

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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B & R SUPERMARKET, INC., d/b/a	:	Case No. 1:17-cv-02738-BMC-JAM
MILAM'S MARKET, a Florida	:	
corporation, et al., Individually and on	:	<u>CLASS ACTION</u>
Behalf of All Others Similarly Situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
VISA, INC., et al.,	:	
	:	
Defendants.	:	
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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION  
FOR FINAL APPROVAL OF SETTLEMENT**

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Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket) (collectively "Plaintiffs" or "Class Representatives") respectfully submit this memorandum in support of Plaintiffs' Motion for Final Approval of Settlement.

## I. INTRODUCTION

After nearly a decade of litigation, Plaintiffs have resolved this matter so favorably for the Class that not a single member has objected to any aspect of the proposed settlement. The lack of objections is a strong indicator that final approval is warranted, and for good reason—this complex action (the "Action") has been litigated successfully through every stage before trial, and Class Counsel have achieved an outstanding result through those efforts. Three settlements have been reached with Defendants<sup>1</sup>: one with Discover (the "Discover Settlement") providing for a \$12.2 million contribution to the common fund; one with Amex (the "Amex Settlement") contributing \$20 million to the common fund; and one with Visa and Mastercard (the "V/MC Settlement") contributing \$199.5 million to the common fund, for a total of \$231,700,000 (together, these are referred to as the "Settlement").<sup>2</sup>

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<sup>1</sup> "Defendants" or "Networks" refers collectively to defendants Visa, Inc. and Visa U.S.A., Inc. ("Visa"), Mastercard International Incorporated ("Mastercard"), Discover Financial Services ("Discover"), and American Express Company ("Amex"). Plaintiffs and Defendants are referred to collectively as the "Parties." Throughout this brief, all citations and footnotes are deemed omitted and all emphasis is deemed added, unless otherwise noted.

<sup>2</sup> Though there are three separate settlements, the Discover and Amex Settlements were presented together in a joint motion for preliminary approval (the "Discover/Amex Prelim Motion"), and the Visa/Mastercard Settlement was presented in a separate motion for preliminary approval (the "Visa/MC Prelim Motion") (together, the "Prelim Motions"). Notice was issued for all three Settlements jointly, and all three Settlements are now being presented for final approval in this combined motion.

Every procedural and substantive aspect of the Settlement supports final approval. Procedurally, the Class remains certifiable, having been certified years ago and then surviving several challenges by Defendants. Both Class Counsel and the Class Representatives continue to ably and dutifully represent the Class. Moreover, the Settlement was reached through arm's-length negotiations with the assistance of two highly experienced and well-regarded mediators.

Substantively, the Settlement was reached deep into litigation, after the Parties had completed fact and expert discovery and summary judgment and were well informed. The Settlement appropriately weighs the risks of liability and damages that would be faced by the Class in continued litigation. It also accounts for the complexity, expense, and likely duration of further litigation, including inevitable appeals. The \$231,700,000 common fund is well within the range of reasonableness for a settlement of this Action, especially in light of the Parties' vastly different estimations of potential damages. The common fund achieved represents between 18-59% of recoverable damages at trial.

Further, the proposed distribution plan (the "Distribution Plan") is a standard and equitable approach based on *pro rata* distribution to the Class. It was developed with the assistance of Plaintiffs' damages expert and the Claims Administrator, which has deep experience administering settlements like this one.

In granting preliminary approval of the Settlement, the Court considered the same factors before it now on final approval and concluded that it was likely to be able to grant final approval. That conclusion has been greatly strengthened by the reaction of the Class after notice of the Settlement was provided. The notice program ("Settlement Notice") was robust and effective, with 98.7% of the identified Class sent individual notice through postcard and/or email. The reach of the Settlement Notice was further enhanced by supplementing the individual notice with online

and print advertising, including hundreds of millions of online impressions, sponsored search listings, newspaper releases, and an informational release. Finally, the Settlement Notice included updating the existing case website with information and documentation relating to the Settlement, a toll-free telephone information line, and a dedicated mailing address for Class members to request additional information. After the completion of this robust notice program, not a single objection was received.

Accordingly, Class Counsel respectfully request that the Court grant final approval of the Settlement as fair, reasonable, and adequate.

## **II. PROCEDURAL HISTORY**

Plaintiffs incorporate by reference Section II of the memorandum in support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, (Dkt. No. 987-1, "Fee Memo") at pages 4-17, which details the procedural history of this Action, and the Joint Declaration of Class Counsel George C. Aguilar and Michael J. Nicoud in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards (Dkt. No. 987-2, "Joint Decl."), which further details the history of this Action, the efforts of counsel, and the details of the Settlement.

## **III. THE PROPOSED SETTLEMENT MERITS FINAL APPROVAL AS FAIR, REASONABLE, AND ADEQUATE**

The approval process is three steps: 1) "a preliminary evaluation of the fairness of the proposed settlement agreement to determine whether to give notice of the proposal to all class members," 2) "providing notice of a hearing ... to class members and holding a hearing to ensure that 'class members and settling parties are provided the opportunity to be heard,'" and 3) "[w]here a court has granted preliminary approval and afforded notice of the hearing and an opportunity to be heard to all class members, the court then proceeds to the third step—final approval." *Caccavale v. Hewlett-Packard Co.*, No. 2:20-cv-974 (NJ) (ST), 2025 WL 2960237, at \*3

(E.D.N.Y. Oct. 20, 2025) (cleaned up) (citing Fed. R. Civ. P. 23(e)(1)-(2) and *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 27 (E.D.N.Y. 2019) ("*Payment Card 2019 Prelim*")).

In assessing whether final approval can be granted, the Court considers the same two inquiries considered on preliminary approval: whether the Court can "(i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." See *Caccavale v. Hewlett-Packard Co.*, No. 2:20-cv-0974 (NJC) (ST), 2024 WL 4250337, at \*8 (E.D.N.Y. Mar. 13, 2024). In granting preliminary approval, the Court concluded that it will "likely be able to approve the Settlement Agreements as fair, reasonable, and adequate under Rule 23(e)(2), and that the Class, already certified, still meets the criteria for certification for purpose of judgment, subject to further consideration at a hearing." Dkt. No. 982 at ¶1; Dkt. No. 983 at ¶1. Those conclusions have only been strengthened now that notice has been provided to the Class.

First, the Court can easily conclude that the Class remains certifiable for purposes of the Settlement. The Class defined in each of the Settlement Agreements is coextensive with the Class defined by "the Court's class certification Order dated August 28, 2020," with no changes. Dkt. No. 980-3 ("*Visa/MC Settlement Stip.*"), ¶4; Dkt. No. 975-3 ("*Discover Settlement Stip.*"), ¶4; Dkt. No. 975-4 ("*Amex Settlement Stip.*"), ¶6. The Class has also remained unchanged through two failed motions to decertify the Class. Dkt. Nos. 936, 937, 940. Thus, the Court can focus on whether the Settlement is fair, reasonable, and adequate.

To determine whether the Court can approve the proposal under Rule 23(e)(2), the Court assesses whether the settlement is "fair, reasonable, and adequate." *Caccavale*, 2024 WL 4250337, at \*8 (citing Fed. R. Civ. P. 23(a) and *Moses v. New York Times Co.*, 79 F.4th 235, 242 (2d Cir. 2023)). This is a "determination within the sound discretion of the court." *Zhu v. Wanrong*

*Trading Corp.*, No. 18-CV-417 (ENV)(MMH), 2024 WL 4351357, at \*3 (E.D.N.Y. Sept. 30, 2024) (citing *Levitt v. Rodgers*, 257 F. App'x 450, 453 (2d Cir. 2007)). Within "the Second Circuit, '[t]here is a strong judicial policy in favor of settlements, particularly in the class action context.'" *Id.* (citing *Flores v. CGI Inc.*, No. 22-CV-350 (KHP), 2022 WL 13804077, at \*2 (S.D.N.Y. Oct. 21, 2022)).

In assessing whether the Settlement merits final approval, the Court considers the same factors presented and considered on preliminary approval—plus "the reaction of the class to the settlement." *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-MD-1720 (MKB) (JO), 2019 WL 6875472, at \*15-16 & n.12 (E.D.N.Y. Dec. 16, 2019) ("*Payment Card 2019 Final*"), *judgment entered*, No. 05-MD-1720 (MKB), 2022 WL 2803352 (E.D.N.Y. July 18, 2022), and *aff'd sub nom. Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704 (2d Cir. 2023).

Courts conduct the assessment of whether a settlement is "fair, reasonable and adequate" through two sets of factors: "both the Rule 23(e) factors and the *Grinnell* factors—to the extent that they differ." *Caccavale*, 2024 WL 4250337, at \*9 (citing *Payment Card 2019 Prelim*, 330 F.R.D. at 29); *see also City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974) (setting forth *Grinnell* factors), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). The Rule 23(e)(2) factors the Court considers are whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm's-length;
- (C) the relief provided for the class is adequate, taking into account:
  - (i) the costs, risks, and delay of trial and appeal;

- (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims;
- (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and
- (iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

*In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-md-1720, 2024 WL 3236614, at \*11 (E.D.N.Y. June 28, 2024) ("*Payment Card 2024*"). Factors (A) and (B) are "procedural in nature," and "examine the conduct of the litigation and of the negotiations leading up to the proposed settlement," while (C) and (D) "guide the substantive review of a proposed settlement" and seek to assess "the relief that the settlement is expected to provide to class members." *Schutter v. Tarena Int'l, Inc.*, No. 21-CV-3502 (PKC), 2024 WL 4118465, at \*6 (E.D.N.Y. Sept. 9, 2024) (cleaned up).

Additionally, courts have found that the Rule 23(e)(2) factors do "not otherwise address the following *Grinnell* factors: the ability of the defendants to withstand a greater judgment; the range of reasonableness of the settlement fund in light of the best possible recovery; and the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." *Caccavale*, 2024 WL 4250337, at \*9 (citing *Payment Card 2019 Prelim*, 330 F.R.D. at 30 n.22). Thus "courts continue to analyze these factors in combination with the Rule 23(e)(2) factors." *Id.*

The procedural and substantive factors overwhelmingly favor settlement, and permit the Court to conclude the Settlement is fair, reasonable, and adequate, and grant final approval.

**A. The Procedural 23(e)(2) Factors Support Final Approval of the Settlement**

As described in the memoranda in support of Plaintiffs' Prelim Motions, the Court can easily conclude that the Class Representatives and Class Counsel have adequately represented the Class, and that the Settlement was negotiated at arm's-length. Dkt. No. 975-1 ("Discover/Amex Prelim Memo") at 13-19; Dkt. No. 980-1 ("Visa/MC Prelim Memo" and, with the Discover/Amex Prelim Memo, the "Prelim Memos") at 6.

**1. Plaintiffs Are Adequate Class Representatives**

A "[d]etermination of adequacy typically entails inquiry as to whether: (1) plaintiff's interests are antagonistic to the interest of other members of the class and (2) plaintiffs' attorneys are qualified, experienced, and able to conduct the litigation." *Payment Card 2024*, 2024 WL 3236614, at \*15 (cleaned up) (citing *Cordes & Co. Fin. Servs. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007)). Both inquiries are satisfied here.

The Court already concluded that "Plaintiffs had satisfied the explicit requirements of Rule 23(a)," including "adequacy of both class representatives and counsel," in granting class certification. Dkt. No. 725 at 7; Dkt. No. 744 at 7 (citing *B & R Supermarket, Inc. v. MasterCard Int'l Inc.*, No. 17-cv-02738 (MKB), 2018 WL 1335355, at \*7-10 (E.D.N.Y. Mar. 14, 2018) ("*B&R II*"). The Court recognized that "[a]ll named putative class representatives assert claims arising out of the same conduct and resulting in the same type of injuries—chargebacks imposed by Defendants as a result of the alleged conspiracy to impose the Liability Shift on the same date." *B&R II*, 2018 WL 1335355, at \*8. Each of the Class Representatives has also provided a declaration attesting to the FLS chargebacks that they incurred as a result of Defendants' conduct, *i.e.* the same harm that affected the Class. Dkt. No. 987-8, ¶¶2, 4; Dkt. No. 987-9, ¶¶2, 4; Dkt. No. 987-10, ¶¶2, 4. They have faithfully represented the common interests of the Class throughout

this litigation. *See generally* Dkt. Nos. 987-8, 987-9, 987-10; *see also* Discover/Amex Prelim Memo at 13-15.

**2. Class Counsel Adequately Represent the Class**

As for Class Counsel, "Rule 23(a)(4) requires that plaintiffs demonstrate that class counsel is qualified, experienced, and generally able to conduct the litigation." *In re Payment Card 2024*, 2024 WL 3236614, at \*19. Class Counsel's qualifications are demonstrated in part by the fact that they focus their practice on complex, representative litigation, and have decades of experience litigating class actions and other complex litigation across the country. *See* Dkt. No. 987-11 (Robbins LLP Firm Resume). Moreover, the results—a \$231,700,000 common fund—speak for themselves. The Court's conclusion at the class certification stage that Class Counsel adequately represent the Class has been further strengthened by the continued litigation victories of Class Counsel that paved the way for the outstanding result achieved. *See also* Discover/Amex Prelim Memo at 15-17.

**3. The Settlements Were Reached Through Arm's-Length Negotiations by Experienced and Well-Informed Counsel, Assisted by Mediators**

While the Court "may not presume a settlement agreement's fairness based solely on its arm's-length negotiation," it "must also consider whether the parties negotiated the proposed settlement at arm's length." *Caccavale v. Hewlett-Packard Co.*, No. 20-cv-974 (NJC) (ST), 2025 WL 882220, at \*6 (E.D.N.Y. Mar. 14, 2025) (citing Fed. R. Civ. P. 23(e)(2)(B) and *Moses*, 79 F.4th at 243), *report and recommendation adopted*, No. 20-CV-974 (NJC) (ST), 2025 WL 882221 (E.D.N.Y. Mar. 21, 2025). Here, the Settlement has every hallmark of an arm's-length negotiation: representation by able and experienced counsel on both sides, vigorous litigation for years that brought the case to the eve of trial, Parties that were well-informed of the facts of the case through the extensive fact and expert discovery completed. *See also* Discover/Amex Prelim at 17-19; Joint

Decl., ¶¶138-51 (describing settlement efforts and mediations). Moreover, the Settlement was reached utilizing two well-respected former judicial officers as mediators. *See* Declaration of Edward A. Infante in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards and Motion for Final Approval of Settlements with Defendants (Dkt. No. 987-6); Declaration of Layn R. Phillips in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards and Motion for Final Approval of Settlements with Defendants (Dkt. No. 987-7).

**B. The Substantive 23(e)(2) Factors Support Final Approval of the Settlement**

**1. The Settlement Provides Adequate Relief for the Class**

"In assessing whether a settlement provides adequate relief for the class under Rule 23(e)(2)(C), the Court is directed to consider: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." *Payment Card 2024*, 2024 WL 3236614, at \*21 (citing Fed. R. Civ. P. 23(e)(2)(C)).

**a. The Costs, Risks, and Delay of Trial and Appeal Strongly Support Final Approval**

"Under this Rule 23(e)(2) factor, courts may need to forecast the likely range of possible classwide recoveries and likelihood of success in obtaining such results." *Payment Card 2024*, 2024 WL 3236614, at \*21. This subfactor overlaps with "several *Grinnell* factors, including: (i) the complexity, expense, and likely duration of the litigation; (ii) the risks of establishing liability; [(iii) the risks of establishing damages]; [iv] the risks of maintaining the class through the trial; and [v] the range of reasonableness of the settlement fund in light of the best possible recovery and in light of all the attendant risks of litigation." *Id.* Plaintiffs also discuss "the ability of

Defendants to withstand a greater judgment" and the "stage of the proceedings" *Grinnell* factors here as they tie closely to these other factors.

**(1) The Complexity, Expense, and Likely Duration of the Litigation Factor Strongly Supports Final Approval**

This factor favors final approval "when litigation is likely to be 'complex, expensive, or drawn out.'" *Payment Card 2024*, at \*21 (citing *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d, 686, 693 (S.D.N.Y. 2019)). As explained in Plaintiffs' Prelim Memos, this factor strongly supports final approval. Discover/Amex Prelim Memo at 20-22; Visa/MC Prelim Memo at 7-8.

Further litigation would mean preparing for trial with four Defendants, each of which would put up a vigorous defense. The factual and legal landscape for such a trial would be highly complex, expensive, and drawn out, as demonstrated by the breadth and scope of the parties' summary judgment and *Daubert* motions. Plaintiffs would also have to assess and present the differing motivations and considerations for Amex and Discover—as issuers in addition to being networks—as compared to Visa and Mastercard, adding further complexity to a trial. Pre-trial, trial, and post-trial briefing and preparation alone would entail significant efforts. Plaintiffs would have to contend with seven defense experts putting forth their own theories and challenging the opinions of Plaintiffs' two experts. Moreover, even if successful at trial, it is a near-certainty that at least one of the four Defendants (and likely all) would file post-trial appeals. The *Illinois Brick* and two-sided versus one-sided market analysis issues, which have been repeatedly raised by Defendants, would be among the issues presented on appeal. *See, e.g.*, Joint Decl., ¶¶129, 173, 177 (discussing risk of *Illinois Brick* and one-sided vs two-sided market analysis issues). Moreover, Amex already has an appeal pending based on its argument that the Class should be decertified. *Id.*, ¶¶98-99.

Accordingly, this factor weighs strongly in favor of final approval.

**(2) The Risks of Establishing Liability Support Final Approval**

To analyze this factor "the court need only assess the risks of litigation against the certainty of recovery under the proposed settlement." *Caccavale*, 2025 WL 882220, at \*7 (cleaned up). As explained in Plaintiffs' Prelim Memos, this factor favors final approval of the Settlement. Discover/Amex Prelim Memo at 22-25; Visa/MC Prelim Memo at 8-11.

Here, Plaintiffs acknowledge that some of the risks of establishing liability have diminished given Plaintiffs' repeated success against Defendants' motions, including numerous *Daubert* motions and motions for summary judgment. *See Payment Card 2024*, 2024 WL 3236614, at \*23 (concluding that this factor was "likely to weigh against final approval" where "Plaintiffs' claims ha[d] survived numerous *Daubert* and summary judgment motions"). However, there are still significant risks to establishing liability at trial. *See Joint Decl.*, ¶¶174-78 (discussing risks of the Action).

Among the many risks that Plaintiffs would face in establishing liability at trial include: (a) proving Plaintiffs' case with circumstantial evidence sufficient to demonstrate parallel conduct plus the existence of "plus factors" demonstrating the conspiracy; (b) combatting Defendants' fact and expert evidence and Defendants' offered alternative inferences to Plaintiffs' evidence; (c) establishing that Defendants would have delayed their FLS absent the conspiracy; (d) challenging Defendants' premise that it was the Target data breach in December 2013, and not collusive conduct, that resulted in an FLS in October 2015; (e) establishing that Plaintiffs are not barred from recovery by the *Illinois Brick* doctrine or the Second Circuit's decision in *Paycom Billing Services, Inc. v. Mastercard International, Inc.*, 467 F.3d 283 (2d Cir. 2006); (f) rebutting Defendants' likely attempts at trial to have the "rule of reason" standard apply; and (g) defeating Defendants' attempts to have Dr. Abrantes-Metz's testimony disregarded or rejected because she

utilized a one-sided market analysis, rather than—as Defendants contend is proper—a two-sided analysis.

Accordingly, this factor weighs in favor of final approval.

**(3) The Risks of Establishing Damages Strongly Support Final Approval**

Even after establishing liability at trial, Plaintiffs would face considerable risks in establishing damages, as in any antitrust case. "[T]he history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal." *Payment Card 2019 Prelim*, 330 F.R.D. at 39 (citing *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005)). As explained in Plaintiffs' Discover/Amex Prelim Memo, this factor strongly favors final approval of the Settlement. Discover/Amex Prelim Memo at 25-26.

The Parties have vastly different estimates of potential damages. *Compare* Joint Decl., ¶180 *with id.*, ¶181. Plaintiffs' damages analysis, supported by Plaintiffs' expert Dr. Officer, has been repeatedly challenged by Defendants and their seven experts. Risks to establishing damages include, among other things: (a) establishing that the length of an FLS delay in the but-for world would be two years (as opposed to the six months urged by Visa and Mastercard in their motion for summary judgment); (b) establishing that a delay of the FLS in the but-for world would have included credit and debit transactions; (c) establishing that a delay of the FLS in the but-for world would have included cross-border transactions; (d) challenging arguments that Dr. Officer's model does not account for, or incorrectly accounts for, government transactions and any absorption of chargebacks by payment processors or issuers; and (e) rebutting Defendants' own damages experts' models and arguments.

Thus, this factor weighs strongly in favor of final approval.

**(4) The Risks of Maintaining the Class Through the Trial Factor Supports Final Approval**

Courts have recognized that "decertification is always possible as a case progresses and additional facts are developed." *Wal-Mart Stores*, 396 F.3d at 119 n.24; *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 476-77 (S.D.N.Y. 1998) (recognizing that "there is no guarantee that this class would not be decertified before or during trial"). Though they have been unsuccessful, Defendants have already tried through two separate motions to decertify the class. Discover/Amex Prelim Memo at 26-27. As explained in Plaintiffs' Discover/Amex Prelim Memo, this factor weighs in favor of final approval given Defendants' repeated challenges to class certification. *Id.*

**(5) The Stage of the Proceedings Factor Strongly Supports Final Approval**

Courts consider the stage of proceedings and the amount of discovery "to ensure 'that counsel for plaintiffs have weighed their position based on a full consideration of the possibilities facing them and the risks of maintaining the class action through trial.'" *Vasquez v. A+ Staffing LLC*, 746 F. Supp. 3d 26, 56 (E.D.N.Y. 2024). Class Counsel are extremely well informed here, having litigated this matter for over nine years, reviewed and analyzed millions of pages of documents, briefed numerous motions including several motions for summary judgment, and having reviewed dozens of expert reports from Plaintiffs' two experts and Defendants' seven experts. On top of all of this, "the parties reached the proposed [a]greement through a mediation session held before a neutral mediator." *Id.* This factor weighs strongly in favor of the Court granting final approval.

**(6) The Ability of Defendants to Withstand a Greater Judgment Factor Is Neutral**

Courts note that "[t]his factor is 'typically relevant only when a settlement is less than what it might otherwise be but for the fact that the defendant's financial circumstances do not permit a greater settlement.'" *Schutter*, 2024 WL 4118465, at \*12 (quoting *In re Namenda Direct Purchaser Antitrust Litig.*, 462 F. Supp. 3d 307, 314 (S.D.N.Y. 2020)). As explained in Plaintiffs' Prelim Memos, this factor is neutral. Discover/Amex Prelim Memo at 28-29; Visa/MC Prelim Memo at 12-13. Here, the ability of Defendants to pay did not limit the recovery. Additionally, Amex and Discover provided valuable cooperation agreements prior to Class Counsel achieving the settlement with Visa and Mastercard. Thus, this factor is neutral.

**(7) The Range of Reasonableness of the Settlement Fund Supports Final Approval**

"The range of reasonableness of the settlement in light of the best possible recovery, and the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation, are two *Grinnell* factors that are often combined for the purposes of analysis." *Payment Card 2024*, 2024 WL 3236614, at \*26. "In considering the reasonableness of the settlement fund, a court must compare "the terms of the compromise with the likely rewards of litigation."" *Id.* (citing *Godson v. Eltman, Eltman, & Cooper, P.C.*, 328 F.R.D. 35, 58 (W.D.N.Y. 2018) (quoting *In re Citigroup, Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 384 (S.D.N.Y. 2013))). "In order to calculate the 'best possible' recovery, the [C]ourt must assume complete victory on both liability and damages as to all class members on every claim asserted against each defendant in the [a]ction." *Id.* (citing *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01-CV-11814, 2004 WL 1087261, at \*5 (S.D.N.Y. May 14, 2004)). Determining if a settlement amount is reasonable "does not involve the use of a mathematical equation yielding a particularized sum." *Ying v. All-Ways Forwarding of N.Y. Inc.*, No. 20-CV-6242 (ENV)(MMH), 2025 WL 968586, at \*10 (E.D.N.Y.

Mar. 31, 2025) (quoting *Viafara v. MCIZ Corp.*, No. 12 Civ. 7452 (RLE), 2014 WL 1777438, at \*7 (S.D.N.Y. May 1, 2014)). Instead, "[t]he range of reasonableness is a 'range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.'" *Payment Card 2024*, 2024 WL 3236614, at \*26 (citing *Wal-Mart Stores*, 396 F.3d at 119 (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972))). As explained in Plaintiffs' Prelim Memos, this factor favors final approval of the Settlement. Discover/Amex Prelim Memo at 29-35; Visa/MC Prelim Memo at 13-18.

The recovery of \$231,700,000 represents an excellent outcome that is well within the range of reasonableness for this case given the complexities of the matter, the risks at trial (and on appeal), and the Parties' vastly different estimates of damages. Accounting for the chargebacks of merchants who opted-out of the Class, merchants who had their chargebacks reimbursed or absorbed by payment processors or acquiring banks, and government entities (all of which could not support damages at trial), Plaintiffs' best-case-scenario damages figure is estimated to be \$1,286,375,666. Joint Decl., ¶180; Fee Memo at 29. Conversely, Defendants' damages estimates cover a vastly different range, from a low of \$24,649,294 to a high of \$1,424,068,666. Joint Decl., ¶181; Fee Memo at 29-30. Defendants' damages figures also include a number based on a hypothetical but-for world posited in Visa and Mastercard's motion for summary judgment ("Defendants' MSJ Alternative"). Under Defendants' MSJ Alternative, where damages would be limited to a six-month delay of the FLS (as opposed to the two years posited by Plaintiffs) and would exclude cross-border chargebacks, Defendants calculated potential damages of \$392,390,199.<sup>3</sup> Joint Decl. ¶181; Dkt. No. 799 at 4, 64-66; Dkt. No. 870 at 4, 64-66.

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<sup>3</sup> Plaintiffs do not purport to be making, adopting, or agreeing with any damages arguments on behalf of Defendants, or claiming that these arguments represent the entirety of their position. Nevertheless, these alternative calculations come from Visa's previously disclosed expert reports

Accordingly, the recovery ranges between 18% (compared to Plaintiffs' best-case-scenario damages figure of \$1,286,375,666) and 59% (compared to Defendants' MSJ Alternative of \$392,390,199) of potentially recoverable damages. This "compares favorably with settlements reached in other antitrust class actions, especially given the lack of prior governmental investigation and the disparity between the parties' damages calculations." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 986 F. Supp. 2d 207, 230 (E.D.N.Y. 2013) (citing *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 123 (S.D.N.Y. 2009) (settlement of \$336 million and injunctive relief "represent an extraordinarily significant recovery" in light of the fact that "Plaintiffs did not have the benefit of a Government investigation")), *rev'd and vacated on other grounds*, 827 F.3d 223 (2d Cir. 2016); *see also In re Med. X-Ray Film Antitrust Litig.*, No. CV-93-5904, 1998 WL 661515, at \*5-6 (E.D.N.Y. Aug. 7, 1998) (approving fee request and noting "[t]his court has previously approved settlements that represent a far smaller percentage of the best possible recovery than that proposed here," which was 17%, including "less than 2%" and "6.4-11%").

Thus, the Settlement is well within the range of reasonableness that would permit the Court to conclude the Settlement merits final approval.

**b. The Effectiveness of Distributing Relief to the Class Supports Final Approval**

"This factor requires courts to look at 'the method of processing class-member claims.'" *Payment Card 2019 Prelim*, 330 F.R.D. at 40 (citing Fed. R. Civ. P. 23(e)(2)(C)(ii)). "To warrant approval, the plan of allocation must also meet the standards by which the settlement is scrutinized – namely it must be fair and adequate...An allocation formula need only have a reasonable, rational

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and reflect Class Counsel's current understanding of certain of Defendants' damages estimates and arguments. Though these estimates were provided by Visa's experts, Plaintiffs believe these to be the most useful benchmarks for the Court's analysis for each of the four Defendants at this time.

basis, particularly if recommended by experienced and competent class counsel." *Id.* (ellipsis in original) (quoting *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005)). As explained in Plaintiffs' Prelim Memos, this factor favors final approval of the Settlement. Discover/Amex Prelim Memo at 35-38; Visa/MC Prelim Memo at 18-19.

Class Counsel developed the proposed Distribution Plan with the assistance of an experienced claims administrator and Plaintiffs' damages expert. Dkt. Nos. 975-7 (Azari Decl. submitted with Discover/Amex Prelim Motion), ¶¶5a, 43; Dkt. No. 975-2 (Aguilar Decl. iso Discover/Amex Prelim Motion), ¶16; Dkt. No. 980-4 (Azari Decl. submitted with Visa/MC Prelim Motion), ¶6a, 44; Dkt. No. 980-2 (Aguilar Decl. iso Visa/MC Prelim Motion), ¶10. The proposed Distribution Plan provides for *pro rata* treatment of claims, a minimum payment to encourage the participation of merchants with smaller chargeback damages while reducing the administrative burden associated with smaller claims, and allows for a *cy pres* distribution to be made only in the event that a further distribution cannot be economically made. Dkt. No. 980-5 (Distribution Plan) at 3-4. Further Class Counsel will work with the Claims Administrator to attempt to pre-populate claims for those claimants with the largest amounts in chargeback damages, if and to the extent it is administratively feasible. *Id.* at 4-5.

The proposed Distribution Plan is thus a standard and effective method of distributing relief to the Class and supports final approval of the Settlement.

**c. The Proposed Attorneys' Fees Award and Class Representative Service Awards Are Reasonable and Support Final Approval**

As explained in detail in Plaintiffs' Fee Memo, the proposed attorneys' fees and Class Representative service awards are in line with those of other cases and commensurate with the efforts invested in this case, the complexity and scope of this matter, the high level of risk involved,

and the results achieved. *See generally* Fee Memo. These requests are reasonable and support final approval of the Settlement.

**d. The Releases in the Settlement Are Appropriate and Support Final Approval**

Another factor considered by courts is the appropriateness of the bargained for releases. *See, e.g., Payment Card 2019 Prelim*, 330 F.R.D. at 42-47; *Payment Card 2024*, 2024 WL 3236614, at \*34-35. Here, the releases are appropriate because they explain that they extend "to the fullest extent permitted by law," and are limited to claims, causes of action, etc. that are "arising out of the factual predicates of the Action." Discover Settlement Stip., ¶32; Amex Settlement Stip., ¶32; Visa/MC Settlement Stip., ¶32; *see Payment Card 2024*, 2024 WL 3236614, at \*34 (recognizing with approval that release "contain[ed] the 'de-facto severability clause' described by the Second Circuit: 'this release shall extend to, but only to, the fullest extent permitted by federal law'" and was "constrained by the 'identical factual predicate' test").

**e. Any Agreement Required To Be Identified Under Rule 23(e)(3)**

There are no such agreements to be disclosed here. Declaration of George C. Aguilar in Support of Plaintiffs' Motion for Final Approval of Settlement ("Aguilar Final Decl.," submitted herewith), ¶4.

**2. The Settlement's Equitable Treatment of Class Members Supports Final Approval**

"Equitable treatment' pursuant to Rule 23(e)(2)(D) 'include[s] whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief.'" *Payment Card 2024*, 2024 WL 3236614, at \*36 (citing Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment). As described in the Prelim Motions, the Court can easily conclude that the Settlement treats Class members equitably, given the *pro rata*

distribution method that is commonly accepted as an equitable method of distributing class relief. Discover/Amex Prelim Memo at 41; Visa/MC Prelim Memo at 22.

### **3. The Lack of Any Objections Strongly Supports Final Approval**

The only factor that could not be fully assessed as of preliminary approval is the "reaction of the class to the settlement," and it now weighs strongly in favor of final approval. "It is well settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy. In fact, the lack of objections may well evidence the fairness of the Settlement." *Payment Card 2019 Final*, 2019 WL 6875472, at \*16. Not a single Class member objected to the Settlement. Aguilar Final Decl., ¶5; Dkt. 989-1 (Declaration of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Notice Plan ("Azari Settlement Notice Decl.")), ¶38. The absence of any objections is particularly compelling given the scope of the notice program and that there are estimated to be hundreds of thousands of merchants in the class. *See Payment Card 2019 Final*, 2019 WL 6875472, at \*16 (citing 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions*, §11.41, at 108 (4th ed. 2002) (recognizing that "[a] certain number of objections are to be expected in a class action with an extensive notice campaign and a potentially large number of class members.")); *see also City of Providence v. Aeropostale*, No. 11 CIV. 7132 (CM) (GWG), 2014 WL 1883494, at \*6 (S.D.N.Y. May 9, 2014) (recognizing where one objection was received that the reaction of the class was "the strongest indication that the Settlement is fair and reasonable"), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015).

### **IV. THE SETTLEMENT NOTICE WAS REASONABLE AND THE BEST NOTICE PRACTICABLE UNDER THE CIRCUMSTANCES**

As described in the Prelim Motions, the Settlement Notice was reasonable and consistent with Rule 23. Discover/Amex Prelim Memo at 43-46; Visa/MC Prelim Memo at 22. In granting

preliminary approval, the Court has already concluded that the notice program "(a) is the best notice that is practicable under the circumstances, and [was] reasonably calculated to reach the members of the Class that would be bound by the Settlement Agreements and to apprise them of the Action, the terms and conditions of the Settlement Agreements, their right to object to the Settlement Agreements; and (b) meets the requirements of Federal Rule of Civil Procedure 23 and due process." Dkt. No. 982, ¶12; Dkt. No. 983, ¶12.

Rule 23(c)(2)(B) requires the court to "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." "The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness." *Payment Card 2019 Prelim*, 330 F.R.D. at 58-59 (citing *Wal-Mart Stores*, 396 F.3d at 113-14). "[N]otice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceeding." *Id.* (citing *Wal-Mart Stores*, 396 F.3d at 114). These objectives have been achieved here.

The Settlement Notice provided to the Class was built on the successful notice provided after the Class was certified. Azari Settlement Notice Decl., ¶8. The Settlement Notice program, like the Class notice program before it, was a multifaceted approach that included individual notice supplemented by targeted advertising and other methods. *Id.*, ¶¶13-37. It was implemented in full in a timely fashion. *Id.*, ¶¶12, 43. The individual notice portion of the plan included sending over one million postcard notices, and nearly one hundred thousand email notices. *Id.*, ¶¶13-19. The individual notice portion alone reached 98.7% of the identified potential Class members. *Id.*, ¶20. Further strengthening the notice program was a media campaign that included: a) targeted internet

advertising on the Google Display Network, Facebook, and Instagram, delivering over 230 million impressions; b) a publication notice in a variety of non-English newspapers; c) sponsored internet search listings on Google, Yahoo!, and Bing (the three most highly-visited internet search engines), which were ultimately displayed over 62,000 times; d) a nationwide informational release over PR Newswire to thousands of print and broadcast outlets and thousands of online sources; e) updating the already-established case website (www.FraudLiabilityShiftLitigation.com) with information relating to the Settlement, which received tens of thousands of visits; and f) a toll-free telephone number and postal mailing address. *Id.*, ¶¶21-37.

Thus, by every measure, the Settlement Notice was effective, thorough, and informative. The Court should thus confirm the adequacy of the Settlement Notice program and that it was effectively implemented.

## V. CONCLUSION

Plaintiffs' Motion for Final Approval of Settlement should be granted and the accompanying [Proposed] Unopposed Class Settlement Order and Final Judgment should be entered.

Dated: February 19, 2026

Respectfully submitted,

**ROBBINS LLP**

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**CERTIFICATE OF COMPLIANCE**

I hereby certify, in accordance with Local Rule 7.1(c), that the foregoing memorandum contains 6,289 words.

*s/ George C. Aguilar*

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 19, 2026, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered parties and attorneys of record.

*s/ George C. Aguilar*

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