UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

B & R SUPERMARKET, INC., d/b/a MILAM'S MARKET, a Florida corporation, et al., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. VISA, INC., et al., Defendants.	:	Case No. 1:17-cv-02738-BMC-JAM CLASS ACTION

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

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Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market) ("B & R"), Grove Liquors LLC ("Grove"), Strouk Group LLC (d/b/a Monsieur Marcel) ("Strouk"), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket) ("Fine Fare, and collectively, "Plaintiffs") respectfully submit this memorandum in support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards ("Motion").

I. INTRODUCTION

Class Counsel achieved an outstanding recovery of $231,700,000 (the "Common Fund") for the certified class ("Class") in this complex antitrust action (the "Action") after nearly a decade litigating against some of the largest household-name corporations in the country, represented by some of the country's largest law firms. Class Counsel brought this Action against the major credit card networks arising out of their policies shifting certain fraud liabilities to merchants (the "FLS") in connection with the shift to EMV chip card technology in the United States. Together, well-financed and well-represented Defendants Discover Financial Services ("Discover"), American Express Company ("Amex"), Visa, Inc. and Visa U.S.A., Inc. ("Visa"), and Mastercard International Incorporated ("Mastercard") (collectively "Defendants" or the "Networks") mounted a vigorous attack on the claims of the Class. Defendants filed motions to dismiss, a motion for judgment on the pleadings, motions to compel arbitration, oppositions to Plaintiffs' critical class certification motions, *Daubert* motions, motions to decertify the class, motions for summary judgment, an appeal, and petitions for interlocutory review. Defendants also retained a combined seven expert witnesses to bolster their defenses.

Class Counsel took on these challenges head-on, with no promise of any recovery and no government investigation or related action paving the way. Class Counsel's efforts included retaining two experts who authored seven expert reports on myriad issues, reviewing a gargantuan

discovery record that spanned nearly two million documents (and tens of millions of pages), propounding discovery to dozens of third parties, over sixty depositions including some of the most senior-ranking individuals at the Networks, and opposing Defendants' myriad attempts to have the claims dismissed or the damages greatly diminished. Class Counsel reached this outcome only after defeating Defendants' motions for summary judgment and *Daubert* motions, facing immense risk at every step up to this stage. Moreover, Class Counsel mediated four times before reaching a settlement with any of the Defendants, utilizing two of the country's most experienced and respected mediators. The scope of this Action resulted in Class Counsel expending 57,333.20 hours of attorney and professional time at a lodestar of $32,868,941.25, and incurring $4,548,300.91 in unreimbursed expenses.

Class Counsel now seek attorneys' fees, the reimbursement of expenses, and service awards for the settlements. After four unsuccessful mediations with Visa and Mastercard, Class Counsel settled with Discover first, then Amex. These icebreaker settlements provided valuable cooperation agreements from each of these smaller Networks and paved the way for a more streamlined trial with the larger Networks. Class Counsel's motion for preliminary approval of these settlements stated Class Counsel would seek fees up to 33.3% of the combined $32.2 million common fund. At the time of those settlements, the next step in the case was trial against Visa and Mastercard. Class Counsel's subsequent settlement with Visa and Mastercard added $199,500,000 to the common fund. Class Counsel's motion for preliminary approval of this settlement, in recognition of the much larger common fund, stated Class Counsel would seek only 27.5% of the $199,500,000 addition to the Common Fund. Thus, combined, Class Counsel are requesting fees of 28.31% of the $231,700,000 Common Fund, along with any accrued interest on that amount (the "Fee Request").

Class Counsel's Fee Request is reasonable and well supported by the *Goldberger* factors. Class Counsel obtained a $231,700,000 Common Fund for the Class after expending massive amounts of time and incurring significant unreimbursed expenses in litigating this highly risky and complicated antitrust action for nearly a decade. Public policy also weighs in favor of the fee given the value of private antitrust enforcement, especially where, as here, there is no prior or parallel government action. Numerous antitrust actions and other complex actions have awarded higher fees than requested here, including many awarding 33% on common funds in the hundreds of millions. Class Counsel present a survey of fifty-seven comparable antitrust settlements with common funds between $100-250 million. Class Counsel's Fee Request is below the median (30%) and average (28.51%) of this representative dataset. Further, a lodestar "cross-check" of the Fee Request further confirms its reasonableness, with a multiplier of 2.00, well within the range of multipliers approved in similar actions.

Class Counsel also seek reimbursement of plaintiffs' counsel's expenses of $4,548,300.91, along with any accrued interest on that amount (the "Expense Request"). These expenses—86% of which were incurred for experts, discovery database hosting, and depositions—were typical litigation expenses that were reasonably incurred in service of the Class, and amount to 1.96% of the Common Fund.

Finally, Class Counsel seek service awards for the three named class representatives of $50,000 each (the "Service Awards"), a small fraction of the Common Fund. These Service Awards are commensurate with the class representatives' long commitment to the Action, the result achieved, and their efforts in the Action, including searching for and providing tens of thousands of documents, sitting for depositions, and monitoring the Action for nearly a decade.

Accordingly, Class Counsel respectfully submit that the Fee Request, Expense Request, and Service Awards are reasonable and appropriate and should be approved.

II. SUMMARY OF CLASS COUNSEL'S LITIGATION EFFORTS[1]

A. Plaintiffs' Counsel Involved in Litigation and Appointment of Class Counsel

Throughout this litigation there has always been one firm acting as lead counsel, beginning with Robbins Geller Rudman & Dowd LLP ("RGRD"), with co-counsel Devine Goodman & Rasco, LLP ("DG&R") serving in a supporting role throughout. Bernay Decl., ¶¶3-4.

Shortly after the transfer of this Action to this Court (Dkt. No. 518), on July 7, 2017, RGRD filed a motion to withdraw as counsel of record. Dkt. No. 567. The motion recognized that DG&R would continue to work on the action, and that Robbins LLP[2] had "been working on this case for many months." *Id.* The Court granted the motion by docket text order on July 11, 2017. From this point forward, Robbins LLP acted as sole lead counsel, with DG&R in a supporting role, and with Thomas G. Amon supporting as local counsel. Joint Decl., ¶8; DG&R Decl., ¶6; Amon Decl., ¶3. The Court formally appointed George C. Aguilar and Michael J. Nicoud of Robbins LLP as Class Counsel on May 6, 2021. Dkt. No. 762. This Motion is the only such motion that will be filed by Plaintiffs' counsel, and with the Court's permission Class Counsel will, in its sole

[1] This section provides only a summary overview of the work performed by Class Counsel and their co-counsel. Plaintiffs' Counsel's litigation efforts are described in further detail in 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 ("Joint Decl."), the Declaration of Alexandra Bernay in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards ("Bernay Decl.," Ex. 1 to the Joint Decl.), the Declaration of John Devine in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards ("Devine Decl.," Ex. 2 to the Joint Decl.), and the Declaration of Thomas G. Amon in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards ("Amon Decl.," Ex. 3 to the Joint Decl.).

[2] The motion refers to Robbins Arroyo LLP, which is the prior name of Robbins LLP. *See* Dkt. No. 719.

discretion, distribute any attorneys' fees or expenses awarded by the Court to Plaintiffs' counsel who have worked on this Action. Joint Decl. ¶3.

B. Prosecution of the Case

1. Initial Investigation, Filing, and Motions to Dismiss

RGRD first began working on this matter in early 2016, shortly after the FLS. Bernay Decl., ¶4. RGRD investigated and developed the initial complaint, filed on March 8, 2016, in the U.S. District Court for the Northern District of California (the "California District Court") after extensive factual and legal research. *Id.* Defendants challenged the complaint with motions to dismiss and a motion to compel arbitration. *Id.*, ¶6. RGRD retained additional plaintiffs, including Fine Fare, which was not subject to a CAA and could pursue claims against Amex. *Id.*, ¶5. After a hearing on the motions to dismiss and compel arbitration, RGRD filed an amended complaint. *Id.*, ¶¶6-7. Defendants once again challenged the complaint, filing three motions to dismiss the amended complaint. *Id.*

2. Fact Discovery

Following the Court's substantial denial of the motions to dismiss as to the Networks (Dkt. No. 346)[3], RGRD began engaging in discovery with the Defendants and numerous third parties. Bernay Decl., ¶8. RGRD drafted and propounded numerous requests for production and interrogatories to the Networks and to more than thirty third parties, leading to numerous meet and confers and discovery disputes. *Id.*

Fact Discovery in this Action was complex and broad, covering numerous areas, including, but not limited to: the structure of the credit and debit payment market in the United States; EMV

[3] The Court granted the motions to dismiss with respect to the non-Network defendants and as to Plaintiffs' claims under New York General Business Law. Dkt. No. 346.

technology, fraud rates, and alternative technologies for combatting fraud; migrations to EMV in other markets, including the FLS policies of the Networks; related government actions, investigations, and pressure regarding payment technologies and policies; the interactions between the Networks and other links in the payment ecosystem, including especially issuing and acquiring banks; industry groups relating to the payments market and/or fraud; communications between Defendants regarding EMV and the FLS; technical and practical problems for merchants in implementing FLS-compliant terminals, including bottlenecks, certification problems, and delays; the types of chargebacks issued to merchants, and the amounts of FLS chargebacks assessed to merchants following the FLS; the Networks' EMV migration roadmaps and their FLS policies; considerations by the Networks for potential delays of the FLS; and considerations by the Networks of potential positive incentives for merchants to incentivize migration to EMV. Joint Decl., ¶13.

As the case progressed past the motions to dismiss stage, and into fact and expert discovery, the document production eventually grew to 1.97 million documents, spanning tens of millions of pages, requiring the use of a dedicated document hosting and review platform. Joint Decl., ¶14.

To effectively review the voluminous discovery materials, Class Counsel oversaw a team of attorneys who analyzed the discovery record, working with them throughout the litigation to refine the process. Bernay Decl., ¶8; Joint Decl., ¶¶15-17. Class Counsel analyzed the massive evidentiary record to determine which additional depositions to take, ensuring the most valuable information was obtained to further Plaintiffs' case. Joint Decl., ¶¶18-19. Class Counsel then directed the document review team to prioritize the review of the deponents, and create document sets of the most pertinent documents for each deponent. *Id.*, ¶20. Class Counsel took vital

depositions of key individuals at the Networks that advanced Plaintiffs' claims, including the President of Visa and Mastercard's former President of North America. *Id.*, ¶31.

Class Counsel also engaged with the significant privilege logs produced by Defendants and third parties, analyzing them and meeting and conferring with the producing parties where necessary. *Id*., ¶21-22.

Fact discovery involved numerous written discovery requests, including requests for admission and interrogatories. *Id*., ¶¶24-28. Responding to Defendants' interrogatories was a particularly burdensome task, given the scope of the questions propounded on Plaintiffs. *Id.*, ¶27. The responses set out dozens of pages of responsive narrative detailing Plaintiffs' claims and the proof thereof, backed by specific documents and testimony relating to each Defendant's involvement in the conspiracy. *Id.*

Plaintiffs took, defended, or attended the depositions of fifty-five fact witnesses over sixty-two days of testimony, including depositions of the class representatives, some of the highest-ranking employees and officers of the Networks, and of third parties, including certain industry groups. Bernay Decl., ¶9; Joint Decl., ¶¶29-32.

3. Expert Discovery

Expert Discovery proceeded in two phases. First, the parties engaged in expert discovery regarding class certification issues with one expert for Plaintiffs and one expert for Defendants. Joint Decl., ¶33. Counsel retained Dr. Micah Officer, a Professor of Finance at Loyola Marymount University, for both class certification and merits expert reports and testimony. Bernay Decl., ¶9; Joint Decl., ¶¶34, 38-39. RGRD worked extensively with Dr. Officer prior to filing the initial class certification motion, and in submitting opening and rebuttal reports in support of the same. Bernay Decl., ¶9.

Following the Court's initial denial of Plaintiffs' motion for class certification, Class Counsel worked with Dr. Officer to prepare a third report in connection with Plaintiffs' renewed motion for class certification. Joint Decl., ¶¶34-37. Dr. Officer's third report covered three main additional issues: the likely date by which Defendants would have imposed the FLS in the but-for world, the likelihood of any chargebacks being absorbed by intermediaries in the payment chain, and to describe deficiencies in Defendants' data productions and the impact of such deficiencies on his analysis. *Id.*, ¶34.

Once Class Counsel obtained class certification, the second phase of expert work began—merits discovery. Joint Decl., ¶38. The scope drastically expanded to two experts for Plaintiffs and seven experts across the Defendants. *Id.*, ¶¶38, 48. Like fact discovery, expert discovery was exceedingly broad, covering a host of issues, including, among other things, EMV technology, the parties' economic motivations, the proper framework for analyzing the alleged collusion, the construction of the but-for world, and damages. *Id.*, ¶33.

Class Counsel worked with Dr. Officer to supplement the work he did in support of class certification. Joint Decl., ¶40. Class Counsel worked with Dr. Officer to gather the necessary information he required for his opinions, including a massive amount of data from Defendants regarding chargebacks, data from numerous third parties—especially acquirers and payment processors—and technical data from the Networks regarding their chargeback rules and procedures. *Id.*, ¶¶42-45. The sum of this work was a fifty-eight-page opening merits expert report with thousands of pages of supporting schedules and materials spanning eight volumes. *Id.*, ¶46.

Class Counsel also retained another expert, Dr. Rosa M. Abrantes-Metz, an economist specializing in industrial organization, econometrics, and asset pricing, to provide expert testimony and analysis regarding Defendants' conspiracy. *Id.*, ¶39.

Dr. Abrantes-Metz's opening report was a substantial undertaking. *Id.*, ¶47. Class Counsel worked with Dr. Abrantes-Metz to obtain the documents she needed to opine on the nature of Defendants' behavior, leading her to opine that the implementation of the FLS in the United States was inconsistent with competitive behavior and consistent with an explicit agreement to set the FLS dates. *Id*. Dr. Abrantes-Metz opined on the nature of the relevant antitrust market, including the economics of multi-sided platforms, explaining the function of the market, and defining the market by geographic bounds. *Id*. Dr. Abrantes-Metz applied a single-sided analysis to this market, focusing on the actions of the Networks as they affected merchants. *Id*.

The seven reports from Defendants' experts covered myriad issues, spanned over a thousand pages, and cited to thousands of documents, articles, and other information in support of their opinions. *Id.*, ¶¶49-59. Class Counsel, with the assistance of Plaintiffs' experts, worked extensively to analyze Defendants' expert reports and determine how to respond to them. *Id.*, ¶59.

Class Counsel took the depositions of each of the Defendants' experts from July to October, 2021. *Id.*, ¶60. Given the breadth of the issues explored by the experts and the volume of their reports and cited materials, each of these depositions required a significant amount of preparation. *Id*. Class Counsel analyzed key documents in the Action, Defendants' experts' reports, and the documents and materials cited by Defendants' experts in support of their reports. *Id*. Class Counsel also conferred with Plaintiffs' experts to determine areas of each of Defendants' experts' reports that were most susceptible to challenge or were lacking support. *Id*.

Class Counsel then worked with Plaintiffs' experts to prepare rebuttal reports to respond to the contentions of each of Defendants' experts. *Id.*, ¶¶61-63. This required further analysis of the discovery record, the arguments made by each of the Defendants' experts, and the materials cited by them in support of those arguments. *Id*., ¶61. Class Counsel then conferred with Plaintiffs'

experts to develop a strategy to obtain the necessary materials to generate rebuttal reports that would further advance Plaintiffs' claims and undermine Defendants' experts' opinions. *Id.*, ¶62.

Finally, Class Counsel prepared each of Plaintiffs' experts for depositions (in Dr. Officer's case, a third deposition). *Id.*, ¶64. Dr. Abrantes-Metz was deposed by Defendants over the course of two days in February 2022. *Id.* Dr. Officer, having been deposed twice already in connection with his class certification opinions, was deposed on a single day in March 2022. *Id.* Class Counsel spent many hours preparing Plaintiffs' experts for these depositions. *Id.*

4. Post-Motion to Dismiss Motion Practice

One of the first challenges Class Counsel faced in terms of additional motion practice was Discover's motion for judgment on the pleadings, served on September 21, 2017. *Id.*, ¶67; Dkt. No. 592. Class Counsel vigorously opposed this motion, Discover's notice of supplemental authority, and Discover's objections to the report and recommendation recommending the motion be denied. *Id.*, ¶¶67-69; Dkt. Nos. 611, 625, 631, 655, 657, 658, 667.

Class Counsel devoted significant time and effort to obtaining certification of the Class. These efforts began with the initial motion for class certification, filed on March 10, 2017, while the Action was still pending in the California District Court. Dkt. No. 425; Bernay Decl., ¶9.

After this Action was transferred to this Court, Class Counsel submitted supplemental briefing regarding differences between Ninth Circuit and Second Circuit authority on class certification issues. Joint Decl., ¶¶70-71; Dkt. Nos. 588, 589. Class Counsel prepared for and argued at a hearing on the initial motion for class certification on November 29, 2017. *Id.*, ¶72.

On March 11, 2018, the Court denied Plaintiffs' motion for class certification, but concluded that Plaintiffs had satisfied the explicit requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy of both class representatives and counsel. Dkt. No. 644 at 12-19; *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, 2028) (*B&R II*). The Court concluded that Plaintiffs, in offering four potential end dates for the class, had not satisfied Rule 23(a)'s implied requirement of ascertainability. *B&R II*, 2018 WL 1335355, at *13-14.

Class Counsel worked to further analyze the discovery record and worked with Plaintiffs' damages expert, Dr. Officer, to further assess what the but-for world would look like and determine how to define a class period with definite bounds. Joint Decl., ¶¶74-75. Class Counsel then prepared a renewed motion proposing a two-year class period, based on the argument that September 30, 2017 "reflects the most likely alternate FLS date, but-for Defendants' collusion." Dkt. No. 706-1 at 1; Dkt. No. 707-1 at 1.

Class Counsel successfully obtained class certification for the full two-year period sought in the renewed motion. Joint Decl., ¶80. This was a complex motion fraught with numerous issues and pitfalls, as demonstrated by the breadth of the Court's August 28, 2020 106-page Memorandum & Order granting class certification and denying Defendants' motion to exclude expert testimony. *Id.*, ¶81; Dkt. Nos. 725, 744. Class Counsel successfully opposed Defendants' petition for leave to appeal the Court's class certification order. Joint Decl., ¶82; Dkt. Nos. 726, 728, 731. The Second Circuit denied the petition in January 2021. Joint Decl., ¶82; Dkt. No. 745.

Following the Court's order granting class certification, Class Counsel worked to provide notice to the Class, engaging Epiq Class Action & Claims Solutions, Inc. ("Epiq") to assist with the same. Joint Decl., ¶¶84-88.

Following class certification, Plaintiffs faced a slew of motions from Defendants, which were nearly entirely defeated by Class Counsel. *Id.*, ¶¶89-116, 118-37. These motions began with Discover's motion to compel arbitration, served on October 30, 2020. *Id.*, ¶90; Dkt. No. 737. On November 30, 2022, Defendants filed two motions to compel arbitration (including Discover's re-

filed motion), two motions to decertify the class, five *Daubert* motions, and three motions for summary judgment. Joint Decl., ¶¶92-116, 118-37; Dkt. Nos. 793, 795, 798-819, 824, 827-869.

Class Counsel opposed the two motions to compel arbitration—one from Discover, and one from Amex. *Id.*, ¶¶93-95, 97-99. Class Counsel was successful in getting the Court to deny Discover's motion to compel arbitration. *Id.*, ¶95; Dkt. No. 936.

Class Counsel also successfully opposed the two motions to decertify the class—one brought by Visa and Mastercard, and one brought by Amex in conjunction with its motion to compel arbitration. *Id.*, ¶¶96-98, 100-01. While the Court granted Amex's motion to compel arbitration, it denied its request made in the same motion to decertify the class on the basis of the arbitration agreement. *Id.*, ¶97; Dkt. No. 936. Class Counsel also defeated Visa and Mastercard's attempt to decertify the class based on a small portion of Dr. Abrantes-Metz's rebuttal report that they contended constituted a new theory of liability. Joint Decl., ¶101; Dkt. Nos. 937, 940.

Class Counsel also defeated Defendants' five *Daubert* motions almost in their entirety. Joint Decl, ¶102. Defendants filed three motions to exclude the merits testimony of Dr. Officer that sought to both have Dr. Officer's testimony and opinions rejected in their entirety, and to reduce the damages Plaintiffs could seek at trial by pointing to purported flaws in his analysis. *Id.*, ¶¶103-09. Class Counsel reviewed each of these motions, consulted with Plaintiffs' experts, and drafted oppositions to each. *Id.*, ¶103. The Court denied all of Defendants' motions directed at Dr. Officer, with the exception of part of Amex's motion relating to Plaintiffs' ability to demonstrate damages attributable to Amex. *Id.*, ¶¶103, 107; Dkt. Nos. 942, 946.

Defendants also filed two motions to exclude the opinions and testimony of Dr. Abrantes-Metz that sought to have Dr. Abrantes-Metz's testimony and opinions excluded in their entirety, and to limit her ability to opine on certain issues. *Id.*, ¶¶110-16. The Court denied these motions

nearly in their entirety as well, except for one aspect of Amex's motion—excluding certain of Dr. Abrantes-Metz's opinions regarding Amex's intent and state of mind. *Id.*, ¶¶110, 116; Dkt. Nos. 942, 946.

Class Counsel also filed a motion to exclude the testimony of Mastercard's EMV expert Julie Conroy, which the Court granted in part. Joint Decl., ¶117; Dkt. Nos. 820, 821, 823, 825, 942, 946.

Finally, Defendants filed three separate summary judgment motions: one from Visa and Mastercard, one from Amex, and one from Discover. *Id.*, ¶118. Collectively, these motions comprised 114 pages of briefing, 648 exhibits spanning 32,098 pages, and 496 separate statements of material fact. *Id*. Class Counsel's oppositions to these motions comprised 125 pages of briefing, 355 exhibits spanning 8,707 pages, and 513 separate statements of material fact as to which Plaintiffs contended there existed a genuine issue to be tried. *Id.*

Defendants' motions for summary judgment raised key dispositive issues as well as arguments that would severely limit Plaintiffs' ability to recover damages at trial. *Id.*, ¶¶119-20. The dispositive arguments included that merchants could not recover because they are, according to Defendants, indirect purchasers of the services at issue, and thus barred from recovery under the *Illinois Brick* doctrine. *Id.*, ¶119. Another key issue was whether applicable law required the collusion to be assessed through a single-sided or two-sided market analysis. *Id*. Defendants also asserted the analysis should be Rule of Reason. *Id*. Class Counsel instead argued that the appropriate analysis was *per se*, or failing that, Quick Look review. *Id.* Further, Class Counsel needed to respond to Defendants' assertions regarding the necessary evidentiary showing to demonstrate an antitrust conspiracy and caselaw distinguishing unilateral conduct from collusion.

Id. Visa and Mastercard argued that the Court should "limit damages to six months" of chargebacks, and exclude certain other chargebacks. *Id*

In addition to the legal research and caselaw perspective, the motions for summary judgment involved myriad factual issues. *Id.*, ¶120. Class Counsel thoroughly combed the discovery record for the best evidence to use in opposition to Defendants' motions. *Id*. Class Counsel analyzed the materials cited by Defendants and crafted detailed responses and rebuttals to Defendants' statements of material fact, along with appropriate objections. *Id*. Class Counsel also prepared additional separate statements of material fact for each of Defendants' motions for summary judgment. *Id*. Given the dozens of depositions, nine experts, and millions of documents that are part of the discovery record in this Action, these tasks were significant. *Id*.

Class Counsel were successful in defeating each of Defendants' motions for summary judgment in their entirety. *Id.*, ¶¶128, 133, 137; Dkt. No. 950. Further, Class Counsel then defeated Defendants' challenges to these orders, including Discover's motion for reconsideration, and Visa and Mastercard's motion to certify certain issues from the Court's orders for interlocutory review. Joint Decl., ¶¶129-30, 134-35; Dkt. Nos. 968, 971.

C. Mediation and Settlement

Class Counsel's first mediation was with Visa and Mastercard on March 22, 2017, utilizing the highly regarded and experienced Hon. Edward A. Infante (Ret.) as the mediator ("Judge Infante"). Bernay Decl., ¶10; 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 ("Infante Decl.," Ex. 4 to the Joint Decl.), ¶2. Judge Infante had significant experience with Visa and Mastercard, and the credit card industry, having been extensively involved in, and partly responsible for, the successful resolution of *In re Payment Card*

Interchange Fee and Merchant Discount Antitrust Litigation, 330 F.R.D. 11, 35 (E.D.N.Y. 2019) (recognizing Judge Infante was one of two "highly qualified mediators" in the case and was part of numerous mediation sessions and a successful mediator's proposal).

Counsel held three more mediations with Visa and Mastercard and Judge Infante over the next six years: on May 11, 2018, June 23, 2023, and September 11, 2024. Joint Decl., ¶¶140, 142, 145; Infante Decl., ¶¶3-5. However, all these sessions were unsuccessful. Joint Decl., ¶¶141, 143, 145; Infante Decl., ¶¶3-5.

Class Counsel continued litigating the Action following these mediation sessions, each time taking the risk that further litigation could lead to Plaintiffs' claims being dismissed or damages greatly reduced. Joint Decl., ¶145. After the *Daubert* and summary judgment motions were denied (Dkt. Nos. 942, 946, 950), Class Counsel elected to try a new approach. *Id.*, ¶147. Class Counsel utilized the assistance of a different mediator and tried to obtain icebreaker settlements from the smaller Networks. *Id.*, ¶¶147-48. Class Counsel scheduled a mediation with another highly regarded and experienced former federal judge—the Honorable Layn R. Phillips (Ret.) of Phillips ADR Enterprises, P.C. ("Judge Phillips"). *Id.*, ¶148. Judge Phillips has settled numerous complex matters, including antitrust cases. 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 ("Phillips Decl.," Ex. 5 to the Joint Decl.), ¶¶2-5; *see also* https://phillipsadr.com/our-team/layn-phillips/ (biography of Judge Phillips).

On December 6, 2024, Class Counsel attended a full-day, in-person mediation in New York, NY, with Discover, mediated by Judge Phillips. Joint Decl., ¶148.; Phillips Decl., ¶7. After negotiating throughout the day, Judge Phillips made a mediator's proposal to settle Plaintiffs' claims with Discover, which was accepted by both sides. Joint Decl., ¶149; Phillips Decl., ¶7.

The Discover Settlement resulted in a $12,000,000 contribution to the Common Fund, along with several forms of cooperation from Discover in further litigation against the remaining Defendants (the "Discover Settlement"). Joint Decl., ¶149.

After reaching the first icebreaker settlement, Class Counsel next turned to Amex. Joint Decl., ¶150. Class Counsel attended a full-day, in-person mediation on March 28, 2025, also in New York, NY, and again utilizing Judge Phillips. *Id.*; Phillips Decl., ¶8. Once again, the mediation process required the use of a mediator's proposal for Plaintiffs and Amex to reach agreement. Joint Decl., ¶150; Phillips Decl., ¶8. The Amex Settlement resulted in a $20,000,000 contribution to the Common Fund, along with several forms of cooperation from Amex in further litigation against the remaining Defendants (the "Amex Settlement"). Joint Decl., ¶150.

Finally, Class Counsel set up a fifth mediation with Visa and Mastercard. *Id.*, ¶151. This mediation session was a full-day, in-person mediation on August 13, 2025, in New York, NY, with Judge Phillips. *Id.*; Phillips Decl., ¶9. Once again, after a full day of negotiating, the Parties required a mediator's proposal to reach agreement. Joint Decl., ¶151; Phillips Decl., ¶9. The Visa and Mastercard settlement resulted in the addition of $199,500,000 to the Common Fund, with $119,700,000 coming from Visa, and $79,800,000 coming from Mastercard (the "Visa/Mastercard Settlement," and together with the Amex and Discover Settlements, the "Settlement"). Joint Decl., ¶151.

D. Settlement Notice and Anticipated Settlement Administration Work

After reaching the Discover and Amex Settlements, Counsel worked with Epiq to develop a distribution plan for the Common Fund, which was revised after Class Counsel reached the settlement with Visa and Mastercard. Joint Decl., ¶152, 156. Class Counsel also worked with Epiq to revise the notice program that had been implemented for class certification, to provide

notice of the Settlement. *Id.*, ¶¶152, 155. Class Counsel also began working with Epiq to preliminarily assess the available data in support of the distribution plan. *Id.*, ¶156. Class Counsel expects that the administration of the Settlement will require hundreds of hours of additional attorney and professional time, and potentially many more. *Id.*, ¶157.

III. ARGUMENT

A. Class Counsel Seek a Reasonable Percentage of the Common Fund as Attorneys' Fees, Which Is Well-Supported by the *Goldberger* Factors

The Second Circuit recognizes that "[i]t is well-established under the common fund doctrine that 'attorneys who create a fund for the benefit of a class of plaintiffs are entitled to reasonable compensation from that fund.'" *Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704, 723 (2d Cir. 2023) (citing *Victor v. Argent Classic Convertible Arbitrage Fund L.P.*, 623 F.3d 82, 84 (2d Cir. 2010)). While courts can determine a fee by the lodestar method, the "trend in this Circuit" is to apply the percentage method. *Fikes*, 62 F.4th at 723 (citing *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-MD-1720-MKB-JO, 2019 WL 6888488, at *9 (E.D.N.Y. Dec. 16, 2019) ("*Payment Card*"), *aff'd sub nom. Fikes*, 62 F.4th 704).

The Court has "very broad discretion … in determining a reasonable fee." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 57 (2d Cir. 2000). In calculating the fee using the percentage method, the Court is to be guided by the *Goldberger* factors: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation … ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Fikes*, 62 F.4th at 723 (citing *Goldberger*, 209 F.3d at 50). The lodestar

is used "as a cross check on the reasonableness of the requested percentage." *Id.* (internal quotes omitted).[4]

1. Class Counsel Expended Significant Time and Labor on this Litigation over Nearly a Decade

Courts regularly find that the "counsel's time and labor" factor supports a significant fee based on litigation efforts of this magnitude. *E.g.*, *Payment Card*, 2019 WL 6888488, at *10 (concluding that this factor supported the requested fee where counsel "devoted an enormous number of hours and many years to this case, through discovery, class certification, and summary judgment briefing, as well as additional briefing and discovery after the Second Circuit's remand" and collecting similar cases); *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 129 (S.D.N.Y. 2009) ("significant" efforts of class counsel included that they "engaged in lengthy and intensive discovery, producing and reviewing hundreds of thousands of documents, and deposing more than a hundred witnesses … briefed and argued motions to dismiss, compel arbitration, class certification and motions for reconsideration … participated in settlement negotiations … prepared two rounds of notification to class members … [and] will also spend additional hours after final approval of this Settlement working through the claims process with Class Members"), *aff'd sub nom. Priceline.com, Inc. v. Silberman*, 405 F. App'x 532 (2d Cir. 2010); *Pearlstein v. BlackBerry Ltd.*, No. 13 CIV. 7060 (CM) (KHP), 2022 WL 4554858, at *9-10 (S.D.N.Y. Sep. 29, 2022) (recognizing the "significant time and labor over nearly nine years to litigate this case" where counsel worked "over 36,000 hours" on the matter, and "successfully appealed and vacated the dismissal of the first amended complaint, defeated Defendants' second attempt to dismiss the case,

[4] Here, as throughout, all citations and footnotes are omitted and all emphasis is deemed added, unless otherwise noted.

completed large-scale discovery, certified a class, defeated in large part Defendants' motion for summary judgment, and were fully prepared to take this matter to trial").

This factor has also supported requested fees where the scope of the litigation was far shorter and less involved. *E.g.*, *In re BioScrip, Inc. Sec. Litig.*, 273 F. Supp. 3d 474, 498 (S.D.N.Y. 2017) (noting there was "no question that Lead Counsel expended significant time and labor in this case" where "counsel expended almost 4,000 hours of time over a course of two years" and reviewed "approximately 800,000 pages of documents"), *aff'd sub nom. Fresno Cnty. Emps.' Ret.' Ass'n v. Isaccson/Weaver Fam. Tr.*, 925 F.3d 63 (2d Cir. 2019); *In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510 CPS SMG, 2007 WL 2743675, at *14 (E.D.N.Y. Sept. 18, 2007) (recognizing "counsel has expended significant time and effort in furtherance of this litigation," based on four years of litigation, even where counsel only "began formal discovery," did not engage in depositions, and spent a total of 9,958 hours prosecuting the action).

Here, the magnitude and duration of this litigation easily support the conclusion that the "time and labor expended by counsel" supports the requested fee. The Action was filed on March 8, 2016. Dkt. No. 1. Class Counsel then litigated the action for more than nine and a half years through October 16, 2025, the date the Court granted preliminary approval. Dkt. Nos. 982, 983. October 16, 2025, is the date used by Class Counsel as the cut-off date for the claimed expenses and lodestar for this Motion. Joint Decl., ¶158.

During this nearly-decade-long effort, plaintiffs' counsel expended 57,333.20 hours of unreimbursed professional time, resulting in a lodestar of $32,868,941.25. *Id.*, ¶163. Further, plaintiffs' counsel expended $4,548,300.91 in unreimbursed expenses during this period. *Id.*, ¶168. The work performed by plaintiffs' counsel took this case from inception through to defeating

Defendants' summary judgment and *Daubert* motions. The scope of plaintiffs' counsel's effort was immense in every respect. *See generally* Joint Decl; Bernay Decl.; Devine Decl.; Amon Decl.

Class Counsel completed discovery efforts here that included: review and analysis of a massive evidentiary record consisting of 1.97 million documents, spanning tens of millions of pages; expert reports from nine experts, including two experts for Plaintiffs (authoring seven reports total) and seven for Defendants; and depositions of fifty-five fact witnesses and all nine experts over seventy-two days of depositions. Joint Decl., ¶170. These efforts were particularly onerous given that this case was built from scratch with no prior government investigation or related action paving the way. *Id.*

Class Counsel also defeated motion after motion by Defendants that attempted to have Plaintiffs' claims dismissed outright or greatly diminish Plaintiffs' ability to recover damages at trial. *Id.*, ¶171. These motions included: motions to dismiss, a motion for judgment on the pleadings, motions to compel arbitration, two motions to decertify the class, five *Daubert* motions (defeated almost in their entirety), and three motions for summary judgment, among others. *Id.* Class Counsel obtained certification of the Class after two rounds of briefing with the assistance of Plaintiffs' expert, Dr. Officer. *Id.*

These litigation efforts paved the way for Class Counsel's robust settlement efforts, which included seven mediations with two highly-respected and experienced mediators, both of whom are former federal judges. *Id.*, ¶172; Phillips Decl.; Infante Decl.

Class Counsel's efforts over nearly a decade put this Action squarely in the territory of cases like *Currency Conversion* and *Pearlstein*, discussed above, where the litigation efforts of counsel over a long period of time were "significant" and weighed in favor of the requested fee. *Currency Conversion*, 263 F.R.D. at 129; *Pearlstein*, 2022 WL 4554858, at *9-10. Moreover, the

efforts of Class Counsel are far greater, and occurred over a far longer time period than the efforts in many other cases that were still recognized as supporting the requested fee. *Cf., e.g.*, *BioScrip*, 273 F. Supp. 3d at 498 (800,000 pages of discovery versus tens of millions here; almost 4,000 hours of time versus 57,333.20 here); *Gilat Satellite Networks*, 2007 WL 2743675, at *14 (counsel had only begun formal discovery and had not engaged in depositions versus the completion of fact and expert discovery and seventy-two days of deposition here; 9,958 hours versus 57,333.20 hours here).

Accordingly, the "counsel's time and labor" *Goldberger* factor strongly supports the Fee Request.

2. The Litigation Was Sprawling and Complex

Numerous courts have recognized that antitrust actions involve a high level of complexity weighing strongly in favor of a requested fee award. *E.g.*, *Payment Card*, 2019 WL 6888488, at *12 (recognizing "complex legal antitrust questions" and that other courts have found this factor supports a fee in circumstances including "antitrust claims"); *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 435 (S.D.N.Y. 2016) (recognizing that "'[f]ederal antitrust cases are complicated, lengthy, and bitterly fought'") (citing *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005)); *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 510, 523 (E.D.N.Y. 2003) (calling "magnitude and complexities of the litigation" "enormous" and recognizing that "[t]he complexity of federal antitrust law is well known"), *aff'd sub nom. Wal-Mart*, 396 F.3d 96.

The conclusion that the magnitude and complexity of this litigation supports the requested fee is also strengthened by the fact that Class Counsel did not piggyback on a government investigation or other action. Joint Decl., ¶171; Bernay Decl., ¶4; *e.g.*, *Currency Conversion*, 263 F.R.D. at 129 (recognizing "antitrust cases are typically complex, and this case has been no exception … [t]here was no Government investigation … Class Counsel did their work on their

own with enormous attention to detail and unflagging devotion to the cause"); *Visa Check*, 297 F. Supp. 2d at 523-524 ("noting Lead Counsel did not benefit from any previous or simultaneous government litigation"); *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588, 597 (S.D.N.Y. 1992) (noting "this is not a case where plaintiffs' counsel can be cast as jackals to the government's lion, arriving on the scene after some enforcement or administrative agency has made the kill. They did all the work on their own").

Additional complexity in this Action came from the development of new Supreme Court authority during the pendency of the litigation—*Ohio v. American Express Co.*, 585 U.S. 529, 531 (2018) ("*Amex*"). Joint Decl., ¶173; *Payment Card*, 2019 WL 6888488, at *12 (recognizing "notable factual and legal developments took place during the course of the action that increased the complexity," including "the Supreme Court's decision in *Ohio v. American Express Co.*"); *In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 379 (S.D.N.Y. 2013) (recognizing that magnitude and complexity of a securities class action weighed in favor of "a significant award" where "they had to contend with significant case law developments that occurred during the pendency of this action"). The *Amex* case presented an issue that became a focal point of the litigation: does the alleged restraint require a two-sided (i.e. merchant and issuer) analysis as opposed to a one-sided (merchant) analysis. Joint Decl., ¶173. Defendants argued that a two-sided analysis was required, while Plaintiffs maintained that the single-sided analysis performed by Dr. Abrantes-Metz was not only proper, but the more appropriate analysis. *Id.* This issue permeated Defendants' *Daubert* and summary judgment motions. *Id.*

The magnitude and complexity of this Action is also further demonstrated by the nearly decade-long span of litigation, the volume of discovery, number of depositions, breadth of factual and expert issues, and the numerous motions Class Counsel filed and/or opposed in reaching this

Settlement. *E.g.*, *Payment Card*, 2019 WL 6888488, at *12 (recognizing this factor weighed in favor of a "substantial award" where "this litigation has been extremely protracted … and has included extensive briefing at nearly every major stage of litigation" and recognizing "the number of depositions taken, and the number of documents reviewed"); *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 669-70 (S.D.N.Y. 2015) (recognizing this factor supported the fee where, among other things, "the duration of the case, the volume of document discovery, the number of depositions taken, the length of expert reports, and the number of briefs filed—underscore[d] the magnitude and scale of the litigation").

Accordingly, the "magnitude and complexity of the action" *Goldberger* factor strongly supports the Fee Request.

3. The Litigation Was Highly Risky and Undertaken on an Entirely Contingent Basis

The "Second Circuit has historically labeled the risk of success as 'perhaps the foremost' factor to be considered in determining whether to award an enhancement." *Payment Card*, 2019 WL 6888488, at *13 (citing *Goldberger*, 209 F.3d at 54). Courts recognize this risk "weighs in favor of a substantial fee award" where "there were significant risks at the outset of the litigation" and where counsel "took the case on contingency." *Id*. at *14; *BioScrip*, 273 F. Supp. 3d at 501. Similarly, "'[t]he plaintiff class is … appropriately charged for contingency risk where such risk is appreciable because the class has benefited from class counsel's decision to devote resources to the class's cause at the expense of taking other cases.'" *Payment Card*, 2019 WL 6888488, at *14 (citing *Fresno Cnty. Emps.' Ret. Ass'n*, 925 F.3d at 69-70).

Courts also recognize that risk is further demonstrated where an action is initiated and litigated, like here, without the benefit of a prior or concurrent government action or investigation. *Payment Card*, 2019 WL 6888488, at *14 (recognizing "Class Counsel initiated this case on their

own, without the benefit of a prior government investigation … even knowing that they would be litigating against some of the best defense counsel, largest banks, and largest household-known corporations without the benefit of a prior government inquiry, and for years on contingency and without pay"); *Sykes v. Harris*, No. 09 CIV 8486 (DC), 2016 WL 3030156, at *16 (S.D.N.Y. May 24, 2016) (recognizing "Class Counsel's risk of no recovery was high. Class Counsel did not benefit from a previous, similar suit or from any similar government action or investigation. Nor was there a high likelihood of settlement at the outset of filing suit – as evidenced by the fact that settlement discussions lasted over two years"); *Wal-Mart*, 396 F.3d at 122 (recognizing "extraordinary" fee warranted where "plaintiffs' counsel did not have the benefit of 'piggybacking' off of a previous case").

Class Counsel faced significant risks here given the nature of this complex antitrust action. In taking on this litigation, Class Counsel expected heavy resistance from Defendants, some of the largest companies in the world. Joint Decl., ¶174. The claims pursued here were a novel extension of horizontal price fixing cases, based on a one-time technological transition in the United States, the adoption of EMV and the accompanying FLS. *Id.*; *see* Dkt. Nos. 799 & 870 at 20 (arguing "Defendants are aware of [no cases] condemning as anticompetitive an alleged inter-platform agreement").

It was not disputed that the underlying technology being implemented in connection with the FLS—the EMV chip—worked to reduce fraud by being more secure than the magnetic strip technology it supplemented. Joint Decl., ¶174. This presented Defendants with the opportunity to argue—as they did throughout the litigation—that their actions regarding the FLS itself were also designed to reduce fraud, and were actually pro-competitive. *Id.* This supposed pro-fraud-reduction argument fed into Defendants' argument that the Court needed to apply a rule of reason

analysis to this Action. *Id.*; *see also* Dkt. Nos. 799 & 870 at 21 (arguing that "Defendants are … unaware of any court applying the *per se* standard to an alleged agreement whose purpose is not to benefit conspirators through higher prices, but rather to create the incentives for millions of participants on both sides of their platforms to invest in new technology that will in the longer-term lower system-wide costs").

Similarly, government pressure to adopt EMV and reduce fraud and a significant highly publicized data breach at Target in late 2013 created convenient scapegoats for the lack of any delay of the FLS. Joint Decl., ¶174; *see also* Dkt. Nos. 799 & 870 at 8-9 (discussing Target breach and government pressure). Defendants utilized seven experts to ensure they could fully develop these—and myriad other arguments—to defeat Plaintiffs' claims. Joint Decl., ¶174. These arguments heightened the risk taken by Class Counsel. *See, e.g.*, *In re Beacon Assocs. Litig.*, No. 09 Civ. 777(CM), 2013 WL 2450960, at *13 (S.D.N.Y. May 9, 2013) ("[A]ll of these matters were taken on contingency, so in view of the novelty of the issues there was some possibility that counsel would recover nothing at all.").

At no point during this litigation did some external event occur that decreased the risk for Class Counsel. There was no related action that settled, or new government investigation, or public revelation of relevant new evidence. Joint Decl., ¶175; *cf. In re Foreign Exch. Benchmark Rates Antitrust Litig.*, No. 13 CIV. 7789 (LGS), 2018 WL 5839691, at *4 (S.D.N.Y. Nov. 8, 2018) (recognizing that "litigation risks decreased as the government investigations progressed and defendants admitted guilt"), *aff'd sub nom. Kornell v. Haverhill Ret. Sys.*, 790 F. App'x 296 (2d Cir. 2019).

Indeed, the opposite is true. The Supreme Court's decision in *Ohio v. Amex* created a new point of uncertainty that greatly affected the litigation of this case. Joint Decl., ¶176. Class

Counsel devoted significant time and effort to addressing the issues that arose out of this authority in *Daubert* motions, summary judgment briefing, and other aspects of litigation. *Id.* Defendants seized on the *Amex* decision to argue that a two-sided market analysis was required and that Dr. Abrantes-Metz's opinions, based on a single-sided analysis, must be rejected. *Id.* While Class Counsel believed Dr. Abrantes-Metz's opinion was well-founded, *Amex* presented a significant risk. *Id.* If the Court were to agree with Defendants that a two-sided analysis was required here, Plaintiffs would have been deprived of Dr. Abrantes-Metz's testimony regarding anticompetitive impact and antitrust injury. *Id.* This development greatly enhanced the risk for Class Counsel. *Id*.; s*ee Payment Card*, 2019 WL 6888488, at *12 (recognizing the added complexity arising out of the Supreme Court's *Ohio v. Amex* decision during the litigation); *see also Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d at 379 (recognizing risk factor "tips in favor of a substantial fee" where "this suit did not involve certain factors that traditionally signal the virtual inevitability of a settlement—such as a successful government investigation—and did involve the risk of an unfavorable outcome brought on by changes in applicable case law").

Class Counsel also faced serious risk because of Defendants' *Illinois Brick* defense, where they argued that merchants were not "direct purchasers" and thus were barred from recovery. Joint Decl., ¶177; *see, e.g.*, *Payment Card*, 2019 WL 6888488, at *14 (recognizing that "Plaintiffs faced challenges under antitrust standing grounds pursuant to *Illinois Brick*"). Indeed, Visa and Mastercard argued that "[t]he Second Circuit has applied the bright-line *Illinois Brick* rule in a case on all fours with the current lawsuit." Dkt. Nos. 799 & 870 at 14 (citing *Paycom Billing Servs., Inc. v. Mastercard Int'l, Inc.*, 467 F.3d 283 (2d Cir. 2006)). They argued that "[s]ummary judgment should be granted in accordance with *Paycom* as to all of Plaintiffs' damages claims based on Visa and Mastercard chargebacks." *Id.* at 16. They further argued that their *Illinois Brick*

defense also entitled them to summary judgment on the chargebacks attributable to Amex and Discover. *Id.* at 16-17.

Despite these risks, Class Counsel persevered over nearly a decade of litigation, pressing the case at each stage. Class Counsel took this case on a contingent basis, receiving no payment or promise thereof in exchange for litigating this Action, while taking on $4,548,300.91 in expenses, and devoting 57,333.20 hours of attorney and professional time to this matter. Joint Decl., ¶¶163, 168. Class Counsel took on the risk that the Action could fail at the motions to dismiss, the motion for judgment on the pleadings, the motion for class certification, the two motions to decertify the class, and Defendants' three summary judgment motions. Class Counsel also faced serious risk through Defendants' five *Daubert* motions. Joint Decl., ¶178.

Thus, Class Counsel repeatedly faced significant "risk that the claims would fail leaving Class Counsel [and the Class] with nothing." *Pearlstein*, 2022 WL 4554858, at *9 (noting the risks taken where "Plaintiffs successfully appealed and vacated the dismissal of the first amended complaint, defeated Defendants' second attempt to dismiss the case, completed large-scale discovery, certified a class, defeated in large part Defendants' motion for summary judgment, and were fully prepared to take this matter to trial"); *Dial Corp.*, 317 F.R.D. at 435 (recognizing "formidable challenges" and that "[c]ounsel prosecuted this case largely on contingency and assumed the risk of recovery nothing if the claims were dismissed at various stages"); *Sykes*, 2016 WL 3030156, at *16 ("Lead Plaintiffs faced the real risk of the Classes being decertified").

Accordingly, the "risk of litigation" *Goldberger* factor greatly weighs in favor of the Fee Request.

4. The High Quality of the Representation by Class Counsel Is Demonstrated by the Results Achieved

"'[T]he quality of representation is best measured by results, and such results may be calculated by comparing "the extent of possible recovery with the amount of actual verdict or settlement."'" *Payment Card*, 2019 WL 6888488, at *15 (citing *Goldberger*, 209 F.3d at 55). Courts consider the fact that an action was filed without a prior government investigation as "relevant in weighing in favor of a substantial award and a finding that counsel engaged in quality representation." *Id.* at *16 (collecting cases); *Meredith Corp.*, 87 F. Supp. 3d at 670 (recognizing quality of representation where "Plaintiffs' counsel (and their teams and experts) were truly the authors of the favorable outcome for the class"). Additionally, "'[t]he quality of opposing counsel is also important in evaluating the quality of Class Counsels' work.'" *Payment Card*, 2019 WL 6888488, at *15 (citing *In re Merrill Lynch & Co., Inc. Rsch. Reps. Sec. Litig.*, 246 F.R.D. 156, 174 (S.D.N.Y. 2007)); *see also Currency Conversion*, 263 F.R.D. at 129 (recognizing "extraordinarily high-quality representation" and that counsel "vigorously litigated every issue against some of the ablest lawyers in the antitrust defense bar").

The high quality of Class Counsel is demonstrated by the circumstances here, including Class Counsel's background and experience, and the specific circumstances of this Action. Class Counsel dedicate their practice to complex litigation. Joint Decl., ¶179; *see also* Bernay Decl., Ex. A. Class Counsel have vigorously pursued this litigation for nearly a decade. While doing so, Class Counsel have fended off attempt after attempt by Defendants to dismiss the case outright or drastically reduce Plaintiffs' ability to recover damages at trial (as in the case of Defendants' MSJ and *Daubert* motions, and class certification oppositions). Class Counsel have achieved these results despite going up against four household-name corporations that are some of the largest in the country, represented by some of the largest law firms in the country. These circumstances

clearly demonstrate the high quality of Class Counsel's representation. *E.g.*, *Sykes*, 2016 WL 3030156, at *17 (recognizing "Class Counsel effectively and efficiently litigated this Action from its inception, during more than six years of contentious litigation against more than able defense counsel").

Further, the result Class Counsel have achieved on behalf of the Class here is outstanding: $231,700,000. The results "may be calculated by comparing 'the extent of possible recovery with the amount of actual verdict or settlement.'" *Goldberger*, 209 F.3d at 55. Plaintiffs and Defendants have vastly different measures of Plaintiffs' possible recovery, and Plaintiffs' recovery is significant compared to either measure.

Plaintiffs' damages expert has opined that the "total dollar amount of damages suffered by members of the certified class of Plaintiffs is $1,454,485,686." Joint Decl., ¶180. However, this figure included chargebacks for merchants who opted-out of the Class, merchants who had their chargebacks reimbursed or absorbed by payment processors or acquiring banks, and government entities, who are excluded from the Class. *Id.* Based on Class Counsel's best efforts to estimate these amounts, Class Counsel believes that reducing the total damages to account for these exclusions would lead to a total best-case-scenario damages figure of $1,286,375,666. *Id.*

Conversely, Defendants have offered vastly different opinions on potentially recoverable damages, ranging from $24,649,294 to $1,424,068,666. Joint Decl., ¶181. Defendants' alternative damages scenarios, taken from Visa's expert reports, provide alternative chargeback calculations for different scenarios, across all four Defendants.[5] *Id.* These alternative scenarios include

[5] 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 and reflect Class Counsel's current understanding of certain of Defendants' damages estimates and

chargeback amounts for a three-, six-, twelve-, eighteen-, or twenty-four-month delay of the Fraud Liability Shift; along with three different scenarios: 1) a delay of only domestic debit FLS charges, 2) a delay of domestic credit and debit FLS charges, with no delay of cross-border FLS charges; and 3) a delay of credit and debit charges including a delay of cross-border FLS charges. *Id.* Visa's experts also provided a figure for a six-month delay of the debit and credit transactions, without cross-border charges (in Visa and Mastercard's summary judgment motion they argued, among other things, that the Court should limit damages to six months and exclude cross-border chargebacks) amounting to $392,390,199 ("Defendants' MSJ Alternative"). *Id.*; Dkt. No. 799 at 4, 64-66; Dkt. No. 870 at 4, 64-66.

Accounting for the total chargebacks associated with each Defendant, with Plaintiffs' estimate (but not Defendants') adjusted for opt-outs, reimbursements/absorption, and government entities, Class Counsel provide several estimates of the recovery here. These estimates include for each contribution to the Common Fund: the percentage recovery of that contributing Defendant's damages, and the percentage recovery of all damages. These estimates include the recovery percentages as a percentage of Plaintiffs' current best estimate of the recoverable damages, and as a percentage of the recoverable damages under Defendants' MSJ Alternative:

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.

Entity	Common Fund Contribution	% of Settling Defendant Damages		% of All Damages	
		With Plaintiffs' Estimates	With Defendants' Estimates	With Plaintiffs' Estimates	With Defendants' Estimates
Discover	$12,000,000	46%	148%	1%	3%
Amex	$20,000,000	19%	59%	2%	5%
Mastercard	$79,800,000	17%	63%	6%	20%
Visa	$119,700,000	18%	53%	9%	31%
All Defendants	$231,700,000	**18%**	**59%**	**18%**	**59%**

The recovery of between 18% and 59% of potentially recoverable damages "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 *Currency Conversion*, 263 F.R.D. at 123 (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); *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 478 (S.D.N.Y. 1998) (antitrust settlement of $1.027 billion approved where plaintiffs' and defendants' damages estimates were vastly disparate); *see also In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-MD-1720-MKB-JO, 2019 WL 6875472, at *28 (E.D.N.Y. July 18, 2022) (recognizing plaintiffs' economist expert provided estimated damages for plaintiffs at between $463-754 billion, while "[d]efendants' expert would have estimated damages" at $1.21-3.66 billion), *aff'd sub nom. Fikes Wholesale*, 62 F4th 704.

Other cases have found similar amounts of recovery to weigh in favor of an award. *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%"); *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-02420 YGR (DMR), 2020 WL 7264559, at *20 (N.D. Cal. Dec. 10, 2020) (characterizing "11.7 percent of the single damages" as an "excellent" result for an antitrust class action), *aff'd*, 2022 WL 16959377 (9th Cir. Nov. 16, 2022); Direct Purchaser Class Plaintiffs' Motion for Final Approval of Class Action Settlements with Gilead and Attorneys' Fees, Costs and Expenses, and Service Award at 18-19, *In re HIV Antitrust Litig.*, No. 3:19-cv-02573 (N.D. Cal. Nov. 21, 2023) (noting achievement of 11.9% of single damages) and *In re HIV Antitrust Litig.*, No. 3:19-cv-02573, slip op. (N.D. Cal. Jan. 19, 2024) (approving $75 million fee for the same) (Joint Decl., Ex. 13, Tabs 2A-B).

Accordingly, the "quality of representation" *Goldberger* factor weighs in favor of the Requested Fee.

5. The Fee Request Is Reasonable in Relation to the Common Fund

Courts assess "the size of the requested fee in relation to the settlement … to ensure that the percentage awarded does not constitute a windfall." *Payment Card*, 2019 WL 6888488, at *19 (internal quotes omitted) (citing *Johnson v. Brennan*, No. 10 CIV. 4712 CM, 2011 WL 4357376, at *18 (S.D.N.Y. Sept. 16, 2011)). While there is often a "sliding scale" approach taken to attorneys' fees as the size of the fund increases, "this principle cannot be considered in isolation without also reviewing the amount of work and time spent by counsel in this litigation." *Id.* A fee does not constitute a "windfall" simply because it is large; rather, a windfall would occur, for example, where "'settlement is quick and the time and labor expended by counsel is low.'" *See id.* (citing *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 514-15 (S.D.N.Y. 2009)). Thus, even where cases have relatively large common funds, courts have still awarded 33.3% of the common fund. *E.g.*, *Pearlstein*, 2022 WL 4554858, at *10 (granting 33.3% fee request in action with $165 million common fund and recognizing "request for one-third of the gross settlement

fund is reasonable within this circuit" and citing examples); *Qsberg v. Foot Locker, Inc., et al.*, No. 1:07-cv-1358, slip op. (S.D.N.Y. June 8, 2018) (awarding 33% of $288.4 million fund) (Joint Decl., Ex. 15).

This Court has utilized a comparison of similar settlements, combined with an assessment of "the unique circumstances of [the] case," to determine the reasonableness of a fee. *Payment Card*, 2019 WL 6888488, at *20 (recognizing that the "fee request falls within a similar range of fees awarded in other multi-billion-dollar antitrust actions"); *see also In re GSE Bonds Antitrust Litig.*, No. 19-CV-1704 (JSR), 2020 WL 3250593, at *5 (S.D.N.Y. June 16, 2020) (acknowledging that lead counsel's "own research of similarly sized megafund antitrust settlements in this District and elsewhere" was one "source[] indicat[ing] that Co-Lead Counsel's fee request falls properly within that sliding scale"); *Foreign Exch.*, 2018 WL 5839691, at *3 (acknowledging usefulness of "comparison" fee awards that were similar "in terms of size, complexity and subject matter").

Class Counsel have endeavored to provide the Court with appropriate comparators, and to that end have compiled a list of antitrust class actions that have settled since 2011 with a common fund between $100 and $250 million. Joint Decl., ¶182. Class Counsel filled this list with all such examples that could be located with a diligent search regardless of whether the fee awarded was higher or lower than that sought here. *Id.* Class Counsel have attached as Exhibit 12 to the Joint Decl. a chart showing those fifty-seven settlements, including: (a) the size of the common fund, (b) the fee awarded, and (c) the expenses awarded. *Id.* The source documents for this chart are attached to the Joint Decl. as Exhibits 13-14.

Given the relative rarity of antitrust cases reaching a settlement of this magnitude, there are only fourteen of these examples from within the Second Circuit (less than one case a year on average for that period). However, the list in its entirety has more than quadruple that amount—

fifty-seven settlements—and thus provides a more complete picture of what is reasonable for an antitrust settlement of comparable magnitude. *See, e.g.*, *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 349 (S.D.N.Y. 2014) (recognizing that "[h]istorical data of fees awarded in common fund cases provides an unbiased and useful reference for comparing fees cases of similar magnitude as a starting point for the sliding scale").

The median attorney fee award for these settlements is 30%, and the average is 28.51%, further demonstrating the reasonableness of Class Counsel's request. Notably, the "2024 Antitrust Annual Report, Class Actions in Federal Court," published in July 2025 by the Center for Litigation and Courts at UC Law San Francisco and The Huntington National Bank reported similar numbers for a similar dataset. Joint Decl., Ex. 16. This study, utilizing "[s]ettlement data analyzed within the 2009-2024 period," reported a median attorneys' fee award in cases settling for between $100 - $249 million of 30%. *Id.* at 31; *see also id*. at 40 (discussing "Methodology and Sources"); *see also In re Auto Refinishing Paint Antitrust Litig.*, No. MDL NO 1426, 2008 WL 63269, at *5 (E.D. Pa. Jan. 3, 2008) (recognizing "it is not unusual in antitrust class actions for the attorneys to receive awards for fees in the 30% range").

More than half of the examples from Class Counsel's chart, thirty-five, grant fee-award percentages higher than sought here, and the majority of those awards are 30% or more. *See* Joint Dec., Ex. 12; *e.g.*, *In re Novartis and Par Antitrust Litig.*, 1:18-cv-04361 (S.D.N.Y July 26, 2023) (awarding 33.2% of $126,850,000 common fund as attorneys' fees for case spanning five years of litigation) (Joint Decl., Ex 12 at Row 26).

Perhaps the most apt comparison for this Action is *In re Municipal Derivatives Antitrust Litigation*, No. 1:08-cv-02516-VM-GWG (S.D.N.Y. July 8, 2016), where the court approved an award of 32.8% of a further settlement in the action, which added $100,514,500 to the common

fund. Joint Decl., Ex. 14, Tab 41A-B. When combined with earlier settlements, for which the court had approved 25.4% of the $122.8 million in common funds, the total resulting fee was 28.76% of the $223.3 million common fund, comparing favorably to Class Counsel's request here for 28.31% of the $231.7 million common fund. Like here, the *Municipal Derivatives* action was sprawling in terms of documents, with millions of documents. *Id.*, Tab 41B at 13 (reviewing millions of documents). However, plaintiffs only took "several" depositions, compared to the dozens taken here over seventy-two days. *Id.* This litigation was also similar in duration to this Action—beginning March 2008, and with counsel's motion for fees for the second settlement filed in May 2016, thus spanning just over eight years, compared to the nearly decade-long litigation here. *Id.* at 2. However, the litigation was far less progressed procedurally than this Action, with plaintiffs only preparing a motion for class certification as of the time of settlement. *Id.* at 13.

Here, Class Counsel is requesting a lower fee than in other cases where counsel took far less risk. For example, in *First Impressions Salon, Inc., et al. v. National Milk Producers Federation, et al.*, No. 3:13-cv-00454 (S.D. Ill.), counsel were awarded $73.3 million in fees, amounting to 33.3% of the common fund, in a case where the Defendants' summary judgment, *in limine* motions, and decertification motions were still pending. Joint Decl., Ex. 13, Tab 3B at 3. Class Counsel here took the significant risk of a decision for each of these motions.

Another apt comparison is the 30.4% award of a $246,750,000 settlement in *In re HIV Antitrust Litigation*, 3:19-cv-02573 (N.D. Cal. Jan. 19, 2024). Joint Decl., Ex. 13, Tab 2A-B. Like here, there was no prior government investigation in *HIV Antitrust*. *Id.*, Tab 2B at 20. The scope of the action was sprawling like here, with "scores of fact depositions, and the review of millions of documents." *Id.* at 3. Also like here, the action progressed through the summary judgment stage, with the case settling just before trial. *Id.* However, the *HIV Antitrust* litigation took only

three years, compared to nearly a decade here, and recovered only 11.9% of single damages (*id.* at 13), versus 18-59% here.

Another similar settlement is *Sidibe, et al. v. Sutter Health*, No. 3:12-cv-04854 (N.D. Cal. Nov. 6, 2025), where the court awarded 33% of a $228.5 million settlement. Joint Decl., Ex. 13, Tabs 1A-B. The scope of discovery in *Sidibe* was similar to here, with 2.5 million documents, 155 depositions, and ten experts. *Id*., Tab 1B at 4-5. The litigation was also sprawling in scope like here, spanning over twelve years and with litigation through to a trial (with a defense verdict), and appeals, and a settlement before a second trial. *Id.* at 1-2. Moreover, in a mirror image of this litigation, "[t]wo rounds of class-certification occurred" and "[t]hree summary judgment motions were filed." *Id*., Tab 1A at 3.

Even cases from Class Counsel's chart awarding a lower percentage are supportive of the Fee Request when examining the specific circumstances. *See McDaniel v. Cnty. of Schenectady*, 595 F.3d 411, 426 (2d Cir. 2010) (recognizing that "fee award should be based on scrutiny of the unique circumstances" of every case) (quoting *Goldberger*, 209 F.3d at 53). One example from within the Second Circuit illustrating the need to consider the specific circumstances of this Action is *Dial Corp. v. News Corp.*, 317 F.R.D. 426. Counsel there asked for more than Class Counsel here (30% vs. 28.31%) on a similarly sized common fund ($244 million vs $231.7 million), but were awarded only 20%. *Id.* at 429-30, 438.

The *Dial* court's reduction appears to have been largely driven by dissatisfaction with certain staffing and billing practices. The *Dial* court, in making this reduction, noted that "the first [*Goldberg*] factor—labor and time expended by counsel—warrants a reduction in the requested fee." *Id.* at 436. The court criticized "the time and labor expended by five law firms—three more than this Court appointed" and asserted that it "most certainly led to a duplication of effort and

multiplication of attorneys' fees."[6] *Id.* at 434. It also criticized an arrangement it described as "a private work-around among themselves" to its leadership order that amounted to "subterfuge." *Id.* The *Dial* court concluded that the lodestar was thus so inflated that it "serves no useful purpose as a 'cross-check'" and thus reduced it by 23.42%. *Id.* at 436-37. Nevertheless, in recognition of the other factors supporting the fee, and especially "the risk in this litigation," the Court still concluded that "[a] reasonable multiplier enhancing the lodestar is appropriate," given the risk of the litigation and quality of the attorneys, and applied a 1.75 multiplier (down from the requested 2.01). *Id.* at 437.

Here, a notable difference between this Action and *Dial* (and many similar large antitrust class actions) is that this Action has always been litigated by a single firm as lead counsel—though assisted throughout by DG&R, and since the transfer to this Court, by local counsel. Joint Decl., ¶183. This single-lead-counsel arrangement greatly diminished the concern identified by the *Dial* court of excessive and duplicative billing. This is another factor that supports the reasonableness of the Settlement, especially when compared to other actions of this magnitude, which are often litigated simultaneously by multiple lead counsel.

Accordingly, the "the size of the requested fee in relation to the settlement" *Goldberger* factor weighs in favor of the Fee Request.

6. There Are Significant Public Policy Benefits in Private Antitrust Class Actions Like this Litigation

Courts have held that "public policy interests weigh in favor of a substantial award" in antitrust actions because "[t]here is a genuine public interest in bringing private antitrust class

[6] While the *Dial* court also criticized what it referred to as "excessive … timekeeper rates," the description of such rates in comparison to those here needs to be considered in light of the fact that this decision is nearly a decade old. *See id*. at 437-38.

actions in order to protect consumers, competition, and businesses, and private antitrust suits often serve as a supplement to government antitrust investigations." *Payment Card*, 2019 WL 6888488, at *21; *see also Meredith Corp.*, 87 F. Supp. 3d at 670-71 (recognizing "[p]rivate antitrust lawsuits 'provide a significant supplement to the limited resources available' to public antitrust regulators"); *In re Credit Default Swaps Antitrust Litig.*, No. 13-MD-2476 (DLC), 2016 WL 2731524, at *18 (S.D.N.Y. Apr. 26, 2016) (recognizing "[i]t is important to encourage top-tier litigators to pursue challenging antitrust cases such as this one. Our antitrust laws address issues that go to the heart of our economy"). Here, these policy considerations are particularly pronounced given that there was no government investigation, nor were there scores of other attorneys lining up to file cases and compete for lead. But for Class Counsel, this relief would not have been achieved for the Class. *See Perma Life Mufflers, Inc. v. Int'l Parts Corp.*, 392 U.S. 134, 139 (1968) ("[T]he purposes of the antitrust laws are best served by ensuring that the private action will be an ever-present threat to deter anyone contemplating business behavior in violation of the antitrust laws."), *overruled on other grounds by Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752 (1984).

Accordingly, the "public policy considerations" *Goldberg* factor also weighs in favor of the Fee Request.

B. A Lodestar Cross-Check Confirms the Fee Request Is Reasonable

Courts recognize that "it is not uncommon for fees to be awarded that reflect multiples of plaintiffs' counsel's lodestar." *Meredith Corp.*, 87 F. Supp. 3d at 668-69 (citing multipliers of 1.41, 2.8, and 3.5). Awarding multiples of the lodestar "is commonly justified on the ground that counsel risked money and time, and may have foregone other engagements and clients, to pursue an uncertain representation of the class." *Id.* (citing *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 441 (E.D.N.Y. 2014)). "'A multiplier is typically applied to the lodestar figure to represent "the risk of litigation, the complexity of the issues, the

contingent nature of the engagement, the skill of the attorneys, and other factors."'" *Payment Card*, 2019 WL 6888488, at *22, *24 (approving lodestar multiplier of 2.45).

1. Counsel's Hourly Rates Are Reasonable

In calculating the lodestar, Class Counsel followed Second Circuit guidance that "[t]he rates used by the court should be current rather than historic hourly rates." *Reiter v. MTA New York City Transit Auth.*, 457 F.3d 224, 232 (2d Cir. 2006) (internal quotes omitted); Joint Decl., ¶161; *see also In re Nassau Cnty. Strip Search Cases*, 12 F. Supp. 3d 485, 496 (E.D.N.Y. 2014) (using current rates "in recognition of the fact that counsel did not receive any interim payments during the course of the litigation"); *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-CV-8557 (CM), 2014 WL 7323417, at *15 & n.9 (S.D.N.Y. Dec. 19, 2014) (recognizing "the use of current rates to calculate the lodestar figure has been endorsed repeatedly by the Supreme Court, the Second Circuit and district courts within the Second Circuit as a means of accounting for the delay in payment inherent in class actions and for inflation").

The current hourly rates of the attorneys working on this matter are reasonable. The beginning presumption is that "the prevailing rates have to be considered with reference to the Eastern District of New York," the district where this action has been litigated. *Moore v. Rubin*, 766 F. Supp. 3d 423, 427 (E.D.N.Y. 2025), *appeal docketed*, No. 25-613 (2d Cir. Mar. 17, 2025). However, "there are different rates applicable to different kinds of cases because the demand for lawyers is different, the volume of lawyers bringing those cases is different, the size of overhead costs of the firms bringing those cases is different, and the expertise needed for different kinds of cases is different." *Id.* (citing *Rubin v. HSBC Bank USA, NA*, 763 F. Supp. 3d 233, 239-40 (E.D.N.Y. 2025)). For example, an upward adjustment from typical market rates for a district may be warranted "in a more complex case." *Id.* at *427-28.

In determining an appropriate rate "the fundamental consideration … is 'the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case.'" *Matter of S.S.*, No. 25-CV-1309 (BMC), 2025 WL 2897522, at *1 (E.D.N.Y. Oct. 10, 2025) (citing *Purdue v. Kenny A.*, 559 U.S. 542, 551 (2010)). Further, when the "'going rate' for a particular kind of case" is not "easy to ascertain" the *Johnson* factors can also be a useful guide. *Moore*, 766 F. Supp. 3d at 429 (citing *Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989)). For example, in *Moore*, the Court determined an upward adjustment was warranted in light of "the time and labor required," "the novelty and difficulty of the questions," "the level of skill required," and the "stakes involved and the actual recovery." *Id.* at 429-430.

Class Counsel respectfully submit that this is an instance where an upward adjustment from the typical Eastern District rates is appropriate. First, looking at the examples provided above of antitrust settlements generating a common fund between $100-250 million, there are only three from the Eastern District, from the same matter, with the latest being in 2016, nearly a decade ago. *See* Joint Decl., Ex. 12 at Row 57 (*Panalpina 3*). The fee motion from counsel in that settlement included current hourly rates as of September 2016 that resulted in a blended average rate of $596—higher than plaintiffs' counsel's combined blended rate of $573. *Id.*, Ex. 14, Tab 57C at ¶21 (noting lodestar of $916,510 for 1,538 hours); Joint Decl. ¶163. This example strongly supports Plaintiffs' Fee Request. However, given this is not an instance where "the Court can draw from its experience in hundreds if not thousands of cases," to determine a "reasonable rate," the *Johnson* factors serve as a further useful guide. *See Moore*, 766 F. Supp. 3d at 428.

Just as in *Moore*, an upwards adjustment is warranted given the "the time and labor required," "the novelty and difficulty of the questions," "the level of skill required," and the "stakes involved and the actual recovery." *Id.* at 429-430. This was a monumental undertaking over the course of nearly a decade, involving four household-name corporations with highly regarded defense attorneys from the country's biggest firms. The issues were difficult and novel, including the *Illinois Brick* issues, the two-sided vs. one-sided market analysis issue stemming from the Supreme Court's *Amex* decision during the pendency of this Action, and the issues arising from nine experts. The stakes were high, and Class Counsel delivered excellent results for the Class, obtaining a Common Fund of $231,700,000.

The rates charged by counsel in this Action are commensurate with those charged by firms leading large-scale complex litigation like this. For example, in an antitrust action in the Southern District of New York that created a common fund of $386.5 million, the court found "billing rates ranging from $350 to $1,150 per hour" were within the range of reasonableness five years ago in 2020. *GSE Bonds*, 2020 WL 3250593, at *5. Similarly, in granting an attorneys' fee award in an antitrust action creating a common fund of over $100 million, one court recognized that "[i]n national markets, 'partners routinely charge between $1,200 and $1,300 an hour, with top rates at several large law firms exceeding $1,400. In specialties such as 'antitrust and high-stakes litigation and appeals ... [f]or lawyers at the very top of those fields, hourly rates can hit $1,800 or even $1,950.'" *In re Auto. Parts Antitrust Litig.*, No. 12-MD-02311, 2018 WL 7108072, at *3 (E.D. Mich. Nov. 5, 2018). Notably, these findings regarding rates in national markets in specialties including antitrust law were made seven years ago. *See also Fleisher v. Phoenix Life Ins. Co.*, No. 11-cv-8405 (CM), 2015 WL 10847814, at *18 & n.15 (S.D.N.Y. Sept. 9, 2015) (finding that counsel's rates are reasonable when they are "comparable to peer plaintiffs and defense-side law

firms litigating matters of similar magnitude" and noting that even thirteen years ago in 2012, partners at New York firms were charging up to $1200 per hour).

More recent data further strengthens the conclusion that Class Counsel's rates are reasonable. In *Sidibe v. Sutter Health* (*see supra*, Section III(A)(5)), an antitrust action litigated over twelve years that was given final approval in 2025 with a common fund of $228.5 million, plaintiffs' counsel's rates were comparable to here. All seven of the plaintiffs' law firms involved reported partner rates in 2025 over $1,000. Joint Decl., Ex. 13, Tab 1C at 10-14 (top rates ranging from $1,000 to $1,550). The most recent associate rates ranged from a low of $475 to a high of $720. *Id.* The Court approved the plaintiffs' attorneys' fee request of $75,400,000 (33% of the common fund), plus $28,185,752 in expenses. *Id*., Tab 1A.

Counsel's blended rate of $573 demonstrates that Counsel's rates are reasonable, and Counsel's claimed rates[7] are in-line with the comparable rates discussed above.

2. The Lodestar Multiplier Is Reasonable and In-Line with Comparable Cases

When "the lodestar method is being used merely as a cross-check against the percentage method … 'the hours documented by counsel need not be exhaustively scrutinized by the district court.'" *Nassau Cnty. Strip Search Cases*, 12 F. Supp. 3d at 496, 501-02 (granting attorneys' fee award of 33.3% of the amount recovered for the class); *see also Payment Card*, 2019 WL 6888488, at *23 ("when used as a crosscheck the Court need not heavily scrutinize the lodestar"). Class Counsel expended 57,333.20 hours of attorney and professional time on this action, for a total lodestar of $32,868,941.25. Each of the firms that have worked on this matter have reviewed every individual entry for their respective firm to ensure accuracy of the entries and that the work was

[7] *See* Joint Decl., Ex. 10, Bernay Decl., Ex. B; Devine Decl., Ex. A.

reasonably performed in service of the Class. Joint Decl., ¶¶159-60; Bernay Decl., ¶¶11-14; Devine Decl., ¶¶13-15; Amon Decl., ¶¶6-7. All counsel have also followed a set of criteria to eliminate certain hours from the lodestar, as further detailed in the Joint Decl. Joint Decl., ¶¶159-60; *see also* Bernay Decl., ¶¶11-14; Devine Decl., ¶¶13-15; Amon Decl., ¶¶6-7. Class Counsel provide timekeeper charts showing the hours incurred, the categories of work performed, and the rates charged for each professional. Joint Decl., ¶162 & Ex. 10; Bernay Decl., ¶16 & Ex. B; Devine Decl., ¶16 & Ex. A; *see* Amon Decl., ¶¶4-5, 8.

Accordingly, the lodestar multiplier of 2.00 confirms that the Fee Request is reasonable, as it is similar to those approved in many cases, and well below the lodestar multipliers often awarded. *E.g.*, *Payment Card*, 2019 WL 6888488, at *22 (recognizing lodestar of 2.5 fell "well within a range of multipliers that have been deemed acceptable, especially in complex actions"); *GSE Bonds*, 2020 WL 3250593, at *5 (recognizing that "a 4.09 multiplier is within the range of what has [been] considered reasonable by courts); *Wal-Mart*, 396 F.3d at 123 (approving of a 3.5 multiplier and citing authority recognizing that "multipliers of between 3 and 4.5 have become common" and that "lodestar multiplier[s] of 1.35 to 2.99 [are] common in megafunds over $100 million"); *Nichols v. Noom, Inc.*, No. 20-cv-3677 (KHP), 2022 WL 2705354, at *10-11 (S.D.N.Y. July 12, 2022) (recognizing that multiplier of 2.88 "fully consistent with that found to be reasonable [in] other cases in this Circuit"); *Pearlstein*, 2022 WL 4554858, at *10 (recognizing multiplier of 2.15 as "well within the range of multipliers that have been applied by courts in this Circuit in similar common fund cases," noting approved multipliers of 2.23, 3, 3.24, 4.65, and 4.8).

Additionally, this lodestar multiplier does not account for significant additional tasks relating to the administration of the Settlement that Class Counsel will undertake after final approval. Joint Decl., ¶157; *See Clem v. KeyBank, N.A.*, No. 13-cv-789, 2014 WL 2895918, at

*10 (S.D.N.Y. June 20, 2014) (recognizing that because "class counsel will be required to spend significant additional time on this litigation in connection with implementing and monitoring the settlement, the multiplier will actually be significantly lower because the award includes not only time spent prior to the award, but after in enforcing the settlement").

Accordingly, the lodestar multiplier of 2.00 confirms the reasonableness of the Fee Request. *See Fikes*, 62 F.4th at 727 (noting "[t]he district court therefore acted within its discretion when it granted Class Counsel a fee award that more than doubled the lodestar"); *Pearlstein*, 2022 WL 4554858, at *10 (recognizing "[t]his is a case in which lodestar plus multiplier makes sense, as it went all the way to the eve of trial and counsel really developed the entire case").

C. Counsel's Expenses Are Reasonable

It is "common practice in this circuit [to] grant[] expense requests." *Visa Check*, 297 F. Supp. 2d at 525 (approving request for $18,716,511.44 in expenses). In approving these requests, courts often recognize the appropriateness of such expenses in connection with "the complexity and duration" of the work. *E.g.*, *Payment Card*, 2019 WL 6888488, at *25 (approving $38,263,023.81 in expenses).

Class Counsel have reviewed each of their claimed expenses of $4,548,300.91 to ensure they were accurately recorded, reasonable, and incurred in this Action. Joint Decl., ¶¶162-164; Bernay Decl., ¶¶17-21; Devine Decl., ¶¶17-18. Further, the vast majority of expenses—86%—are for experts, depositions, and discovery review platform costs (72% are for expert costs alone). Joint Decl., ¶168 & Ex. 11; Bernay Decl., Ex. C; Devine Decl., Ex. B. Accordingly, Class Counsel respectfully requests the Court grant the Expense Request.[8]

[8] Class Counsel's expenses do not include any expenses incurred by Epiq in connection with providing notice to the Class of class certification, or notice to the Class of the Settlement. Nor do they include the anticipated costs for administration of the Settlement. Class Counsel expect to submit these expenses, including those already incurred, and those yet-to-be-incurred in service

IV. THE REQUESTED SERVICE AWARDS SHOULD BE APPROVED

Courts recognize that "'service awards are common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by plaintiffs.'" *Hernandez v. Immortal Rise, Inc.*, 306 F.R.D. 91, 101 (E.D.N.Y. 2015). The Second Circuit has recognized that "'the decision to grant the [service] award, and the amount thereof, rests solely within the discretion of the Court." *Fikes*, 62 F.4th at 721-22 (citing *Dial*, 317 F.R.D. at 439). Recently, one court in this district has reflected that these "'[a]wards on an individualized basis have generally ranged from $2,500 to $85,000.'" *Kurtz v. Kimberly-Clark Corp.*, No. 14-CV-1142 (PKC) (RML), 2024 WL 184375, at *4 (E.D.N.Y. Jan. 17, 2024) (citing *Dial Corp.*, 317 F.R.D. at 439), *vacated and remanded on other grounds*, 142 F.4th 112 (2d Cir. 2025). Even higher awards are not uncommon. *E.g.*, *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05MD1720MKBJO, 2019 WL 13213700 (E.D.N.Y. Dec. 16, 2019) (approving service awards including one at $50,000, two at $75,000, three at $100,000, and two at $200,000); *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1775-JG-VVP, 2015 WL 5918273, at *5-6 (E.D.N.Y. Oct. 9, 2015) (approving $90,000 awards for six class representatives); *Pearlstein*, 2022 WL 4554858, at *11 (recognizing service awards of $100,000 each to two plaintiffs was "consistent with similar awards granted in this district"); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-cv-3400, 2010 WL 4537550, at *31 (S.D.N.Y. Nov. 8, 2010) (approving $100,000 award); *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, No. 14-cv-

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of the Class, to the Court on behalf of Epiq at the appropriate time, with the appropriate support and documentation, to be approved for payment out of the Common Fund. Additionally, the requested expenses do not include the payment of taxes and tax expenses imposed on the Common Fund as defined in the settlement agreements and which will be paid by the Claims Administrator out of the Common Fund.

7126, 2018 WL 6250657, at *4 (S.D.N.Y. Nov. 29, 2018) (approving six awards of $50,000 and two of $100,000).

Here, Class Counsel seeks comparatively modest awards of $50,000 for each of the three named class representatives, who have dutifully served the class for nearly a decade. Declaration of Max Milam in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards and Motion for Final Approval of Settlements with Defendants ("Milam Decl.," Ex. 6 to Joint Decl.); Declaration of Stephane Strouk in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards and Motion for Final Approval of Settlements with Defendants ("Strouk Decl.," Ex. 7 to Joint Decl.); Declaration of Carlos Collado in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards and Motion for Final Approval of Settlements with Defendants ("Collado Decl.," Ex. 8 to Joint Decl.);. These class representatives have spent significant time over the life of this Action. Milam Decl., ¶¶5-14; Strouk Decl., ¶¶5-11; Collado Decl., ¶¶5-12. Just like in *Air Cargo*, where the Court approved $90,000 service awards, here the class representatives have "fulfilled substantial discovery obligations, including producing large volumes of documents, responding to interrogatories and giving deposition testimony, working with counsel and their experts regarding class certification, communicating with counsel regarding settlements and filings, and monitoring the status of the case throughout the years of litigation." 2015 WL 5918273, at *5; Milam Decl., ¶¶5-14; Strouk Decl., ¶¶5-11; Collado Decl., ¶¶5-12. Further, the total award of $150,000 represents just 0.06% of the Common Fund, a miniscule amount of the fund that without the class representatives' dedication would not exist at all.

Accordingly, Class Counsel respectfully request the Court grant the proposed Service Awards.

V. CONCLUSION

For all of the above reasons, Plaintiffs respectfully request that the Court grant this Motion and enter the proposed order submitted herewith.

Dated: December 23, 2025

Respectfully submitted,

ROBBINS LLP

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CERTIFICATE OF COMPLIANCE

I hereby certify, in accordance with Local Rule 7.1(c) and this Court's order dated December 12, 2025, that the foregoing memorandum contains 14,430 words.

s/ George C. Aguilar

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CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2025, 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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