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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

13 LARRY TRAN, on behalf of himself and all) Case No. BC717323
14 others similarly situated,)
15 Plaintiff,) **DECLARATION OF CHANT YEDALIAN IN**
16 v.) **SUPPORT OF MOTION FOR FINAL**
17 FASTENAL COMPANY (d/b/a Fastenal);) **APPROVAL OF CLASS ACTION**
and DOES 1 through 100, inclusive,) **SETTLEMENT, AND FOR AWARD OF**
18 Defendants.) **ATTORNEY'S FEES AND COSTS TO CLASS**
19) **COUNSEL AND INCENTIVE AWARD TO**
) **THE CLASS REPRESENTATIVE**

HEARING
Date: October 14, 2020
Time: 10:00 a.m.
Dept.: 7
Judge: Hon. Amy D. Hogue

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DECLARATION OF CHANT YEDALIAN

I, Chant Yedalian, declare as follows:

1. I am an attorney at law licensed to practice before all of the courts of 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.

2. I am the attorney for the named Plaintiff Larry Tran. 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:

3. This Declaration is made in support of the Motion For Final Approval Of Class Action Settlement, And For Award Of Attorney's Fees And Costs To Class Counsel And Incentive Award To The Class Representative ("Motion").

Notice Sent To Defendant and Lawsuit Filed

4. On August 21, 2018, on behalf of Plaintiff, I sent to Fastenal Company ("Fastenal") a letter entitled Notice To Cease And Desist FACTA Violations; And Notice Of Intended Class Action Lawsuit. Enclosed with the August 21, 2018 letter was a copy of the Complaint which was about to be filed.

5. Following this notice, Plaintiff commenced this action on August 22, 2018 by filing a proposed class action complaint against Fastenal and Doe defendants. Plaintiff's Complaint alleges, *inter alia*, that Fastenal willfully violated FACTA by printing more than the last five digits and the expiration date of credit and debit cards on electronically printed customer receipts printed at a point of sale or transaction.

**Settlement Discussions, Including The
Extensive Mediation Negotiations With The Mediator**

6. As Plaintiff's counsel, I participated in all aspects of the settlement discussions and negotiations.

1 7. While the Parties had initial settlement discussions through their counsel, these
2 discussions focused mainly on legal issues and disputes and did not make much material progress
3 towards settlement. Additionally, a substantial factual dispute arose regarding the nature and
4 extent of Fastenal's conduct. Although many other issues and disputes remained, that particular
5 factual dispute was resolved, due at least in part to the fact that prior to filing suit, I investigated
6 certain of Fastenal's store locations to determine their receipt-printing practices, including
7 equipment and processes used, as well as whether such was consistent with the experience
8 Plaintiff had previously had when he had received his receipt.

9 8. Further discussions thereafter ultimately resulted in an agreement to participate in a
10 mediation with the hope that a mediator could assist Plaintiff and Fastenal in resolving (or at least
11 narrowing) their disputes and differences.

12 9. Plaintiff and Fastenal ultimately expressed to this Court their agreement and desire
13 to participate in a mediation with Mr. Martin Quinn of JAMS.

14 10. In preparation for the mediation, additional underlying facts and information were
15 exchanged between Plaintiff and Fastenal to facilitate the discussions.

16 11. A mediation was scheduled to take place with Mr. Quinn in San Francisco on
17 March 1, 2019.

18 12. Also as part of the preparation for the March 1, 2019 mediation, Mr. Quinn
19 requested briefs from each of the Parties addressing the pertinent issues and disputes. I prepared
20 Plaintiff's brief detailing the pertinent issues and disputes and an extensive legal analysis of same,
21 and I was informed that Fastenal did too.

22 13. I also thereafter prepared additional supplemental material and brought such to the
23 mediation to assist with the negotiations.

24 14. The Parties made substantial progress at the mediation and agreed to continue their
25 settlement discussions. With the assistance of the mediator, the Parties continued their
26 negotiations until April 10, 2019 by which time they reached agreement, in principle, on certain
27 key terms of a class-wide settlement.

28

1 15. Thereafter, the Parties worked on memorializing, in writing, all key terms. On
2 April 30, 2019 the Parties finalized the memorialization of all key terms of a proposed class-wide
3 settlement in a written Memorandum of Understanding of Settlement ("MOU"). The MOU was
4 thereafter circulated for signatures and fully executed on May 1, 2019.

5 16. Although the MOU was finalized and executed, it was with the understanding that
6 the Parties still had matters that they were working on and that they would prepare a long-form
7 settlement agreement and related documents. The Parties informed the Court of their status
8 through a written report on May 3, 2019 and appeared before the Court on May 8, 2019 to provide
9 a further update.

10 17. I thereafter continued efforts with Fastenal, and I also continued to consult with the
11 Settlement Administrator Atticus Administration, LLC, until July 2, 2019 when the Parties
12 reached final agreement on the long-form settlement agreement and related class notices.

13 18. On July 8, 2019, I filed, on behalf of Plaintiff, Plaintiff's motion for preliminary
14 approval of the class settlement. Prior to the continued preliminary approval hearing date of
15 November 21, 2019, the Parties jointly filed additional supporting documents, including an
16 amendment to the long-form settlement agreement. The Court held a preliminary approval
17 hearing on November 21, 2019 and requested supplemental information and briefing, as well as a
18 revised long-form settlement agreement (including revised notice documents). On February 18,
19 2020, the Parties filed the requested supplemental information and briefing together with
20 supporting declarations, as well as a revised long-form settlement agreement (including revised
21 notice documents). The revised long-form settlement agreement, entitled Amended Stipulated
22 Settlement Agreement and Release (hereinafter sometimes referred to as "Settlement" or
23 "Agreement") (which includes the various notices to the Settlement Class) is a product of the
24 extensive research, investigation, exchanges and negotiations, including but not limited to the
25 mediation efforts with Mr. Quinn and the comments and input of this Court. A true and correct
26 copy of the Agreement is attached to as **Exhibit 1.**¹

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

The Settlement Warrants Final Approval

19. 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.

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

21. Outright Dismissal As explained in paragraphs 81-91 below, the risk of outright dismissal of FACTA cases is a real, acute risk with many FACTA cases (including many which I have prosecuted as counsel) having been dismissed.

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

23. 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.

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

25. 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.

26. 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.

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

8 28. As another example, the Judicial Council of California/Administrative Office of the
9 Courts' "Findings of the Study of California Class Action Litigation, 2000-2006" shows that well
10 under 21.4% of all class actions are successfully certified by way of a contested motion.²

11 29. In sum, and despite these statistics, I reasonably and strongly believe about the
12 prospect of certification in this case. However, *Martin* is an example of a FACTA case
13 demonstrating the risks inherent in certification, including, at a minimum, delays and potential
14 appeals.

15 30. As explained in paragraphs 93-96 below, the risk of an adverse class certification
16 outcome recently materialized in a published appellate opinion in New Jersey state court in
17 another FACTA case I prosecuted.

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

21 32. The Settlement establishes a non-reversionary Settlement Fund in the amount of
22 \$1,300,000, from which Settlement Class members may submit a claim of up to \$1,000.
23 Agreement ¶ 11(a) and (b). This potential amount made available to Settlement Class members is
24 a 100% value compared to the maximum possible recovery of \$1,000 in statutory damages. This
25 is an excellent value particularly when the propriety of awarding full statutory damages to
26 Settlement Class members who do not claim actual monetary loss is strongly disputed. Many
27 FACTA defendants have argued that lack of "actual harm" precludes, if not any award of statutory

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² Available at <http://www.courts.ca.gov/documents/class-action-lit-study.pdf>.

1 damages to begin with, at the very least "excessive" statutory damages. Since it remains to be
2 seen how courts will resolve such constitutional challenges to statutory damage awards under
3 FACTA, the value negotiated by the Parties represents a fair compromise well within the range of
4 reasonableness.

5 33. Another benefit of this lawsuit and Settlement is the fact that, as part of the
6 Settlement, Fastenal shall implement a written company policy which states that it will not print
7 more than the last five digits of the credit or debit card number nor the credit or debit card
8 expiration date upon any printed receipt provided to any customer that uses a credit or debit card
9 to transact business with Fastenal. Agreement ¶ 11(e). I believe that this FACTA compliance
10 policy ensures that Fastenal will not continue to violate the law, willfully, inadvertently or
11 otherwise. Such non-pecuniary benefits are properly considered in judging the results of the
12 lawsuit. *See, e.g., Craft v. County of San Bernardino*, 624 F.Supp.2d 1113, 1121, (C.D. Cal.
13 2008) (taking into account fact that, in addition to monetary aspects, the defendant stopped the
14 practices at issue). This is especially true with a consumer protection statute such as FACTA
15 which, as the Ninth Circuit has held, serves both a compensatory and "deterrent purpose."
16 *Bateman*, 623 F.3d at 718. "In fashioning FACTA, Congress aimed to 'restrict the amount of
17 information available to identity thieves.'" *Ibid.* The non-pecuniary benefits achieve that
18 substantial purpose. The importance of such non-pecuniary benefits was also explained by the
19 Ninth Circuit in a case involving another consumer protection statute, the Fair Debt Collection
20 Practices Act:

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

34. Agreement Provides That Change Of Law Before Final Approval of Settlement
Will Not Compromise Settlement Class Members' Benefits: A further benefit of the Settlement
assures that if there is an intervening change of law before final approval of the Settlement, the

1 Settlement and Settlement benefits will continue to remain valid, enforceable and available to
2 Settlement Class members. Agreement ¶ 20.

3 35. As explained in paragraphs 97-101 below, the significance of this benefit cannot be
4 understated in light of the real risk of adverse legislative action.

5 36. The Settlement Is The Product of Extensive Arm's-Length Negotiations: The
6 Agreement is the product of extensive, adversarial, arm's-length discussions, negotiations,
7 correspondence, factual and legal investigation and research, and careful evaluation of the
8 respective parties' strengths and weaknesses. As explained above, the Agreement was also
9 reached through the extensive negotiations that occurred with the assistance of mediator Mr.
10 Quinn.

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

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

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

21 40. My opinion regarding the Settlement is also based in substantial part on my
22 experience and qualifications, a brief summary of which is set forth in paragraphs 42-63, below.

23 **No Objections**

24 41. I received a correspondence by mail from someone who identified herself as
25 Jameelia Matheson claiming she is writing about a "Fastenal Credit Card Recall Class Action" and
26 requesting "Mediation" and summarily claiming that "\$1,000.00 isn't sufficient for such
27 Violation." A true and correct copy of this correspondence is attached as **Exhibit 2** (but redacted
28 to exclude certain information, such as mailing address, email address and telephone number).

Qualifications of Counsel

42. I am an attorney and a consumer activist.

43. 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).

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

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

46. 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.

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

48. 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.).

49. 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. These facts not only demonstrate experience but they also reflect the fact that I have the wherewithal and resources necessary to take on and successfully prosecute FACTA class actions against the largest of merchants.

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

1 51. For example, nearly 13 years ago, I successfully opposed a motion to dismiss
2 in the seminal case of *Pirian v. In-N-Out Burgers*, SACV-06-1251 DOC-MLGx, 2007 WL
3 1040864 (C.D. Cal. 2007), which set favorable pleading standards for FACTA claims.

4 52. Throughout the years, I have opposed many motions to dismiss in FACTA
5 cases and continued to secure favorable results in favor of consumers. See, as recent
6 examples, *Deschaaf v. American Valet & Limousine, Inc.*, Case No. 2:16-cv-03464-GMS,
7 2017 WL 610522 (D. Ariz. Feb. 15, 2017); *De Cesare, et al v. Lab. Corp. of Am. Holdings*,
8 2016 WL 3483205 (C.D. Cal. May 31, 2016).

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

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

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

19 56. I have handled several putative class action cases before the Judicial Panel On
20 Multidistrict Litigation. I have argued before the Judicial Panel On Multidistrict Litigation. I
21 have also served as a lead counsel on behalf of plaintiffs in an MDL. *In Re: Toys "R" Us –*
22 *Delaware, Inc. – Fair And Accurate Credit Transactions Act (FACTA) Litigation*, MDL 08-
23 01980 MMM (FMOx) (C.D. Cal.); *In Re: The TJX Companies, Inc. Fair and Accurate Credit*
24 *Transactions Act (FACTA) Litigation*, MDL Case No. 07-md-1853 (D. Kansas).

25 57. I have litigated (and continue to litigate) several appeals in FACTA cases. I
26 have also argued before several courts of appeal in FACTA cases.

27 58. I have also persevered and litigated a FACTA case through bankruptcy, on a
28 class-basis, resulting in a \$37 million dollar judgment. *Potikyan v. JS Dreams, Inc. (Johnny*

1 *Rockets - Commons At Calabasas*), *et al.*, No. CV13-6237 JEM (C.D. Cal.) (judgment entered
2 Nov. 17, 2016).

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

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

26 61. My work on behalf of consumers does not end with my legal efforts as an attorney.
27 I believe I am specially well suited to represent consumers because, in addition to my legal
28 experience, I am a consumer activist. I have worked hand-in-hand with various consumer

1 policy concerning FACTA, and ensuring that the Settlement is properly administered and
2 implemented. Agreement ¶ 19.

3 66. Consideration of the other valuable benefits of this Settlement, which obviously
4 have additional value, would result in the fees award representing less than one-third of the
5 overall benefits to the Settlement Class. In particular, there are non-pecuniary benefits resulting
6 from the fact that this lawsuit caused Fastenal to change its Point of Sale ("POS") equipment such
7 that all of its stores ceased printing information prohibited by FACTA, and the Settlement
8 requires Fastenal to implement a written FACTA compliance policy. *See, e.g., Craft v. County of*
9 *San Bernardino*, 624 F.Supp.2d 1113, 1121, (C.D. Cal. 2008) (taking into account fact that, in
10 addition to monetary aspects, the defendant stopped the practices at issue and explaining that
11 "'Attorneys' fees [in class action cases] may be awarded even though the benefit conferred is
12 purely non-pecuniary in nature.'").

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

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

22 69. Further, the risks here were not hypothetical possibilities. FACTA litigation has
23 been extremely high risk as demonstrated by many actual losses. "[A]ttorneys whose
24 compensation depends on their winning the case[] must make up in compensation in the cases
25 they win for the lack of compensation in the cases they lose." *Dakota Medical, Inc. v. RehabCare*
26 *Group, Inc.*, 2017 WL 4180497 *8 (E.D. Cal. Sept. 21, 2017), quoting *Vizcaino v. Microsoft*
27 *Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002). "Absent successful resolution, none of this attorney
28 time would have been compensated." *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017

1 WL 749018 *7 (E.D. Cal. Feb. 27, 2017), also quoting *Vizcaino*, 290 F.3d at 1048 for the principle
2 that such "Risk is a relevant circumstance." Some of these risks are explained in greater detail
3 below in paragraphs 80-101.

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

11 71. Up to August 27, 2020, I have devoted 415.17 hours of my time on this matter. I
12 expect to devote approximately 30 hours of additional time after August 27, 2020, including for
13 matters such as preparing for and appearing for the final approval hearing and work relating to the
14 continuing administration of this Settlement, including such matters as follow-up with the Court
15 and class member and *cy pres* distribution issues.

16 72. To the extent the Court would like to review the different tasks I performed, I am
17 submitting an unredacted paper copy of my itemized time records for the Court's *in camera*
18 review.³

19 73. These itemized time records show the tasks I performed and the amount of time I
20 worked.

21 74. Each and every task which I performed concerns the FACTA cause of action
22 prosecuted, and ultimately settled, in this case. Therefore, I believe the hours worked were plainly
23 reasonable to accomplish these tasks and could and would certainly have been billed to a private
24 client who hired counsel to pursue such litigation.

25 75. My current hourly rate is \$650. My current rate is based, in part, on my
26 qualifications and experience, a brief summary of which is set forth in paragraphs 42-63, above.

27
28 ³ 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 76. Moreover, my current rate is further supported by the fact that this is a class action
2 case, and class action work requires specialized learning and experience.

3 77. My 415.17 hours of work devoted to date to this case plus the 30 additional hours
4 expected, multiplied by my \$650 hourly rate yields a lodestar of \$289,360.50.

5 78. "Beyond simply the multiplication of a reasonable hourly rate by the number of
6 hours worked, a lodestar multiplier is typically applied." *Dakota Medical, Inc. v. RehabCare*
7 *Group, Inc.*, 2017 WL 4180497 *8 (E.D. Cal. Sept. 21, 2017) and authorities cited therein.
8 "Multipliers can range from 2 to 4 or even higher." *Wershba v. Apple Computer, Inc.*, 91
9 Cal.App.4th 224, 255 (2001).

10 79. Here, it takes a multiplier of less than 1.498 applied to my lodestar of
11 \$289,360.50 to yield the \$433,333.33 amount in fees requested. Thus, a cross-check using the
12 lodestar with multiplier demonstrates that the amount of the fees requested is reasonable.

13 80. The reasonableness of the fees requested is also demonstrated and supported by the
14 real risks and real losses I have had to endure in FACTA cases, some of which are as follows:

15 81. Outright Dismissal Many federal courts, including the Ninth Circuit, Second
16 Circuit and Seventh Circuit have dismissed FACTA cases which allege expiration date violations
17 that seek statutory damages. The dismissals are based on the position that plaintiffs who allege
18 such violations without any accompanying actual injury do not sustain any "concrete injury"
19 sufficient to satisfy Article III standing requirements in federal court. *Bassett v. ABM Parking*
20 *Servs., Inc.*, 883 F.3d 776 (9th Cir. 2018)⁴; *Crupar-Weinmann v. Paris Baguette America, Inc.*, 861
21 F.3d 76 (2nd Cir. 2017); *Meyers v. Nicolet Rest. of De Pere, LLC*, 843 F.3d 724 (7th Cir. 2016).

22 82. In addition, the Second Circuit has dismissed a FACTA excess digits case
23 involving the printing of the first six digits and last four digits on Article III grounds while
24 suggesting (albeit wrongly in my view) that the first six digits of a card number do not result in an
25 increased risk of harm and are therefore not the digits Congress sought to protect against. *Katz v.*
26 *Donna Karan Company, L.L.C.*, 872 F.3d 114, 120 (2nd Cir. 2017). Several other district courts

27 _____
28 ⁴ Prior to the Ninth Circuit's opinion, I had obtained a published opinion from a federal
district court holding that a FACTA expiration date violation satisfied Article III. *Deschaaf v.*
American Valet & Limousine, Inc., 234 F.Supp.3d 964 (D. Ariz. Feb. 15, 2017).

1 have followed suit. *E.g.*, *Tarr v. Burger King Corp.*, 2018 U.S. Dist. LEXIS 2176 (S.D. Fla. Jan.
2 5, 2018); *Gesten v. Burger King Corp.*, 2017 U.S. Dist. LEXIS 158173 (S.D. Fla. Sept. 27, 2017).

3 83. I have received several dismissal orders in FACTA expiration date cases and
4 FACTA excess digit cases in federal and state court. *E.g.*, *Jacobson v. Peter Piper Inc.*, No. 4:16-
5 cv-00596-JAS-LCK (D. Ariz. Aug. 3, 2018); *Llewellyn v. AZ Compassionate Care Inc.*, No. 2:16-
6 cv-04181-DGC, 2017 WL 1437632 (D. Ariz. Apr. 24, 2017); *Gant v. Fondren Orthopedic Group*.
7 *L.L.P.*, No. 4:16-cv-00648, 2017 WL 4479955 (S.D. Tex. May 23, 2017); *O'Shea v. P.C. Richard*
8 *& Son, LLC*, No. 1:15-cv-09069-KPF, 2017 WL 3327602 (S.D. N.Y. Aug. 3, 2017); *Batra v. RLS*
9 *Supermarkets LLC*, No. 3:16-cv-02874-B, 2017 WL 3421073 (N.D. Tex. Aug. 9, 2017); *Noble v.*
10 *Nevada Checker Cab Corp.*, No. 2:15-cv-02322-RCJ-VCF, 2016 WL 4432685 (D. Nev. Aug. 19,
11 2016); *Miles v. The Company Store, Inc.*, No. 16-CVS-2346 (North Carolina Superior Court Nov.
12 16, 2017); *Nowe v. Essex Technology Group, LLC*, No. 17-1-3769-99 (Georgia Superior Court
13 Jan. 12, 2018).

14 84. During the time the Parties were negotiating settlement in this case, the Third
15 Circuit also issued an opinion dismissing a FACTA case involving the first 6 and last 4 digits.
16 *Kamal v. J. Crew Grp., Inc.*, 918 F.3d 102 (3rd Cir. March 8, 2019).

17 85. After the MOU but before the long-form Agreement was reached, I received a
18 dismissal order in another FACTA case involving the disclosure of excess digits, *McCloud v.*
19 *Save-A-Lot Knoxville, LLC*, 2019 WL 2250269 (E.D. Tenn. May 24, 2019).

20 86. More recently, in a case involving the printing of the first 6 digits and the last 4
21 digits, I received another dismissal from the United States District Court for the Northern District
22 of California where the court ruled that the printing of such digits does not violate the FACTA
23 statute and dismissed the case with prejudice on the merits. *Marshall v. Motel 6 Operating L.P.*,
24 No. 4:19-cv-03095-JSW (N.D. Cal. October 22, 2019)(Doc. Nos. 28-29).⁵ In *Marshall* the

25 _____
26 ⁵ This outcome flies in the face of the express language of the statute which prohibits the
27 printing of any more than the last five digits of the card number. For example, I have successfully
28 defeated attempts to dismiss based on the printing of the first two digits and last four digits.
Tchoboian v. Fedex Office & Print Services, Inc., 2011 WL 12842228 *2 (C.D. Cal. January 28,
2011)(Judge Guilford)("The language of 15 U.S.C. § 1681c(g) is unambiguous. Section 1681c(g)
clearly makes the display of 'more than the last 5 Digits' a violation of FACTA. In fact, it would
have been difficult for Congress to be more clear in its language."); *Tchoboian v. Fedex Office &*

1 defense made other arguments, including that the court does not have personal jurisdiction over
2 non-resident class members (something which Fastenal has also argued during discussions as a
3 defense to class certification) but the court dismissed the case in its entirety and did not reach that
4 issue. I appealed the dismissal to the Ninth Circuit (Ninth Cir. Case No. 19-17316), the appeal
5 was just recently fully briefed and the Ninth Circuit has set oral argument for October 13, 2020.

6 87. In short, FACTA litigation has been extremely high risk and the risks are not
7 hypothetical as demonstrated by the many actual losses.

8 88. However, Fastenal knows that I will zealously prosecute matters, through
9 conclusion. For example, I appealed, briefed with my co-counsel, and argued the issue of Article
10 III standing in a FACTA case involving the first digit and the last four digits before the Ninth
11 Circuit Court of Appeals. *Noble v. Nevada Checker Cab Corp.*, 2018 WL 1223484 (9th Cir.
12 March 9, 2018). Unfortunately, while that appeal resulted in an unfavorable and unpublished
13 result on the issue of Article III concerning those particular facts, I believe that my pursuit of the
14 appeal through the Ninth Circuit and my skilled determination for more than 12 years of
15 prosecuting FACTA cases was a substantial motivation for Fastenal to settle this matter. Fastenal
16 knows that I have pursued appeals in other FACTA cases too.

17 89. For example, I argued an appeal before the Eleventh Circuit on January 29, 2019 in
18 a FACTA case involving both excess digits and expiration date. *Taylor v. Fred's, Inc.*, Eleventh
19 Circuit No. 18-10832.

20 90. I received a published opinion from the D.C. Circuit in another appeal which my
21 co-counsel and I were prosecuting and successfully obtained a reversal of the district court's
22 dismissal order in that FACTA case. *Jeffries v. Volume Services America, Inc.*, 928 F.3d 1059
23 (D.C. Cir. July 2, 2019).

24 91. If this case proceeded to litigation, Fastenal also contends that a state court would
25 likewise not have subject-matter jurisdiction due to the purported lack of any actual damage. If
26 Fastenal is correct, then class members would not be able to recover anything in federal or state

27
28 *Print Services, Inc.*, 2011 WL 12842230 *3-4 (C.D. Cal. November 14, 2011)(Judge
Kronstadt)(same).

1 court. I defeated a demurrer brought by another defendant in Los Angeles County Superior Court
2 in another FACTA case where the defendant made just such an argument. Although the Court
3 overruled the demurrer, it noted it was a "very close question." Defendants filed a writ petition
4 and I filed opposition papers with the California Court of Appeal. The Court of Appeal denied the
5 writ petition. At a minimum, litigation of this issue would cause delay and pose substantial risk,
6 including the risk of outright dismissal as has already occurred in many cases. In light of the acute
7 risk of outright dismissal, I believe that this factor alone renders the Settlement not only
8 reasonable, but an exceptionally favorable result.

9 92. Actual Bankruptcies Three FACTA cases I was prosecuting (against merchants
10 Fred's, J. Crew, and Men's Wearhouse) have recently been met by actual bankruptcy filings. The
11 unfortunate result of these bankruptcies is that, even if there is any recovery for the FACTA
12 claims, the recovery will likely be not more than a few pennies on the dollar versus the expected
13 recovery had the bankruptcies not taken place. Moreover, recovery in bankruptcy is far from
14 guaranteed and the battle over merits and other issues continue in the context of the bankruptcies.
15 The practical real world effect and impact of these bankruptcies mean I will experience substantial
16 financial hits, after having previously devoted substantial time and resources to such cases. For
17 example, in Fred's, I had already argued an appeal before the Eleventh Circuit and while awaiting
18 the outcome on appeal, the merchant filed for bankruptcy. In J. Crew, the matter had been
19 litigated in three different courts (state and federal) before the merchant filed for bankruptcy. The
20 Men's Wearhouse case was filed on May 15, 2017 with the bankruptcy filing occurring more than
21 three years later on August 2, 2020.

22 93. Class Certification The risk of an adverse class certification outcome recently
23 materialized in a published appellate opinion in New Jersey state court in another FACTA case
24 which I am prosecuting. In *Baskin, et al. v. P.C. Richard & Son, LLC*, No. OCN-L-000911-18
25 (N.J. Superior 2018), on a motion to dismiss, the lower court struck the class allegations and
26 dismissed the entirety of the case, holding, among other things, that a FACTA claim does not
27 warrant class treatment as such is not a superior method of adjudication. My co-counsel and I
28

1 appealed and I argued the matter before the New Jersey appellate court (known as the Superior
2 Court Of New Jersey Appellate Division).

3 94. In a published opinion, the appellate court affirmed the dismissal of the class
4 allegations but reinstated one plaintiff's individual FACTA claim. *Baskin, et al. v. P.C. Richard &*
5 *Son, LLC*, No. A-2662-18T1 (N.J. App. Div. March 2, 2020).

6 95. My co-counsel and I filed a Petition For Certification to the New Jersey Supreme
7 Court seeking the court's discretion to hear and review the matter. On June 16, 2020, the New
8 Jersey Supreme Court granted the petition limited to the class certification issues. Oral argument
9 before the New Jersey Supreme Court is not expected until several months from now and an
10 opinion expected to follow sometime thereafter.

11 96. This is yet another example of the difficulties faced in these cases and the
12 perseverance required to pursue to them.

13 97. Legislative Risk I have previously experienced adverse legislative action and such
14 may recur. As explained by the Ninth Circuit in *Bateman*, in 2008 (while many FACTA lawsuits
15 were then pending) Congress enacted the Credit and Debit Card Receipt Clarification Act
16 ("Clarification Act"). The Clarification Act retroactively granted a *temporary* immunity from
17 statutory damages for FACTA violations to those defendants that printed an expiration date
18 "between December 4, 2004, and June 3, 2008 [the date the Clarification Act was enacted]."
19 *Bateman, supra*, 623 F.3d at 717. Stated another way, the effect of the Clarification Act was that
20 it wiped-out liability for statutory damages for all then pending FACTA expiration date cases. As
21 a result of the change of law imposed by the Clarification Act, many FACTA class action cases
22 were dismissed without any recovery for consumers.

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

27 99. I had extensive first-hand experience of the devastating impact of the Clarification
28 Act.

1 of the Class Representative's actions that the Defendant ceased its offensive conduct and agreed to
2 implement a written FACTA compliance policy. Thus, the Class Representative effectuated
3 substantial change of conduct, thereby accomplishing the "deterrent" objectives of FACTA. He
4 was also willing and stepped forward to act as a private attorney general where, to my knowledge,
5 no other plaintiff has done so.

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

9 109. Based upon my time records as well as my communications with him, I estimate
10 that the Class Representative devoted approximately 45-50 hours of his time to pursue this
11 litigation. By definition, the time he devoted to this litigation was time spent away from work
12 and/or leisure in an effort to advance the interests of the entire class.

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

17 "An incentive award may be appropriate when a class representative will not
18 gain any benefit beyond that he would receive as an ordinary class member. See
19 *Razilov*, 2006 WL 3312024, at *4 (approving the payment of an incentive award
20 where the only benefit a class representative was going to receive from a settlement
21 was the same statutory damages other class members would receive); *Van Vranken*,
22 901 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."

23 111. I also believe that the amount requested is also reasonable in relation to other cases.
24 In *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001), the court approved
25 incentive awards of \$300,000 to each named plaintiff in recognition of the services they provided
26 to the class by responding to discovery, participating in the mediation process and taking the risk
27 of stepping forward on behalf of the class. In *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294,
28 300 (N.D. Cal. 1995), a \$50,000 incentive award was approved for similar participation.

1 112. The amount requested is also consistent with incentive awards in various other
2 FACTA cases. For example, in *McGee, et al. v. Ross Stores, Inc, et al.*, C06-7496 CRB (N.D.
3 Cal. January 9, 2009), the court awarded each of the two class representatives a \$5,000 incentive
4 payment. In *Tchoboian v. Parking Concepts, Inc., et al.*, SACV09-422 DMG (ANx) (C.D. Cal.
5 November 12, 2010) the court awarded the class representative a \$5,000 incentive payment. In
6 *Jarchaffian v. American Multi-Cinema, Inc., et al.*, CV09-03434 JHN (AJWx), 2011 U.S. Dist.
7 LEXIS 158005 *6 (C.D. Cal. October 6, 2011) the court awarded the class representative a \$5,000
8 incentive payment. In *Sakamoto v. One Parking, Inc. et al.*, SACV11-1249 MLG (C.D. Cal. June
9 21, 2012) the court awarded the class representative a \$5,000 incentive payment. In *In re Toys*
10 *"R" Us—Delaware, Inc.—Fair And Accurate Credit Transactions Act (FACTA) Litigation*, No. cv-
11 08-01980 MMM (FMOx), 295 F.R.D. 438, 472 (C.D. Cal. January 17, 2014), the court awarded
12 each of the three class representatives a \$5,000 incentive payment.

13 113. In sum, I believe the requested incentive payment of \$5,000 to the Class
14 Representative in this case, for the valuable time and resources he contributed to advance this
15 litigation is fair and reasonable, and I respectfully request that the Court approve and award this
16 amount to him as his incentive award.

17
18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20
21 Executed this 27th day of August 2020.

22
23 
24 _____
25 CHANT YEDALIAN
26 Declarant

EXHIBIT "1"

Tran, et al. v. Fastenal Company, et al.
(Los Angeles Superior Court Case No. BC717323)

AMENDED STIPULATED SETTLEMENT AGREEMENT AND RELEASE

This Amended Stipulated Settlement Agreement and Release ("**Settlement**" or "**Agreement**") is entered into between plaintiff Larry Tran ("**Tran**" or "**Plaintiff**") and defendant Fastenal Company ("**Fastenal**" or "**Defendant**"). Tran and Fastenal are collectively referred to as the **Parties**.

RECITALS

1. On August 21, 2018, Plaintiff, through his counsel, sent to Fastenal a letter entitled Notice To Cease And Desist FACTA Violations; And Notice Of Intended Class Action Lawsuit ("**Notice**"). Enclosed with the August 21, 2018 letter was a copy of the Complaint which was about to be filed.

2. On August 22, 2018 Plaintiff filed his putative class action ("**Action**") by filing his complaint ("**Complaint**") in Los Angeles County Superior Court, entitled *Tran, et al. v. Fastenal Company, et al.*, Case No. BC717323. The Action was ultimately assigned to the Honorable Amy D. Hogue before whom it is currently pending.

3. The Complaint alleges that Fastenal willfully violated the Fair and Accurate Credit Transactions Act ("**FACTA**"), 15 U.S.C. §1681c(g), by printing more than the last five digits and the card expiration date of Plaintiff's and other consumers' respective credit card and/or debit card on their electronically printed customer receipt(s) printed at Fastenal store locations during a certain time period.

4. The Parties participated in extensive settlement discussions including, but not limited to, a mediation with Mr. Martin Quinn of JAMS in San Francisco and further settlement negotiations with the mediator following the mediation.

5. By entering into this Settlement, Fastenal does not admit liability for any violation of the FACTA or any other wrongdoing. Fastenal has agreed to settle this Action solely as a business decision based on its evaluation of the time, expense, burden and uncertainty of further litigation.

AGREEMENT

6. In consideration of the mutual covenants, promises, and warranties set forth in this Agreement, the Parties agree to a class-wide settlement, subject to the Court's approval, as follows:

7. **Incorporation of Recitals.**

The recitals set forth above are incorporated into this Agreement.

8. **Settlement Contingent Upon Court Approval.**

The terms of this Settlement are subject to approval by the Court. If the Settlement is not approved by the Court or does not become final for any reason, then the Parties expressly reserve all of their rights and remedies.

9. **If the Settlement Does Not Become Final.**

If the Settlement does not become final for any reason, the Settlement will be deemed null and void. In such an event, the Parties will resume as if the Settlement had not been entered, and the terms and provisions of this Agreement will have no further force and effect and may not be used for any purpose (except to potentially later demonstrate the work performed by Plaintiff's counsel).

10. **The Settlement Class.**

As part of the Settlement, the Parties stipulate to the certification, for settlement purposes only, of the following settlement class (the "**Settlement Class**"): All consumers who, at any time during the period August 22, 2016 to September 6, 2018, were provided an electronically printed receipt at the point of a sale or transaction at any Fastenal store within the United States, on which receipt was printed more than the last 5 digits and/or the expiration date of the consumer's credit card or debit card. Excluded from the Settlement Class are all current and former employees, directors and officers of Fastenal.

During the Settlement Class period of August 22, 2016 to September 6, 2018 ("**Settlement Class Period**"), Fastenal had approximately 1,061,508 credit and debit card transactions where a consumer credit card or consumer debit card may have been used. Of this number of transactions, approximately 314,580 involved the use of a consumer credit card or consumer debit card, and some of the remaining 746,928 transactions, may have also involved the use of a consumer credit card or consumer debit card. Thus, the number of transactions during the Settlement Class Period where a consumer credit card or consumer debit card was used ranges from approximately 314,580 to approximately 1,061,508. All credit and debit card printed customer receipts issued by Fastenal during the Settlement Class Period included the first 4 digits and the last 4 digits and the expiration date of the respective credit or debit card printed on the receipt.

11. **Settlement Benefits to the Class.**

(a) **Cash Fund**: No later than five days after the Court enters an order granting preliminary approval of the Settlement, Fastenal will establish a non-reversionary cash fund in the amount of \$1,300,000 (the "**Cash Fund**"), and will transfer the full amount of the Cash Fund to a bank account designated and maintained by the Settlement Administrator for purposes of this Settlement.

(b) **Distributions From The Cash Fund**: After subtracting from the Cash Fund Class Counsel's attorney's 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 \$1,000, each Settlement Class member who submits a valid and timely claim will be mailed a check in the amount of \$1,000 (less any applicable backup withholding), to be paid from the Net Cash Fund. In the event the Pro-Rata Share is less than \$1,000, each Settlement Class Member who submits a valid and timely claim will be mailed a check in the amount of the Pro-Rata Share (less any applicable backup withholding), to be paid from the Net Cash Fund. Distribution of Settlement checks will begin no earlier than 30 days after the Settlement Date. All Settlement checks will be distributed no later than 60 days after the last day to submit claims for compensation from the Net Cash Fund or the Settlement Date, whichever is later. All Settlement checks will have an expiration date stated on them that will be calculated as 180 days from the date the check is issued.

(i.) **Distribution of Residue**: Given the nature of this particular consumer class action case, the fact that Fastenal does not know, nor does Fastenal have access to any information which would enable it to determine, the postal addresses, email addresses or facsimile numbers of absent Settlement Class members, 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, consistent with C.C.P. § 384. 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, and, if that fails, the Parties agree that the Court may itself propose and select charity(ies) consistent with C.C.P. § 384. The Parties further agree to comply with all of the terms and respective obligations of C.C.P. § 384. After conferring, and subject to the Court's approval, the Parties have agreed to propose Legal Assistance For Seniors as the *cy pres* beneficiary of any residual funds.

(c) **Administration of Settlement**: The Parties agree that, subject to the Court's approval, either Atticus Administration, LLC, or another third party settlement administrator selected by Plaintiff, 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 translation, check issuance, Settlement Website, notice to Settlement Class Members, and envelope and postage charges, will be paid from the Cash Fund. Administration Costs are estimated at approximately \$167,662.00 but may increase depending on the number of claims submitted by Settlement Class members.

(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 August 22, 2016 to September 6, 2018. A valid claim will require that a Settlement Class member produce evidence that he or she received a customer receipt from Fastenal at any time during the period August 22, 2016 to September 6, 2018 that displays more than the last 5 digits and/or expiration date of his or her credit or debit card, and to state that he or she used their own personal card for such transaction. In addition to stating that he or she used their own personal card for the subject transaction, proof of claim may consist of the original or a copy of either (1) a customer receipt containing more than the last 5 digits and/or expiration date of his or her credit or debit card showing that he or she made a transaction at any Fastenal store in the United States at any time during the period August 22, 2016 to September 6, 2018, 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 any Fastenal store in the United States at any time during the period August 22, 2016 to September 6, 2018.

(e) **Implementation of FACTA Compliance Policy:** Not later than twenty days after the Settlement Date, Fastenal shall implement a written company policy which states that it will not print more than the last five digits of the credit or debit card number nor the credit or debit card expiration date upon any printed receipt provided to any customer that uses a credit or debit card to transact business with Fastenal.

In addition, Fastenal has already ceased printing more than the last five digits of the credit or debit card number and the credit or debit card expiration date on printed receipts it issues to its customers. On August 21, 2018, Plaintiff, through his counsel, sent to Fastenal a letter entitled Notice To Cease And Desist FACTA Violations; And Notice Of Intended Class Action Lawsuit. Enclosed with the August 21, 2018 letter was a copy of the Complaint which was about to be filed. In response to the August 21, 2018 letter and Plaintiff's Complaint filed on August 22, 2018, Fastenal took measures to change its Point of Sale ("POS") equipment such that by September 6, 2018 all of its stores ceased printing more than the last five digits of the credit or debit card number and the credit or debit card expiration date on printed receipts issued to its customers.

12. **Notice to the Class.**

The Parties agree that notice of the proposed Settlement will be provided to the Settlement Class through the following methods, but the Parties also agree that should the Court require any different, or modified, means or content of any notice(s) such shall not affect the enforceability of the Settlement and the Parties agree to adopt any such different or modified means or content of notice:

(a) **On-Location Notice:** Multiple copies of a short-form notice ("**Short-Form Notice**") in English and, separately, also in Spanish, shall be prominently posted at or near the following locations within each of the Fastenal stores that print receipts at the point of sale in the United States: (1) front door or (2) each cash register. The Short-Form Notice will be in the form attached hereto as **Exhibit B**. After preliminary approval of the Settlement is granted by the Court, the Settlement Administrator shall cause Exhibit B to be translated by a court certified

translator and thereupon provide the translated version of Exhibit B to the Parties. Fastenal shall separately pay for all costs associated with the printing and posting of the Short-Form Notice and shall be responsible for posting the Short-Form Notice at each of the Fastenal stores. The Short-Form Notice shall be posted no later than 20 days after the date preliminary approval of the Settlement is granted and shall continue to be posted at least until and through the last day on which Settlement Class members may submit a Claim Form. Not later than thirty days before the hearing date set for final approval of the Settlement, a representative or representatives of Fastenal (which shall be selected by Fastenal) shall file with the Court a declaration(s) of compliance attesting that the Short-Form Notice has been posted as required by this paragraph 12(a).

(b) **Newspaper Notice and Targeted Internet Notice:** Newspaper notice ("**Newspaper Notice**"), which will be substantially in the form attached hereto as **Exhibit C**, will be made as follows: The Newspaper Notice will be published on three separate dates in the USA Today in approximately a quarter page size, 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 80 days after the first date. After preliminary approval of the Settlement is granted by the Court, the Settlement Administrator shall cause the portion of Exhibit C which is designated for translation into Spanish to be translated by a court certified translator. In addition to the Newspaper Notice, targeted internet notice ("**Targeted Internet Notice**") consisting of targeted internet ads will be provided in rotating English and Spanish, with the Spanish translation effectuated by the Settlement Administrator using a court certified translator. All costs for the Newspaper Notice and Targeted Internet Notice shall be paid from the Cash Fund.

(c) **Settlement Website Notice:** Beginning no later than 20 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 D**, via a Settlement Website containing a description of the Settlement terms. After preliminary approval of the Settlement is granted by the Court, the Settlement Administrator shall cause Exhibit D to be translated by a court certified translator and thereupon provide the translated version of Exhibit D to the Parties. The Settlement Website shall also have an option where viewers can click to view in Spanish, which translation shall be effectuated by the Settlement Administrator using a court certified translator. All costs for the Settlement Website shall be paid from the Cash Fund.

(d) **Telephone Number For Settlement Class Members:** The Short-Form Notice, Newspaper Notice, Settlement Website, and Full Notice shall refer to the Settlement Administrator's toll-free telephone number, which Settlement Class members may call.

13. **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.

14. **Opt-Out.**

(a) **The Opt-Out Process:** Settlement Class members will have until 180 days from the first date of posting the Full Notice to the Class pursuant to paragraph 12(c) 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 (final approval) hearing.

15. **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 mailed to the Settlement Administrator. To be effective, any such objection must be in writing and include the contents described in paragraph 15(c), and must be mailed and postmarked no later than 180 days from the first date of posting the Full Notice to the Settlement 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 award of attorney's fees and costs and/or the Class Representative's service (or incentive) award. Any objection must be mailed to the Settlement Administrator. To be effective, any such objection must be in writing and include the contents described in paragraph 15(c), and must be mailed and postmarked no later than 180 days from the first date of posting the Full Notice to the Settlement Class, 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 15(a) or paragraph 15(b) must contain all of the following information:

A. A reference at the beginning to this matter, *Tran, et al. v. Fastenal Company, et al.*, Case No. BC717323.

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

C. Proof of Settlement Class membership consisting of the original or a copy of either (1) a customer receipt containing more than the last 5 digits and/or expiration date of his or her credit or debit card showing that he or she made a transaction at any Fastenal store in the United States at any time during the period August 22, 2016 to September 6, 2018, or (2) a credit or debit card statement showing that he or she made a transaction at any Fastenal store in the United States at any time during the period August 22, 2016 to September 6, 2018. In addition, a statement stating that the objector used their own personal card for the subject transaction reflected in the customer receipt or credit or debit card statement provided by the objector.

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.
- 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 Settlement 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, and (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.

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

As of the Settlement Date, and except as to such rights or claims created by the Settlement, Tran and each Settlement Class member who does not timely opt-out of the Settlement forever discharge and release Fastenal 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 August 22, 2016 to September 6, 2018, concerning Fastenal.

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

Fastenal shall not object to, oppose or otherwise contest the designation and appointment of Tran 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, Fastenal will not object to, oppose or otherwise contest Tran receiving an incentive payment of up to \$5,000, to be paid from the Cash Fund, to compensate him for his 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

"Larry Tran" within 10 days of the Settlement Date. This award will be in addition to any other benefit to which Tran will be entitled under the Settlement as a Settlement Class member.

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

As part of the Settlement, Fastenal will not object to, oppose or otherwise contest Class Counsel receiving an award of attorney's fees of up to \$433,333.33, to be paid from the Cash Fund, plus an award of Class Counsel's litigation costs of up to \$25,000, 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 or wire transfer 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 in connection with the already filed 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.**

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) award. 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 his services as the class representative;
- (d) Awarding Class Counsel reasonable attorney's fees and costs;
- (e) Entering Judgment in this Action;
- (f) Retaining continuing jurisdiction over the interpretation, implementation and enforcement of the Settlement; and
- (g) Confirming that the Settlement Administrator shall post a copy of the Judgment on the Settlement website for a period of at least 30 days and that, such posting shall provide the requisite notice of the Judgment to the Settlement Class and satisfy the requirements of California Rules of Court Rule 3.771(b).

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.

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

The Parties agree to cooperate and take all steps necessary and appropriate to effectuate the Settlement. This includes, consistent with the terms of this Agreement, the Parties' agreement to work together in good faith to prepare the Claim Form, Short-Form Notice, Newspaper Notice, Targeted Internet Notice and Full Notice, all of which are to be submitted to the Court in connection with Tran's motion for preliminary approval of the Settlement. The Parties shall diligently work together to seek preliminary and final court approval of the Settlement. Class Counsel shall prepare the preliminary and final approval motion and proposed orders concerning same. 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. **Agreement Is Fully Enforceable, and any Disputes Shall Be Decided By Court.**

The Parties agree that this Agreement shall be fully enforceable by the Court, including but not limited to by motion pursuant to California Code of Civil Procedure Section 664.6. To the extent that there is any disagreement concerning the contents of the Claim Form, Short-Form Notice, Newspaper Notice, Targeted Internet Notice and/or Full Notice, and/or deciding where or how the Newspaper Notice or Targeted Internet Notice shall be made, the Parties agree that the Court shall resolve any such differences and the Court shall look to and use the terms of this Agreement in resolving any such differences.

27. **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.

28. **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.

29. **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.

30. **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 Fastenal:

E. Crystal Lopez, Esq.
Matthew J. Novian, Esq.
MINTZ, LEVIN, COHN,
FERRIS, GLOVSKY AND POPEO, P.C.
2029 Century Park East, Suite 3100
Los Angeles, CA 90067
Phone: 310.586.3203

31. **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.

32. **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.

33. **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.

34. **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.

35. **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.

36. **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.

37. 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.

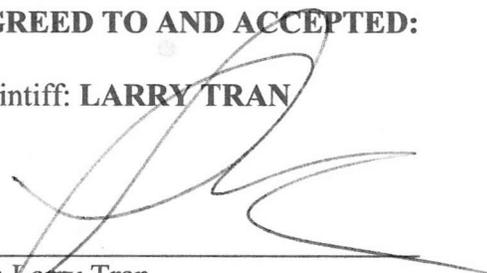
38. Counterparts.

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:

Plaintiff: **LARRY TRAN**

Defendant: **FASTENAL COMPANY**

By: 
Larry Tran

Dated: 2/13/20

By (name): _____

As Its (title): _____

Dated: _____

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

Counsel for Defendant:
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.


By: Chant Yedalian

Dated: 2/12/20

By: E. Crystal Lopez, Esq.

Dated: _____

37. 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.

38. 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:

Plaintiff: **LARRY TRAN**

Defendant: **FASTENAL COMPANY**

By: Larry Tran

Dated: _____



By (name): John Milk
As Its (title): VP General Counsel
Dated: 2/12/2020

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

Counsel for Defendant:
**MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.**

By: Chant Yedalian

Dated: _____



By: E. Crystal Lopez, Esq.
Dated: 2/12/2020

EXHIBIT "A"

CLAIM FORM

Larry Tran, et al. v. Fastenal Company, et al.
Los Angeles Superior Court Case No. BC717323

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 more than the last 5 digits and/or expiration date of your credit or debit card and shows that you made a transaction at any Fastenal store in the United States at any time during the period August 22, 2016 to September 6, 2018. By completing this Claim Form you also confirm that you used your own personal card for the Fastenal transaction.

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 any Fastenal store in the United States at any time during the period August 22, 2016 to September 6, 2018. By completing this Claim Form you also confirm that you used your own personal card for the Fastenal transaction. 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 any Fastenal store in the United States, 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 any Fastenal store in the United States at any time during the period August 22, 2016 to September 6, 2018.

III. Please Sign This Form

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

Signature: _____

Questions? Call 1-???-???-???? or visit www.[????].com

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 more than the last 5 digits and/or expiration date of your credit or debit card and shows that you made a transaction at any Fastenal store in the United States at any time during the period August 22, 2016 to September 6, 2018. By completing the Claim Form you also confirm that you used your own personal card for the Fastenal transaction.

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 any Fastenal store in the United States at any time during the period August 22, 2016 to September 6, 2018. By completing the Claim Form you also confirm that you used your own personal card for the Fastenal transaction. 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 any Fastenal store in the United States, 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 any Fastenal store in the United States at any time during the period August 22, 2016 to September 6, 2018.

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.

V. Further Information At A Later Date

The Settlement provides that, if you are a Class member and you submit a valid Claim Form by [DATE], you may be entitled to an amount up to \$1,000. The actual amount you receive may be less, depending on how many valid Claim Forms are received. If, after all Claim Forms are received, your Pro-Rata Share is determined to be \$600 to \$1,000, the Settlement Administrator will thereafter provide you with a form which will enable you to prevent any withholdings if you complete and return the form certifying that you are not subject to backup withholding; if you do not return that form with your certification, you will still receive payment but mandatory backup withholding will be withheld from your payment. Regardless of whether you complete and return any other form, remember that in order to receive any benefits from this Settlement, you must complete and return the attached Claim Form by no later than [DATE].

EXHIBIT "B"

NOTICE OF PROPOSED
CLASS ACTION SETTLEMENT

Larry Tran, et al. v. Fastenal Company, et al.
Los Angeles Superior Court Case No. BC717323

If you received a credit card or debit card receipt from a Fastenal store at any time during August 22, 2016 to September 6, 2018, a class action settlement may affect your rights, and you may be entitled to a payment in the amount of up to \$1,000.

This notice is only a summary. For more information, visit the website or call the phone number below.

1-8??-???-????? [www.\[insertaddress\].com](http://www.[insertaddress].com)

EXHIBIT "C"

LEGAL NOTICE

Larry Tran, et al. v. Fastenal Company, et al.
Los Angeles Superior Court Case No. BC717323

If you received a credit card or debit card receipt from a Fastenal store at any time during August 22, 2016 to September 6, 2018, a class action settlement may affect your rights, and you may be entitled to a payment in the amount of up to \$1,000.

[Spanish Text Start:] If you received a credit card or debit card receipt from a Fastenal store at any time during August 22, 2016 to September 6, 2018, a class action settlement may affect your rights, and you may be entitled to a payment in the amount of up to \$1,000. For further information about this lawsuit and settlement and your options, you may visit the website or call the toll-free number listed below. [:Spanish Text End]

What's This About and Who's Included?

A class action lawsuit has been filed against Fastenal Company ("Fastenal"). The lawsuit alleges that Fastenal willfully violated a federal law by printing the credit card or debit card expiration date and more than the last five digits of its customer's credit card or debit card number on receipts provided to customers at its stores in the United States. The law which Fastenal is alleged to have violated is the Fair and Accurate Credit Transactions Act ("FACTA"). Fastenal 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 Fastenal. 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. Fastenal 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.

Am I a Class Member?

You are a member of the Class if you used your personal credit card or debit card for any transaction at any Fastenal store within the United States, and you were provided an electronically printed receipt, at any time during the period August 22, 2016 to September 6, 2018, on which receipt was printed more than the last 5 digits and/or the expiration date of your credit card or debit

card. Current and former employees, directors and officers of Fastenal are excluded from the Class.

What Is Being Sought By This Lawsuit?

The lawsuit seeks to recover statutory damages in the range of \$100-\$1,000 for each electronically printed customer receipt provided to Class members on which receipt more than the last five digits of their credit card or debit card number and the card expiration date was printed. The lawsuit also seeks other remedies such as attorney's fees and costs. The Court has not yet decided in favor of either the Class or Fastenal.

Why Am I Receiving This Notice?

Judge Amy D. Hogue, who is presiding over this lawsuit (entitled *Tran, et al. v. Fastenal Company, et al.*, Los Angeles County Superior Court Case No. BC717323), approved a proposed class settlement. If you are part of the Class, your legal rights will be affected by this settlement unless you decide to exclude yourself. The Court authorized this notice to inform Class members about this settlement and their options.

Do I Have a Lawyer in the Case?

The Court appointed Chant Yedalian of Chant & Company A Professional Law Corporation to represent you and other Class members, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

What Are My Options?

If you are a Class member, you have the following options: (1) remain in the Class and submit a claim for up to a \$1,000 payment; (2) do nothing and do not receive any payment from this settlement but remain in

the Class; (3) exclude yourself from the Class and settlement; (4) remain in the Class and object to the settlement; (5) remain in the Class and speak at the fairness hearing. If you remain in the Class, you will be bound by all of the Court's orders and judgment. Staying in the Class also means that you can't sue or be part of any other lawsuit against Fastenal and certain other persons or entities about the issues involved in this lawsuit and settlement. You will not be responsible for any out-of-pocket costs or attorneys' fees concerning this lawsuit if you stay in the Class. If, however, you would like to exclude yourself from this lawsuit and settlement, you must send a request for exclusion postmarked no later than [Month, Day 2020]. For further information about this lawsuit and settlement and your options, you may visit the website or call the toll-free number listed below.

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

Fastenal will establish a non-reversionary cash fund in the amount of \$1,300,000 (the "Cash Fund"). After subtracting from the Cash Fund Class Counsel's attorney's fees of up to \$433,333.33 and costs of up to

\$25,000, an enhancement payment to the Class Representative of up to \$5,000, and Administration Costs (which includes notice and other costs estimated at approximately \$167,662 but which may increase depending on the number of claims submitted), 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 \$1,000, each Settlement Class member who submits a valid and timely claim will be mailed a check in the amount of \$1,000 (less any applicable backup withholding), to be paid from the Net Cash Fund. In the event the Pro-Rata Share is less than \$1,000, each Settlement Class Member who submits a valid and timely claim will be mailed a check in the amount of the Pro-Rata Share (less any applicable backup withholding), to be paid from the Net Cash Fund.

1-???-???-????

www.?????????????????????.com

EXHIBIT "D"

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

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

Plaintiff,

v.

FASTENAL COMPANY (d/b/a Fastenal); and
DOES 1 through 100, inclusive,

Defendants.

Case No.: BC717323

Hon. Amy D. Hogue

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 Fastenal Company ("Fastenal") 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 Fastenal. The lawsuit alleges that Fastenal 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 customer's credit card or debit card expiration date and more than the last five digits of the customer's credit card or debit card number. Fastenal 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 Fastenal. 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. Fastenal 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 Larry Tran.

Am I a Class Member?

You are a member of the Class if you used your personal credit card or debit card for any transaction at any Fastenal store within the United States, and you were provided an electronically printed receipt, at any time during the period August 22, 2016 to September 6, 2018, on which receipt was printed more than the last 5 digits and/or the expiration date of your credit card or debit card. Current and former employees, directors and officers of Fastenal are excluded from the Class

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 Superior Court of California, County of Los Angeles, 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?

Fastenal will establish a non-reversionary cash fund in the amount of \$1,300,000.00 (the "Cash Fund").

If you are a Class member, you may be entitled to an amount up to \$1,000.00.

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

If the Court approves the proposed Settlement, Fastenal shall also implement a written company policy which states that it will not print more than the last five digits of the credit or debit card number nor the credit or debit card expiration date upon any printed receipt provided to any customer that uses a credit or debit card to transact business with Fastenal.

How Can I Get Payment?

To obtain a payment, in an amount up to \$1,000.00, 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 more than the last 5 digits and/or expiration date of your credit or debit card and shows that you made a transaction at any Fastenal store in the United States at any time during the period August 22, 2016 to September 6, 2018. You must also state that you used your own personal card for the transaction.

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 any Fastenal store in the United States at any time during the period August 22, 2016 to September 6, 2018. You must also state that you used your own personal card for the transaction. 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 any Fastenal store in the United States, 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 any Fastenal store in the United States at any time during the period August 22, 2016 to September 6, 2018.

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?**

Fastenal will establish a non-reversionary cash fund in the amount of \$1,300,000 (the "Cash Fund"). After subtracting from the Cash Fund Class Counsel's attorney's fees and costs, an enhancement payment to the Class Representative, and Administration Costs (which includes notice and other costs estimated at approximately \$167,662 but which may increase depending on the number of claims submitted), 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 \$1,000, each Settlement Class member who submits a valid and timely claim will be mailed a check in the amount of \$1,000 (less any applicable backup withholding), to be paid from the Net Cash Fund. In the event the Pro-Rata Share is less than \$1,000, each Settlement Class Member who submits a valid and timely claim will be mailed a check in the amount of the Pro-Rata Share (less any applicable backup withholding), 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 (including any remaining from un-cashed checks) will be distributed *cy pres* to the following 501(c)(3) charity: Legal Assistance For Seniors.

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 Fastenal 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, Tran and each Settlement Class member who does not timely opt-out of the Settlement forever discharge and release Fastenal 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 August 22, 2016 to September 6, 2018, concerning Fastenal.

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 Fastenal 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 *Tran, et al. v. Fastenal Company, et al.*, Case No. BC717323. 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 (final approval) 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 Fastenal 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 Fastenal 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 service (or incentive) award. You can also object to Class Counsel's attorney's 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 *Tran, et al. v.*

Fastenal Company, et al., Case No. BC717323. Your letter must include all of the following:

A. A reference at the beginning to this matter, *Tran, et al. v. Fastenal Company, et al.*, Case No. BC717323.

B. Your full name, address, and telephone number.

C. Proof of Settlement Class membership consisting of the original or a copy of either: (1) your customer receipt containing more than the last 5 digits and/or expiration date of your credit or debit card showing that you made a transaction at any Fastenal store in the United States at any time during the period August 22, 2016 to September 6, 2018, or (2) a credit or debit card statement showing that you made a transaction at any Fastenal store in the United States at any time during the period August 22, 2016 to September 6, 2018. In addition, you must state that you used your own personal card for the subject transaction reflected in the customer receipt or credit or debit card statement which you provide.

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, the 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 the 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 the objection in its entirety, (2) you are member of the Settlement 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, and (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.

You must mail your objection to the Settlement Administrator at the following address:

[Settlement Administrator's Address]

Any and all objections to must be postmarked no later than **[objection deadline]**.

**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 Representative Be Paid?

Class Counsel will ask the Court to approve payment of up to \$433,333.33 for attorney's fees, to be paid to Class Counsel from the Cash Fund, plus an award of Class Counsel's litigation costs of up to \$25,000, 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, causing Fastenal to change its receipt printing processes and implement a new written policy concerning FACTA, and implementing the Settlement. Class Counsel will also ask the Court to approve payment of up to \$5,000, to be paid from the Cash Fund, to Larry Tran for his services as the 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 312 North Spring Street, Los Angeles, California 90012, in Department 7, before Judge Amy D. Hogue. 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. You may also pay your own lawyer to attend, but it's not necessary.

May I Speak at the Fairness Hearing?

If you would like to speak at the fairness hearing, you may do so as long as you have not excluded yourself from 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-???-???-?????. You may also view the Court file at 312 North Spring Street, Los Angeles, California 90012.

EXHIBIT "2"

April 21, 2020

To: Chant Yedalian

Hi my name is Jameelia Matheson. I am a Class Member of Fastenal Credit Card Recall Class Action. I am requesting Mediation. A Settlement for \$1,000.00 isn't sufficient for such Violation.

Feel free contact me

Jameelia Matheson

[REDACTED]
[REDACTED]

Email: [REDACTED]

Cell: [REDACTED]

Sincerely Yours,

A handwritten signature in blue ink that reads "Jameel Yedalian". The signature is written in a cursive style with a long horizontal flourish extending to the right.