

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

B & R SUPERMARKET, INC., d/b/a  
MILAM'S MARKET, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

V.

VISA, INC., et al.,

## Defendants.

X : Case No. 1:17-cv-02738-MKB-JAM  
: CLASS ACTION  
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**DECLARATION OF GEORGE C. AGUILAR  
IN SUPPORT OF PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF SETTLEMENT WITH DISCOVER AND AMEX**

I, GEORGE C. AGUILAR, declare as follows:

1. I am a partner with the law firm Robbins LLP, Class Counsel and one of the counsel of record for plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket) (collectively, "Plaintiffs") in the above-captioned action. I am a member in good standing of the Bar of the State of California, and I have been admitted to practice *pro hac vice* before this Court.

2. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Settlement with Discover and Amex ("Motion"). I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

3. The Parties<sup>1</sup> have completed both fact and expert discovery and have generated a gigantic discovery record. Defendants made dozens of productions in response to Plaintiffs' discovery requests, producing hundreds of thousands of documents each—and in Visa's case, producing more than 700,000 documents. Plaintiffs also subpoenaed dozens of third parties, including primarily acquirers, and received hundreds of thousands of documents in response. In total, Plaintiffs received 1.97 million documents, spanning tens of millions of pages. Plaintiffs devoted significant attorney resources to reviewing and analyzing these documents. Plaintiffs responded to requests for admission from Discover and Mastercard and responded to and propounded interrogatories to/from each of the Defendants. Plaintiffs also took, attended, or defended seventy-one depositions, some of which were multiple days long due to coordination with the multi-district litigation, *In re Payment Card Interchange Fee & Merchant Discount Antitrust*

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<sup>1</sup> Unless otherwise defined, all capitalized terms have the same meaning set forth in the memorandum in support of Plaintiffs' Motion, filed herewith.

*Litigation*, No. 05-md-01720-MKB-JAM (E.D.N.Y. initiated October 20, 2005) for purposes of discovery.

4. The Parties' expert discovery efforts were equally robust. Plaintiffs had two experts: Dr. Micah Officer and Dr. Rosa M. Abrantes-Metz. Dr. Officer is a Professor of Finance at Loyola Marymount University, has been an editor and reviewer for the *Journal of Financial Economics*, the *Journal of Law and Economics*, the *European Economic Review*, and the *Journal of Accounting and Economics*, and has published dozens of peer reviewed articles involving quantitative analysis of large datasets. Dkt. No. 942 at 43-44; Dkt. No. 946 at 43-44. Dr. Abrantes-Metz is an economist specializing in industrial organization, econometrics, and asset pricing, who is a Managing Director at BRG,<sup>2</sup> and who focuses her work on "conspiracies, fraud, and the detection of cartel behavior – including price-fixing conspiracies – through various empirical 'screening' methods." Dkt. No. 942 at 7-8; Dkt. No. 946 at 7-8. Defendants retained seven expert witnesses of their own, including one each for Discover and Amex, and Class Counsel analyzed each of their reports with the help of Plaintiffs' own experts.

5. Amex filed a notice of appeal on August 27, 2024, appealing the Court's August 14, 2024 order on Amex's motion to compel arbitration "insofar as that Order refused American Express Company's request for a stay pending arbitration of all proceedings on claims brought by plaintiffs that are bound by Amex's standard card acceptance agreement." Dkt. No. 941. Plaintiffs and Amex fully briefed that appeal, but subsequently filed a motion to adjourn oral argument and to hold the appeal in abeyance, which was granted on April 30, 2025.

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<sup>2</sup> Dr. Abrantes-Metz was previously a Managing Director and Principal at Global Economics Group, from 2011-2020 (as referenced in the Court's *Daubert* order) and a Principal at The Brattle Group from 2020 – 2023.

6. Plaintiffs and Discover attended a full-day in-person mediation on December 6, 2024, in New York, NY, utilizing the Hon. Layn R. Phillips (Ret.) of Phillips ADR Enterprises, P.C. as the mediator (the "Mediator"). At the conclusion of this mediation, as the result of a mediator's proposal, Plaintiffs and Discover reached agreement on a settlement in principle. Over the next few weeks, Plaintiffs and Discover negotiated and drafted a stipulation of settlement, which was executed on February 10, 2025. Plaintiffs and Discover thereafter negotiated and executed an amended stipulation of settlement on June 6, 2025 (the "Discover Stip."). A true and correct copy of the Discover Stip. is attached hereto as Exhibit 1.

7. Similarly, Plaintiffs and Amex attended a full-day in-person mediation on March 28, 2025, in New York, NY, again utilizing the Mediator. Again, through a mediator's proposal, Plaintiffs and Amex were able to reach a settlement in principle at the conclusion of the day of mediation. Thereafter, Plaintiffs and Amex negotiated and drafted a stipulation of settlement, which was executed on May 16, 2025 (the "Amex Stip."). A true and correct copy of the Amex Stip. is attached hereto as Exhibit 2.<sup>3</sup>

8. Robbins LLP is a nationally recognized shareholder rights law firm dedicated to the prosecution of shareholder derivative and class action lawsuits. Since its inception, the firm has been dedicated to complex litigation, and we have achieved significant victories on behalf of shareholders, classes, and companies across the country. The firm has recovered more than \$1 billion of value for its clients, classes they represent, and institutions in which they have invested. The firm has received numerous accolades for its work in complex litigation. A true and correct copy of the Firm Resume is attached hereto as Exhibit 3.

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<sup>3</sup> The settlement agreements memorialized in the Discover Stip. and Amex Stip. are collectively referred to herein as the "Settlement."

9. Class Counsel have a well-developed understanding of the factual and legal landscape of the action. We are confident that our extensive review of the sizeable evidentiary record, combined with our thorough understanding of the legal landscape, have given us enough information to conclude that the Settlement is in the best interests of the Class. Our understanding of the case has been shaped further by the significant motion practice in this case, giving us a chance to reflect not only on our own theories, but the competing theories that will be advanced by Defendants at trial. In Class Counsel's view, the Settlement is an excellent result for the Class.

10. Further litigation would mean preparing for trial with Amex and Discover (in addition to Visa and Mastercard). Pre-trial, trial, and post-trial briefing and preparation alone would entail significant efforts. As issuers themselves, the motivations of Amex and Discover include different considerations than those driving Visa and Mastercard, thus adding another layer of complexity to a trial with them as defendants. Amex and Discover also each have their own expert witness, which would further add to the complexity at trial and beyond. Having two additional defendants at trial would also increase the likelihood of post-trial appeals, and the number of issues involved in any such appeals. I expect further litigation to include the litigation of issues including *Illinois Brick* arguments, claims that Plaintiffs' liability expert has analyzed the market incorrectly from a one-sided perspective, claims of "follow the leader" behavior as distinguished from conspiratorial conduct, damages calculations, and complex factual issues relating to EMV certification, preparation, and merchant readiness.

11. Amex has raised the presence of its Card Acceptance Agreement with certain merchants as a defense at numerous junctures throughout this litigation. Class Counsel expects that it would continue to do so in this matter if the Amex Settlement is not approved. These arguments add another hurdle for Plaintiffs to overcome.

12. The conclusions of Dr. Micah Officer, Plaintiffs' damages expert, have been challenged in numerous ways by Defendants' seven experts. Consistent with Defendants' experts' reports, Class Counsel expect that these experts would offer their own competing versions of damages calculations, alongside criticism of Dr. Officer's testimony and methodology at trial.

13. Dr. Officer's estimates of the chargebacks attributable to each Defendant during the Class Period are: \$762,051,815 for Visa, \$544,384,692 for Mastercard, \$118,273,655 for Amex, and \$29,775,524 for Discover, for a total of \$1,454,485,686. Accordingly, the chargebacks attributable to Amex and Discover, by dollar amount, equate to 10.18% of the chargebacks attributable to Defendants during the Class Period. Thus, Visa and Mastercard, the remaining Defendants if this Settlement is approved, account for 89.82% of the chargebacks between the Defendants during the Class Period. Visa's experts have provided alternative chargeback calculations for different scenarios for each of the four defendants through its expert reports. These scenarios include figures 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. The lowest of these figures is \$24,649,294, associated with a three-month delay of only debit transactions. Discover and Amex account for \$2,752,648, and \$0 (N/A) of this amount, respectively (the lowest figure provided for Amex alone is \$16,300,000 for a three-month delay of credit and debit transactions, without cross-border). The highest figure is \$1,424,068,666 associated with a two-year delay of credit and debit transactions, including cross-border. Discover and Amex account for \$29,775,524, and \$89,800,000 of this amount, respectively. 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. Discover and Amex account for \$8,083,840, and \$34,000,000 of this amount, respectively.

14. Dr. Officer has analyzed the FLS chargeback data provided by Defendants in this action and endeavored to provide a more precise estimate of the size of the Class, taking into account that some merchants may appear multiple times in the data, or appear in some Networks' chargeback data sets but not others. Based on Dr. Officer's analysis, the class likely consists of approximately 400,000 members, with an approximate lower bound of 370,000, and an approximate upper bound of 415,000 members.

15. Class Counsel believe the settlement amount achieved here represents an excellent outcome, considering the risks of the litigation, the relative market size of the settling defendants and the relative amount of the chargebacks associated with them, the cooperation agreements secured, and the vast difference in estimated damages between Plaintiffs and Defendants.

16. Class Counsel have worked with the Claims Administrator, Epiq Class Action and Claims Solutions, Inc. ("Epiq"), and with Plaintiffs' expert Dr. Officer, who has extensively analyzed the chargeback data produced by Defendants in this litigation, to develop a plan for the administration and distribution of the funds obtained in the Settlement. A true and correct copy of the plan is attached hereto as Exhibit 4.

17. Class Counsel has taken this matter on contingency without any payment of fees or expenses. Class Counsel will apply for an award of attorneys' fees not to exceed 33.3% of the Gross Settlement Fund, plus accrued interest, and seek the partial reimbursement of expenses incurred during the course of this litigation, not to exceed \$2 million. Class Counsel will also seek the Court's approval of \$25,000 initial service awards for the named Plaintiffs as class

representatives. These awards will be sought in recognition of Plaintiffs' long involvement in this case, hours of dedication, and service to the interests of the Class. Class Counsel will make appropriately supported submissions in support of these requests, with ample time for Class members to weigh in prior to any settlement hearing.

18. In cooperation with Epiq, Class Counsel have drafted proposed notices of the Settlement. These notices include a long form notice, a postcard notice, an email notice, a publication notice, and an advertising banner notice. True and correct copies of these notices as attached as Exhibits 7-11.

19. There are no agreements required to be identified under Rule 23(e)(3) in connection with the settlements with Discover and Amex.

20. Attached hereto are true and correct copies of the following:

- Exhibit 1: Amended Stipulation and Agreement of Settlement between Plaintiffs and Discover Financial Services, dated June 6, 2025;
- Exhibit 2: Stipulation and Agreement of Settlement between Plaintiffs and American Express Company, dated May 16, 2025;
- Exhibit 3: Robbins LLP Firm Resume;
- Exhibit 4: Plan of Administration and Distribution;
- Exhibit 5: Declaration of Cameron R. Azari, Esq. Regarding Settlement Notice Plan and Distribution Plan;
- Exhibit 6: *In re Namenda Indirect Purchaser Antitrust Litig.*, No. 1:15-cv-06549-CM-RWL, slip op. (S.D.N.Y. Mar. 23, 2023), ECF No. 967;
- Exhibit 7: Proposed Long Form Notice;
- Exhibit 8: Proposed Postcard Notice;
- Exhibit 9: Proposed Email Notice;
- Exhibit 10: Proposed Publication Notice; and

Exhibit 11: Proposed Banner and Social Media Advertisements.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th day of June, 2025, at San Diego, California.

*s/ George C. Aguilar*

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GEORGE C. AGUILAR

**CERTIFICATE OF SERVICE**

I hereby certify that on June 13, 2025, I caused a true and correct copy of the foregoing Declaration of George C. Aguilar in Support of Plaintiffs' Motion for Preliminary Approval of Settlement with Discover and Amex, including all exhibits thereto, to be served via e-mail on the parties listed on the attached service list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 13, 2025.

*s/ George C. Aguilar*  
GEORGE C. AGUILAR

**ROBBINS LLP**  
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Telephone: (619) 525-3990  
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**PLAINTIFFS' COUNSEL**

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**DEFENSE COUNSEL**

| <b>FIRM</b>  | <b>EMAIL ADDRESSES</b>  | <b>ATTORNEYS FOR:</b>                         |
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| <p>Kenneth A. Gallo<br/>Craig A. Benson<br/>Lina T. Dagnew<br/>PAUL, WEISS, RIFKIND,<br/>WHARTON<br/>&amp; GARRISON LLP<br/>2001 K Street, NW<br/>Washington, DC 20006</p> <p>Brette Tannenbaum<br/>Yahonnes Cleary<br/>PAUL, WEISS, RIFKIND,<br/>WHARTON &amp; GARRISON LLP<br/>1285 Avenue of the Americas<br/>New York, NY 10019</p>   | <p>kgallo@paulweiss.com;<br/>cbenson@paulweiss.com;<br/>ldagnew@paulweiss.com;<br/>btannenbaum@paulweiss.com;<br/>ycleary@paulweiss.com</p>                  | Defendant Mastercard International Incorporated |

| FIRM   | EMAIL ADDRESSES  | ATTORNEYS FOR:                              |
|--|--|---|
| <p>Matthew A. Eisenstein<br/>Karen C. Otto<br/>Mike Rubin<br/>Rosemary Szanyi<br/>ARNOLD &amp; PORTER<br/>KAYE SCHOLER LLP<br/>601 Massachusetts Ave., NW<br/>Washington, DC 20001</p> <p>Robert J. Vizas<br/>Sharon D. Mayo<br/>ARNOLD &amp; PORTER<br/>KAYE SCHOLER LLP<br/>Three Embarcadero Center,<br/>10th Floor<br/>San Francisco, CA 94111</p> | <p>matthew.eisenstein@arnoldporter.com;<br/>karen.otto@arnoldporter.com;<br/>michael.rubin@arnoldporter.com;<br/>rosemary.szanyi@arnoldporter.com;<br/>robert.vizas@arnoldporter.com;<br/>sharon.mayo@arnoldporter.com</p> | Defendant Visa Inc.<br>and Visa U.S.A. Inc. |

# EXHIBIT 1

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.

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CLASS ACTION  
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## **AMENDED STIPULATION AND AGREEMENT OF SETTLEMENT**

## I. RECITALS

This Amended Stipulation and Agreement of Settlement ("Settlement Agreement") is made and entered into on June 6, 2025 ("Execution Date"), between Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket) (collectively, "Plaintiffs" or "Class Representatives"), for themselves individually and on behalf of each member of the Class (as defined herein) (collectively, "Class Members") and Discover Financial Services ("Discover"), by and through Plaintiffs' Counsel and Discover's Counsel (as defined herein). This Settlement Agreement is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), with respect to the Released Parties (as defined herein), upon and subject to the terms and conditions herein.

WHEREAS, on July 15, 2016, Plaintiffs filed the operative complaint in this Action (as defined herein), the Amended Complaint for Violations of the Sherman Antitrust Act, the Clayton Antitrust Act, California's Cartwright Act, New York's Donnelly Act, Florida's Antitrust and Unfair Trade Practices Act and Unjust Enrichment (the "Complaint");

WHEREAS, on August 28, 2020, the Court (as defined herein) entered an order granting Plaintiffs' renewed motion for class certification and certified a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure;

WHEREAS, Plaintiffs are prosecuting the Action on their own behalf and on behalf of a certified Rule 23(b)(3) class against Discover and the other Defendants (as defined herein);

WHEREAS, Plaintiffs have alleged, among other things set forth more fully in the Complaint and subsequent filings, that Defendants, including Discover, violated antitrust laws by entering into a conspiracy to: (1) adopt the same policy via nearly identical rules for shifting billions of dollars in liability for fraudulent charges, or "chargebacks," from banks to merchants

("Fraud Liability Shift," "Liability Shift," or "FLS"); and (2) make the Liability Shift effective on the same day and in the same manner for all four networks, to prevent merchants from steering customers to use cards with more lenient terms or concessions such as reduced interchange or merchant discount fees. Plaintiffs allege Defendants' actions damaged the Class, as defined herein, in violation of the Sherman Act, 15 U.S.C. §§ 1 and 3, *et seq.* as well as state antitrust, restraint of trade, and unfair competition laws;

WHEREAS, Plaintiffs have contended that they and the Class Members are entitled to actual damages, treble damages, and injunctive relief for loss or damage, and threatened loss or damage, as a result of violations of the laws as alleged in the Complaint, arising from Discover's (and the other Defendants') alleged conduct;

WHEREAS, Discover has denied and continues to deny each and all of the claims and allegations made by Plaintiffs in the Action and all liability against it arising out of any of the conduct, statements, acts, or omissions that were alleged, or that could have been alleged, in the Action, and Discover has asserted a number of defenses to Plaintiffs' claims;

WHEREAS, Plaintiffs, for themselves individually and on behalf of each Class Member, and Discover agree that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Discover or of the truth of any of the claims or allegations alleged in the Action or a waiver of any defenses thereto;

WHEREAS, Plaintiffs and Discover have engaged in extensive discovery regarding the facts pertaining to Plaintiffs' claims and Discover's defenses;

WHEREAS, Plaintiffs' Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the

Action, the legal and factual defenses thereto, and the applicable law, that: (1) it is in the best interests of the Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein, including the value of the Settlement Amount (as defined herein) to be paid by Discover under this Settlement Agreement, are obtained for the Class; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate and in the best interests of the Class;

WHEREAS, Discover, while continuing to deny that it is liable for any of the claims asserted against it in the Action and maintaining that it has valid defenses to such claims, has nevertheless agreed to enter into this Settlement Agreement to avoid the further risk, expense, inconvenience, and distraction of burdensome and protracted litigation, and thereby to put fully to rest this controversy, to avoid the risks inherent in complex litigation, and to obtain complete dismissal of the Complaint as to Discover and a release of claims as set forth herein;

WHEREAS, the Parties previously entered into a settlement agreement dated February 10, 2025 (the "Prior Settlement Agreement") and now desire to enter into this amended Settlement Agreement, which is intended to supersede the Prior Settlement Agreement in its entirety;

WHEREAS, this Settlement Agreement is the product of arm's-length negotiations between Plaintiffs' Counsel and Discover's Counsel under the guidance and oversight of former U.S. District Judge Layn Phillips as Mediator, and this Settlement Agreement embodies all of the terms and conditions of the settlement agreed upon between Discover and Plaintiffs, both for themselves individually and on behalf of the Class; and

WHEREAS, the Parties further acknowledge and agree that nothing in this amended Settlement Agreement is intended to be, nor shall be construed as, inconsistent with the terms, conditions, or intent of the Prior Settlement Agreement;

NOW, THEREFORE, in consideration of the covenants, terms, and releases in this Settlement Agreement, it is agreed, by and among Plaintiffs (for themselves individually and on behalf of the Class and each member thereof who has not timely excluded themselves) and Discover, by and through Plaintiffs' Counsel and Discover's Counsel, that, subject to the approval of the Court and any appellate review of that approval, the Action be settled, compromised, and dismissed with prejudice as to Discover and the other Released Parties, without costs, except as stated herein, and releases be extended, as set forth in this Settlement Agreement.

## II. DEFINITIONS

As used in this Settlement Agreement, the following capitalized terms have the meanings specified below:

1. "Action" means *B & R Supermarket, Inc., et al. v. Visa, Inc., et al.*, No. 1:17-cv-02738-MKB-JAM (E.D.N.Y.), which is currently pending in the United States District Court for the Eastern District of New York.
2. "Authorized Claimant" means any Class Member who will be entitled to a distribution from the Net Settlement Fund as provided for in the Plan of Distribution.
3. "Claims Administrator" means Epiq Class Action & Claims Solutions, Inc. ("Epiq"), a third-party retained by Plaintiffs' Counsel to manage and administer the process by which each member of the Class is notified of the Settlement Agreement and paid from the Net Settlement Fund.
4. "Class," as defined in the Court's class certification Order dated August 28, 2020, means all "Merchants who incurred one or more unreimbursed chargeback(s) between October 1, 2015 through and including September 30, 2017, pursuant to the Fraud Liability Shift for the assessment of Mastercard, Visa, Discover and/or Amex payment card chargebacks. Excluded from the Class are members of the judiciary and government entities or agencies." Also excluded

from the Class are any putative class members who previously excluded themselves from this Action by filing a request for exclusion with the requirements set forth in the Order Granting Unopposed Motion for Approval of Proposed Class Notice and Notice Plan dated June 3, 2022, and the Class Notice pursuant thereto previously provided to Class Members.

5. "Class Member" means a Person who is a member of the Class and has not timely and validly excluded himself, herself, or itself in accordance with the requirements set forth in the Order Granting Unopposed Motion for Approval of Proposed Class Notice and Notice Plan dated June 3, 2022.

6. "Class Counsel" means Robbins LLP.

7. "Class Notice" means the proposed form of, method for, and the date of dissemination of notice of the Settlement Agreement to the Class.

8. "Class Representatives" means Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket).

9. "Complaint" means the Amended Complaint for Violations of the Sherman Antitrust Act, the Clayton Antitrust Act, California's Cartwright Act, New York's Donnelly Act, Florida's Antitrust and Unfair Trade Practices Act and Unjust Enrichment filed in the Action on July 15, 2016.

10. "Court" means the United States District Court for the Eastern District of New York.

11. "Defendants" means Discover, Mastercard International, Inc. ("Mastercard"), Visa, Inc. and Visa U.S.A., Inc. (collectively, "Visa"), and American Express Company ("Amex"); and

any other Person or Persons who are named as defendants in the Action at any time up to and including the date a Preliminary Approval Order is entered.

12. "Discover" means Discover Financial Services.
13. "Discover's Counsel" means Winston & Strawn LLP.
14. "Effective Date of Settlement" has the meaning given to it in Section VII.
15. "Escrow Account" means the account to be established with the Escrow Agent for the purpose of holding the Gross Settlement Fund pursuant to the terms of this Settlement Agreement.
16. "Escrow Agent" means the bank or trust company that agrees to establish and maintain the Escrow Account upon approval of the Court as set forth in Section XI.
17. "Execution Date" means the date of the execution of this Settlement Agreement by counsel for all Parties thereto.
18. "Fairness Hearing" means the hearing to be held by the Court to determine whether the settlement set forth in this Settlement Agreement shall receive final approval pursuant to Rule 23 of the Federal Rules of Civil Procedure.
19. "Fee and Expense Application" has the meaning given to it in Section X.
20. "Fee and Expense Award" has the meaning given to it in Section X.
21. "Final Approval Order" has the meaning given to it in Section V.
22. "Final Judgment and Order of Dismissal" has the meaning given to it in Section V.
23. "Gross Settlement Fund" means the Settlement Amount plus any interest that may accrue. The Gross Settlement Fund includes any amounts for notice and administration of the Settlement, any fees or expenses that may be awarded, and any service awards. In no event shall

Discover be required to contribute more than \$12.2 million (\$12,200,000.00) to the Gross Settlement Fund.

24. "Mediator" means former U.S. District Judge Layn R. Phillips.
25. "Net Settlement Fund" has the meaning given to it in Section XI.
26. "Parties" means, collectively, Plaintiffs (on behalf of themselves and the Class) and Discover.
27. "Person" means an individual or entity, and his, her, or its spouses, heirs, predecessors, successors, representatives, or assignees.
28. "Plaintiffs" means B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket).
29. "Plaintiffs' Counsel" means Class Counsel and other counsel representing any of the named Plaintiffs in this Action.
30. "Plan of Distribution" means a plan or formula for allocation of the Net Settlement Fund among, and distributing the Net Settlement Fund to, Authorized Claimants as set forth in the Class Notice, or such other plan of allocation as the Court shall approve.
31. "Preliminary Approval Order" means an order of the Court that preliminarily approves the settlement set forth in this Settlement Agreement and that approves the form of Class Notice and preliminarily approves a proposed Plan of Distribution.
32. "Released Claims" means, in consideration of payment of the Settlement Amount into the Escrow Account as specified in Section XI of this Settlement Agreement, and for other valuable consideration, any and all manner of known and unknown claims, causes of action, cross-claims, counterclaims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs,

rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), arising out of the factual predicates of the Action, whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, including without limitation any and all actual or potential actions, losses, judgments, fees, fines, debts, liabilities (including joint and several), liens, causes of action, demands, rights, damages, penalties, punitive damages, costs, expenses (including attorneys' fees and legal expenses), indemnification claims, contribution claims, obligations, compensation, and claims for damages or for declaratory, equitable or injunctive relief of any nature (including but not limited to antitrust, RICO, contract, tort, conspiracy, unfair competition or unfair trade practice claims), whenever incurred, and liabilities of any nature whatsoever (including joint and several) that have or could have been alleged in the Action by the Releasing Parties against the Released Parties to the fullest extent permitted by law, from the beginning of time and continuing into the future without end. It is expressly agreed for purposes of clarity that any claims arising out of the factual predicates of the Action, including with respect to the rules, fees, and/or conduct at issue, are claims that have or could have been alleged in the Action by the Releasing Parties against the Released Parties.

33. "Released Party" or "Released Parties" means Discover Financial Services, and its past, present, and future, direct and indirect parents (including holding companies), subsidiaries, affiliates, associates, divisions, predecessors, successors, assigns, and members, and each of their respective officers, directors, employees, trustees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, members, and assigns. "Released Party" or "Released Parties" does not include any other Defendant or alleged co-conspirator, either explicitly or as a third-party beneficiary.

34. "Releasing Parties" means, individually and collectively, Plaintiffs and any Class Member, on behalf of themselves and any of their respective past, present or future officers, directors, stockholders, agents, employees, legal or other representatives, partners, associates, trustees, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns, whether or not they object to the settlement set forth in this Settlement Agreement, and whether or not they make a claim for payment from the Net Settlement Fund.

35. "Settlement Agreement" means this Amended Stipulation and Agreement of Settlement.

36. "Settlement Amount" means the sum of \$12.2 million dollars (\$12,200,000.00) payable in lawful tender of the United States.

37. "Taxes" means all (i) taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest, penalties, or additions to tax) arising in any jurisdiction with respect to the income earned by the Gross Settlement Fund, including any taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a "qualified settlement fund" within the meaning of Treasury Regulations §1.468B-1 (or any equivalent state or local tax law) and (ii) other taxes or tax expenses imposed on or in connection with the Gross Settlement Fund.

### **III. GOOD FAITH EFFORTS TO EFFECTUATE THIS SETTLEMENT AGREEMENT**

38. The Parties agree to cooperate with one another in good faith to effectuate and implement the terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the terms of this Settlement Agreement.

#### IV. PRELIMINARY APPROVAL ORDER, NOTICE, AND FAIRNESS HEARING

39. As soon as reasonably possible and in no event later than thirty (30) calendar days after the Execution Date, Plaintiffs' Counsel shall submit to the Court, and Discover shall support, a motion requesting entry of a Preliminary Approval Order. That motion shall, *inter alia*:

- (a) seek preliminary confirmation that the Class already certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure will serve as the Class for purposes of the settlement;
- (b) request preliminary approval of the settlement set forth in this Settlement Agreement as fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure;
- (c) request authorization to disseminate Class Notice via: (1) a proposed form of, method for, and date of dissemination of Class Notice; and (2) a proposed Preliminary Approval Order. Class Notice shall be as provided in the motion and as approved by the Court, with all expenses paid from the Gross Settlement Fund, subject to the provisions of Section XI of this Settlement Agreement. The motion shall recite and ask the Court to find that the method of Class Notice to all Class Members who can be identified upon reasonable effort constitutes valid, due, and sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23 and due process. The Claims Administrator will also establish and maintain a dedicated settlement website, from which Class Members can view and download relevant documents;
- (d) seek appointment of the Claims Administrator;
- (e) seek appointment of an Escrow Agent;
- (f) request that the Court, pending final determination of whether the Settlement Agreement should be approved, stay all proceedings in the Action against Discover

until the Court renders a final decision on approval of the settlement set forth in this Settlement Agreement, except those proceedings provided for or required by this Settlement Agreement;

(g) request that the Court, pending final determination of whether the Settlement Agreement should be approved, temporarily enjoin each Class Representative and each Class Member, either directly, representatively, or in any other capacity, from prosecuting in any forum any Released Claim against any of the Released Parties;

(h) request a Court hearing at which the Court will consider the final approval of this Settlement Agreement; and

(i) attach a proposed form of order, the proposed text of which Plaintiffs' Counsel shall provide to Discover at least five (5) business days prior to the submission to the Court of the motion requesting entry of a Preliminary Approval Order. Plaintiffs' Counsel will consider in good faith any suggestions from Discover regarding the proposed form of order. The form of order will include such provisions as are typical in such orders, including: (1) setting a date for the Fairness Hearing; (2) a provision indicating that, if final approval of the settlement is not obtained, the settlement is null and void, and the Parties will revert to their positions *ex ante* (as of the Execution Date) without prejudice to their rights, claims, or defenses; (3) stating the substantial litigation risks that the Class faced in the Action; (4) requiring that all Class Members be bound by all final determinations in the Action concerning the settlement, whether favorable or unfavorable to the members of the Class; and (5) stating that Discover has denied and continues to deny each and all of the claims made by Plaintiffs in the Action and has denied and continues to deny liability against Discover arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action, and Discover has asserted a number of defenses to Plaintiffs' claims.

40. Class Members who were in existence as of June 3, 2022, and did not exclude themselves from the Class pursuant to the Court's Order Granting Unopposed Motion for Approval of Proposed Class Notice and Notice Plan dated June 3, 2022, will not be provided another opportunity to opt-out. This provision shall not be amended in whole or in part without the consent of both Plaintiffs and Discover.

41. Discover shall be responsible for providing all notices required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

42. The Parties to this Settlement Agreement contemplate and agree that, prior to final approval of the settlement, Plaintiffs will request a Fairness Hearing at which the Court will consider the final approval of this Settlement Agreement.

## **V. FINAL JUDGMENT AND ORDER OF DISMISSAL AGAINST DISCOVER**

43. If the Court preliminarily approves the Settlement Agreement, Plaintiffs shall seek entry of a Final Approval Order and a Final Judgment and Order of Dismissal against Discover, the proposed text of which Plaintiffs and Discover shall agree upon. The Final Approval Order and Final Judgment and Order of Dismissal submitted for Court approval will include, at a minimum, terms:

(a) that the Class already certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure will be the Class for purposes of the settlement;

(b) as to the Action, approving fully and finally this settlement and its terms as being a fair, reasonable, and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms and conditions;

(c) finding that the Class Notice given to Class Members constitutes the best notice practicable under the circumstances and complies in all respects with the valid, due, and

sufficient notice requirements of Federal Rule of Civil Procedure 23, and meets the requirements of due process;

(d) as to Released Parties, directing that the Action be dismissed with prejudice and, except as provided for in this Settlement Agreement, with each Party bearing their own costs;

(e) discharging and releasing the Released Parties from the Released Claims, regardless of whether any such Releasing Party executes and delivers a proof of claim;

(f) permanently barring and enjoining Plaintiffs or any Class Member from (i) instituting or prosecuting any other action against any of the Released Parties as to any of the Released Claims, or (ii) assisting any third party in commencing or maintaining any suit against any Released Party related in any way to any of the Released Claims;

(g) reserving exclusive jurisdiction over the settlement and this Settlement Agreement, including all future proceedings concerning the administration, interpretation, consummation, and enforcement of this settlement and this Settlement Agreement, to the Court; and

(h) determining under Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay and directing that the judgment of dismissal as to the Released Parties shall be final and entered forthwith.

44. The Final Judgment and Order of Dismissal shall become final when (i) the Court has entered a final order approving this Settlement Agreement under Federal Rule of Civil Procedure 23(e) and a final judgment dismissing the Action with prejudice as to the Released Parties against all Class Members and without costs other than those provided for in this Settlement Agreement, and (ii) the time for appeal from the Court's approval of this Settlement Agreement and entry of a final judgment as to the Released Parties described in (i) hereof has expired or, if

appealed, approval of this Settlement Agreement and the final judgment as to the Released Parties have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times.

45. As of the Execution Date, Plaintiffs, Class Members, and Discover shall be bound by the Settlement Agreement's terms and this Settlement Agreement shall not be rescinded except in accordance with the terms of this Settlement Agreement.

## **VI. NO ADMISSION OF WRONGDOING OR LIABILITY BY DISCOVER**

46. Nothing in this Settlement Agreement will constitute or be construed as an admission of liability or wrongdoing by Discover. Neither this Settlement Agreement (regardless of whether it becomes final), nor the Final Judgment and Order of Dismissal, nor any and all negotiations, documents, or discussions associated with them, nor any proceedings undertaken in accordance with the terms set forth herein, shall be deemed or construed to be (i) an admission or concession by Discover (or evidence thereof) in any action or proceeding of any kind whatsoever, civil, criminal, or otherwise, before any court, arbitrator, administrative agency, regulatory body, or any other body or authority present or future, (ii) evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Discover, or (iii) evidence of the truth or validity of any of the claims or allegations contained in any complaint or any other pleading that Plaintiffs or Class Members have or could have asserted against Discover, including without limitation that Discover has engaged in any conduct or practice that violates any antitrust statute, or other law, regulation, or obligation. Discover expressly denies any wrongdoing or liability whatsoever for any and all such claims and allegations. Discover does not admit that a class was or could be certified for any purpose other than this Settlement Agreement.

## **VII. EFFECTIVE DATE OF SETTLEMENT**

47. The "Effective Date of Settlement" shall be the latest date when all of the following events shall have occurred and shall be conditioned on the occurrence of all of the following events:

- (a) the Settlement Amount has been contributed to the Escrow Account pursuant to this Settlement Agreement;
- (b) entry of the Preliminary Approval Order;
- (c) final approval by the Court of the settlement set forth in this Settlement Agreement, following Class Notice and the Fairness Hearing;
- (d) no Party has exercised his, her, or its rights to terminate this Settlement Agreement pursuant to Section XIV, and all periods for any Party to exercise such rights have expired; and
- (e) entry by the Court of a Final Judgment and Order of Dismissal, and the Final Judgment and Order of Dismissal becomes final pursuant to Section V, Paragraph 44.

48. Notwithstanding any other provision herein, any proceeding or order, or motion for reconsideration, appeal, petition for a writ of certiorari or its equivalent, pertaining solely to the Plan of Distribution or Fee and Expense Application, or both, shall not in any way delay or preclude the Effective Date of Settlement.

## **VIII. SCOPE AND EFFECT OF SETTLEMENT**

49. The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action against Discover; and (ii) any and all Released Claims as against all Released Parties.

50. Upon the Effective Date of Settlement, each of the Releasing Parties: (i) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal, shall have fully,

finally, and forever waived, released, relinquished, and discharged all Released Claims against the Released Parties; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (iii) agrees and covenants not to sue, either directly, representatively, or in any other capacity, any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit, action, proceeding or claim in any court, tribunal, administrative agency, regulatory body, arbitrator or other body in any jurisdiction against any of the Released Parties related in any way to any Released Claims.

51. The Parties intend that the Release in this agreement be interpreted and enforced broadly and to the fullest extent permitted by law. Each Releasing Party may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with regard to the Released Claims. Nevertheless, each Releasing Party hereby expressly waives and fully, finally, and forever settles and releases, upon this Settlement Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claim, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

52. The Released Claims effected by Paragraph 50 are intended to apply according to their terms, regardless of Section 1542 of the California Civil Code ("Section 1542") or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction. The Releasing Parties acknowledge that they have been advised by their attorneys of the contents and effect of Section 1542 and hereby expressly waive and release with respect to the Released Claims any and all provisions, rights, and benefits conferred by (i) Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

(ii) any equivalent, similar, or comparable past, present, or future law or principle of law in any jurisdiction; or (iii) any law or principle of law in any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above. The foregoing release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims is contractual, and not a mere recital.

53. The releases provided in this Settlement Agreement shall become effective immediately upon occurrence of the Effective Date of Settlement without the need for any further action, notice, condition, or event.

54. The Parties shall seek entry by the Court of an order, in the Final Judgment and Order of Dismissal or otherwise, to the extent not prohibited by law, barring claims by any Person against the Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise.

55. In the event that this Settlement Agreement is terminated pursuant to Section XIV, or any condition for the final approval of this Settlement Agreement is not satisfied, the release and covenant not to sue provisions of this Paragraph shall be null and void and unenforceable.

## **IX. COOPERATION**

56. As a material term of the Settlement Agreement, Discover will agree to cooperate (fully and faithfully) in further litigation against the remaining Defendants in this Action. Cooperation in further litigation against the remaining Defendants in this Action is a material component of the Settlement Agreement and is defined as the follows:

- (a) Discover agrees to use reasonable efforts to authenticate documents and/or things produced in the Action in connection with trial, whether by declarations, affidavits, depositions, hearings, or live witnesses at trial, as may be necessary for the Action;
- (b) Discover agrees to respond to requests for clarification on produced chargeback data, testimony, or expert opinion, and/or further documentation or information relating to chargeback data, as necessary for the Action;
- (c) Discover will utilize its best efforts to produce up to two then-current Discover employees as live witnesses at any trial of Plaintiffs' claims in the Action;
- (d) Discover will not object to reasonable requests for trial depositions as necessary for the Action, in case of medical or other emergency; and
- (e) At least four months prior to trial, at a time agreed to by Plaintiffs and Discover, Discover's Counsel will meet with Plaintiffs' Counsel for five hours, and more if agreed-to by Discover and Plaintiffs, at an agreed-upon location, or virtually if in-person attendance is not possible, and provide at that meeting a reasonably detailed description of the principal facts known to Discover that are relevant to the alleged conduct at issue in the Action.

57. Additionally, in connection with the settlement, Discover will, to the extent permitted by law, work in good faith to furnish information reasonably available to it to assist in the identification of potential Class Members. Discover further agrees to employ reasonable and good faith efforts to cooperate with Plaintiffs to ensure the timely production of this information, as well as to determine the specific information to be provided and the format of that information. Any confidentiality or security concerns Discover may have in connection with providing such information will be addressed by Plaintiffs in good faith, including by allowing Discover to condition its provision of the information upon its approval of the data security and privacy

practices of the Claims Administrator handling its information. In turn, Discover will respond in good faith to reasonable inquiries or requests from the Claims Administrator or Plaintiffs that may arise in connection with the notice, claims, or distribution process. Discover agrees to employ reasonable and good faith efforts to cooperate with the Claims Administrator and other third-party service providers with respect to notice, claims processing, and claims distribution by providing information concerning its capacity to facilitate those third-party service providers' efforts to provide notice. To the extent any disagreements arise as to the information Discover agrees to provide under this paragraph, the Parties will first attempt to meet and confer in good faith to reach a resolution. If, following a good faith meet and confer process, the Parties cannot reach a resolution, the Parties agree they will submit the dispute to the Court for resolution in accordance with applicable law. Nothing in this paragraph identifying cooperation that Discover shall provide to the Claims Administrator is intended to cause Discover to assume the role or responsibilities of the Claims Administrator. Similarly, nothing in this paragraph is intended to waive any party's rights to seek to impose or oppose any additional obligations with respect to notice, claims, or distribution of the Settlement Amount.

#### **X. FEE AND EXPENSE APPLICATION**

58. Plaintiffs' Counsel may submit an application or applications to the Court (the "Fee and Expense Application") for distribution to them solely from the Gross Settlement Fund of (1) an award of attorneys' fees; plus (2) reimbursement of reasonable expenses paid by Plaintiffs' Counsel in connection with prosecuting the Action; plus (3) any interest earned in the escrow account on such attorneys' fees and expenses (until paid) at the same rate and for the same periods as earned by the Gross Settlement Fund, as appropriate, and as may be awarded by the Court (the "Fee and Expense Award").

59. The Fee and Expense Award, as approved by the Court, shall be paid solely from the Gross Settlement Fund to an account designated by Plaintiffs' Counsel within five (5) business days after entry of a final, non-appealable order. Plaintiffs' Counsel shall not seek payment of same from any source other than the Gross Settlement Fund. Plaintiffs and Class Members shall not seek payment of any attorneys' fees or costs from Discover in this Action.

60. Plaintiffs' Counsel shall allocate the Fee and Expense Award among themselves in good faith.

61. In the event that the order making the Fee and Expense Award is reversed or modified, then Plaintiffs' Counsel shall, within ten (10) business days from receiving notice from Discover's Counsel or from a court of appropriate jurisdiction, refund to the Gross Settlement Fund the Fee and Expense Award or any portion thereof previously paid to them plus interest thereon at the same rate as earned by the account into which the balance of the Gross Settlement Fund is deposited.

62. The procedure for, and the allowance or disallowance by the Court of, the application by Plaintiffs' Counsel for attorneys' fees, costs, and expenses to be paid out of the Gross Settlement Fund are not part of this Settlement Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement, and any order or proceeding relating to the Fee and Expense Application, the pendency of any such application, or any appeal from any such order shall not operate to terminate or cancel this Settlement Agreement, provide a basis to terminate or cancel this Settlement Agreement, or affect or delay the finality of the judgment approving the settlement.

63. Plaintiffs' Counsel may request service awards for each of the Plaintiffs, to be drawn exclusively from the Gross Settlement Fund, as provided for in Paragraph 68(b).

## **XI. THE GROSS SETTLEMENT FUND**

64. The Gross Settlement Fund shall be established within an Escrow Account and administered by the Escrow Agent, designated by Class Counsel, subject to the continuing jurisdiction of the Court. No monies shall be paid from the Gross Settlement Fund without the specific authorization of Plaintiffs' Counsel, based on prior approval by the Court. Plaintiffs' Counsel will form an appropriate escrow agreement in conformance with this Settlement Agreement.

65. Within twenty-five (25) business days following the Court's entry of the Preliminary Approval Order, provided that within seven (7) days following entry of such Preliminary Approval Order, Plaintiffs' Counsel shall provide Discover with such information as Discover may require to effect the payment, and subject to the provisions hereof, and in full, complete the necessary wire transfers, Discover shall cause the payment of \$12.2 million (\$12,200,000.00) to be wired to the Escrow Agent. These funds, together with any interest earned thereon, shall constitute the Gross Settlement Fund. In the event that Plaintiffs' Counsel does not provide Discover with the information required to complete the wire transfer within the prescribed time, Discover's payment obligations under this paragraph shall be deferred by an amount of time equivalent to Plaintiffs' Counsel's delay in providing such information.

66. The Gross Settlement Fund shall be invested exclusively in accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a United States Treasury Fund or a bank account that is either: (i) fully insured by the Federal Deposit Insurance Corporation; or (ii) secured by instruments backed by the full faith and credit of the United States Government. The proceeds of these accounts shall be reinvested in similar instruments at their then-current market rates as they

mature. Discover shall have no responsibility or liability for any losses incurred by the Gross Settlement Fund.

67. All funds held by the Escrow Agent shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Settlement Agreement and the Plan of Distribution approved by the Court.

68. The Gross Settlement Fund shall be applied as follows:

- (a) to pay the Fee and Expense Award, if and to the extent allowed by the Court;
- (b) to pay service awards for each of the Plaintiffs, if and to the extent allowed by the Court;
- (c) to use, if approved by the Court, up to \$650,000.00 of the Settlement Amount for payment of any Court-approved costs and expenses in connection with providing Class Notice and the administration of the settlement, including, without limitation, identifying potential members of the Class; soliciting, reviewing, and evaluating proofs of claim or release forms, or both; and administering the settlement and disbursing the Gross Settlement Fund. For the avoidance of doubt, notice and administration costs shall not include Plaintiffs' Counsel's work in securing settlement approval, including appeals from the grant of a Final Approval Motion. If necessary, Plaintiffs shall be permitted to apply directly to the Court for approval of additional amounts to be used for notice and administration expenses without Discover's written agreement to the amounts requested, which shall be funded out of the Gross Settlement Fund. In no event shall Discover have any obligation to increase the Settlement Amount or the Gross Settlement Fund for any purpose, including notice and administration costs. In the event the Settlement Agreement is not approved by the Court or otherwise terminated, all amounts actually incurred up

to \$650,000.00 for notice and/or administration are not recoverable and will not be returned or refunded to Discover;

- (d) to pay the Taxes and tax expenses described in Section XIII herein;
- (e) to pay any other Court-approved fees and expenses; and
- (f) to distribute the balance of the Gross Settlement Fund (the "Net Settlement Fund") to Class Members as allowed by the Court.

69. It is understood and agreed that no consideration or amount or sum paid, credited, offered, or expended by Discover in performance of this Settlement Agreement constitutes a penalty, fine, punitive damages, or other form of assessment for any alleged claim or offense. Each Class Member is enforcing its rights as a private party and is not directly, indirectly, or derivatively enforcing any rules or exercising any regulatory powers as part of a governmental function on behalf of itself or any government or governmental entity.

70. This Settlement Agreement does not include any provisions for injunctive relief.

## **XII. ADMINISTRATION OF THE SETTLEMENT**

71. Pursuant to the Preliminary Approval Order, Plaintiffs' Counsel shall seek to have the Claims Administrator approved by the Court, for purposes of administering the settlement claims process, as set forth herein.

72. The Claims Administrator shall effectuate the notice plan approved by the Court in the Preliminary Approval Order, shall administer and calculate the claims, and shall oversee distribution of the Net Settlement Fund in accordance with the Plan of Distribution.

73. The Claims Administrator also shall assist in the development of the Plan of Distribution and the resolution of any disputes that may be raised by Class Members regarding the amount that they are owed under the Plan of Distribution.

74. The Claims Administrator shall process this settlement based upon the orders of the Court and this Settlement Agreement, and, after entry of relevant order(s) of the Court, distribute the Net Settlement Fund in accordance with such order(s) and this Settlement Agreement.

75. Except for its obligation to fund the settlement or cause it to be funded as detailed in this Settlement Agreement, the Released Parties shall have no liability, obligation, or responsibility for the administration of the settlement or disbursement of the Net Settlement Fund.

76. The Net Settlement Fund shall be distributed by the Claims Administrator only after the Effective Date of Settlement.

77. Plaintiffs and Class Members shall look solely to the Gross Settlement Fund as full, final and complete satisfaction of all Released Claims. Except as set forth in Section XI, Paragraph 65, Released Parties shall have no obligation under this Settlement Agreement or the settlement to pay or cause to be paid any amount of money, and Released Parties shall have no obligation to pay or reimburse any fees, expenses, costs, liability, losses, Taxes, or damages whatsoever alleged or incurred by Plaintiffs, by any Class Member, or by any Releasing Parties, including, but not limited to, by their attorneys, experts, advisors, agents, or representatives, with respect to the Action and Released Claims. Plaintiffs and Class Members acknowledge that as of the Effective Date of Settlement, the releases given herein shall become effective immediately by operation of the Final Judgment and Order of Dismissal and shall be permanent, absolute, and unconditional.

78. Any funds that remain in the Net Settlement Fund after distribution of the Net Settlement Fund in accordance with the Plan of Distribution shall not revert to Discover. Plaintiffs shall apply directly to the Court to authorize the *cy pres* distribution of those remaining funds.

### XIII. TAXES

79. The Parties agree that the Gross Settlement Fund is intended to be a qualified settlement fund within the meaning of Treasury Regulations §1.468B-1, and agree not to take any position for tax purposes inconsistent therewith. The Parties agree that the Gross Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any "relation-back election" (within the meaning of Treasury Regulations §1.468B-1) required to treat the Gross Settlement Fund as a qualified settlement fund from the earliest date possible. The Claims Administrator shall be designated as the "administrator" (within the meaning of Treasury Regulation §1.468B-2(k)(3)) of the Gross Settlement Fund.

80. The Claims Administrator shall timely make, or cause to be made, such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election." Such election shall be made in compliance with the procedures and requirements contained in the relevant Treasury Regulations. The Gross Settlement Fund, less any amounts incurred for notice and administration as defined in Paragraph 68(c), and/or Taxes , including any accrued interest thereon, shall be returned to Discover, as provided in Section XIV, if the settlement does not become effective for any reason, including by reason of a termination of this Settlement Agreement pursuant to Section XIV.

81. The Claims Administrator shall timely and properly file, or cause to be filed, all income, informational, and other tax returns necessary or advisable with respect to the Gross Settlement Fund (including, without limitation, the returns described in Treasury Regulations §1.468B-2(k) and §1.468B-2(l)(2)).

82. All Taxes shall timely be paid out of the Gross Settlement Fund by the Claims Administrator without prior order from the Court. The Claims Administrator shall also be obligated to, and shall be responsible for, withholding from distribution to Class Members any

funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes. The Parties agree to cooperate with the Claims Administrator, Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section XIII.

83. Neither the Parties nor their counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent, Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Gross Settlement Fund or otherwise; (ii) the Plan of Distribution; (iii) the determination, administration, calculation, or payment of any claims asserted against the Gross Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Gross Settlement Fund; or (v) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Gross Settlement Fund or the filing of any returns. The Claims Administrator shall indemnify and hold harmless the Parties, using monies from the Gross Settlement Fund, from and against any claims, liabilities, or losses relating to the matters addressed in the preceding sentence (including, without limitation, taxes payable by reason of any such indemnification payments).

84. The Class Members shall be responsible for paying any and all federal, state, and local income taxes due on any distribution made to them pursuant to the settlement provided herein.

#### **XIV. TERMINATION OF SETTLEMENT**

85. Plaintiffs, through Plaintiffs' Counsel, and Discover, through Discover's Counsel, shall, in each of their separate discretions, have the right to terminate the settlement set forth in this Settlement Agreement by providing written notice of their election to do so to all other Parties hereto within thirty (30) days of the date on which the following occurs: (1) if the Court, in a final order, declines to enter the Preliminary Approval Order, the Final Approval Order, or the Final

Judgment and Order of Dismissal (denying it in its entirety or in any material respect), or (2) if the Court enters the Final Approval Order and the Final Judgment and Order of Dismissal and appellate review is sought and, on such review, the Final Approval Order or the Final Judgment and Order of Dismissal is finally vacated, modified, or reversed; provided, however, that the Parties agree to act in good faith to secure final approval of this settlement, and to attempt to address in good faith concerns regarding the settlement identified by the Court or any court of appeal. Notwithstanding this paragraph, the Court's determination as to the Fee and Expense Application or any plan of distribution, or both, or any determination on appeal from any such orders, shall not provide grounds for termination of this Settlement Agreement or settlement.

86. Except as otherwise provided herein, in the event the Settlement Agreement is terminated in accordance herewith, is vacated, or is not approved, or in the event the Effective Date of Settlement fails to occur for any reason, then the Parties to this Settlement Agreement shall be deemed to have reverted to their respective status in the Action as of the Execution Date, and, except as otherwise expressly provided herein, the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered (subject to seeking whatever revisions to the pretrial schedule as may be necessary to protect the rights of the Parties), and any portion of the Gross Settlement Fund previously paid by or on behalf of Discover, together with any interest earned thereon (and, if applicable, re-payment of any Fee and Expense Award referred to in Section X above), less Taxes due, if any, with respect to such income, and less costs of administration and notice actually incurred and paid or payable in accordance with Paragraph 68(c), shall be returned to Discover within ten (10) business days from the date of the event causing such termination. At the request of Discover's Counsel, the Escrow Agent shall apply for any tax refund owed on the Gross Settlement Fund and pay the proceeds to Discover.

The Parties expressly reserve all of their rights if this Settlement Agreement is rescinded or does not otherwise become final.

## **XV. MISCELLANEOUS**

87. The Parties to this Settlement Agreement intend the settlement to be a final and complete resolution of all disputes asserted or that could be asserted by Plaintiffs or any Class Member against the Released Parties with respect to the Action and the Released Claims. Accordingly, Plaintiffs and Discover agree not to assert in any judicial proceeding that the Action was brought by Plaintiffs or defended by Discover in bad faith or without a reasonable basis. The Parties further agree not to assert in any judicial proceeding that any Party violated Rule 11 of the Federal Rules of Civil Procedure. The Parties agree that the amount paid and the other terms of the settlement were negotiated at arm's-length in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel and the Mediator.

88. The terms and provisions of the Stipulated Protective Order, filed on June 15, 2016, and approved on July 1, 2016, shall survive and continue in effect through and after any final adjudication of the Action.

89. Nothing in this Settlement Agreement is intended to waive any right to assert that any information or material is protected from discovery by reason of any individual or common interest privilege, attorney-client privilege, work product protection, or other privilege, protection, or immunity, or is intended to waive any right to contest any such claim of privilege, protection, or immunity.

90. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

91. The administration and consummation of the settlement as embodied in this Settlement Agreement shall be under the authority of the Court, and the Court shall retain

jurisdiction for the purpose of entering orders relating to the Fee and Expense Application and the Plan of Distribution, and enforcing the terms of this Settlement Agreement.

92. For the purpose of construing or interpreting this Settlement Agreement, Plaintiffs and Discover agree that it is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

93. This Settlement Agreement shall constitute the entire agreement between Plaintiffs and Discover pertaining to the settlement of the Action against Discover and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Discover in connection therewith. All terms of this Settlement Agreement are contractual and not mere recitals. The terms of this Settlement Agreement are and shall be binding upon each of the Parties hereto, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, and upon all other Persons claiming any interest in the subject matter hereto through any of the Parties hereto including any Class Members.

94. The terms of this Settlement Agreement are not severable, but are interdependent and have been agreed to only as a whole by Plaintiffs (for themselves individually and on behalf of each Class Member in the Action) and Discover.

95. This Settlement Agreement may be modified or amended only by a writing executed by Plaintiffs, through Plaintiffs' Counsel, and Discover, through Discover's Counsel, subject (if after preliminary or final approval by the Court) to approval by the Court. Amendments and modifications may be made without notice to the Class unless notice is required by law or by the Court.

96. All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law principles.

97. Discover, Plaintiffs, their respective counsel, and the Class Members hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Eastern District of New York, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein.

98. The Parties acknowledge that this Settlement Agreement makes no determination as to which Class Members are entitled to distribution from the Net Settlement Fund, or as to the formula for determining the amounts to be distributed.

99. Any proposed plan of distribution is not a necessary term of this Settlement Agreement, and it is not a condition of this Settlement Agreement that any particular plan of distribution be approved. The Plan of Distribution is a matter separate and apart from the settlement between the Parties and any decision by the Court concerning a particular plan of distribution shall not affect the validity or finality of the proposed settlement, including the scope of the release.

100. Any and all notices, requests, consents, directives, or communications by any Party intended for any other Party related to this Settlement Agreement shall be in writing and shall, unless expressly provided otherwise herein, be given by United States mail and electronic mail, to:

FOR PLAINTIFFS:

George C. Aguilar  
Michael J. Nicoud  
Jacob Ogbozo  
ROBBINS LLP  
5060 Shoreham Place, Suite 300  
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FOR DISCOVER;

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dlcook@winston.com

101. This Settlement Agreement may be executed in counterparts by Plaintiffs and Discover, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

102. Plaintiffs and Discover acknowledge that they have been represented by counsel and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, Plaintiffs, Discover, and their

respective counsel agree that they will not seek to set aside any part of this Settlement Agreement on the grounds of mistake. Moreover, Plaintiffs, Discover, and their respective counsel understand, agree, and expressly assume the risk that any fact may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that this Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

103. Each of the undersigned attorneys represents that he/she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, subject to Court approval; and the undersigned Plaintiffs' Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Plaintiffs. Each of the undersigned attorneys shall use his/her best efforts to effectuate this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement, dated June 6, 2025.



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Michael J. Nicoud

Jacob W. Ogbozo

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*Class Counsel and Counsel for Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market),  
Grove Liquors LLC, Strouk Group LLC  
(d/b/a Monsieur Marcel), and Palero Food  
Corp. and Cagueyes Food Corp. (d/b/a Fine  
Fare Supermarket)*

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*Attorneys for Defendant Discover Financial Services*

# EXHIBIT 2

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

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

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**STIPULATION AND AGREEMENT OF SETTLEMENT**

## I. RECITALS

This Stipulation and Agreement of Settlement ("Settlement Agreement") is made and entered into on May 16, 2025 ("Execution Date"), between Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket) (collectively, "Plaintiffs" or "Class Representatives"), for themselves individually and on behalf of each member of the Class (as defined herein) (collectively, "Class Members") and American Express Company ("Amex"), by and through Plaintiffs' Counsel and Amex's Counsel (as defined herein). This Settlement Agreement is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), with respect to the Released Parties (as defined herein), upon and subject to the terms and conditions herein.

WHEREAS, on July 15, 2016, Plaintiffs filed the operative complaint in this Action (as defined herein), the Amended Complaint for Violations of the Sherman Antitrust Act, the Clayton Antitrust Act, California's Cartwright Act, New York's Donnelly Act, Florida's Antitrust and Unfair Trade Practices Act and Unjust Enrichment (the "Complaint");

WHEREAS, on August 28, 2020, the Court (as defined herein) entered an order granting Plaintiffs' renewed motion for class certification and certified a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure;

WHEREAS, Plaintiffs are prosecuting the Action on their own behalf and on behalf of a certified Rule 23(b)(3) class against Amex and the other Defendants (as defined herein);

WHEREAS, Plaintiffs have alleged, among other things set forth more fully in the Complaint and subsequent filings, that Defendants, including Amex, violated antitrust laws by entering into a conspiracy to: (1) adopt the same policy via nearly identical rules for shifting billions of dollars in liability for fraudulent charges, or "chargebacks," from banks to merchants

("Fraud Liability Shift," "Liability Shift," or "FLS"); and (2) make the Liability Shift effective on the same day and in the same manner for all four networks, to prevent merchants from steering customers to use cards with more lenient terms or concessions such as reduced interchange or merchant discount fees. Plaintiffs allege Defendants' actions damaged the Class, as defined herein, in violation of the Sherman Act, 15 U.S.C. §§ 1 and 3, *et seq.* as well as state antitrust, restraint of trade, and unfair competition laws;

WHEREAS, Plaintiffs have contended that they and the Class Members are entitled to actual damages, treble damages, and injunctive relief for loss or damage, and threatened loss or damage, as a result of violations of the laws as alleged in the Complaint, arising from Amex's (and the other Defendants') alleged conduct;

WHEREAS, Amex has denied and continues to deny each and all of the claims and allegations made by Plaintiffs in the Action and all liability against it arising out of any of the conduct, statements, acts, or omissions that were alleged, or that could have been alleged, in the Action, and Amex has asserted a number of defenses to Plaintiffs' claims;

WHEREAS, Plaintiffs, for themselves individually and on behalf of each Class Member, and Amex agree that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Amex or of the truth of any of the claims or allegations alleged in the Action or a waiver of any defenses thereto;

WHEREAS, Plaintiffs and Amex have engaged in extensive discovery regarding the facts pertaining to Plaintiffs' claims and Amex's defenses;

WHEREAS, Plaintiffs' Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the

Action, the legal and factual defenses thereto, and the applicable law, that: (1) it is in the best interests of the Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein, including the value of the Settlement Amount (as defined herein) to be paid by Amex under this Settlement Agreement, are obtained for the Class; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate and in the best interests of the Class;

WHEREAS, Amex, while continuing to deny that it is liable for any of the claims asserted against it in the Action and maintaining that it has valid defenses to such claims, has nevertheless agreed to enter into this Settlement Agreement to avoid the further risk, expense, inconvenience, and distraction of burdensome and protracted litigation, and thereby to put fully to rest this controversy, to avoid the risks inherent in complex litigation, and to obtain complete dismissal of the Complaint as to Amex and a release of claims as set forth herein; and

WHEREAS, this Settlement Agreement is the product of arm's-length negotiations between Plaintiffs' Counsel and Amex's Counsel under the guidance and oversight of former U.S. District Judge Layn Phillips as Mediator, and this Settlement Agreement embodies all of the terms and conditions of the settlement agreed upon between Amex and Plaintiffs, both for themselves individually and on behalf of the Class;

NOW, THEREFORE, in consideration of the covenants, terms, and releases in this Settlement Agreement, it is agreed, by and among Plaintiffs (for themselves individually and on behalf of the Class and each member thereof who has not timely excluded themselves) and Amex, by and through Plaintiffs' Counsel and Amex's Counsel, that, subject to the approval of the Court and any appellate review of that approval, the Action be settled, compromised, and dismissed with

prejudice as to Amex and the other Released Parties, without costs, except as stated herein, and releases be extended, as set forth in this Settlement Agreement.

## II. DEFINITIONS

As used in this Settlement Agreement, the following capitalized terms have the meanings specified below:

1. "Action" means *B & R Supermarket, Inc., et al. v. Visa, Inc., et al.*, No. 1:17-cv-02738-MKB-JAM (E.D.N.Y.), which is currently pending in the United States District Court for the Eastern District of New York.
2. "Amex" means American Express Company.
3. "Amex's Counsel" means Cravath, Swaine & Moore LLP.
4. "Authorized Claimant" means any Class Member who will be entitled to a distribution from the Net Settlement Fund as provided for in the Plan of Distribution.
5. "Claims Administrator" means Epiq Class Action & Claims Solutions, Inc. ("Epiq"), a third-party retained by Plaintiffs' Counsel to manage and administer the process by which each member of the Class is notified of the Settlement Agreement and paid from the Net Settlement Fund.
6. "Class," as defined in the Court's class certification Order dated August 28, 2020, means all "Merchants who incurred one or more unreimbursed chargeback(s) between October 1, 2015 through and including September 30, 2017, pursuant to the Fraud Liability Shift for the assessment of Mastercard, Visa, Discover and/or Amex payment card chargebacks. Excluded from the Class are members of the judiciary and government entities or agencies." Also excluded from the Class are any putative class members who previously excluded themselves from this Action by filing a request for exclusion with the requirements set forth in the Order Granting

Unopposed Motion for Approval of Proposed Class Notice and Notice Plan dated June 3, 2022, and the Class Notice pursuant thereto previously provided to Class Members.

7. "Class Member" means a Person who is a member of the Class and has not timely and validly excluded himself, herself, or itself in accordance with the requirements set forth in the Order Granting Unopposed Motion for Approval of Proposed Class Notice and Notice Plan dated June 3, 2022.

8. "Class Counsel" means Robbins LLP.

9. "Class Notice" means the proposed form of, method for, and the date of dissemination of notice of the Settlement Agreement to the Class.

10. "Class Representatives" means Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket).

11. "Complaint" means the Amended Complaint for Violations of the Sherman Antitrust Act, the Clayton Antitrust Act, California's Cartwright Act, New York's Donnelly Act, Florida's Antitrust and Unfair Trade Practices Act and Unjust Enrichment filed in the Action on July 15, 2016.

12. "Court" means the United States District Court for the Eastern District of New York.

13. "Defendants" means Amex, Mastercard International, Inc. ("Mastercard"), Visa, Inc. and Visa U.S.A., Inc. (collectively, "Visa"), and Discover Financial Services ("Discover"); and any other Person or Persons who are named as defendants in the Action at any time up to and including the date a Preliminary Approval Order is entered.

14. "Effective Date of Settlement" has the meaning given to it in Section VII.

15. "Escrow Account" means the account to be established with the Escrow Agent for the purpose of holding the Gross Settlement Fund pursuant to the terms of this Settlement Agreement.

16. "Escrow Agent" means the bank or trust company that agrees to establish and maintain the Escrow Account upon approval of the Court as set forth in Section XI.

17. "Execution Date" means the date of the execution of this Settlement Agreement by counsel for all Parties thereto.

18. "Fairness Hearing" means the hearing to be held by the Court to determine whether the settlement set forth in this Settlement Agreement shall receive final approval pursuant to Rule 23 of the Federal Rules of Civil Procedure.

19. "Fee and Expense Application" has the meaning given to it in Section X.

20. "Fee and Expense Award" has the meaning given to it in Section X.

21. "Final Approval Order" has the meaning given to it in Section V.

22. "Final Judgment and Order of Dismissal" has the meaning given to it in Section V.

23. "Gross Settlement Fund" means the Settlement Amount plus any interest that may accrue. The Gross Settlement Fund includes any amounts for notice and administration of the Settlement, any fees or expenses that may be awarded, and any service awards. In no event shall Amex be required to contribute more than \$20 million (\$20,000,000.00) to the Gross Settlement Fund.

24. "Mediator" means former U.S. District Judge Layn R. Phillips.

25. "Net Settlement Fund" has the meaning given to it in Section XI.

26. "Parties" means, collectively, Plaintiffs (on behalf of themselves and the Class) and Amex.

27. "Person" means an individual or entity, and his, her, or its spouses, heirs, predecessors, successors, representatives, or assignees.

28. "Plaintiffs" means B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket).

29. "Plaintiffs' Counsel" means Class Counsel and other counsel representing any of the named Plaintiffs in this Action.

30. "Plan of Distribution" means a plan or formula for allocation of the Net Settlement Fund among, and distributing the Net Settlement Fund to, Authorized Claimants as set forth in the Class Notice, or such other plan of allocation as the Court shall approve.

31. "Preliminary Approval Order" means an order of the Court that preliminarily approves the settlement set forth in this Settlement Agreement and that approves the form of Class Notice and preliminarily approves a proposed Plan of Distribution.

32. "Released Claims" means, in consideration of payment of the Settlement Amount into the Escrow Account as specified in Section XI of this Settlement Agreement, and for other valuable consideration, any and all manner of known and unknown claims, causes of action, cross-claims, counterclaims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), arising out of the factual predicates of the Action, whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, including without limitation any and all actual or potential actions, losses, judgments, fees, fines, debts, liabilities (including joint and several), liens, causes of action, demands, rights, damages, penalties, punitive damages, costs, expenses (including attorneys' fees and legal

expenses), indemnification claims, contribution claims, obligations, compensation, and claims for damages or for declaratory, equitable or injunctive relief of any nature (including but not limited to antitrust, RICO, contract, tort, conspiracy, unfair competition or unfair trade practice claims), whenever incurred, and liabilities of any nature whatsoever (including joint and several) that have or could have been alleged in the Action by the Releasing Parties against the Released Parties to the fullest extent permitted by law, from the beginning of time and continuing into the future without end, except that Released Claims does not include any claims against Amex by class members who are bound by a valid Card Acceptance Agreement and who were compelled to arbitrate by the Court's August 14, 2024 Memorandum and Order. It is expressly agreed for purposes of clarity that any claims arising out of the factual predicates of the Action, including with respect to the rules, fees, and/or conduct at issue, are claims that have or could have been alleged in the Action by the Releasing Parties against the Released Parties.

33. "Released Party" or "Released Parties" means American Express Company, and its past, present, and future, direct and indirect parents (including holding companies), subsidiaries, affiliates, associates, divisions, predecessors, successors, assigns, and members, and each of their respective officers, directors, employees, trustees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, members, and assigns. "Released Party" or "Released Parties" does not include any other Defendant or alleged co-conspirator, either explicitly or as a third-party beneficiary.

34. "Releasing Parties" means, individually and collectively, Plaintiffs and any Class Member, on behalf of themselves and any of their respective past, present or future officers, directors, stockholders, agents, employees, legal or other representatives, partners, associates, trustees, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers,

predecessors, successors, and assigns, whether or not they object to the settlement set forth in this Settlement Agreement, and whether or not they make a claim for payment from the Net Settlement Fund.

35. "Settlement Agreement" means this Stipulation and Agreement of Settlement.

36. "Settlement Amount" means the sum of \$20 million dollars (\$20,000,000.00) payable in lawful tender of the United States.

37. "Taxes" means all (i) taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest, penalties, or additions to tax) arising in any jurisdiction with respect to the income earned by the Gross Settlement Fund, including any taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a "qualified settlement fund" within the meaning of Treasury Regulations §1.468B-1 (or any equivalent state or local tax law) and (ii) other taxes or tax expenses imposed on or in connection with the Gross Settlement Fund.

### **III. GOOD FAITH EFFORTS TO EFFECTUATE THIS SETTLEMENT AGREEMENT**

38. The Parties agree to cooperate with one another in good faith to effectuate and implement the terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the terms of this Settlement Agreement.

### **IV. PRELIMINARY APPROVAL ORDER, NOTICE, AND FAIRNESS HEARING**

39. As soon as reasonably possible and in no event later than thirty (30) calendar days after the Execution Date, Plaintiffs' Counsel shall submit to the Court a motion requesting entry of a Preliminary Approval Order. That motion shall, *inter alia*:

(a) seek preliminary confirmation that the Class already certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure will serve as the Class for purposes of the settlement;<sup>1</sup>

(b) request preliminary approval of the settlement set forth in this Settlement Agreement as fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure;

(c) request authorization to disseminate Class Notice via: (1) a proposed form of, method for, and date of dissemination of Class Notice; and (2) a proposed Preliminary Approval Order. Class Notice shall be as provided in the motion and as approved by the Court, with all expenses paid from the Gross Settlement Fund, subject to the provisions of Section XI of this Settlement Agreement. The motion shall recite and ask the Court to find that the method of Class Notice to all Class Members who can be identified upon reasonable effort constitutes valid, due, and sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23 and due process. The Claims Administrator will also establish and maintain a dedicated settlement website, from which Class Members can view and download relevant documents;

(d) seek appointment of the Claims Administrator;

(e) seek appointment of an Escrow Agent;

(f) request that the Court, pending final determination of whether the Settlement Agreement should be approved, stay all proceedings in the Action against Amex until

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<sup>1</sup> Amex agrees not to challenge the settlement Class in connection with preliminary approval or final approval proceedings, but Amex otherwise preserves all of its arguments related to class certification/decertification in the event the Settlement Agreement is not approved.

the Court renders a final decision on approval of the settlement set forth in this Settlement Agreement, except those proceedings provided for or required by this Settlement Agreement;

(g) request that the Court, pending final determination of whether the Settlement Agreement should be approved, temporarily enjoin each Class Representative and each Class Member, either directly, representatively, or in any other capacity, from prosecuting in any forum any Released Claim against any of the Released Parties;

(h) request a Court hearing at which the Court will consider the final approval of this Settlement Agreement; and

(i) attach a proposed form of order, the proposed text of which Plaintiffs' Counsel shall provide to Amex at least five (5) business days prior to the submission to the Court of the motion requesting entry of a Preliminary Approval Order. Plaintiffs' Counsel will consider in good faith any suggestions from Amex regarding the proposed form of order. The form of order will include such provisions as are typical in such orders, including: (1) setting a date for the Fairness Hearing; (2) a provision indicating that, if final approval of the settlement is not obtained, the settlement is null and void, and the Parties will revert to their positions *ex ante* (as of the Execution Date) without prejudice to their rights, claims, or defenses; (3) stating the substantial litigation risks that the Class faced in the Action; (4) requiring that all Class Members be bound by all final determinations in the Action concerning the settlement, whether favorable or unfavorable to the members of the Class; and (5) stating that Amex has denied and continues to deny each and all of the claims made by Plaintiffs in the Action and has denied and continues to deny liability against Amex arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action, and Amex has asserted a number of defenses to Plaintiffs' claims.

40. Class Members who were in existence as of June 3, 2022, and did not exclude themselves from the Class pursuant to the Court's Order Granting Unopposed Motion for Approval of Proposed Class Notice and Notice Plan dated June 3, 2022, will not be provided another opportunity to opt-out. This provision shall not be amended in whole or in part without the consent of both Plaintiffs and Amex.

41. Amex shall be responsible for providing all notices required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

42. The Parties to this Settlement Agreement contemplate and agree that, prior to final approval of the settlement, Plaintiffs will request a Fairness Hearing at which the Court will consider the final approval of this Settlement Agreement.

## **V. FINAL JUDGMENT AND ORDER OF DISMISSAL AGAINST AMEX**

43. If the Court preliminarily approves the Settlement Agreement, Plaintiffs shall seek entry of a Final Approval Order and a Final Judgment and Order of Dismissal as to Amex, the proposed text of which Plaintiffs and Amex shall agree upon. The Final Approval Order and Final Judgment and Order of Dismissal submitted for Court approval will include, at a minimum, terms:

- (a) that the Class already certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure will be the Class for purposes of the settlement;
- (b) as to the Action, approving fully and finally this settlement and its terms as being a fair, reasonable, and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms and conditions;
- (c) finding that the Class Notice given to Class Members constitutes the best notice practicable under the circumstances and complies in all respects with the valid, due, and

sufficient notice requirements of Federal Rule of Civil Procedure 23, and meets the requirements of due process;

(d) as to Released Parties, directing that the Action be dismissed with prejudice and, except as provided for in this Settlement Agreement, with each Party bearing their own costs;

(e) discharging and releasing the Released Parties from the Released Claims, regardless of whether any such Releasing Party executes and delivers a proof of claim;

(f) permanently barring and enjoining Plaintiffs or any Class Member from (i) instituting or prosecuting any other action against any of the Released Parties as to any of the Released Claims, or (ii) assisting any third party in commencing or maintaining any suit against any Released Party related in any way to any of the Released Claims;

(g) reserving exclusive jurisdiction over the settlement and this Settlement Agreement, including all future proceedings concerning the administration, interpretation, consummation, and enforcement of this settlement and this Settlement Agreement, to the Court; and

(h) determining under Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay and directing that the judgment of dismissal as to the Released Parties shall be final and entered forthwith.

44. The Final Judgment and Order of Dismissal shall become final when (i) the Court has entered a final order approving this Settlement Agreement under Federal Rule of Civil Procedure 23(e) and a final judgment dismissing the Action with prejudice as to the Released Parties against all Class Members and without costs other than those provided for in this Settlement Agreement, and (ii) the time for appeal from the Court's approval of this Settlement Agreement and entry of a final judgment as to the Released Parties described in (i) hereof has expired or, if

appealed, approval of this Settlement Agreement and the final judgment as to the Released Parties have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times.

45. As of the Execution Date, Plaintiffs, Class Members, and Amex shall be bound by the Settlement Agreement's terms and this Settlement Agreement shall not be rescinded except in accordance with the terms of this Settlement Agreement.

## **VI. NO ADMISSION OF WRONGDOING OR LIABILITY BY AMEX**

46. Nothing in this Agreement will constitute or be construed as an admission of liability or wrongdoing by Amex. Neither this Settlement Agreement (regardless of whether it becomes final), nor the Final Judgment and Order of Dismissal, nor any and all negotiations, documents, or discussions associated with them, nor any proceedings undertaken in accordance with the terms set forth herein, shall be deemed or construed to be (i) an admission or concession by Amex (or evidence thereof) in any action or proceeding of any kind whatsoever, civil, criminal, or otherwise, before any court, arbitrator, administrative agency, regulatory body, or any other body or authority present or future, (ii) evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Amex, or (iii) evidence of the truth or validity of any of the claims or allegations contained in any complaint or any other pleading that Plaintiffs or Class Members have or could have asserted against Amex, including without limitation that Amex has engaged in any conduct or practice that violates any antitrust statute, or other law, regulation, or obligation. Amex expressly denies any wrongdoing or liability whatsoever for any and all such claims and allegations. Amex does not admit that a class was or could be certified for any purpose other than this Settlement Agreement.

## **VII. EFFECTIVE DATE OF SETTLEMENT**

47. The "Effective Date of Settlement" shall be the latest date when all of the following events shall have occurred and shall be conditioned on the occurrence of all of the following events:

- (a) the Settlement Amount has been contributed to the Escrow Account pursuant to this Settlement Agreement;
- (b) entry of the Preliminary Approval Order;
- (c) final approval by the Court of the settlement set forth in this Settlement Agreement, following Class Notice and the Fairness Hearing;
- (d) no Party has exercised his, her, or its rights to terminate this Settlement Agreement pursuant to Section XIV, and all periods for any Party to exercise such rights have expired; and
- (e) entry by the Court of a Final Judgment and Order of Dismissal, and the Final Judgment and Order of Dismissal becomes final pursuant to Section V, Paragraph 44.

48. Notwithstanding any other provision herein, any proceeding or order, or motion for reconsideration, appeal, petition for a writ of certiorari or its equivalent, pertaining solely to the Plan of Distribution or Fee and Expense Application, or both, shall not in any way delay or preclude the Effective Date of Settlement.

## **VIII. SCOPE AND EFFECT OF SETTLEMENT**

49. The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action against Amex; and (ii) any and all Released Claims as against all Released Parties.

50. Upon the Effective Date of Settlement, each of the Releasing Parties: (i) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal, shall have fully,

finally, and forever waived, released, relinquished, and discharged all Released Claims against the Released Parties; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (iii) agrees and covenants not to sue, either directly, representatively, or in any other capacity, any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit, action, proceeding or claim in any court, tribunal, administrative agency, regulatory body, arbitrator or other body in any jurisdiction against any of the Released Parties related in any way to any Released Claims.

51. The Parties intend that the Release in this agreement be interpreted and enforced broadly and to the fullest extent permitted by law. Each Releasing Party may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with regard to the Released Claims. Nevertheless, each Releasing Party hereby expressly waives and fully, finally, and forever settles and releases, upon this Settlement Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent Released Claim, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

52. The Released Claims effected by Paragraph 50 are intended to apply according to their terms, regardless of Section 1542 of the California Civil Code ("Section 1542") or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction. The Releasing Parties acknowledge that they have been advised by their attorneys of the contents and effect of Section 1542 and hereby expressly waive and release with respect to the Released Claims any and all provisions, rights, and benefits conferred by (i) Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

(ii) any equivalent, similar, or comparable past, present, or future law or principle of law in any jurisdiction; or (iii) any law or principle of law in any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above. The foregoing release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims is contractual, and not a mere recital.

53. The releases provided in this Settlement Agreement shall become effective immediately upon occurrence of the Effective Date of Settlement without the need for any further action, notice, condition, or event.

54. The Parties shall seek entry by the Court of an order, in the Final Judgment and Order of Dismissal or otherwise, to the extent not prohibited by law, barring claims by any Person against the Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise.

55. In the event that this Settlement Agreement is terminated pursuant to Section XIV, or any condition for the final approval of this Settlement Agreement is not satisfied, the release and covenant not to sue provisions of this Paragraph shall be null and void and unenforceable.

## **IX. COOPERATION**

56. As a material term of the Settlement Agreement, Amex agrees to cooperate (fully and faithfully) in further litigation against the remaining Defendants in this Action, with such cooperation defined as follows:

- (a) Amex agrees to use reasonable efforts to authenticate documents and/or things produced in the Action in connection with trial, whether by declarations, affidavits, depositions, hearings, or live witnesses at trial, as may be necessary for the Action;
- (b) Amex agrees to respond to requests for clarification on produced chargeback data, testimony, or expert opinion, as necessary for the Action;
- (c) Amex will utilize its best efforts to produce up to two then-current Amex employees as live witnesses at trial, as necessary for the Action; and
- (d) In case of medical or other emergency, Amex will not object to reasonable requests for trial depositions as necessary for the Action.

57. At present, Class Counsel believe they do not require from Amex any additional contact information or other data related to Class Members in order to provide the best practicable notice under the circumstances to potential Class Members. To the extent Class Counsel identify, in the future, gaps in the information or data needed to carry out the Notice Plan or to pay claims in accordance with the Plan of Distribution, Class Counsel shall identify such additional information or data for Amex, and Amex agrees to provide reasonable cooperation in providing (or assisting Class Counsel in otherwise obtaining) any such necessary information or data to the Claims Administrator, as appropriate, with all Parties agreeing that Amex shall have reasonable and sufficient time to do so. Any data or information provided pursuant to this Paragraph 57 shall be kept Confidential. Nothing in this paragraph is intended to cause Amex to assume the role or responsibilities of the Claims Administrator. Similarly, nothing in this paragraph is intended to waive any party's rights to seek to impose or oppose any additional obligations with respect to notice, claims, or distribution of the Settlement Amount.

## **X. FEE AND EXPENSE APPLICATION**

58. Plaintiffs' Counsel may submit an application or applications to the Court (the "Fee and Expense Application") for distribution to them solely from the Gross Settlement Fund of (1) an award of attorneys' fees; plus (2) reimbursement of reasonable expenses paid by Plaintiffs' Counsel in connection with prosecuting the Action; plus (3) any interest earned in the escrow account on such attorneys' fees and expenses (until paid) at the same rate and for the same periods as earned by the Gross Settlement Fund, as appropriate, and as may be awarded by the Court (the "Fee and Expense Award").

59. The Fee and Expense Award, as approved by the Court, shall be paid solely from the Gross Settlement Fund to an account designated by Plaintiffs' Counsel within five (5) business days after entry of a final, non-appealable order. Plaintiffs' Counsel shall not seek payment of same from any source other than the Gross Settlement Fund. Plaintiffs and Class Members shall not seek payment of any attorneys' fees or costs from Amex in this Action.

60. Plaintiffs' Counsel shall allocate the Fee and Expense Award among themselves in good faith.

61. In the event that the order making the Fee and Expense Award is reversed or modified, then Plaintiffs' Counsel shall, within ten (10) business days from receiving notice from Amex's Counsel or from a court of appropriate jurisdiction, refund to the Gross Settlement Fund the Fee and Expense Award or any portion thereof previously paid to them plus interest thereon at the same rate as earned by the account into which the balance of the Gross Settlement Fund is deposited.

62. The procedure for, and the allowance or disallowance by the Court of, the application by Plaintiffs' Counsel for attorneys' fees, costs, and expenses to be paid out of the Gross Settlement Fund are not part of this Settlement Agreement, and are to be considered by the Court

separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement, and any order or proceeding relating to the Fee and Expense Application, the pendency of any such application, or any appeal from any such order shall not operate to terminate or cancel this Settlement Agreement, provide a basis to terminate or cancel this Settlement Agreement, or affect or delay the finality of the judgment approving the settlement.

63. Plaintiffs' Counsel may request service awards for each of the Plaintiffs, to be drawn exclusively from the Gross Settlement Fund, as provided for in Paragraph 68(b).

## **XI. THE GROSS SETTLEMENT FUND**

64. The Gross Settlement Fund shall be established within an Escrow Account and administered by the Escrow Agent, designated by Class Counsel, subject to the continuing jurisdiction of the Court. No monies shall be paid from the Gross Settlement Fund without the specific authorization of Plaintiffs' Counsel, based on prior approval by the Court. Plaintiffs' Counsel will form an appropriate escrow agreement in conformance with this Settlement Agreement.

65. Within twenty-five (25) business days following the Court's entry of the Preliminary Approval Order, provided that within seven (7) days following entry of such Preliminary Approval Order, Plaintiffs' Counsel shall provide Amex with such information as Amex may require to effect the payment, and subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, Amex shall cause the payment of \$20 million (\$20,000,000.00) to be wired to the Escrow Agent. These funds, together with any interest earned thereon, shall constitute the Gross Settlement Fund. In the event that Plaintiffs' Counsel does not provide Amex with the information required to complete the wire transfer within the prescribed time, Amex's payment obligations under this paragraph shall be deferred by an amount of time equivalent to Plaintiffs' Counsel's delay in providing such information.

66. The Gross Settlement Fund shall be invested exclusively in accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a United States Treasury Fund or a bank account that is either: (i) fully insured by the Federal Deposit Insurance Corporation; or (ii) secured by instruments backed by the full faith and credit of the United States Government. The proceeds of these accounts shall be reinvested in similar instruments at their then-current market rates as they mature. Amex shall have no responsibility or liability for any losses incurred by the Gross Settlement Fund.

67. All funds held by the Escrow Agent shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Settlement Agreement and the Plan of Distribution approved by the Court.

68. The Gross Settlement Fund shall be applied as follows:

- (a) to pay the Fee and Expense Award, if and to the extent allowed by the Court;
- (b) to pay service awards for each of the Plaintiffs, if and to the extent allowed by the Court;
- (c) to use, if approved by the Court, up to \$650,000.00 of the Settlement Amount for payment of any Court-approved costs and expenses in connection with providing Class Notice and the administration of the settlement, including, without limitation, identifying potential members of the Class; soliciting, reviewing, and evaluating proofs of claim or release forms, or both; and administering the settlement and disbursing the Gross Settlement Fund. For the avoidance of doubt, notice and administration costs shall not include Plaintiffs' Counsel's work in securing settlement approval, including appeals from the grant of a Final Approval Motion. If

necessary, Plaintiffs shall be permitted to apply directly to the Court for approval of additional amounts to be used for notice and administration expenses, which shall be funded out of the Gross Settlement Fund. In no event shall Amex have any obligation to increase the Settlement Amount or the Gross Settlement Fund for any purpose, including notice and administration costs. In the event the Settlement Agreement is not approved by the Court or otherwise terminated, all amounts actually incurred up to \$650,000.00 for notice and/or administration are not recoverable and will not be returned or refunded to Amex;

- (d) to pay the Taxes and tax expenses described in Section XIII herein;
- (e) to pay any other Court-approved fees and expenses; and
- (f) to distribute the balance of the Gross Settlement Fund (the "Net Settlement Fund") to Class Members as allowed by the Court.

69. It is understood and agreed that no consideration or amount or sum paid, credited, offered, or expended by Amex in performance of this Settlement Agreement constitutes a penalty, fine, punitive damages, or other form of assessment for any alleged claim or offense. Each Class Member is enforcing its rights as a private party and is not directly, indirectly, or derivatively enforcing any rules or exercising any regulatory powers as part of a governmental function on behalf of itself or any government or governmental entity.

70. This Settlement Agreement does not include any provisions for injunctive relief.

## **XII. ADMINISTRATION OF THE SETTLEMENT**

71. Pursuant to the Preliminary Approval Order, Plaintiffs' Counsel shall seek to have the Claims Administrator approved by the Court, for purposes of administering the settlement claims process, as set forth herein.

72. The Claims Administrator shall effectuate the notice plan approved by the Court in the Preliminary Approval Order, shall administer and calculate the claims, and shall oversee distribution of the Net Settlement Fund in accordance with the Plan of Distribution.

73. The Claims Administrator also shall assist in the development of the Plan of Distribution and the resolution of any disputes that may be raised by Class Members regarding the amount that they are owed under the Plan of Distribution.

74. The Claims Administrator shall process this settlement based upon the orders of the Court and this Settlement Agreement, and, after entry of relevant order(s) of the Court, distribute the Net Settlement Fund in accordance with such order(s) and this Settlement Agreement.

75. Except for its obligation to fund the settlement or cause it to be funded as detailed in this Settlement Agreement, the Released Parties shall have no liability, obligation, or responsibility for the administration of the settlement or disbursement of the Net Settlement Fund.

76. The Net Settlement Fund shall be distributed by the Claims Administrator only after the Effective Date of Settlement.

77. Plaintiffs and Class Members shall look solely to the Gross Settlement Fund as full, final and complete satisfaction of all Released Claims. Except as set forth in Section XI, Paragraph 65, Released Parties shall have no obligation under this Settlement Agreement or the settlement to pay or cause to be paid any amount of money, and Released Parties shall have no obligation to pay or reimburse any fees, expenses, costs, liability, losses, Taxes, or damages whatsoever alleged or incurred by Plaintiffs, by any Class Member, or by any Releasing Parties, including, but not limited to, by their attorneys, experts, advisors, agents, or representatives, with respect to the Action and Released Claims. Plaintiffs and Class Members acknowledge that as of the Effective Date of Settlement, the releases given herein shall become effective immediately by

operation of the Final Judgment and Order of Dismissal and shall be permanent, absolute, and unconditional.

78. Any funds that remain in the Net Settlement Fund after distribution of the Net Settlement Fund in accordance with the Plan of Distribution shall not revert to Amex. Plaintiffs shall apply directly to the Court to authorize the *cy pres* distribution of those remaining funds.

### **XIII. TAXES**

79. The Parties agree that the Gross Settlement Fund is intended to be a qualified settlement fund within the meaning of Treasury Regulations §1.468B-1, and agree not to take any position for tax purposes inconsistent therewith. The Parties agree that the Gross Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any "relation-back election" (within the meaning of Treasury Regulations §1.468B-1) required to treat the Gross Settlement Fund as a qualified settlement fund from the earliest date possible. The Claims Administrator shall be designated as the "administrator" (within the meaning of Treasury Regulation §1.468B-2(k)(3)) of the Gross Settlement Fund.

80. The Claims Administrator shall timely make, or cause to be made, such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election." Such election shall be made in compliance with the procedures and requirements contained in the relevant Treasury Regulations. The Gross Settlement Fund, less any amounts incurred for notice and administration as defined in Paragraph 68(c), and/or Taxes , including any accrued interest thereon, shall be returned to Amex, as provided in Section XIII, if the settlement does not become effective for any reason, including by reason of a termination of this Settlement Agreement pursuant to Section XIV.

81. The Claims Administrator shall timely and properly file, or cause to be filed, all income, informational, and other tax returns necessary or advisable with respect to the Gross

Settlement Fund (including, without limitation, the returns described in Treasury Regulations §1.468B-2(k) and §1.468B-2(l)(2)).

82. All Taxes shall timely be paid out of the Gross Settlement Fund by the Claims Administrator without prior order from the Court. The Claims Administrator shall also be obligated to, and shall be responsible for, withholding from distribution to Class Members any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes. The Parties agree to cooperate with the Claims Administrator, Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section XIII.

83. Neither the Parties nor their counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent, Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Gross Settlement Fund or otherwise; (ii) the Plan of Distribution; (iii) the determination, administration, calculation, or payment of any claims asserted against the Gross Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Gross Settlement Fund; or (v) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Gross Settlement Fund or the filing of any returns. The Claims Administrator shall indemnify and hold harmless the Parties, using monies from the Gross Settlement Fund, from and against any claims, liabilities, or losses relating to the matters addressed in the preceding sentence (including, without limitation, taxes payable by reason of any such indemnification payments).

84. The Class Members shall be responsible for paying any and all federal, state, and local income taxes due on any distribution made to them pursuant to the settlement provided herein.

#### **XIV. TERMINATION OF SETTLEMENT**

85. Plaintiffs, through Plaintiffs' Counsel, and Amex, through Amex's Counsel, shall, in each of their separate discretions, have the right to terminate the settlement set forth in this Settlement Agreement by providing written notice of their election to do so to all other Parties hereto within thirty (30) days of the date on which the following occurs: (1) if the Court, in a final order, declines to enter the Preliminary Approval Order, the Final Approval Order, or the Final Judgment and Order of Dismissal (denying it in its entirety or in any material respect), or (2) if the Court enters the Final Approval Order and the Final Judgment and Order of Dismissal and appellate review is sought and, on such review, the Final Approval Order or the Final Judgment and Order of Dismissal is finally vacated, modified, or reversed; provided, however, that the Parties agree to act in good faith to secure final approval of this settlement, and to attempt to address in good faith concerns regarding the settlement identified by the Court or any court of appeal. Notwithstanding this paragraph, the Court's determination as to the Fee and Expense Application or any plan of distribution, or both, or any determination on appeal from any such orders, shall not provide grounds for termination of this Settlement Agreement or settlement.

86. Except as otherwise provided herein, in the event the Settlement Agreement is terminated in accordance herewith, is vacated, or is not approved, or in the event the Effective Date of Settlement fails to occur for any reason, then the Parties to this Settlement Agreement shall be deemed to have reverted to their respective status in the Action as of the Execution Date, and, except as otherwise expressly provided herein, the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered (subject to seeking whatever revisions to the pretrial schedule as may be necessary to protect the rights of the Parties), and any portion of the Gross Settlement Fund previously paid by or on behalf of Amex, together with any interest earned thereon (and, if applicable, re-payment of any Fee and Expense Award referred to

in Section X above), less Taxes due, if any, with respect to such income, and less costs of administration and notice actually incurred and paid or payable in accordance with Paragraph 68(c), shall be returned to Amex within ten (10) business days from the date of the event causing such termination. At the request of Amex's Counsel, the Escrow Agent shall apply for any tax refund owed on the Gross Settlement Fund and pay the proceeds to Amex. The Parties expressly reserve all of their rights if this Agreement is rescinded or does not otherwise become final.

#### **XV. MISCELLANEOUS**

87. The Parties to this Settlement Agreement intend the settlement to be a final and complete resolution of all disputes asserted or that could be asserted by Plaintiffs or any Class Member against the Released Parties with respect to the Action and the Released Claims. Accordingly, Plaintiffs and Amex agree not to assert in any judicial proceeding that any Party violated Rule 11 of the Federal Rules of Civil Procedure. The Parties agree that the amount paid and the other terms of the settlement were negotiated at arm's-length in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel and the Mediator.

88. The terms and provisions of the Stipulated Protective Order, filed on June 15, 2016, and approved on July 1, 2016, shall survive and continue in effect through and after any final adjudication of the Action.

89. Nothing in this Settlement Agreement is intended to waive any right to assert that any information or material is protected from discovery by reason of any individual or common interest privilege, attorney-client privilege, work product protection, or other privilege, protection, or immunity, or is intended to waive any right to contest any such claim of privilege, protection, or immunity.

90. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

91. The administration and consummation of the settlement as embodied in this Settlement Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders relating to the Fee and Expense Application and the Plan of Distribution, and enforcing the terms of this Settlement Agreement.

92. For the purpose of construing or interpreting this Settlement Agreement, Plaintiffs and Amex agree that it is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

93. This Settlement Agreement shall constitute the entire agreement between Plaintiffs and Amex pertaining to the settlement of the Action against Amex and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Amex in connection therewith. All terms of this Settlement Agreement are contractual and not mere recitals. The terms of this Settlement Agreement are and shall be binding upon each of the Parties hereto, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, and upon all other Persons claiming any interest in the subject matter hereto through any of the Parties hereto including any Class Members.

94. The terms of this Settlement Agreement are not severable, but are interdependent and have been agreed to only as a whole by Plaintiffs (for themselves individually and on behalf of each Class Member in the Action) and Amex.

95. This Settlement Agreement may be modified or amended only by a writing executed by Plaintiffs, through Plaintiffs' Counsel, and Amex, through Amex's Counsel, subject (if after preliminary or final approval by the Court) to approval by the Court. Amendments and

modifications may be made without notice to the Class unless notice is required by law or by the Court.

96. All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law principles.

97. Amex, Plaintiffs, their respective counsel, and the Class Members hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Eastern District of New York, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein.

98. The Parties acknowledge that this Settlement Agreement makes no determination as to which Class Members are entitled to distribution from the Net Settlement Fund, or as to the formula for determining the amounts to be distributed.

99. Any proposed plan of distribution is not a necessary term of this Settlement Agreement, and it is not a condition of this Settlement Agreement that any particular plan of distribution be approved. The Plan of Distribution is a matter separate and apart from the settlement between the Parties and any decision by the Court concerning a particular plan of distribution shall not affect the validity or finality of the proposed settlement, including the scope of the release.

100. Any and all notices, requests, consents, directives, or communications by any Party intended for any other Party related to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be given by United States mail and electronic mail, to:

FOR PLAINTIFFS:

George C. Aguilar  
Michael J. Nicoud

Jacob Ogbozo  
Robbins LLP  
5060 Shoreham Place, Suite 300  
San Diego, CA 92122  
619-525-3990 (office)  
[gaguilar@robbinsllp.com](mailto:gaguilar@robbinsllp.com)  
[mnicoud@robbinsllp.com](mailto:mnicoud@robbinsllp.com)  
[jogbozo@robbinsllp.com](mailto:jogbozo@robbinsllp.com)

FOR AMEX:

Peter T. Barbur  
Damaris Hernández  
David H. Korn  
Rebecca J. Schindel  
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[rschindel@cravath.com](mailto:rschindel@cravath.com)

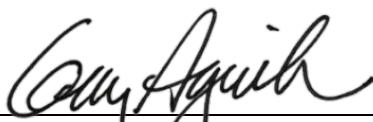
101. This Settlement Agreement may be executed in counterparts by Plaintiffs and Amex, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

102. Plaintiffs and Amex acknowledge that they have been represented by counsel and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, Plaintiffs, Amex, and their respective counsel agree that they will not seek to set aside any part of this Settlement Agreement on the grounds of mistake. Moreover, Plaintiffs, Amex, and their respective counsel understand, agree, and expressly assume the risk that any fact may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree

that this Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

103. Each of the undersigned attorneys represents that he/she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, subject to Court approval; and the undersigned Plaintiffs' Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Plaintiffs. Each of the undersigned attorneys shall use his/her best efforts to effectuate this Settlement Agreement.

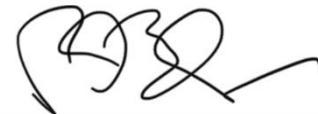
IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement, dated May 16, 2025.



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George C. Aguilar  
Michael J. Nicoud  
Jacob W. Ogbozo  
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*Class Counsel and Counsel for Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market),  
Grove Liquors LLC, Strouk Group LLC  
(d/b/a Monsieur Marcel), and Palero Food  
Corp. and Cagueyes Food Corp. (d/b/a Fine  
Fare Supermarket)*

# EXHIBIT 3



## FIRM RESUME

Robbins LLP<sup>1</sup> is a nationally recognized shareholder rights law firm dedicated to the prosecution of shareholder derivative and class action lawsuits. We are committed to the principle that the directors and managers of publicly traded corporations must be held accountable to the owners of the enterprise – the shareholders. A leader in corporate governance reform, Robbins LLP has worked with individual and institutional shareholders to improve board oversight, legal compliance, transparency, and responsiveness at more than 400 Fortune 1000 companies. The firm has also helped secure several of the largest monetary recoveries in the history of shareholder derivative litigation and has helped clients to realize more than \$1 billion in value for themselves and the companies in which they have invested.

For its achievements, the firm has received numerous accolades, including inclusion in the first *Chambers California Spotlight Guide for 2025*; recognition from *U.S. News & World Report*, which named the firm a Best Law Firm for 2017-2024, *Daily Journal*, which named the firm a 2015 Top 25 Boutique in California, the *Legal 500*, which named the firm a Leading Firm in Merger and Acquisition Litigation in 2013-2018, the *National Law Journal*, which included the firm on its 2012 Litigation Boutiques Hot List, and ISS's Securities Class Action Services, which has listed the firm among the nation's top shareholder plaintiffs' firms. Each year, Robbins LLP's attorneys are honored as Super Lawyers or Rising Stars. In addition, Robbins LLP's co-founder, Brian J. Robbins, is featured in Best Lawyers in America for Securities Litigation (2016-2025), in *San Diego Business Journal* as Best of the Bar (2014-2016), and in *The Daily Transcript* as a Top Attorney (2015).

### Practice Areas

Robbins LLP represents individual and institutional investors in shareholder derivative actions, securities fraud class actions, and securities class actions arising out of mergers and acquisitions, initial public offerings, and going private transactions. Additional Robbins LLP practice areas include antitrust actions, Employee Retirement Income Security Act (ERISA) actions, whistleblower actions under the Dodd-Frank Wall Street Reform and Consumer Protection Act and the False Claims Act, and consumer class actions.

### Leadership

Robbins LLP's experienced attorneys provide skilled representation to clients through all phases of complex litigation. The firm's partners include former federal prosecutors, defense counsel from top corporate law firms, in-house counsel from leading financial institutions, and career shareholder rights litigators. Collectively, they have litigated hundreds of cases in nearly every state, serving in numerous court-appointed leadership roles in complex multi-jurisdictional litigation. They currently serve as lead or co-lead counsel in dozens of cases nationwide. The firm's attorneys are supported by investigators, corporate research analysts, client relations specialists, and legal support professionals, each of whom provides exceptional client service. Our talented team has helped secure significant results for our clients. We feature below some of the firm's achievements across the nation.

- ***Pirelli Armstrong Tire Corp. Ret. Med. Benefits Trust v. Hanover Compressor Co.***, No. H-02-0410 (S.D. Tex. Feb. 6, 2004): Shareholders of Hanover Compressor Company, a provider of natural gas compression services operating in the United States and select international markets, brought claims on behalf of the company against company officers and

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<sup>1</sup> "Robbins LLP" and "the firm" herein collectively refer to the firm's previous names of Robbins Arroyo LLP, Robbins Umeda LLP and Robbins Umeda & Fink, LLP.

directors for breach of fiduciary duty, waste of corporate assets, abuse of control, and gross mismanagement. The claims arose out of an off-balance-sheet joint venture to build and operate a natural gas processing plant on barges off the coast of Nigeria. Robbins LLP attorneys, serving as lead negotiators for derivative plaintiffs, secured extraordinary results for Hanover. First, Robbins LLP achieved for the company approximately \$57.4 million in compensation – consisting of a \$26.5 million payment and the return of 2.5 million shares valued at approximately \$30.9 million by an entity controlled by certain of the individual defendants. Second, Robbins LLP helped secure corporate governance changes at the company that have been noted as "groundbreaking" and "unprecedented" benefits for Hanover, including the appointment of two shareholder-nominated directors and becoming one of the first companies in the United States to commit to implementing a five-year rotation rule for its outside audit firms.

- ***In re Nicor, Inc. S'holder Derivative Litig.***, No. 02 CH 15499 (Ill. Cir. Ct.-Cook Cnty. Mar. 29, 2005): The firm served as co-lead counsel for plaintiffs who brought claims for breach of fiduciary duty and unjust enrichment against several officers and directors of Nicor, Inc., one of the largest natural gas distributors in the United States. Plaintiffs alleged that Nicor's management made material misrepresentations and omitted material information from the Illinois Commerce Commission and the company's shareholders and customers, and unlawfully manipulated the company's operating results. Robbins LLP attorneys negotiated and secured personnel changes among Nicor's executive officers and board members, as well as \$33 million for Nicor.
- ***In re OM Group, Inc. Derivative Litig.***, No. 1:03-CV-0020 (N.D. Ohio Nov. 10, 2005): The firm served as lead counsel to plaintiffs in this derivative action arising out of a massive accounting fraud at this global solutions provider and specialty chemical manufacturer. During the litigation, our attorneys opposed and defeated defendants' motions to dismiss, reviewed thousands of documents produced during discovery, conducted expert discovery, and took over forty depositions of witnesses and defendants throughout the United States and Europe. Robbins LLP obtained a settlement that included a \$29 million payment to the company, the termination of the company's chief executive officer, the addition of two shareholder-nominated directors, and the implementation of various other beneficial corporate governance procedures at the company.
- ***Lieb v. Unocal Corp.***, No. BC331316 (Cal. Super. Ct.-L.A. Cnty. Dec. 20, 2005): Robbins LLP served as co-lead counsel for the public shareholders of Unocal Corporation in this securities class action against Unocal and several of its insiders, officers, and directors for self-dealing and breach of fiduciary duty in connection with the proposed sale of Unocal to Chevron Corporation. Plaintiffs alleged that Unocal's management failed to obtain the highest share price reasonably available by tailoring the proposed acquisition terms to meet the specific needs of acquirer Chevron, and by discouraging alternative bids. After obtaining broad expedited discovery, the firm was credited for helping Unocal shareholders to realize \$500 million in additional consideration as a result of Chevron's increased bid of \$17.4 billion. The firm also secured supplemental proxy statement disclosures before Unocal shareholders voted on whether to accept Chevron's bid over a nominally higher bid by the Chinese National Offshore Oil Corporation.
- ***In re Titan, Inc. Sec. Litig.***, No. 04-CV-0676-LAB (NLS) (S.D. Cal. Dec. 20, 2005): The firm served as co-lead counsel in this securities fraud class action against The Titan Corporation and certain of its officers and directors for violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and breach of fiduciary duty. Robbins LLP's efforts resulted in a recovery of \$61.5 million for Titan's shareholders.
- ***In re Tenet Healthcare Corp. Derivative Litig.***, No. 01098905 (Cal. Super Ct.-Santa Barbara

Cnty. May 5, 2006), *aff'd*, No. B192252 (Cal. App. Sept. 20, 2007): The firm served as co-lead counsel for the plaintiffs, who alleged that Tenet Healthcare Corp.'s top executives breached their fiduciary duties to the company by failing to monitor, investigate, and oversee Tenet's patient procedures, Medicare billing, and accounting practices. After prosecuting the case for over three years, Robbins LLP's attorneys negotiated a comprehensive settlement, which included \$51.5 million in cash contributions to Tenet and sweeping corporate governance reforms and other remedial measures designed to ensure the independence and accountability of the company's board of directors. The new governance regime included separation of the positions of chief executive officer and chairman of the board of directors, strict internal financial controls, enhanced guidelines for stock ownership and stock retention, and a comprehensive insider trading policy. The settlement was upheld on appeal.

- ***In re Qwest Sav. & Inv. Plan ERISA Litig.***, No. 02-cv-00464 (D. Colo. Jan. 29, 2007): Robbins LLP served on plaintiffs' executive committee in a class action brought as a civil enforcement suit for ERISA violations. The employees alleged that Qwest's management repeatedly misrepresented the financial status of the company to its employees to encourage employees to make discretionary investments in Qwest common stock. When the truth about Qwest's financial condition and egregious accounting manipulations was revealed, the price of Qwest common stock plummeted, but employees were restricted from selling their retirement fund shares under the terms of the Qwest Savings & Investment Plan. When the restriction was lifted, Qwest stock was trading at an all-time low, devastating the employees' retirement funds. After years of contentious litigation, Robbins LLP helped achieve a \$37.5 million settlement for the benefit of the employees who had invested in the retirement plan.
- ***Staehr v. Walter***, No. 02-CVG-11-0639 (Ohio Ct. C.P.-Del. Cnty. Dec. 17, 2007) (hereinafter *Cardinal Health*): Robbins LLP led the charge in derivative litigation on behalf of the plaintiff who brought claims against certain Cardinal officers and directors arising out of Cardinal's proposed stock-for-stock acquisition of Syncor International Corp. The action forced Cardinal to reduce the previously negotiated acquisition price for Syncor, saving the company millions of dollars. During its work on the Syncor transaction, Robbins LLP and other firms discovered that Cardinal insiders had engaged in a massive revenue inflation scheme to fraudulently overstate the company's financial performance. Robbins LLP filed an amended complaint against several of Cardinal's officers and directors, defeated multiple motions to dismiss, and pursued and reviewed millions of pages of documents in discovery. The firm ultimately negotiated and resolved the matter by obtaining \$70 million for the company—among the largest monetary recoveries ever in a shareholder derivative action. The settlement also required Cardinal's board of directors to implement significant corporate governance and internal accounting controls designed to improve the board's oversight of Cardinal's senior management and to prevent recurrence of the alleged accounting manipulations.
- ***In re Juniper Networks, Inc. Derivative Litig.***, No. 1:06-CV-064294 (Cal. Super. Ct.-Santa Clara Cnty. Dec. 4, 2008): Robbins LLP served as co-lead counsel in this state shareholder derivative suit against several officers and directors of Juniper Networks, Inc., a global networking and communications technology company, for breach of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets, unjust enrichment, insider selling, accounting, and rescission in connection with a stock option backdating scheme. After extensively prosecuting the case, the firm helped secure substantive corporate governance reforms and the forfeiture of more than \$22 million in stock options to the company from four executives and directors of the board.
- ***In re KB Home S'holder Derivative Litig.***, No. 2:06-CV-05148-FMC (CTx) (C.D. Cal. Feb. 9, 2009): Robbins LLP served as co-lead counsel for the plaintiffs, who alleged that insiders of KB Home, Inc., a prominent builder of single family homes in the United States and France, manipulated their stock option grant dates to misappropriate millions of dollars in illicit

compensation. Robbins LLP's efforts helped return nearly \$50 million in value to the company, including a cash payment of over \$31 million. In addition, the firm helped KB Home secure corporate governance enhancements and implement remedial measures, including separation of the chairman of the board and chief executive officer positions; declassification of the board of directors; majority voting for elections to the board; adoption of formal written procedures for the grant of stock options; and limits on future executive severance payments, among others.

- ***Overby v. Tyco Int'l Ltd.***, No. 02-CV-1357-B (D.N.H. Nov. 23, 2009): Robbins LLP represented a class of employees of Tyco International Ltd., the largest electronics security provider in the world, when employees brought claims against the company for ERISA violations. Robbins LLP helped obtain a \$70 million settlement for the beneficiaries of Tyco's defined contribution retirement plan.
- ***In re Brocade Communications Systems, Inc. Derivative Litigation***, No. 1:05CV041683 (Cal. Super. Ct.-Santa Clara County Jan. 28, 2010): Robbins LLP represented plaintiffs in this shareholder derivative action against officers and directors of Brocade Communications Systems, Inc., an industry leader in data center networking solutions, following the announcement that Brocade would have to restate two fiscal years of financial statements to correct its improper accounting for stock-based compensation expenses. For years, Brocade's insiders had engaged in a secret stock option backdating scheme designed to reward executives and recruit engineers with stock options priced below their fair market value as of the date of the grants. Robbins LLP successfully petitioned the court to proceed with litigation to prevent an inadequate settlement of a related federal action, which would have released the officers, directors, and agents of the company responsible for the criminal backdating scheme for no money to the company nor a payment of attorney's fees, even as the U.S. Government pursued and ultimately won criminal convictions against the responsible executives. After almost three years of diligently prosecuting the case, during which Robbins LLP engaged in extensive motion practice, reviewed approximately three million pages of documents, and marshaled evidence from related cases involving the conduct at Brocade, Brocade's Special Litigation Committee retained Robbins LLP to serve as its co-counsel, and, after presentations from Robbins LLP, authorized the continued prosecution of claims against Brocade's officers and directors and on behalf of the shareholders.
- ***In re PETCO Animal Supplies, Inc. S'holder Litig.***, No. GIC 869399 (Cal. Super. Ct.-San Diego Cnty. Mar. 26, 2010): Robbins LLP served as co-lead counsel to the public shareholders of PETCO Animal Supplies, Inc., in a class action that sought to enjoin PETCO's insiders, directors, and affiliates from consummating any sale of PETCO unless and until the company implemented a procedure to ensure that PETCO's shareholders received the highest possible price for the sale. Over the course of three years, our attorneys engaged in extensive motion practice and document, expert, and witness discovery. Shortly before the case went to trial, Robbins LLP assisted in achieving a settlement that secured a \$16 million settlement fund for the class.
- ***In re Am. Int'l Group, Inc. Derivative Litig.***, No. 04 Civ. 8406 (DLC) (S.D.N.Y. Mar. 14, 2011): The firm was appointed lead counsel in the consolidated federal action alleging breach of fiduciary duty claims in connection with a bid-rigging scheme with Marsh & McLennan Companies, Inc., sham reinsurance transactions with General Re Corporation, and other activities intended to falsify American International Group, Inc.'s ("AIG") financial results. As part of a global settlement of the derivative claims on AIG's behalf, Robbins LLP helped secure a \$90 million payment to AIG, one of the largest monetary recoveries in the history of shareholder derivative actions.
- ***Kloss v. Kerker***, No. 50-2010-CA-018594-XXXX-MB (Fla. Cir. Ct.-Palm Beach Cnty. May 27,

2011): Robbins LLP worked with the parties to derivative litigation filed on behalf of the Internet's leading vitamin and supplement retailer, Vitacost.com, Inc., to save the \$158 million market cap company from bankruptcy and to preserve the equity interests of its shareholders. Robbins LLP was instrumental in achieving a settlement that enabled the company to bring its financial statements and Security and Exchange Commission ("SEC") filings current; allowed Vitacost to hold a long overdue shareholder meeting to address fundamental defects in the corporation's formation, board composition, and past stock issuances; and helped the company to persuade NASDAQ to lift its trading moratorium and provide the company and its shareholders access to the capital markets. The firm worked with the company's new board of directors to implement a series of corporate governance best practices, including a robust insider trading policy. Vitacost hired Robbins LLP to evaluate and potentially to prosecute the company's claims against other parties relating to the defects in its formation, stock issuances, and other pre-IPO issues.

- ***Martinez v. Toll (Toll Bros., Inc.)***, No. 2:09-cv-00937-CDJ (E.D. Pa. Mar. 27, 2013); ***Pfeiffer v. Toll***, No. 4140-VCL (Del. Ch. Mar. 15, 2013): Robbins LLP represented shareholders in the Toll Brothers, Inc. shareholder derivative litigation in which plaintiffs alleged that certain company officers and directors, including the co-founders, traded on inside information and grossly misled investors about company earnings projections during a housing market downturn. After four years of contentious litigation, the firm helped secure one of the largest *Brophy (Brophy v. Cities Serv. Co., 70 A.2d 5 (Del. Ch. 1949))* settlements ever, a \$16.25 million cash payment to the luxury homebuilding company. The settlement included a \$6.45 million payment from the executive directors—an unprecedented result in shareholder litigation of this type.
- ***Cook v. McCullough***, No. 1:11-cv-09119 (N.D. Ill. Jan. 28, 2014): Robbins LLP served as co-lead counsel in shareholder derivative litigation arising out of Career Education Corp.'s alleged publication of false statements regarding job placement and student loan repayment rates, and failure to ensure compliance with Title IV regulations. The firm played a leading role in negotiating the global resolution of a series of actions brought against and on behalf of the company, and helped secure a \$20 million recovery and comprehensive board and management-level corporate governance and oversight reforms for Career Education, including enhanced compliance and whistleblower policies, new director independence standards, improved executive compensation claw-back provisions, a comprehensive director education and employee training program, and an improved regulatory risk management and disclosure regime.
- ***In re Star Scientific, Inc. Securities Litigation***, No. 3:13-CV-00183-JAG (E.D.Va. July 6, 2015): Robbins LLP served as lead counsel in this securities fraud class action against Star Scientific, Inc. alleging that the defendants made materially false and misleading statements regarding Johns Hopkins University School of Medicine's purported involvement in the clinical development and testing of the Company's main product - Anatabloc® - to increase Star Scientific's stock price to the detriment of stockholders and to secure the equity financing the company needed to stay in business. The firm successfully defeated defendants' motion to dismiss, engaged in extensive settlement discussions, and ultimately secured a \$5.9 million settlement fund on behalf of stockholders who purchased their shares of Star Scientific stock based on the misrepresentations.
- ***Espinosa v. Zuckerberg, C.A.*** No. 9745-CB (Del. Ch. Mar. 30, 2016): Robbins LLP served as counsel in shareholder derivative litigation on behalf of Facebook, Inc. arising from the alleged award of unfair excessive compensation by the board of directors to its non-employee members. Certain members of Facebook's board of directors attempted to circumvent corporate law procedures to obtain controlling stockholder approval of compensation awarded by the Board to its non-employee members. After deposing Facebook's Chief Executive

Officer Mark Zuckerberg and beating a motion for summary judgment, Robbins LLP convinced Facebook to impose corporate governance reforms designed to ensure the Board awards executive compensation fairly and not to the detriment of the company, including allowing stockholders to vote on non-employee directors' compensation. As such, Robbins LLP helped establish that public companies with controlling stockholders must comply with corporate law procedures.

- ***In re Venoco, Inc. S'holder Litig.***, C.A. No. 6825-VCG (Del. Ch. Oct. 5, 2016): Robbins LLP served as co-lead counsel to the public shareholders of Venoco, Inc. in this class action arising out of a scheme by the energy company's Chief Executive Officer to buy out Venoco's minority shareholders at an inadequate share price. Robbins LLP conducted extensive fact and expert discovery for two years after the closing of the acquisition. During this time, Venoco foundered due to a decline in the price of oil, a burst pipeline, and additional debt from the acquisition, which ultimately led the company to file for bankruptcy. Amidst the company's demise, the firm achieved a settlement fund of \$19 million for shareholders—a significant recovery in light of Venoco's dire financial circumstances. At the final approval hearing, the Honorable Sam Glasscock III, Vice Chancellor, in the Court of Chancery of the State of Delaware, touted the settlement as a "good result for all" and "very fortunate for the class," and noted Robbins LLP as "excellent counsel." Transcript of Proceeding at 19, 22, *In re Venoco, Inc. S'holder Litig.*, C.A. No. 6825-VCG (Del. Ch. Oct. 5, 2016).
- ***In re Fifth Street Finance Corp. Shareholder Derivative Litigation***, Lead Case No. 3:15-cv-01795-RNC (D. Conn. Dec. 13, 2016): Robbins LLP served as lead counsel in shareholder derivative litigation brought on behalf of Fifth Street Finance Corp. to challenge alleged conflicts of interest in Fifth Street's relationship with its investment advisor, FSAM. Plaintiffs alleged that certain Fifth Street and FSAM officers and directors caused Fifth Street to make reckless investments, use bogus accounting, and pay excessive fees to inflate FSAM's perceived value in the lead up to FSAM's initial public offering. The firm's settlement negotiations resulted in advisory fee reductions worth at least \$30 million and comprehensive corporate governance, oversight, and conflicts management enhancements.
- ***In re Community Health Systems, Inc. Shareholder Derivative Litig.***, No. 3:11-cv-00489 (M.D. Tenn. Jan. 20, 2017): Serving as co-lead counsel against the officers and directors of Community Health, Inc. in shareholder derivative litigation alleging that the fiduciaries systematically steered patients into medically unnecessary inpatient admissions when they should have been treated as outpatient, Robbins LLP was instrumental in obtaining what is believed to be the largest shareholder derivative recovery in the Sixth Circuit to date. After five years of contentious litigation and discovery, defendants agreed to settle the case, which included a \$60 million cash payment to Community Health and the implementation of extensive corporate governance reforms, including board modifications to ensure director independence, improved internal disclosure policies to allow for the confidential reporting of suspected violations of healthcare laws, and the establishment of a Trading Compliance Committee to ensure compliance with Community Health's insider stock trading policy, among others.
- ***In re Saba Software, Inc. Stockholder Litig.*** C.A., No. 10697-VCN (Del. Ch. Sept. 26, 2018): Robbins LLP served as lead counsel in this shareholder class action in the Delaware Chancery Court against the officers and directors of Saba Software, Inc. for breaches of fiduciary duties related to the buyout of Saba by Vector Capital Management. Plaintiffs alleged that because the company was facing mounting financial concerns, including delisting by the U.S. Securities and Exchange Commission and a failure to complete its internal review of the accounting treatment of certain international transactions, defendants chose to sell the company in a flawed and self-serving sales process in exchange for inadequate merger consideration of Saba shareholders. After three and a half years of litigation, including extensive discovery, mediation, and a lengthy settlement negotiation process, defendants agreed to pay Saba's

former shareholders \$19.5 million. In approving the settlement, Vice Chancellor Slights called the firm's representation of the class "exemplary" and touted the settlement as a "strong recovery for the class."

- ***In re Twitter, Inc. Shareholder Derivative Litig.*** No. 1:18-cv-00062-VAC-MPT (D. Del. July 27, 2021): The firm served as co-lead counsel on behalf of the federal shareholder plaintiffs in a shareholder derivative action that alleged defendants breached their fiduciary duties to Twitter and its stockholders by making materially false and/or misleading statements about Twitter's user growth and user management prospects and that certain individual defendants profited on their inside information. After extensive litigation, including multiple mediations and months of settlement discussions, Robbins LLP's attorneys were instrumental in obtaining a \$38 million settlement to Twitter and substantial corporate governance reforms, including enhancements to the Disclosure and Audit Committees, the creation of an independent Chief Compliance Officer position, and improved compliance training and insider trading policies.
- ***In Re Workhorse Group Inc. Stockholder Derivative Litigation*** No. A-21-833050-B (NV. Dist. Ct.-Clark Cnty June 22, 2023): Robbins LLP represented the plaintiffs in the Nevada state court derivative action who alleged that defendants made false and misleading statements regarding Workhorse's future business prospects, including its ability to win all, or a significant portion off, the United States Postal Service's multibillion dollar contract to replace its aging fleet of vehicles with electric vehicles, and sales of stock by Workhorse directors and officers while the Company's stock price was allegedly inflated by those false and misleading statements. After extensive negotiations that included the parties to various derivative cases involving Workhorse, counsel reached a settlement that included \$12.5 million to the Company, the creation of a Disclosure Controls Committee and Chief Compliance Officer Position, and numerous other substantial reforms designed to prevent similar future wrongdoing.
- ***In re Altria Group, Inc. Derivative Litigation*** No. 3:20cv772 (DJN) (E.D. VA, Feb 20, 2023): Robbins LLP served as additional counsel to the federal plaintiffs in this coordinated litigation on behalf of Altria Group Inc. wherein plaintiffs alleged that Altria's \$12.8 billion investment in Juul Labs, Inc. undermined the Company's hard-fought reputational progress with regulators and lawmakers after decades of marketing tobacco products and funding misleading research about the harmful effects of smoking. After a yearlong negotiation, Robbins LLP was instrumental in achieving a hard-fought settlement that required multiple mediations, months of continued discussions, informal mediation conferences, and extensive document review of over 35 million pages. When achieved, the settlement contemplated a comprehensive and global resolution of the actions. As a result of the settlement, Altria committed to funding \$117 million over five years, with a minimum spend of \$20 million each year to address policy and governance measures relating to youth prevention and transaction oversight that may include: (i) positive youth development programs; (ii) smoking and vaping cessation treatment; and (iii) point of sale age verification technology.
- ***Yu v. RMG Sponsor, LLC, et al.*** C.A. No. 2021-0932-NAC (Del. Ch. Oct. 18, 2024): Robbins LLP served as co-lead counsel for the class that sued defendants asserting claims for breach of fiduciary duty and unjust enrichment in connection with the merger between RMG Acquisition Corp., a SPAC, and Romeo Systems, Inc., a privately held company purportedly engaged in the design and manufacture of lithium-ion battery modules and packs for commercial electric vehicles. Post-merger, Romeo revealed that it had overstated its revenue projections and understated its backlog projections. The Company was ultimately acquired by Nikola Corporation in a stock-for-stock transaction that valued Romeo at \$144 million (\$0.74 a share). After extensive discovery, the parties reached a settlement that resulted in plaintiff securing a \$11.99 million settlement for the class, nearly 100% of the damages.

- ***In Re GeneDx de-SPAC Litigation*** C.A. No. 2023-0140-PAF (Del. Ch. Dec. 2, 2024): Robbins LLP served as co-lead counsel for the class of CM Life Sciences, Inc. stockholders who were entitled to redeem their stock in connection with the Company's merger with a formerly privately held company, Mount Sinai Genomics, Inc. d/b/a Sema4 Holdings Corp. The stockholders claimed that the defendants breached their fiduciary duties by issuing a misleading proxy that impaired their decision on whether to redeem their CM Life Sciences, Inc. stock when it merged with Legacy Sema4. Post-merger, GeneDx reported less revenue than projected in the Proxy Statement issued in support of the merger, lowered revenue expectations, and announced its exit from one of its core businesses. As a result, GeneDx's share price fell below \$0.50 per share. After extensive and contested discovery, the parties reached an agreement that resulted in a recovery to the class of \$21 million.
- ***Siseles, et al. v. Lutnick, et al.*** C.A. No. 2023-1152-JTL (Del. Ch. Dec. 6, 2024): Robbins LLP served as co-lead counsel for the class who brought claims arising from the business combination between special purpose acquisition company CF Finance Acquisition Corp. II and Legacy View, Inc., which CF II shareholders voted to approve on March 5, 2021. After reviewing corporate documents and records, plaintiffs filed a complaint against View asserting claims for breach of fiduciary duty resulting from defendants' alleged impairment of CF II stockholders' redemption rights in connection with the merger. View filed for bankruptcy relief under Chapter 11 of the Bankruptcy Code on April 2, 2024, and sought to release defendants and plaintiffs from future claims. Notwithstanding, the parties to the bankruptcy action agreed that certain causes of action of this matter would be carved out of the Chapter 11 Plan. Through mediation, the parties agreed to settle for \$12 million.
- ***Walsh, et al. v. Buchholz, et al.***, Case No. 0:19-cv-01856-JWB-DTS (D. Minn. Mar. 12, 2025): Robbins LLP represented a class of unitholders who challenged the fairness of the April 2019 unit-for-unit acquisition of Apollonia, LLC by St. Renatus, LLC. Plaintiffs alleged the acquisition was designed to unlawfully divest Apollonia, LLC unitholders of the Company's valuable assets for grossly inadequate consideration via a flawed sales process. After five years of litigation, including multiple private mediation sessions and a settlement conference, plaintiffs achieved a settlement on the eve of trial of \$11.6 million for the class of former Apollonia unit holders.

## Awards & Recognition

For its achievements, Robbins LLP and our attorneys have received numerous accolades, including:

- Chambers *California Spotlight Guide* (2025)
- Best Law Firm, *U.S. News & World Report* (2017-2024)
- Leading Firm in Merger and Acquisition Litigation, *Legal 500* (2013-2018)
- Top 20 Settlements in California (2017)
- Top 25 Boutique Law Firm in California, *Daily Journal* (2015)
- Litigation Boutiques Hot List, *National Law Journal* (2012)
- Among Top Shareholder Plaintiffs' Firms by ISS's Securities Class Action Services
- Ten attorneys named to *Super Lawyer* lists (2025)
- Top 50 Attorney in San Diego, *Super Lawyers*, George C. Aguilar (2016-2020)
- Top 50 Attorney in San Diego, *Super Lawyers*, Brian J. Robbins (2014, 2016, 2018-2025)
- Best Lawyers in America for Securities Litigation, *Best Lawyers*, Brian J. Robbins (2016-2025)
- Best of the Bar, *San Diego Business Journal*, Brian J. Robbins (2016)
- Best Overall Lawyer in San Diego, *Fine Magazine*, Brian J. Robbins (2016)
- Top Attorney, *The Daily Transcript*, Brian J. Robbins (2015)
- Attorney of the Year, *SD La Raza*, George C. Aguilar (2014)

## Judicial Accolades

Robbins LLP's achievements in the courtroom have been recognized by a number of respected jurists. We feature a selection of commendations below.

- *"The quality of representation by the Derivative Plaintiffs' Counsel was witnessed first hand by this Court through their articulate, high quality, and successful pleadings. Moreover, as shown by their excellent efforts in this case, Derivative Plaintiffs' Counsel are dedicated to vindicating the rights of shareholders ...."*

**Honorable Ed Kinkeade**, Judge of the U.S. District Court for the Northern District of Texas, *In re Heelys, Inc. Derivative Litig.*, No. 3:07-CV-1682-K

- *"I think you've actually set the bar kind of high for future settlements. This looks like an excellent result for the various class members in both the derivative action and the other action.... And it's to the credit of the lawyers that they were able to achieve this result before a lot of discovery and a lot of expenses were undertaken ... And so, I would be quite delighted and satisfied to make the necessary findings that this is an excellent settlement for plaintiffs."*

**Honorable Robert S. Lasnik**, Judge of the U.S. District Court for the Western District of Washington, *In re Cutter & Buck Sec. Litig.*, No. C02-1948L

- Robbins LLP's lawyers proved "competent, experienced, [and] trustworthy."

**Honorable Larry A. Burns**, Judge of the U.S. District Court for the Southern District of California, *In re Sequenom, Inc. Derivative Litig.*, No. 09CV1341-LAB (WMC)

- *"Class counsel is highly experienced in bringing both class actions and derivative claims" and have "a nationwide reputation for handling shareholder derivative litigation, various class actions, and complex litigation.... Throughout the litigation, [class counsel] has shown themselves to be capable and qualified to represent the class."*

**Honorable Darla Williamson**, Judge of the Fourth Judicial District of the State of Idaho, County of Ada, *Carmona v. Bryant*, CV-OC-0601251

- *"The court also notes that the settlement appears to place the shareholders in a much better position than that which existed prior to the beginning of this litigation."*

**Honorable John A. Houston**, Judge of the U.S. District Court for the Southern District of California, *In re Wireless Facilities Inc. Derivative Litig.*, No. 04-CV-1663 JAH (NLS)

- *"I have high regard for ... your firm."*

**Honorable James P. Kleinberg**, Judge of the Superior Court of California, County of Santa Clara, *In re Altera Corp. Derivative Litig.*, No. 1-06-CV-063537

- *"[W]e had ... competent counsel who were able to reach a very handsome settlement for the shareholders who were working here on behalf of the shareholders interests."*

**Honorable Denise de Bellefeuille**, Judge of the Superior Court of California, County of Santa Barbara, *In re Tenet Healthcare Corp. Derivative Litig.*, No. 01098905

- *"Thank you very much for the good work that you all did. And I think that your stockholders will appreciate it, too."*

**Honorable Sophia H. Hall**, Judge of the Circuit Court of Cook County, Illinois, *In re Nicor, Inc. Shareholder Derivative Litig.*, No. 02CH 15499

- "Thank you for your good work on behalf of your clients. I appreciate it."
- **Honorable Thomas Barkdull**, Circuit Judge of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, *Kloss v. Kerker*, No. 50-2010-CA-018594-XXXX-MB
- "I want to tell you what a pleasure it is dealing with talented counsel.... Thank you very much."
- **Honorable John G. Evans**, Judge of the Superior Court for the State of California, Riverside County, *Hess v. Heckmann*, No. INC10010407
- "I think the plaintiffs and their counsel did a good job pressing forward with this action and achieving a good result.... I think that all in all, [\$16.25 million] is a good value, a significant benefit for the company."
- **Honorable J. Travis Lesser**, Vice Chancellor in the Court of Chancery of the State of Delaware, *Toll Bros.*, No. 2:09-cv-00937-CDJ and No. 4140-VCL
- "It seems to me to be an excellent settlement in light of all the circumstances: and "a good result for all." "[P]laintiffs' counsel [got] a result that I think is very fortunate for the class."
- **Honorable Sam Glasscock III**, Vice Chancellor in the Court of Chancery of the State of Delaware, *In re Venoco, Inc. Shareholder Litigation*, C.A. No. 6825-VCG
- "I think y'all have done a great job pulling this thing together. It was complicated, it was drawn out, and a lot of work clearly went into this.... I'll approve this settlement. I appreciate the work you all did on this. I think this is one where – I can't always say this ... there is ... benefit to the shareholders that are above and beyond money, a benefit to the company above and beyond money that changed hands."
- **Honorable Kevin H. Sharp**, U.S. Chief District Judge, U.S. District Court for the Middle District of Tennessee Nashville Division, *In re Community Health Systems, Inc., Shareholder Derivative Litigation*, No. 3:11-cv-00489
- "[T]his recovery is a strong recovery for the class. And, it's one, again, that I think counsel should be commended for achieving.
- **Honorable Joseph R. Slights, III**, Vice Chancellor in the Court of Chancery of the State of Delaware, *In re Saba Software, Inc. Stockholder Litig.*, C.A. No. 10697-VCN

## Partners

### George C. Aguilar

George C. Aguilar is a former federal prosecutor and trial lawyer who has tried more than forty federal criminal trials. Mr. Aguilar concentrates his practice on complex litigation that focuses on shareholder rights and antitrust actions. Mr. Aguilar has litigated on behalf of shareholder clients against fraudulent management and company insiders, securing meaningful corporate governance reforms at companies across the U.S., and on behalf of businesses and consumers challenging anticompetitive behavior. For example, in *Warner v. Lesar*, No. 2011-09567 (Tex. Dist. Ct.-Harris Cnty. Oct. 1, 2012),

Mr. Aguilar led the firm's efforts on behalf of Halliburton Company arising from defendants' mismanagement of risk, controls, and operations that led to the worst oil spill in U.S. history at the Deepwater Horizon offshore drilling rig in the Gulf of Mexico. Navigating the case through the company's internal investigation, and difficult and complex settlement discussions and mediation sessions, Mr. Aguilar secured comprehensive health, safety, and environmental governance reforms. In shareholder derivative litigation on behalf of Maxwell Technologies, Inc., *Loizides v. Schramm*, No. 37-2010-00097953-CU-BT-CTL (Cal. Super. Ct.-San Diego Cnty. Apr. 12, 2012), Mr. Aguilar helped secure a settlement in which the company adopted corporate governance and compliance measures addressing its violations of the Foreign Corrupt Practices Act (FCPA) after being investigated by federal agencies for bribery and subcontracting kickbacks. Of particular note is the creation of a new FCPA and Anti-Corruption Compliance department led by a Chief Compliance Officer to provide for greater effectiveness of Maxwell's board of directors in responding to FCPA compliance issues worldwide. In shareholder litigation involving Brocade Communications Systems, *In re Brocade Communications Systems, Inc., Derivative Litigation*, No. 1:05CV041683 (Cal. Super. Ct.-Santa Clara Cnty. Jan. 28, 2010), the firm prosecuted the shareholder action involving a criminal options backdating scheme at Brocade until the company formed a Special Litigation Committee to consider the plaintiffs' claims. A key player in the prosecution of the action, Mr. Aguilar successfully presented facts and law to the Special Litigation Committee on behalf of the firm's shareholder clients. Brocade ultimately retained the firm as co-counsel to prosecute its claims against Brocade's officers and directors.

Mr. Aguilar also led the firm's efforts as part of a consortium of plaintiff firms in a high profile antitrust class action suit, *Dahl v. Bain Capital Partners*, No. 1:07-cv-12388 (WGY) (D. Mass. Mar. 17, 2015), against several private equity firms. The case involved allegations of conspiracy among defendants to rig bids, restrict the supply of private equity financing, fix transaction prices, and divide up the market for private equity services for leveraged buyouts. Robbins LLP played a prominent role in this litigation, bearing the responsibility for building the case against a principal defendant, one of the largest private equity firms in the world. In doing so, Mr. Aguilar conducted several depositions of some of the key private equity principals during the initial discovery phase of the case. The defendants settled for more than \$590 million.

Before joining Robbins LLP, Mr. Aguilar spent 17 years as a federal prosecutor with the U.S. Attorney's Office in San Diego. During his tenure, Mr. Aguilar served as chief for the Terrorism, Violent Crimes, and General Prosecutions Section; deputy chief for the General Crimes Section; trial lawyer for the Financial Institution Fraud Task Force and the Major Frauds Sections; and as a supervising ethics officer. He led grand jury investigations and indicted and tried complex white collar criminal cases involving corporate, securities, bank, investor, tax, foreign currency and bankruptcy fraud, bank bribery, and money laundering, among others. He authored 35 appellate briefs and argued more than a dozen cases on appeal before the U.S. Court of Appeals for the Ninth Circuit. For his work, Mr. Aguilar received several awards of recognition from the U.S. Department of Justice and federal agencies, including the prestigious Director's Award of the Executive Office for U.S. Attorneys. Prior to joining the U.S. Attorney's Office, Mr. Aguilar worked on complex securities defense litigation at Morrison & Foerster LLP's San Francisco office.

Mr. Aguilar is a recognized leader in the legal and civic communities. He writes and speaks on topics related to shareholder litigation and corporate governance. He was recently appointed as a member of the U.S. District Court's Magistrate Judge's Merit Selection Panel, and is an active member of Association of Business Trial Lawyers, Public Justice Foundation, San Diego La Raza Lawyers Association, and San Diego County Bar Association. He has served in top leadership positions at La Raza Lawyers Association of California, San Diego La Raza Lawyers Association, the State Bar of California, and the City of San Diego. Mr. Aguilar was honored as a Super Lawyers Top 50 attorney in San Diego (2016-2020) and has been named a Super Lawyer for 14 consecutive years (2012-2025). He is also the recipient of the Attorney of the Year Award from San Diego La Raza Lawyers Association (2014) and has received the San Diego Mediation Center's Peacemaker Award for his

community service work.

Mr. Aguilar received his law degree in 1986 from the University of California, Berkeley School of Law. While in law school, he served on the Moot Court Board and was managing editor of the *La Raza Law Journal*. Mr. Aguilar graduated from the University of Southern California in 1983 with a Bachelor of Arts in both Political Science and Journalism. He is licensed to practice law in the State of California and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, the Eastern District of Wisconsin, and the District of Colorado, as well as the U.S. Courts of Appeals for the Second, Ninth, and Tenth Circuits, and the U.S. Supreme Court.

### **Gregory E. Del Gaizo**

Gregory E. Del Gaizo focuses his practice on shareholder rights litigation. As the head of Robbins LLP's New Matters Group, he initiates and oversees pre-litigation investigations and analysis of new cases for the firm. Mr. Del Gaizo has prosecuted shareholder litigation that has recouped over one hundred million dollars and secured extensive corporate governance reforms and other pro-investor measures at companies in which his clients invest.

Mr. Del Gaizo's successes on behalf of clients include leading the discovery process for Robbins LLP in litigation on behalf of luxury homebuilder Toll Brothers, Inc., which resulted in a \$16.25 million settlement, one of the largest *Brophy* monetary recoveries ever. *Martinez v. Toll*, No. 2:09-cv-00937-CDJ (E.D. Pa. Mar. 27, 2013). He was also a member of litigation teams in *Staehr v. Walter*, No. 02-CVG-11-0639 (Ohio Ct. C.P.-Del. Cnty. Dec. 17, 2007), which secured a payment of \$70 million to Cardinal Health, and *In re KB Home S'holder Derivative Litig.*, No. 2:06-CV-05148-FMC (CTx) (C.D. Cal. Feb. 9, 2009), which obtained \$30 million in cash benefits and substantial corporate governance reforms for the home builder.

Under Mr. Del Gaizo's guidance, the firm has achieved numerous successes on behalf of clients who were investors in special purpose acquisition companies. In Sema4 Holdings Corp. (n/k/a GeneDx Holdings Corp.), Mr. Del Gaizo, obtained a \$21 million recovery for the class of shareholders who were misled in connection with the business combination of CM Life Sciences, Inc. and Sema4 Holdings Corp. *In Re GeneDx de-SPAC Litigation*, C.A. No. 2023-0140-PAF (Del. Ch. Dec. 2, 2024). As co-lead counsel in View, Inc., Mr. Del Gaizo obtained a \$12 million settlement for shareholders who were misled in connection with the business combination of CF Finance Acquisition Corp. II and Legacy View, Inc. *Siseles, et al. v. Lutnick, et al.*, C.A. No. 2023-1152-JTL (Del. Ch. Dec. 6, 2024). Serving as co-lead counsel in Romero Power, Inc., Mr. Del Gaizo helped secure \$11.99 million for the class of shareholders who were misled in connection with the business combination of RMG Acquisition Corp. and Romeo Systems, Inc. *Yu v. RMG Sponsor, LLC, et al.*, C.A. No. 2021-0932-NAC (Del. Ch. Oct. 18, 2024). Mr. Del Gaizo served as co-lead counsel for the class of shareholders who were misled in connection with the business combination of Fortress Value Acquisition Corp., II and Wilco Holding, Inc., and secured \$6.450 million to settle the shareholder derivative claims and \$6 million to settle the *Multiplan* claims. *In re ATI Physical Therapy, Inc. S'Holder Deriv. Litig.*, No. 1-21-cv-06415 (N.D. Ill Sept. 24, 2024).

Mr. Del Gaizo has authored several articles on securities litigation, including *State Law Insider Trading Claims See New Light*, The Recorder, July 1, 2011; *Directors and Officers Can't Hide in Del.*, Securities Law360, Jan. 14, 2011; *Control of Forum in Derivative Actions*, The Recorder, Dec. 10, 2010; and *Clearing the Path for Double Derivative Suits*, The Recorder, Nov. 1, 2010. He also speaks to audiences about shareholder rights. Mr. Del Gaizo has been acknowledged for his hard work and dedication by Super Lawyers (2015-2016, 2022-2025), Best Lawyers for Litigation – Securities (2020-2025), and as a Recommended Attorney in M&A Litigation by Legal 500 (2016).

Mr. Del Gaizo obtained his Juris Doctor degree in 2006 from the University of San Diego School of Law. While in law school, Mr. Del Gaizo served as a research assistant to Frank Partnoy, director of

the Center for Corporate and Securities Law at the University of San Diego, and as an intern at Kim & Chang, the largest law firm in Korea. Mr. Del Gaizo attended Providence College and, while there, interned for the New York City Law Department. He graduated *cum laude* in 2003 with a Bachelor of Arts degree in Political Science. Mr. Del Gaizo is licensed to practice law in the State of California and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California and the District of Colorado.

### **Michael J. Nicoud**

Michael J. Nicoud represents individuals and institutional investors in complex litigation aimed at improving corporate governance practices and recovering lost assets for shareholders of publicly traded companies, and businesses and consumers challenging anticompetitive behavior. He has litigated cases involving antitrust violations, accounting fraud, insider trading, false and misleading statements, and other types of fiduciary and corporate misconduct at public and private companies. In addition to his experience at Robbins LLP, Mr. Nicoud has worked at several boutique business litigation firms in San Diego, where he worked on trials, arbitrations, and mediations in cases before state and federal courts. For his work, Mr. Nicoud's peers have recognized him as a Super Lawyer Rising Star for ten consecutive years.

One of Mr. Nicoud's most important contributions to the firm's success was his role in the litigation against the officers and directors of Community Health Systems, Inc. *In re Community Health Systems, Inc. Shareholder Derivative Litig.*, No. 3:11-cv-00489 (M.D. Tenn. Jan. 20, 2017). Mr. Nicoud deposed multiple hospital CEOs, a physician whistleblower, and other high-level executives. The case ultimately settled for a massive \$60 million dollar payment to the company, along with extensive corporate governance reforms.

Mr. Nicoud received his Juris Doctor degree from the University of Colorado Law School. While in law school, Mr. Nicoud served as an intern at the San Diego Public Defender's Office, as an editor of the *Colorado Journal of International Environmental Law and Policy*, as president of the Student Trial Lawyers Association, and was on the Moot Court Board. As a member of the mock trial team, he earned a best advocate award at the national level, and received the Melanie Ruth Vogl Memorial Scholarship for Outstanding Trial Advocacy. Mr. Nicoud received his Bachelor of Science in Environmental Science, with honors, from the University of Calgary in Alberta, Canada. Mr. Nicoud is licensed to practice law in California and has been admitted to the U.S. District Court for the Northern and Southern Districts of California, the U.S. District Court for the District of Colorado, the U.S. District Court for the Central District of Illinois, and the U.S. District Court of Appeals for the Second and Ninth Circuit.

### **Stephen J. Oddo**

Stephen J. Oddo represents the firm's clients in complex litigation. Of particular note, Mr. Oddo spent more than a decade representing individual and institutional shareholders in corporate merger and acquisition class actions. In so doing, he has secured tens of millions of dollars of additional consideration for shareholders whose investments have been adversely impacted by corporate transactions. Mr. Oddo has also achieved disclosure of material information to shareholders so they are informed on the transaction at the time of the vote. His litigation efforts have helped preserve the integrity of the merger process in companies across the country and helped maximize value to shareholders. For his excellence in practice, Mr. Oddo was recognized as a Super Lawyer (2016-2025), by Best Lawyers for Securities Litigation (2020-2025), and as a Recommended Attorney in M&A Litigation by Legal 500 (2016, 2018).

Mr. Oddo's contributions to the firm are extensive. In *Walsh, et al. v. Buchholz, et al.*, Case No. 0:19-cv-01856-JWB-DTS (D. Minn. Mar. 12, 2025), Mr. Oddo represented a class of unitholders who challenged the fairness of the April 2019 unit-for-unit acquisition of Apollonia, LLC by St. Renatus,

LLC., and achieved a \$11.6 million settlement for the class on the eve of trial. Serving as lead counsel on behalf of a plaintiff who alleged certain Microchip Technology, Inc. officers and directors issued materially false and misleading statements regarding the operations and financial performance of Microsemi Corporation, which Microchip acquired for \$10.15 billion, Mr. Oddo obtained a \$4 million payment for Microchip from defendants' insurer and significant governance benefits for the Company. *Reid v. Sanghi*, Case No. CV2019-002389 (Sup. Ct. AZ June 14, 2023). After three years of litigation, Mr. Oddo secured an \$8 million settlement for LRR Energy, L.P. unitholders who owned stock when Vanguard Natural Resources, LC acquired LRR Energy for an unfair price and as the result of a misleading proxy. *Hurwitz v. Mullins, et al.*, C.A., No. 15-711 (Del. Ch. Dec. 19, 2018). Serving as lead counsel in *In re Saba Software, Inc. Stockholder Litig.* C.A. No. 10698-VCN, Mr. Oddo secured a \$19.5 million settlement on behalf of former Saba Software shareholders in a class action alleging the company had engaged in a flawed and self-serving sales process in exchange for inadequate merger consideration for Saba Software shareholders. The court acknowledged that the settlement was "exemplary" and a "strong recovery for the class." In *In re Venoco, Inc. S'holder Litig.*, C.A. No. 6825-VCG (Del. Ch. Oct. 5, 2016), Mr. Oddo, serving as co-lead counsel to the public shareholders of the energy company, achieved a \$19 million settlement fund for shareholders – a significant recovery in light of Venoco's dire financial circumstances. Mr. Oddo earned praise from the judge for securing a "good result for all" and noted Robbins LLP as "excellent counsel." Mr. Oddo secured a \$5.9 million settlement fund as lead counsel in *In re Star Scientific, Inc. Securities Litig.*, No. 3:13-CV-00183-JAG (E.D. VA July 6, 2015), a securities fraud class action alleging that defendants made materially false and misleading statements regarding one of the company's clinical trials. In *In re PETCO Animal Supplies, Inc. S'holder Litig.*, Lead Case No. GIC 869399 (Cal. Super. Ct.-San Diego Cnty. Mar. 26, 2010), Mr. Oddo helped secure a \$16 million settlement fund for the shareholder class after three years of contentious litigation. At his former firm, Mr. Oddo represented shareholders of eMachines, Inc., in *In re eMachines, Inc. Merger Litigation*, No. 01-CC-00156 (Cal. Super. Ct.-Orange Cnty. July 25, 2007), in challenging the efforts of the company's founder to take the company private. Mr. Oddo's litigation efforts helped secure a \$24 million common fund for shareholders. In the merger and acquisition-related securities class action *In re Electronic Data Systems Class Action Litigation*, Master File No. 366-01078-2008 (Tex. Dist. Ct.-Collin Cnty. Dec. 23, 2008), Mr. Oddo served as lead counsel and challenged the acquisition of Electronic Data Systems Corporation by Hewlett-Packard Company. Mr. Oddo negotiated a pre-closing settlement that secured for Electronic Data Systems shareholders a \$25 million dividend and the disclosure of previously omitted material information concerning the transaction that allowed for an informed shareholder vote.

Prior to joining Robbins LLP, Mr. Oddo was a partner at the firm now known as Robbins Geller Rudman & Dowd LLP, where Mr. Oddo was part of a team at the forefront of litigating shareholder claims challenging unfair business combinations. Before entering the legal profession, Mr. Oddo served as Press Secretary to U.S. Representative Robert T. Matsui (D-Cal).

Mr. Oddo received his Juris Doctor in 1994 from the University of San Diego School of Law. During law school, he interned for the Honorable Eugene Lynch, U.S. District Judge in the Northern District of California. Mr. Oddo earned his Master of Science in Journalism from Northwestern University, Medill School of Journalism in 1987, and his Bachelor of Arts from Santa Clara University in 1986. Mr. Oddo is licensed to practice law in the State of California and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, the District of Colorado, the Northern District of Illinois, the Southern District of Texas, the Eastern District of Michigan, and the Eastern District of Wisconsin.

### **Brian J. Robbins**

Brian J. Robbins is a co-founder and the managing partner of Robbins LLP and oversees the management of the firm and its practice areas. He has committed his entire career to representing shareholders, employees, consumers, and businesses in complex litigation matters. Focusing on shareholder rights litigation, Mr. Robbins has served as lead or co-lead counsel in many complex,

multi-party actions across the country on behalf of U.S. and international clients. He has secured hundreds of millions of dollars in monetary recoveries and comprehensive corporate governance enhancements for shareholders and the public corporations in which they have invested.

In *Titan, Inc. Securities Litigation*, No. 04-CV-0676-LAB (NLS) (S.D. Cal. Dec. 20, 2005), Mr. Robbins helped obtain a \$61.5 million recovery, one of the largest securities fraud class action recoveries in San Diego's history, and in *In re Tenet Healthcare Corporation Derivative Litigation*, No. 01098905 (Cal. Super Ct.-Santa Barbara Cty. May 5, 2006), *aff'd*, No. B192252 (Cal. App. Sept. 20, 2007), he helped recover \$51.5 million for Tenet and sweeping corporate governance enhancements and remedial measures. In *In re OM Group, Inc. Derivative Litigation*, No. 1:03-CV-0020 (N.D. Ohio Nov. 10, 2005), Mr. Robbins secured \$29 million for OM Group, the removal of the company's long term chief executive officer, the addition of two shareholder-nominated directors, and other corporate governance reforms, and in *In re Wireless Facilities, Inc. Derivative Litigation*, No. 04-CV-1663-JAH-(NLS) (S.D. Cal. Mar. 30, 2010), Mr. Robbins was instrumental in obtaining the forfeiture of stock and/or stock options back to the company by certain officers, restricted voting rights for certain former officers and directors, monetary reimbursement to the company, and corporate governance reforms, such as the addition of two independent directors to the board and an annual review of the chairman's performance. Mr. Robbins was also instrumental in achieving an extraordinary settlement on behalf of his shareholder client in *Kloss v. Kerker*, No. 50-2010-CA-018594-XXXX-MB (Fla. Cir. Ct.-Palm Beach Cty. May 27, 2011), which virtually saved vitamin and supplement retailer Vitacost.com, Inc. from bankruptcy and helped to preserve the equity interests of its shareholders.

Mr. Robbins is recognized nationally as a leader in the plaintiffs' bar. He has authored articles in several national publications and speaks to audiences as an authority on securities litigation, corporate governance, and shareholder rights topics. For his leadership and achievements, he has been named a Super Lawyer (2007–2025), Best of the Bar by *San Diego Business Journal* (2014–2016), and a Top 50 Attorney in San Diego by Super Lawyers (2014, 2016, 2018-2025). He was also recognized by Best Lawyers in America for Securities Litigation (2016-2025), and a Top Attorney by *The Daily Transcript* (2015).

Mr. Robbins earned his Master of Laws (LL.M.) in Securities and Financial Regulation from the Georgetown University Law Center in 1998 and received his Juris Doctor from Vanderbilt Law School in 1997. While at Vanderbilt, Mr. Robbins served as research assistant for two corporate and securities law professors: Professor Donald C. Langevoort, former Special Counsel for the U.S. Securities and Exchange Commission in the Office of the General Counsel, and the late Professor Larry D. Soderquist, one of the most respected professors in the field of corporate and securities law. He earned his Bachelor of Arts in Sociology from the University of California, Berkeley in 1993 after only two and a half years of study. Mr. Robbins is licensed to practice law in the State of California and the State of Connecticut, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, the District of Colorado, the District of Connecticut, and the Western District of Texas, as well as the U.S. Courts of Appeals for the Second, Fifth, Sixth, Ninth, and Tenth Circuits.

### **Shane P. Sanders**

Shane P. Sanders represents individual and institutional investors in shareholder derivative actions, securities fraud class actions, and mergers and acquisitions actions. Mr. Sanders has litigated a broad range of matters, including cases addressing stock option backdating, the subprime mortgage crisis, board entrenchment and elections, executive compensation, corporate takeovers, violations of the Foreign Corrupt Practices Act and myriad forms of fraud, including violations of federal securities laws related to insider trading and companies' initial public offerings. He has played a major role in securing monetary recoveries and innovative governance reforms designed to improve the independence, rigor, and transparency of corporate governance at dozens of publicly traded companies.

Mr. Sanders served as part of the Robbins LLP that represented plaintiffs who had concerns that Altria Group Inc.'s \$12.8 billion investment in Juul Labs, Inc. undermined Altria's hard-fought reputational progress after decades of marketing tobacco products and funding misleading research about the harmful effects of smoking. Our hard-fought settlement requires Altria to commit to funding \$117 million over five years, with a minimum spend of \$20 million each year to address policy and governance measures relating to youth prevention and transaction oversight. *In re Altria Group, Inc. Derivative Litigation*, No: 3:20cv772(DJN) (E.D. VA, Feb. 20, 2023). Mr. Sanders helped secure a \$38 million settlement to Twitter and substantial corporate governance reforms, including enhancements to the Disclosure and Audit Committees, the creation of an independent Chief Compliance Officer position, and improved compliance training and insider trading policies in *In re Twitter, Inc. Shareholder Derivative Litig.* No. 1:18-cv-00062-VAC-MPT (D. Del. July 27, 2021). Mr. Sanders served as co-lead counsel on behalf of the federal shareholder plaintiffs on allegations that defendants breached their fiduciary duties to the Company and its stockholders by making materially false and/or misleading statements about Twitter's user growth and user management prospects and that certain individual defendants profited on their inside information. Mr. Sanders achieved this result after extensive litigation, including multiple mediations and months of settlement discussions. Mr. Sanders helped litigate shareholder derivative litigation on behalf of Fifth Street Finance Corp., *In re Fifth Street Finance Corp. Shareholder Derivative Litigation*, Lead Case No. 3:15-cv-01795-RNC (D. Conn. Dec. 13, 2016), based on allegations that the company's officers and directors caused Fifth Street to pursue reckless asset growth strategies, employ aggressive accounting and financial reporting practices, and pay excessive fees to its investment advisor to inflate the investment advisor's perceived value in advance of its initial public offering. Mr. Sanders was instrumental in the discovery efforts and settlement negotiations and mediations, and helped secure an outstanding settlement for Fifth Street and its stockholders, including advisory fee reductions worth at least \$30 million to Fifth Street, and comprehensive corporate governance, oversight, and conflicts management enhancements to substantially improve the compliance control environment at Fifth Street and reduce the likelihood of a recurrence of similar wrongdoing in the future. Mr. Sanders was the lead associate in *In re Koss Corporation Shareholder Derivative Litigation*, No. 10-CV-2422 (Wis. Cir. Ct.-Milwaukee Cnty. Sept. 22, 2011), a shareholder derivative action that involved the theft of tens of millions of dollars from the company by one of its executive officers. In that case, Mr. Sanders and his fellow counsel defeated defendants' motion to dismiss based on demand futility and negotiated a settlement that provided for the implementation of extensive corporate governance changes, including the separation of the positions of chairman of the board of directors, chief executive officer, and chief financial officer; the appointment of a lead independent director; enhanced accounting and audit functions; and the implementation of a plan requiring the reimbursement of excess incentive-based compensation in the event of a financial restatement. In *In re Fossil, Inc. Derivative Litigation*, No. 3:06-cv-01672-F (N.D. Tex. July 6, 2011), Mr. Sanders supported a team in multi-year derivative litigation that achieved a settlement securing \$8.6 million payment for Fossil from individual defendants and industry leading corporate governance reform, such as declassifying the election of directors to the board. Mr. Sanders was the lead associate in *Paschetto v. Shaich*, No. 08-SL-CC00805 (Mo. Cir. Ct.-St. Louis Cnty. April 8, 2011), a shareholder derivative action on behalf of Panera Bread Company in which Mr. Sanders helped the firm defeat defendants' motion to dismiss based on demand futility and negotiate a settlement that provided substantial benefits to the company and its shareholders. In *In re Vitesse Semiconductor Corporation*, No. Civ240483 (Cal. Sup. Ct.-Ventura Cnty. Oct. 17, 2008), Mr. Sanders was part of a team that achieved the return of more than \$13 million from company insiders and valuable corporate governance improvements. In *In re Ligand Pharmaceuticals, Inc. Derivative Litigation*, No. GIC834255 (Cal. Super. Ct.-San Diego Cnty. Oct. 12, 2006), Mr. Sanders supported a team that persuaded the court that demand on the board of directors was futile and subsequently defeated all of defendants' other motions, and helped obtain a \$14 million payment to the corporation and significant corporate governance improvements for the company.

For his achievements, Mr. Sanders was recognized by his peers as a Super Lawyer (2021-2025) and Super Lawyer Rising Star (2015), and by Best Lawyers in America for Securities Litigation (2020-2025).

Mr. Sanders received his Juris Doctor degree in 2004 from the University of San Diego School of Law. While in law school, Mr. Sanders served as a law clerk at the San Diego County Public Defender's Office, and he was a member of the Association of Trial Lawyers of America and USD's Sports and Entertainment Law Society. He also participated in USD's Thorsnes Closing Argument Competition and Senior Honors Moot Court Competition, receiving among the highest marks for his written briefs. Mr. Sanders graduated from the University of California, Santa Barbara in 2001 with a Bachelor of Arts degree in Sociology. He is licensed to practice law in the State of California and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California and the District of Colorado, as well as the U.S. Courts of Appeals for the First, Second, Third, and Ninth Circuits.

### **Kevin A. Seely**

Kevin A. Seely devotes his practice to representing shareholders, whistleblowers, and consumers in complex derivative, *qui tam*, and class actions throughout the U.S. A tenacious trial lawyer with more than 25 years of litigation experience in both the public and private sectors and in criminal and civil fraud prosecutions, Mr. Seely has successfully prosecuted top corporate executives, high-ranking government officials, and corporate entities for a variety of wrongdoing, including theft of government services, bribery, embezzlement, and health care fraud.

Mr. Seely has achieved significant results for his clients. In *In re Community Health Systems, Inc. Shareholder Derivative Litig.*, No. 3:11-cv-00489 (M.D. Tenn. Jan. 20, 2017), serving as plaintiff's co-lead counsel, Mr. Seely and his team were instrumental in obtaining a \$60 million cash payment to Community Health, which is believed to be the largest shareholder derivative recovery in the Sixth Circuit to date, and extensive corporate governance reforms. The firm brought *In re Alphatec Holdings, Inc., Derivative Shareholder Litigation*, No. 37-2010-00058586-CU-BT-NC (Cal. Super. Ct.—San Diego Cnty. Aug. 21, 2014) on behalf of Alphatec Holdings, Inc. to hold the company's fiduciaries responsible for their role in depleting shareholder equity through their self-serving actions. Mr. Seely's efforts resulted in the resignation of several defendant directors and senior executives, and Alphatec's implementation of reforms providing for director independence, greater review and oversight of related party transactions, and enhanced audit committee responsibilities regarding disclosure of company financial information. In shareholder derivative litigation on behalf of Computer Sciences Corporation, *Bainto v. Laphen*, No. A-12-661695-B (Nev. Dist. Ct.—Clark Cnty. Nov. 6, 2013), arising out of senior management and board of directors' breaches of fiduciary duties, Mr. Seely obtained extensive governance enhancements, including personnel changes, implementation of a Global Ethics & Compliance Program, and finance and administration training to strengthen accounting procedures and processes. Mr. Seely's settlement in *In re SciClone Pharmaceuticals, Inc. Shareholder Derivative Litigation*, No. CIV 499030 (Cal. Super. Ct.—San Mateo Cnty. Dec. 13, 2011), was praised by the Honorable Marie S. Weaver as "the most detailed and extensive corporate governance changes I've seen in a derivative settlement," and established consequences to employees for violations of the FCPA and other criminal misconduct. The settlement also created the position of compliance coordinator and a compliance program and code, instituted a due diligence process pertaining to the hiring of all foreign agents and distributors and demanded employee compliance training, established policies for disclosure and clawback of incentive-based compensation for officers in the event of a material restatement of the company's financial statements, and modified the company's whistleblower programs. In *In re ArthroCare Corporation Derivative Litigation*, No. D-1-GN-08-003484 (W.D. Tex.); *Weil v. Baker*, No. 08-CA-00787-SS (W.D. Tex Dec. 8, 2011), Mr. Seely obtained a substantial monetary recovery for ArthroCare Corporation, as well as the implementation of enhanced internal controls and reforms designed to curtail future corporate misconduct.

Prior to joining Robbins LLP, Mr. Seely served as an Assistant U.S. Attorney ("AUSA") in the U.S. District Court for the Southern District of California where he prosecuted civil fraud claims under the federal False Claims Act. He also served as an AUSA for the Districts of Guam and Northern

Mariana Islands, focusing on white collar crime and public corruption matters. In actions filed on behalf of various U.S. federal agencies, Mr. Seely led the investigation, litigation, and negotiation of numerous settlements resulting in the return of millions of dollars to the victims of complex financial, accounting, and contract fraud schemes. Before becoming a federal prosecutor, Mr. Seely was a partner at a prominent commercial litigation law firm with offices in Guam and the Commonwealth of the Northern Mariana Islands.

Mr. Seely has authored articles in leading legal publications on shareholder and consumer rights topics and was named a Super Lawyer for the past ten years (2015–2025).

Mr. Seely received his Juris Doctor in 1992 from the Northwestern School of Law of Lewis & Clark College. While in law school, he was an associate editor of the *Lewis & Clark Law Review*. Mr. Seely graduated *cum laude* from the University of California, Irvine in 1988. He is licensed to practice law in the State of California, the territory of Guam, and the Commonwealth of the Northern Mariana Islands. Mr. Seely has been admitted to the U.S. District Courts for the Northern, Central, Southern, and Eastern Districts of California, the District of Colorado, the Northern District of Florida, the District of Guam, the Northern and Central Districts of Illinois, the Eastern District of Michigan, the District of the Northern Mariana Islands, and the Western District of Texas, as well as the U.S. District Court of Appeals for the Ninth Circuit.

### **Craig W. Smith**

Craig C. Smith represents shareholders in derivative and securities fraud class actions. His clients include shareholders invested in banking and finance, biotechnology, defense, education, information technology, leisure, consumer goods, and pharmaceutical industries. Mr. Smith also serves as the firm's general counsel.

Mr. Smith has led the firm's prosecution of a number of successful actions brought directly on behalf of shareholders and derivatively for the benefit of public corporations. In *In re Fifth Street Corp. Shareholder Derivative Litigation*, Lead Case No. 3:15-cv-01795-RNC (D. Conn. Dec. 13, 2016), Mr. Smith served as lead counsel in shareholder derivative litigation on behalf of Fifth Street to challenge alleged conflicts of interest in Fifth Street's relationship with its investment advisor after certain Fifth Street officers and directors caused the company to make reckless investments and pay excessive fees to inflate the investment advisor's perceived value in advance of its initial public offering. Mr. Smith led the settlement negotiations that resulted in advisory fee reductions worth at least \$30 million and comprehensive corporate governance, oversight, and conflicts management enhancements. Mr. Smith and his team played a leading role in a shareholder derivative suit brought on behalf of Avon Products, Inc., *Pritika v. Jung*, No. 651479/2015 (N.Y. Sup. Ct. May 1, 2015), against certain officers and directors who plaintiffs allege turned a blind eye to bribes made in violation of the FCPA to secure the first foreign direct sales license in China. Mr. Smith led the negotiations that resulted in Avon's agreement to adopt a comprehensive corporate governance and compliance reform program. The *Wall Street Journal* praised the settlement as "a victory for shareholders looking for accountability from the business." Mr. Smith also played a leading role in shareholder derivative litigation brought on behalf of Career Education Corporation against officers and directors who plaintiffs alleged allowed its for-profit schools to falsify job placement and student loan repayment rates, fall short of accreditation standards, and jeopardize access to the Title IV federal student loan funds that account for the lion's share of its revenues. Mr. Smith and his co-counsel in *Alex v. McCullough*, No. 1:12-cv-08834 (N.D. Ill. Dec. 5, 2012); *Bangari v. Lesnik*, No. 1:11-CH-41973 (Ill. Cir. Ct.-Cook Cty. Dec. 11, 2011); and *Cook v. McCullough*, No. 1:11-cv-09119 (N.D. Ill. Dec. 22, 2011), negotiated a global settlement that secured a \$20 million recovery for Career Education, as well as comprehensive board and management-level governance and oversight reforms.

Mr. Smith has played an important role in improving the quality of corporate governance and oversight at pharmaceutical and bio-technology companies. In *In re Forest Labs., Inc., Derivative Litigation*, No.

1:05-cv-03489 (RJH) (S.D.N.Y. Feb. 7, 2012), Mr. Smith secured comprehensive regulatory oversight and compliance reforms to address the fallout resulting from Forest Lab's marketing of Celexa and Lexapro for off-label treatment of pediatric depression — violations that cost Forest Labs more than \$313 million in fines and sanctions. The reforms included the creation of Chief of Compliance and Chief Medical Officer positions, board oversight and management-level oversight of sales and promotions compliance, comprehensive policies and procedures governing sales and promotional activities, and compliance monitoring programs, including field sampling of interactions with physicians and rigorous reporting procedures and controls. Mr. Smith spearheaded the litigation and settlements in shareholder derivative actions brought on behalf of biotechnology companies, MannKind Corporation, *In re MannKind Corp. Derivative Litigation*, No. 1:11-cv-05003-GAF-SSx (C.D. Ca. June 13, 2011), and CTI BioPharma (f.k.a. Cell Therapeutics), *In re Cell Therapeutics, Inc., Derivative Litigation*, No. 2:10-cv-00564-MJP (W.D. Wash.-Seattle Apr. 1, 2010), that led to their adoption of state-of-the-art clinical trial and disclosure oversight and internal controls programs, following costly mismanagement of clinical trials and publication of misleading disclosures.

Mr. Smith played a leading role in securing best-in-class corporate governance for Motorola, Inc. in shareholder derivative litigation arising from Motorola's publication of misleading statements about prospects for its next-generation cell phones and related revenue projections. *In re Motorola, Inc. Derivative Litigation*, No. 07-CH-23297 (Ill. Cir. Ct.-Cook Cty. Nov. 29, 2012). Mr. Smith was instrumental in drafting and negotiating a comprehensive overhaul of board- and executive-level supervision of financial disclosures, as well as broader corporate governance reforms designed to align director and executive compensation with long-term shareholder interests and to eliminate incentives for executives to manipulate results or withhold negative information from shareholders. As lead counsel in *Monday v. Meyer*, No. 1:10-cv-01838-DCN (N.D. Ohio Aug. 17, 2012), Mr. Smith challenged the KeyCorp Board of Director's handling of an unlawful tax avoidance scheme, which exposed the bank to billions of dollars in back taxes and fines by the IRS. While the case was on appeal, Mr. Smith negotiated corporate governance reforms that strengthened KeyCorp's internal controls and Board oversight over financial transactions and legal/regulatory risk, capital planning, dividends, and stock repurchases. Mr. Smith played a key role in persuading Brocade Communication Systems, Inc.'s Board Special Litigation Committee to prosecute stock option backdating claims against former officers and directors of Brocade. *In re Brocade Communication Systems, Inc., Derivative Litigation*, No. 1:05-cv-041683 (Cal. Super. Ct.-Santa Clara Cty. Jan. 28, 2010). As part of a four-lawyer team, Mr. Smith convinced the Committee to retain the firm as co-counsel to pursue the claims. Brocade recovered tens of millions of dollars and extinguished its obligation to fund the criminal defense of its former CEO.

Mr. Smith was recognized by his peers as a San Diego Super Lawyer for ten consecutive years (2015–2025).

Before joining Robbins LLP, Mr. Smith served for four years as division and regional counsel for UBS Financial Services, Inc., a global financial services company, where he advised management regarding litigation, regulatory, and employment matters arising in the company's Northern Pacific region. Mr. Smith spent the first decade of his career at O'Melveny & Myers LLP, where he defended Fortune 500 companies and professional services firms in securities fraud class actions, shareholder derivative litigation, SEC investigations and enforcement actions, and professional malpractice and business tort matters. Mr. Smith served for five years on O'Melveny & Myers' firm-wide Pro Bono Committee.

Mr. Smith earned his Juris Doctor in 1992 from Yale Law School. At Yale, he externed for the U.S. Attorney's Office in New Haven, Connecticut. Mr. Smith graduated with highest honors in Political Science and highest distinction in Letters and Science from the University of California, Berkeley in 1988, and was initiated into Phi Beta Kappa as a junior. He is licensed to practice law in the State of California and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, as well as the U.S. Courts of Appeals for the First, Sixth, Eighth, and Ninth

Circuits.

## Associates

### **Aaron M. Dumas, Jr.**

Aaron M. Dumas, Jr. is an associate of the firm. Mr. Dumas has represented individuals and institutional shareholders in a variety of complex matters. He has experience conducting extensive legal research and document review, drafting motions, settlement offers, and litigation and inspection demands. Mr. Dumas also helps analyze the firm's new matters, including on-boarding the firm's clients, maintaining relationships, and ensuring outstanding client support and engagement throughout the litigation process.

In addition to his experience at Robbins LLP, Mr. Dumas worked for another well-known shareholder rights law firm, was a solo practitioner serving a broad range of clients in criminal, civil, and family law matters, and worked for a consulting firm drafting contracts related to real estate investments and assisting in the acquisition of federal government contracts.

Mr. Dumas received his Juris Doctor in 2006 from the University of San Diego School of Law. While in law school, Mr. Dumas served as a research assistant for Professor Joseph J. Darby and a summer associate for Sony Electronics Limited. He participated in moot court and studied abroad in Florence, Italy. Mr. Dumas received his Bachelor of Science in 2001 in Zoology from the University of Texas. He is licensed to practice in the State of California.

### **Kevin H. Kim**

Kevin H. Kim represents shareholders in a variety of complex matters, including shareholder derivative litigation and securities class actions. Prior to attending law school, Mr. Kim worked in corporate finance, focusing on financial planning, analysis, and business strategy within the entertainment industry.

Mr. Kim received his Juris Doctor from The University of Iowa College of Law. While in law school, Mr. Kim worked as a research assistant for Professor Derek T. Miller as well as the Career Services Office, and served as a law clerk for a personal injury law firm. Mr. Kim received his Masters of Business Administration from The University of Southern California and his Bachelor of the Arts in Sociology and Criminology from the University of California, Irvine. Mr. Kim is licensed in the State of California.

### **Grant M. Klasna**

Grant M. Klasna is an associate of the firm. Mr. Klasna represents individual and institutional shareholders in a variety of complex matters. He has experience conducting legal research and drafting compliance documents in the areas of corporate, tax, and securities law.

Prior to joining Robbins LLP, Mr. Klasna worked at a boutique law firm, where he practiced corporate, tax, accounting, and estate law. In this role, he drafted and negotiated corporate contracts, assisted clients in structuring business entities, and prepared securities law compliance reports.

Mr. Klasna his received his Juris Doctor from University of San Diego School of Law. While in law school, Mr. Klasna interned at the Office of the United States Trustee, Department of Justice and served as a corporate counsel intern for a medical billing company. Mr. Klasna also participated on the Client Advocacy Negotiations Team and was a member of the Business Law and Sports and Entertainment Law Societies. Mr. Klasna received his Bachelor of Sciences in Business Administration from San Diego State University, where he graduated with honors. While in college, Mr. Klasna

participated in the Pre-Law Society and was the VP of Operations for the Sports Business Initiative. Mr. Klasna is licensed in the State of California.

### **Lauren G. Levi**

Lauren G. Levi is an associate of the firm where she represents shareholders in a variety of complex matters. Her experience includes conducting extensive legal research, document review, complaint drafting, and client communications. Ms. Levi also serves as the manager of the firm's business development department, engaging with clients on new matters and overseeing the firm's marketing efforts.

Prior to joining Robbins LLP, Ms. Levi served almost ten years as a research attorney for the Los Angeles County Superior Court where she conducted extensive research, analyzed law and motion ranging from simple discovery disputes to contested motions for summary judgment, and prepared bench memoranda reflecting the tentative rulings of the civil judges. In addition, Ms. Levi supervised and mentored attorneys new to the role and student externs.

Ms. Levi received her Juris Doctor from Pepperdine University School of Law. While in law school, Ms. Levi clerked for the Honorable Ronald S.W. Lew, U.S. District Court Judge for the Central District of California, served as a judicial extern for the Los Angeles Superior Court, and volunteered with the Legal Aid Foundation's Domestic Violence Project preparing restraining orders for domestic violence victims. Ms. Levi received her Bachelor of Arts in History from California State University, Northridge. Ms. Levi is licensed in the State of California.

### **Maria L. Mansur**

Ms. Mansur is an associate of the firm representing shareholders in a variety of complex shareholder matters. Ms. Mansur has experience conducting complex legal research and drafting legal memoranda.

Prior to joining Robbins LLP, Ms. Mansur worked as an ADR Deputy Counsel for the International Chamber of Commerce where she gained extensive mediation experience. In her role, she analyzed complex, disputed legal issues, and facilitated mediations. Ms. Mansur also worked as a legal clerk for JAMS Mediation, Arbitration and ADR Services and as an associate in a general litigation law firm in Brazil.

Ms. Mansur received her Bachelor of Laws from Pontifical Catholic University of Sao Paulo and is currently pursuing a Master of Law in Dispute Resolution from Pepperdine University Caruso School of Law. Ms. Mansur is licensed in Brazil, Paris, and the State of California.

### **Ryan M. Messina**

Mr. Messina represents investors harmed by corporate malfeasance through shareholder derivative litigation and securities fraud class actions. Prior to joining Robbins LLP, Mr. Messina worked for a national shareholder rights law firm where he was involved in all facets of shareholder litigation. He also has experience in real property law.

Mr. Messina received his Juris Doctor degree and Masters of Business Administration from West Virginia University College of Law and College of Business and Economics. While in law school, Mr. Messina interned at the Supreme Court of New York Commercial Division for the Honorable Justice Oing and a private law firm, served as a clinician through the Land Use and Sustainable Development Law Clinic, and worked pro bono as a volunteer income tax assistant. Mr. Messina received his Bachelor of Arts, cum laude, from West Virginia University. Mr. Messina is licensed in the State of New York.

### **Jacob W. Ogbozo**

Jacob W. Ogbozo protects shareholder rights through complex litigation and represents business and consumers in challenging anticompetitive conduct. Mr. Ogbozo has extensive experience in large-scale class action discovery. He is a subject matter expert on multiple e-discovery platforms and his experience includes investigating and helping to develop complex theories of liability, preparing depositions and other discovery, interfacing with expert witnesses and consultants, and supervising the firm's antitrust staff attorneys.

In addition to his experience at Robbins LLP, Mr. Ogbozo worked for several non-profit agencies focusing on environmental and landlord tenant law and several law firms focusing on environmental and securities law. Mr. Ogbozo also worked as an Administrative Hearing Officer in which he conducted administrative appeal hearings on behalf of several local municipalities.

Mr. Ogbozo received his Juris Doctor from the University of San Diego School of Law where he received multiple scholarships in recognition of his academic achievements. While in law school, Mr. Ogbozo interned and clerked for the Honorable Paul A. Magnuson, U.S. District Judge for the District of Minnesota; the City of San Diego, Neighborhood Code Compliance; and the San Diego County Counsel. Mr. Ogbozo received his Bachelor of Arts from the University of Minnesota where he triple majored in Political Science, International Studies and Spanish Language. Mr. Ogbozo is licensed in the State of California.

### **Mario D. Valdovinos**

Mario D. Valdovinos focuses his practice on protecting the rights of shareholders in complex matters involving shareholder derivative and securities fraud class actions. Prior to joining Robbins LLP as an associate, Mr. Valdovinos served as a summer law clerk for the firm. For his work, Mr. Valdovinos has been recognized by his peers as a Super Lawyers Rising Star (2024 – 2025).

Mr. Valdovinos received his Juris Doctor degree from Michigan State University College of Law. While in law school, Mr. Valdovinos participated in moot court, where he was recognized as regional champion and for writing the best brief in the Giles Sutherland Rich Patent Competition. Mr. Valdovinos received his Bachelor of Science in Business Administration from California State University, Long Beach. Mr. Valdovinos is licensed in the State of California.

### **Of Counsel**

#### **Ashley R. Rifkin**

Ashley R. Rifkin has over 15 years' experience representing clients in complex litigation, including shareholder rights, consumer class actions, and antitrust matters. She has helped achieve significant recoveries for shareholders in connection with securities class actions involving corporate mergers and acquisitions. For example, in *Fuerstenberg v. Mid-State Bancshares*, No. CV 060976 (Cal. Super. Ct.-San Luis Obispo County Oct. 4, 2007), Ms. Rifkin was part of the litigation team that obtained waivers of the "confidentiality" and "no-shop" provisions in the sale agreement, which enabled other suitors to participate effectively in the bidding process. In *In re HCA Inc. Derivative Litigation*, No. 3:05-CV-0968 (M.D. Tenn. Dec. 20, 2007), Ms. Rifkin was part of the litigation team that forced the disclosure of material information to shareholders before they voted on the proposed buyout by a private equity group and founding member.

Ms. Rifkin has litigated shareholder derivative actions on behalf of corporations and shareholders seeking to redress various forms of corporate misconduct including backdating and springloading

practices, false and misleading public disclosures, improper Medicare and Medicaid billing practices, claims of off-label marketing, violations of the FCPA, and other state and federal law violations. She has helped achieve considerable monetary recoveries and corporate governance reforms for clients and companies through these actions. In *In re Community Health Systems Inc. Shareholder Derivative Litig.*, No. 3:11-cv-00489 (M.D. Tenn. Jan. 20, 2017), Ms. Rifkin was part of the team that brought shareholder derivative litigation against the officers and directors of Community Health Systems, Inc. alleging that the fiduciaries systematically steered patients into medically unnecessary inpatient admissions when they should have been treated as outpatient. Ms. Rifkin oversaw the extensive document review process and other aspects of discovery. Ms. Rifkin's team obtained a \$60 million cash payment to Community Health and the implementation of extensive corporate governance reforms. In shareholder derivative litigation arising from Motorola Inc.'s publication of allegedly misleading statements regarding its next-generation cell phones and revenue projections, *In re Motorola, Inc. Derivative Litig.*, No. 07CH23297 (Ill. Cir. Ct.-Cook Cnty. Nov. 29, 2012), Ms. Rifkin helped negotiate comprehensive governance reforms that overhauled the company's oversight of financial disclosures and achieved structural reforms that better aligned director and executive compensation with long-term shareholder interests. Ms. Rifkin served alongside a team of plaintiff firms in antitrust litigation involving allegations of conspiracy among private equity firms to rig bids, restrict the supply of private equity financing, fix transaction prices, and divide up the market for private equity services for leveraged buyouts. *Dahl v. Bain Capital Partners*, No. 1:07-cv-12388 (WGY) (D. Mass. Mar. 17, 2015). The defendants settled for more than \$590 million.

Ms. Rifkin was named a Super Lawyer (2022-2025), a Super Lawyer Rising Star (2015-2016, 2019-2020), and one of the "Best Young Attorneys in San Diego County" by *The Daily Transcript* (2011).

Ms. Rifkin received her Juris Doctor in 2006 from Thomas Jefferson School of Law. She graduated *summa cum laude* second in her class, was on the Dean's List, and received the Outstanding Scholastic Achievement Award for the 2004-2005 school year. While in law school, Ms. Rifkin served as a judicial extern for the Honorable David A. Workman in the Los Angeles Superior Court. She also was chief articles editor and notes editor of the *Thomas Jefferson Law Review* and vice president of operations of the Tax Society. Ms. Rifkin graduated from the University of California, Santa Barbara in 2002 with a Bachelor of Arts degree in Psychology. She is licensed to practice law in the State of California and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, the District of Colorado, the Eastern District of Michigan, and the U.S. Courts of Appeals for the Sixth, Seventh, Ninth, and Tenth Circuits.

## **Corporate Research Department**

The Corporate Research Department is staffed by college graduates with degrees and/or work experience in accounting, economics, finance, health sciences, legal studies, political science, sociology, and statistics. They are trained in the use of public and proprietary databases and search engines, including Bloomberg, Capital IQ, Lexis, and Morningstar. Members of the Corporate Research Department analyze financial statements, various SEC filings, analyst reports, and other public data to prepare complex financial analyses and calculations in support of case filings.

# EXHIBIT 4

## **PLAN OF ADMINISTRATION AND DISTRIBUTION**

*B & R Supermarket, Inc., et al. v. Visa, Inc., et al., No. 1:17-cv-02738-MKB-JAM (E.D.N.Y.)*

### **I. INTRODUCTION**

This Plan of Administration and Distribution ("Plan") shall govern the administration and distribution of the "Net Settlement Fund," defined as the amount of money that will be available for distribution by the Claims Administrator (as defined herein) to qualified Class members (defined below). This amount is equal to the Gross Settlement Amount (as defined herein), plus any further amounts obtained through settlement or further litigation with the remaining Defendants (defined below), along with any interest earned thereon, after all attorneys' fees, litigation expenses, costs of notice and claims administration, class representative service awards, taxes and tax preparation costs, and other costs or payments as approved by the Court are deducted from the Gross Settlement Amount.

The Net Settlement Fund will be allocated and distributed by the Claims Administrator, according to this Plan, to the eligible members of the certified class: merchants who incurred one or more unreimbursed chargeback(s) between October 1, 2015 through and including September 30, 2017 (the "Class Period"), pursuant to the Fraud Liability Shift for the assessment of Mastercard International Inc. ("Mastercard"), Visa Inc. and Visa U.S.A. Inc. ("Visa"), Discover Financial Services ("Discover") and/or American Express Company ("Amex") (together, "Defendants") payment card chargebacks ("FLS Chargebacks"), but excluding members of the judiciary and government entities or agencies (collectively, the "Class").

### **II. STATUS OF THE LITIGATION AND SETTLEMENT SO FAR**

Settlements of the action have been reached on behalf of the Class with Defendants Discover (the "Discover Settlement") and Amex (the "Amex Settlement") (together, the "Settlement"). Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC,

Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket) (collectively, "Plaintiffs") are still pursuing claims against the remaining defendants—Visa and Mastercard. The Settlement, if approved by the Court, will result in a \$32.2 million dollar "Gross Settlement Amount" as a common fund (with Amex contributing \$20.0 million and Discover contributing \$12.2 million). Upon final approval of the Settlement, no part of this \$32.2 million dollar Gross Settlement Amount will revert to Defendants. Additional litigation of this action could increase the size of the Gross Settlement Amount. If Plaintiffs favorably settle the claims on behalf of the Class against the other Defendants, this would be expected to add to the Gross Settlement Amount. Similarly, the Gross Settlement Amount could be increased if Plaintiffs proceed to trial against any remaining Defendants and obtain a favorable verdict.

### **III. CLAIMS ADMINISTRATOR**

Subject to Court approval, Class Counsel<sup>1</sup> have determined it is in the best interests of the Class to continue using Epiq Class Action and Claims Solutions, Inc. ("Epiq") as the "Claims Administrator." With the assistance of the Claims Administrator, Class Counsel will further develop this Distribution Plan and will present an updated version to the Court for approval prior to sending out any claims forms or making any distributions.

### **IV. FUNDS TO BE DISTRIBUTED TO CLASS MEMBERS**

#### **A. Timing of Distribution**

Given the ongoing litigation of the action, the size of the class, and the anticipated complexity of administering the Plan, Class Counsel do not intend to distribute the Net Settlement Fund until the claims against the remaining Defendants are resolved. This will help to ensure the efficient administration of any distribution(s) to the Class. Accordingly, Class Counsel plan to

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<sup>1</sup> Robbins LLP was appointed "Class Counsel" by the Court on May 6, 2021. Dkt. No. 762.

make distribution(s) after all of the following have occurred: (1) the Court has granted final approval of any settlements with Defendants, including the Discover and Amex Settlements; (2) Plaintiffs have otherwise finally resolved claims against any remaining Defendants; and (3) any actual or potential appeals are exhausted, such that the resolution of all of Plaintiffs' claims, against all Defendants, is final.

**B. *Pro Rata Plan of Distribution of Net Settlement Fund***

Class Counsel intend to distribute the Net Settlement Fund on a *pro rata* basis to eligible members of the Class who timely submit a valid claim. Payments will be determined on a *pro rata* basis based on the dollar amount of unreimbursed FLS Chargebacks incurred by eligible Class members, as compared to the total dollar amount of unreimbursed FLS Chargebacks incurred by all eligible Class members that submit valid claims.

Given that the Class is constituted of a broad range of merchants, including a portion that incurred relatively small dollar amounts of FLS Chargebacks and others that incurred much larger amounts of FLS Chargebacks, Plaintiffs are proposing a minimum payment amount. The purpose of this minimum payment amount is twofold: (1) to incentivize the filing of claims by merchants with lower estimated damages, ensuring they receive meaningful compensation for participating in the claims process; and (2) to ensure payments to eligible Class members are economically feasible and efficient from a claims administration standpoint.

Prior to the mailing of Claim Forms (as defined herein), Class Counsel will consult with the Claims Administrator to develop a proposed minimum payment threshold ("Minimum Payment Amount"). The Claims Administrator will analyze FLS Chargeback information provided by Defendants, Net Settlement Fund projections (based on various reasonable scenarios) and historical claim rates from other relevant class action settlements in order to develop a reasonable range of Minimum Payment Amounts along with a supporting rationale for such recommendations. Class Counsel will consider this information and then seek approval for a

Minimum Payment Amount from the Court. Claim Form packets sent to known Class members will specify the Minimum Payment Amount such that a Class member may consider this information as part of its decision as to whether to prepare and submit a claim.

A hypothetical claimant whose *pro rata* distribution amount would have been greater than the Minimum Payment Amount would continue to receive a larger amount based on an adjusted *pro rata* distribution, which would be adjusted to account for the effect of the Minimum Payment Amount.

Insofar as the Net Settlement Fund includes residual funds after distribution or distributions as set forth herein that cannot be economically distributed to eligible claimants (because of the costs of distribution as compared to the amount remaining), Class Counsel shall make an application to the Court to approve the amount, and recipient(s) for such sums, to be used to make *cy pres* payments for the benefit of members of the Class.

### **C. Conditions and Process for Claims and Distribution**

Class Counsel and the Claims Administrator will utilize data produced by Defendants and any productions from non-defendant acquiring banks, as well as from claimants themselves, for the purposes of mailing Claim Form packets to likely Class members, determining valid claims, and the appropriate amounts to distribute *pro rata* to each eligible claimant. Once the claims process begins, the following conditions must be met in order for a member of the Class to receive a distribution from the Net Settlement Fund: (1) the entity is a member of the Class; (2) the entity has timely submitted a claim, based on a timeline to be determined before the claims process begins; and (3) the Claim Form must be complete including all required elements. All claims will be subject to audit, and larger claims may require verification. Class Counsel will work with the Claims Administrator to process the data available to them to attempt to minimize the burdens on claimants with respect to submitting proof of a valid claim, as discussed further herein.

The Claims Administrator will attempt to link the chargeback data provided to Class Counsel by Defendants in this litigation with the other data productions available to Class Counsel, including the productions made by Defendants to facilitate notice to the Class, and the productions from third-party acquiring banks. The Claims Administrator in conferral with Class Counsel intend to pre-populate Claims Forms, especially for Class members with the largest dollar amounts of chargebacks, to the extent administratively feasible. The degree to which the Claims Administrator will be able to accomplish this pre-population will depend on a range of factors, including the availability of supporting data, the number of discrete FLS Chargeback transactions, the number of identified Class members submitting valid claims, the difficulty in linking a specific FLS Chargeback transaction to the related downstream entity or entities that incurred the chargeback, and the proportion of Class members who make valid claims that consist of relatively high dollar amounts of incurred FLS Chargebacks. Any Class member receiving a pre-populated claim amount on its Claim Form will have an opportunity as part of the claim submission process to accept or challenge the pre-populated amount.

As part of the Claim Form package sent via postal mail and/or email (to the extent a facially valid scrubbed email address is available), the Claims Administrator will provide claimants with credentials they can use to quickly log into the Case Website ([www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com)) to view their FLS Chargeback amounts and file a claim. Pre-populated Claim Forms may also contain a QR code a claimant can scan to immediately log into the Case Website to view the information without entering the credentials manually.

To the extent a claimant's FLS Chargeback data is not located in Defendants' data productions, the Claims Administrator will consider information provided by the claimant in order to value their claim. Such information to substantiate a claim is expected in one of two types (as described below) or some combination thereof: (1) Research Request; and/or (2) FLS Chargeback

Documentation. The Claims Administrator will work with Class Counsel to determine whether other forms of information or documentation can be used to substantiate a claim and will update this Plan with any other available forms of proof.

For a Research Request, a Class member may provide information to allow the Claims Administrator to analyze datasets received from Defendants and/or other sources to seek to identify additional FLS Chargebacks incurred by the Class member. Information provided by a Class member in connection with a Research Request may include, among other things: (1) location address(es); (2) payment processor name(s); or (3) merchant identifier numbers or other unique identifying numbers that can be used to match a given claimant with Defendants' chargeback data sets. Once a Research Request has been processed by the Claims Administrator, the Claims Administrator will notify the Class member as to the outcome of this research. Prior to the claim submission deadline, if the claimant is still dissatisfied with the outcome of the Claims Administrator's research, the Class member may submit a further Research Request provided they are able to include significant new information with this additional Research Request that would assist the Claims Administrator with its further research efforts.

Either in lieu of a Research Request or as a supplement, a Class member may provide documentation substantiating FLS Chargebacks it incurred during the Class Period. Such documentation could include information about an FLS Chargeback it received from its acquirer or payment processor such as a chargeback notice, a daily settlement advice or a monthly account statement. Such documentation is expected to indicate that the chargeback is related to fraudulent charges (rather than a return of merchandise, services cancellation, error correction and the like).

It is expected that there could be instances in which a discrete FLS Chargeback transaction is claimed by more than one entity involved in the underlying transaction. Such contention could occur, for example, between a franchisor and franchisee or between a payment facilitator and end

merchant. In such instances of a conflict, the Claims Administrator will notify the affected claimants and provide a process for the respective claimants to indicate why they should receive the settlement payment amount related to the contested FLS Chargeback. In lieu of documentation to the contrary, it is generally expected that the end merchant that provided goods or services in exchange for a payment is the entity that incurred the FLS Chargeback.

The Claims Administrator and Class Counsel reserve the right to establish other methods via which reasonable estimates of the FLS Chargebacks incurred by a respective claimant may be made in order to value a claim. To the extent such other methods are identified, claimants will be informed of the documentation and data that must be produced to utilize these methods, if any. It is expected that insights obtained via the processing of Research Requests and FLS Chargeback Documentation submissions received during the claims intake and review stages may assist Class Counsel and the Claims Administrator in assessing the viability of approaches to make reasonable estimates of FLS Chargebacks for such outstanding claims.

As further detailed herein, prior to issuing payment, the Claims Administrator will notify each claimant of the total dollar amount of the FLS Chargebacks the Claims Administrator has associated with their claim, and provide the opportunity to challenge this amount. Excluded from this notification will be claimants that previously accepted an FLS Chargeback amount that was provided by the Claims Administrator or indicated that they accept the Minimum Payment Amount. There will also be a process by which any Class member can seek a review of their claim ineligibility. Members of the Class should maintain any records of incurred FLS chargebacks during the Class Period.

Information to be supplied by claimants may consist of some or all of the following, for the period commencing October 1, 2015 through September 30, 2017, to the extent known: (1) the Claimant's legal name, doing-business-as (DBA) name and federal taxpayer identification number

(TIN); (2) if different, the merchant's legal name, DBA name and TIN; (3) FLS Chargebacks incurred; (4) the amounts of any reimbursements of any of those FLS chargebacks; (5) location address(es) during the Class Period; (6) payment processor(s) and acquirers used during the Class Period; (7) merchant identifier numbers (MIDs) for the acquirers, payment processors and Defendant networks for which a claimant accepted payment during the Class Period; (8) other unique identifiers; (9) information sufficient to identify any franchise relationship, if any; and (10) contact information and preferred method of contact. The Case Website will be configured to allow the submission of all required claim information electronically.

The Claims Administrator may require claimants to provide supporting documentation and/or additional information as appropriate in connection with: (1) a challenge to a pre-populated claim estimate; (2) a request to aggregate claims (e.g. consolidation of claims for multiple TINs associated with a single entity); (3) a claim submitted by a third-party; (4) a disputed claim (e.g., sale of business, dissolution or bankruptcy); or (5) an audit.

It will be the responsibility of each claimant to provide the Claims Administrator with any change in its postal and/or email address and there will be a facility on the Case Website for doing so.

#### **D. Claim Form**

The Claims Administrator will disseminate a claim form ("Claim Form") to known members of the Class as soon as practicable after all of the following have occurred: (1) the Court has granted final approval of any settlements with Defendants, including the Amex and Discover Settlements; (2) Plaintiffs have otherwise finally resolved claims against any remaining Defendants; and (3) any actual or potential appeals are exhausted, such that the resolution of all of Plaintiffs' claims, against all Defendants, is final. As part of the Claim Form, the claimant will be provided the option to choose to accept either the pre-populated FLS Chargeback amount calculated by the Claims Administrator (if available) or the Minimum Payment Amount as listed

on the Claim Form. Claimants with a pre-populated form may also contest the pre-populated amount on the Claim Form, as noted above.

If the Claims Administrator has mailed a settlement notice to a likely Class member, a Claim Form packet will be sent to the merchant automatically. Prior to the dissemination of Claim Forms, the Claims Administrator will also establish functionality on the Case Website for unknown potential Class members to provide their contact information in order to be sent a Claim Form packet following the commencement of the claim submission period.

## **V. THE CLAIMS PROCESS**

### **A. Timing of Claim Form Submissions**

When the claims process begins, the following criteria will apply. To be considered valid, all Claim Forms must be submitted to the Claims Administrator, via the Case Website or addressed in accordance with the instructions on the Claim Form, by or before the deadline specified in the Claim Form unless such deadline is extended by order of the Court. If sent by mail, a Claim Form shall be deemed submitted when posted, provided that the envelope: (1) shows that first-class postage was affixed or prepaid; and (2) bears a postmark or postage meter with a date no later than the deadline. If sent by private or commercial carrier (e.g., Federal Express, UPS, etc.), a Claim Form shall be deemed submitted on the shipping date reflected on the shipping label. If sent electronically, a Claim Form shall be deemed submitted when the "Submit" button has been clicked on the Case Website and a Claim Confirmation Number has been provided to the Claimant.

### **B. Third-Party Filings**

It is anticipated that third-parties, including claim filing companies, law firms, accounting firms and purchasers of bankruptcy assets, will solicit and file claims in lieu of Class members. The Claims Administrator, along with Class Counsel, will develop disclosures that must be provided by third-parties in communicating with potential clients and in contracting with their clients, as well as criteria that must be met with regard to sufficient proof of authorization

documentation prior to the claims process (i.e. full name, TIN, title, disclosure language, etc.). Such third-parties will be required to adhere to the explicit criteria in their contracts with their clients. Insufficient documentation may result in the third-party filer being unable to represent a Class member and file a claim.

To assist third-party filers with efficient filing methods, the Case Website is expected to be configured to allow a bulk submission process whereby an authorized third-party filer can submit claims on behalf of multiple Class members in a single submission.

### **C. Claim Review and Analysis**

All Claim Forms shall be subject to anti-fraud procedures and random and/or selective audits. The Claims Administrator shall be responsible for developing an appropriate plan to audit Claims Forms (an "Audit Plan"). The Claims Administrator shall provide its Audit Plan to Class Counsel before beginning any audits.

In addition to an Audit Plan, the Claims Administrator will implement a robust conflict resolution process to ensure that the appropriate Class member, or their verified representative, is able to easily and efficiently file a claim when more than one party attempts to submit a claim for a single Class member.

The Case Website will also include a method by which merchants can report unauthorized activity and claims attempted or made on their behalf.

### **D. Challenges to the Claims Administrator's Calculations**

Members of the Class that file claims will be entitled to challenge decisions by the Claims Administrator regarding the amount or denial of any claim. However, if a claim is validated and the claimant has previously accepted either the pre-populated FLS Chargeback amount provided by the Claims Administrator or the Minimum Payment Amount, the claimant may not be afforded a subsequent opportunity to challenge their claim.

Claimants may challenge the Claims Administrator's determination of unreimbursed FLS Chargebacks associated with their claim and may appeal the Claims Administrator's determination of such challenge. Claimants whose claims are denied, or who disagree with the final calculation of their claims, may challenge such denials or final calculations in writing, together with supporting documentation, mailed or emailed to the Claims Administrator within thirty days after receipt of the notice of the denial or final calculation of the claim. Upon review of the claimant's challenge and supporting documentation, the Claims Administrator will make a determination whether the claim should be denied, approved or adjusted, and will notify the claimant of its determination, together with information about how the claimant can appeal such determination to Class Counsel for a *de novo* review.

## **VI. NOTICE AND CLAIMS ADMINISTRATION WEBSITE**

The website [fraudliabilityshiftlitigation.com](http://fraudliabilityshiftlitigation.com), which has been operational since June 28, 2022, will be updated to reflect information concerning the Settlement and to, *inter alia*: (1) permit persons to read and/or download the Notice of Class Action Settlement, the operative complaint, the settlement agreements for the Discover Settlement and the Amex Settlement, certain Court orders or decisions, Class Counsel's names, address(es), and contact information, and other pertinent documents or information agreed to by the parties or ordered by the Court; (2) facilitate a registration process for Class members to be sent a Claim Form packet once the claims submission period commences; (3) facilitate the answering of FAQs regarding the Settlement, the status of the litigation, this Plan, and/or to provide any updates agreed upon by the parties; and (4) functionality for claimants to submit a Claim Form electronically. The Case Website will continue to be available in English and Spanish.

## **VII. TELEPHONE SUPPORT**

The Claims Administrator has set up an automated IVR telephone system that claimants can reach through a toll-free number to, *inter alia*, obtain information and request documents

related to the claims process. This system has been operational since June 28, 2022. The IVR system shall be updated to permit callers to hear options in English, Spanish and potentially other languages, and shall offer callers who choose a non-English option certain case-related documents in that requested language. In addition, the IVR telephone system will include updated recorded information stating that Discover and Amex have each entered into settlement agreements with Plaintiffs, that these parties are seeking Court approval of the Settlement, and that further details will be available in the future.

To assist Class members, the Claims Administrator will continue to provide trained staff to respond to questions by telephone during normal business hours and by email.

### **VIII. MODIFICATION**

Class Counsel may apply to the Court to make material modifications to the Plan on notice to members of the Class and Defendants. Class Counsel reserve the right to make non-material modifications to the Plan, consistent with the goal of efficient, effective, and timely distribution of the Net Settlement Fund, without notice to the Class or further approval from the Court.

# EXHIBIT 5

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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

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**DECLARATION OF CAMERON R. AZARI, ESQ. REGARDING SETTLEMENT  
NOTICE PLAN AND DISTRIBUTION PLAN**

I, Cameron R. Azari, Esq., hereby declare and state as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.
2. I am a nationally recognized expert in the field of legal notice and have served as an expert in hundreds of federal and state cases involving class action notice plans.
3. I am a Senior Vice President of Epiq Class Action & Claims Solutions, Inc. (“Epiq”) and the Managing Director of Epiq Legal Noticing (aka Hilsoft Notifications), a business unit of Epiq that specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans.
4. I previously executed my *Declaration of Cameron R. Azari, Esq. Regarding Notice Plan*, (“Class Certification Notice Plan Declaration”) on May 16, 2022, (ECF 774-5), which described the Class Certification Notice Plan, detailed Hilsoft’s class action notice experience, and attached Hilsoft’s *curriculum vitae*. I also provided my educational and professional experience relating to class actions and my ability to render opinions on overall adequacy of notice programs. Subsequently, I signed my *Declaration of Cameron R. Azari, Esq. on Implementation*

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AND DISTRIBUTION PLAN**

*and Adequacy of Notice Plan*, (“Class Certification Notice Plan Implementation Declaration”) on January 19, 2023, which described the successful implementation of the Class Certification Notice Plan and provided notice administration statistics to document compliance with the Court’s order regarding notice. The Class Certification Notice Plan Implementation Declaration is included as **Attachment 1**.

5. In addition to designing and implementing the Class Certification Notice Plan, I have served as a notice expert and have been recognized and appointed by courts to design and provide notice in many significant cases, including:

a) *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720 (E.D.N.Y.). Second Circuit affirmed. *See Fikes Wholesale, Inc. v. Visa U.S.A., Inc.* 62 F.4th 704 (2d Cir. 2023). The case involved a \$5.5 billion settlement reached by Visa and MasterCard. An intensive initial notice program included more than 19.8 million direct mail notices sent to potential class members, together with insertions in over 1,500 newspapers, consumer magazines, national business publications, trade and specialty publications, with notices in multiple languages, and a digital notice campaign (delivering more than 770 million adult impressions). Sponsored search listings and a settlement website in eight languages expanded the notice program. For the subsequent settlement reached by Visa and MasterCard, an extensive notice program was implemented, which included over 16.3 million direct mail notices to class members together with more than 354 print publication insertions and digital notices (delivering more than 689 million adult impressions).

b) *In re Juul Labs, Inc. Marketing, Sales Practices, and Products Liability Litigation* 19-md-02913 (N.D. Cal.), involved two settlements totaling \$300 million for JUUL Labs, Inc. and Altria, which alleged consumers were misled about JUUL products’ addictiveness and safety, causing them to pay more, and that JUUL products were unlawfully marketed to minors. Two companion notice programs were implemented with more than 10.7 million email notices and nearly 500,000 postcard notices sent to potential class members and comprehensive media efforts

(over 936 million impressions delivered). The notice programs each reached approximately 80% of the class nationwide.

c) *In Re: Zoom Video Communications, Inc. Privacy Litigation*, 3:20-cv-02155 (N.D. Cal.), involved an extensive notice plan for a \$85 million privacy settlement involving Zoom, the most popular videoconferencing platform. Notice was sent to more than 158 million class members by email or mail, and millions of reminder notices were sent to stimulate claim filings. The individual notice efforts reached approximately 91% of the class. A supplemental media campaign provided notice via regional newspaper notice, nationally distributed digital and social media notice (delivering more than 280 million impressions), sponsored search, an informational release, and a settlement website.

d) *In re Takata Airbag Products Liability Litigation*, MDL No. 2599, 1:15-md-02599 (S.D. Fla.), involved \$1.91 billion in settlements with BMW, Mazda, Subaru, Toyota, Honda, Nissan, Ford, and Volkswagen regarding Takata airbags. The notice programs included individual mailed notice to more than 61.8 million potential class members and extensive nationwide media via consumer publications, U.S. Territory newspapers, radio, digital notices, mobile digital notices, and behaviorally targeted digital media. Combined, the notice programs reached more than 95% of adults aged 18+ in the U.S. who owned or leased a subject vehicle, with a frequency of 4.0 times each.

e) *In Re: Capital One Consumer Data Security Breach Litigation*, MDL No. 2915, 1:19-md-02915 (E.D. Va.), involved an extensive notice program for a \$190 million data breach settlement. Notice was sent to more than 93.6 million settlement class members by email or mail. The individual notice efforts reached approximately 96% of the identified settlement class members and were enhanced by a supplemental media plan that included digital and social media notices (delivering more than 123.4 million impressions), sponsored search, and a settlement website.

f) *In re U.S. Office of Personnel Management Data Security Breach Litigation* MDL No. 2664, 15-cv-01394 (D.D.C.), involved a \$63 million settlement for compromised personal information of then-current and former federal government employees and contractors, and certain

DECLARATION OF CAMERON R. AZARI, ESQ. REGARDING NOTICE PLAN AND  
DISTRIBUTION PLAN

applicants for federal employment. An extensive nationwide media notice campaign was implemented using magazines, digital and social media notices (delivering more than 758 million impressions), traditional and satellite radio, and other forms of media. The media notice reached at least 85% of the class. In addition, more than 3.5 million email notices and/or postcard notices were sent to identified class members. The notice program was supplemented with outreach to unions and associations, sponsored search listings, an informational release, and a settlement website.

g) *In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010, MDL No. 2179 (E.D. La.),* involved landmark settlement notice programs to distinct “Economic and Property Damages” and “Medical Benefits” settlement classes for BP’s \$7.8 billion settlement of claims related to the Deepwater Horizon oil spill. Notice efforts included more than 7,900 television spots, 5,200 radio spots, and 5,400 print insertions and reached over 95% of Gulf Coast residents.

6. Courts have recognized our testimony as to which method of notification is appropriate for a given case, and I have provided testimony on numerous occasions on whether a certain method of notice represents the best notice practicable under the circumstances. Numerous court opinions and comments regarding my testimony, and the adequacy of our notice efforts, are included in the Epiq Legal Noticing *curriculum vitae* included as **Attachment 2**.

7. In forming expert opinions, my staff and I draw from our in-depth class action case experience, as well as our educational and related work experiences. I am an active member of the Oregon State Bar, having received my Bachelor of Science from Willamette University and my Juris Doctor from Northwestern School of Law at Lewis and Clark College. I have served as the Director of Legal Notice for Epiq since 2008 and have overseen the detailed planning of virtually all our court-approved notice programs during that time. Overall, I have more than 24 years of experience in the design and implementation of legal notification and claims administration programs, having been personally involved in well over one hundred successful notice programs.

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8. The facts in this declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Epiq and Epiq Legal Noticing (hereinafter “Epiq”).

### **OVERVIEW**

9. This declaration describes the proposed Settlement Notice Plan (“Notice Plan”) and Notices (the “Notice” or “Notices”) for *B & R Supermarket, Inc., et al. v. Visa, Inc., et al.*, Case No. 1:17:cv-02738-MKB-JAM, pending in the United States District Court for the Eastern District of New York, for Settling Defendants Discover Financial Services, (“Discover”) and American Express Company (“Amex”). Epiq designed this Notice Plan based on our extensive prior experience and research into the notice issues particular to the Settlements and our prior experience designing and implementing the Class Certification Notice Plan of this Action. We have analyzed and proposed the best notice practicable under the circumstances to provide notice to the Class Members.

### **DATA PRIVACY AND SECURITY**

10. Epiq has procedures in place to protect the security of data for the Class. As with all cases, Epiq maintains extensive data security and privacy safeguards in its official capacity as the Claims Administrator for the Action. A Services Agreement, which formally retains Epiq as the Claims Administrator, will govern Epiq’s continued administration responsibilities for the Action. Service changes or modification beyond the original contract scope will require formal contract addendum or modification. Epiq maintains adequate insurance in case of errors.

11. With respect to the data it receives, collects, and otherwise hosts, Epiq serves as a data processor and acts only at the direction of the designated data controller or of the Court, as described in applicable contracts, statements of work, and/or Court documents and Orders. Epiq does not utilize or perform other procedures on personal data provided or obtained as part of services as Administrator. Epiq will not use any information provided by Class Members for any other purpose than the administration of this action. Specifically, Class Member information will

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not be used, disseminated, or disclosed by or to any other person for any other purpose unrelated to the administration of this action.

12. The security and privacy of clients' and class members' information and data are paramount to Epiq. That is why Epiq has invested in a layered and robust set of trusted security personnel, controls, and technology to protect the data we handle. To promote a secure environment for client and class member data, industry leading firewalls and intrusion prevention systems protect and monitor Epiq's network perimeter with regular vulnerability scans and penetration tests. Epiq deploys best-in-class endpoint detection, response, and anti-virus solutions on our endpoints and servers. Strong authentication mechanisms and multi-factor authentication are required for access to Epiq's systems and the data we protect. In addition, Epiq has employed the use of behavior and signature-based analytics as well as monitoring tools across our entire network, which are managed 24 hours per day, 7 days per week, by a team of experienced professionals.

13. Epiq's world class data centers are defended by multi-layered, physical access security, including formal ID and prior approval before access is granted, closed-circuit television ("CCTV"), alarms, biometric devices, and security guards, 24 hours per day, 7 days per week. Epiq manages minimum Tier 3+ data centers in 18 locations worldwide. Our centers have robust environmental controls including uninterruptable power supply ("UPS"), fire detection and suppression controls, flood protection, and cooling systems.

14. Beyond Epiq's technology, our people play a vital role in protecting class members' and our clients' information. Epiq has a dedicated information security team comprised of highly trained, experienced, and qualified security professionals. Our teams stay on top of important security issues and retain important industry standard certifications, like SysAdmin, Audit, Network, and Security ("SANS"), Certified Information Systems Security Professional ("CISSP"), and Certified Information Systems Auditor ("CISA"). Epiq is continually improving security infrastructure and processes based on an ever-changing digital landscape. Epiq also partners with best-in-class security service providers. Our robust policies and processes cover all aspects of

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information security to form part of an industry leading security and compliance program, which is regularly assessed by independent third parties.

15. Epiq holds several industry certifications including: Trusted Information Security Assessment Exchange (“TISAX”), Cyber Essentials, Privacy Shield, and ISO 27001. In addition to retaining these certifications, we are aligned to Health Insurance Portability and Accountability Act (“HIPAA”), National Institute of Standards and Technology (“NIST”), and Federal Information Security Management Act (“FISMA”) frameworks. Epiq follows local, national, and international privacy regulations. To support our business and staff, Epiq has a dedicated team to facilitate and monitor compliance with privacy policies. Epiq is also committed to a culture of security mindfulness. All employees routinely undergo cybersecurity trainings to ensure that safeguarding information and cybersecurity vigilance is a core practice in all aspects of the work our teams complete.

16. Upon completion of a project, Epiq continues to host all data until otherwise instructed in writing by a customer to delete, archive or return such data. When a customer requests that Epiq delete or destroy all data, Epiq agrees to delete or destroy all such data; provided, however, that Epiq may retain data as required by applicable law, rule or regulation, and to the extent such copies are electronically stored in accordance with Epiq’s record retention or back-up policies or procedures (including those regarding electronic communications) then in effect. Epiq keeps data in line with client retention requirements. If no retention period is specified, Epiq returns the data to the client or securely deletes it as appropriate.

#### **NOTICE PLAN METHODOLOGY**

17. Federal Rules of Civil Procedure, Rule 23 directs that notice must be “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort” and that “the notice may be by one or more of the

following: United States mail, electronic means, or other appropriate means.”<sup>1</sup> The Notice Plan will satisfy these requirements.

18. This Notice Plan is designed to reach the greatest practicable number of Class Members, and has been built with all of the same features as the Class Certification Notice Plan. Given our experience with similar notice efforts, we expect the Notice Plan’s individual notice efforts via email and/or mail to identified Class Members combined with an extensive media program including digital and social media notice will reach at least 80% of the Class. The reach will be further enhanced by newspaper publication, internet sponsored search listings, an informational release, and a Case Website. In my experience, the projected reach of the Notice Plan is consistent with other court-approved notice programs, is the best notice practicable under the circumstances of this case, and has been designed to satisfy the requirements of due process, including its “desire to actually inform” requirement.<sup>2</sup>

#### **NOTICE PLAN DETAIL**

19. The Notice Plan is designed to provide notice to the following Class as defined in the *Class Certification Order*, approved on August 28, 2020:

Merchants who incurred one or more unreimbursed chargeback(s) between October 1, 2015 through and including September 30, 2017, pursuant to the Fraud Liability Shift for the assessment of Mastercard, Visa, Discover and/or Amex payment card chargebacks (the “Class”). Excluded from the Class are members of the judiciary and government entities or agencies.

20. Both the Discover and AmEx Stipulation and Agreements of Settlement (“Settlement Agreements”) were also reviewed in designing the Notice Plan.

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<sup>1</sup> Fed. R. Civ. P. 23(c)(2)(B).

<sup>2</sup> *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950) (“But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . .”).

**NOTICE PLAN*****Individual Notice***

21. It is my understanding from counsel for the parties that Epiq was provided all the available data for the identified Class Members at the class certification stage. The data includes names, email addresses, and physical addresses for identified Class Members. This existing data will be used to provide notice to the identified Class Members regarding the Discover Settlement and the Amex Settlement.

22. A Postcard Notice will be sent via United States Postal Service (“USPS”) first class mail to all identified Class Members with an associated physical address, and an Email Notice will be sent to all identified Class Members for whom a valid email address is available (meaning records with both a physical address and an email address will be sent both a Postcard Notice and an Email Notice).

***Individual Notice – Direct Mail***

23. Epiq will send a Postcard Notice to all identified Class Members with an associated physical address. The Postcard Notice will be sent via USPS first class mail. In addition, the Postcard Notice will also direct the recipients to the Case Website where they can access the Long Form Notice and additional information about the Settlements.

24. Prior to sending the Postcard Notice, mailing addresses will be checked against the National Change of Address (“NCOA”) database maintained by the USPS to ensure the Class Member address information is up-to-date and accurately formatted for mailing.<sup>3</sup> In addition, the addresses will be certified via the Coding Accuracy Support System (“CASS”) to ensure the quality of the zip code, and will be verified through Delivery Point Validation (“DPV”) to verify

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<sup>3</sup> The NCOA database is maintained by the USPS and consists of approximately 160 million permanent change-of-address (COA) records consisting of names and addresses of individuals, families, and businesses who have filed a change-of-address with the Postal Service™. The address information is maintained on the database for 48 months and reduces undeliverable mail by providing the most current address information, including standardized and delivery-point-coded addresses, for matches made to the NCOA file for individual, family, and business moves.

the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

25. The return address on the Postcard Notices will be a post office box that Epiq will maintain for these Settlements. The USPS will automatically forward Postcard Notices with an available forwarding address order that has not expired (“Postal Forwards”). Postcard Notices returned as undeliverable will be re-mailed to any new address available through USPS information, (for example, to the address provided by the USPS on returned mail pieces for which the automatic forwarding order has expired, but is still within the time period in which the USPS returns the piece with the address indicated), and to better addresses that may be found using a third-party lookup service. Upon successfully locating better addresses, Postcard Notices will be promptly remailed.

***Individual Notice – Email***

26. Epiq will send an Email Notice to all identified Class Members for whom a valid email address is available. The following industry standard best practices will be followed for the Email Notice efforts. The Email Notice will be drafted in such a way that the subject line, the sender, and the body of the message overcome SPAM filters and ensure readership to the fullest extent reasonably practicable. For instance, the Email Notice will use an embedded html text format. This format will provide easy-to-read text without graphics, tables, images, and other elements that in our experience would increase the likelihood that the message could be blocked by Internet Service Providers (ISPs) and/or SPAM filters for this type of email communication. The Email Notices will be sent from an IP address known to major email providers as one not used to send bulk “SPAM” or “junk” email blasts. Each Email Notice will be transmitted with a digital signature to the header and content of the Email Notice, which will allow ISPs to programmatically authenticate that the Email Notices are from our authorized mail servers. Each Email Notice will also be transmitted with a unique message identifier. The Email Notice will include an embedded link to the Case Website. By clicking the link, recipients will be able to access the Long Form Notice and other information about the Settlements.

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27. If the receiving email server cannot deliver the message, a “bounce code” will be returned along with the unique message identifier. For Email Notices for which a bounce code is received indicating that the message was undeliverable for reasons such as an inactive or disabled account, the recipient’s mailbox was full, technical autoreplies, etc., at least two additional attempts will be made to deliver the Notice by email.

#### ***Internet Digital Notice Campaign***

28. Internet advertising has become a standard component in legal notice programs. The internet has proven to be an efficient and cost-effective method to target class members as part of providing notice of a settlement for a class action case. According to MRI-Simmons<sup>4</sup> data, 97% of all adults are online and 85% of all adults use social media.<sup>5</sup>

29. The Notice Plan includes targeted digital advertising (“Digital Notices”) on the selected advertising network *Google Display Network*, which represents thousands of digital properties across all major content categories. Digital Notices in English and Spanish will be targeted to selected target audiences and are designed to encourage participation by Class Members—by linking directly to the Case Website, allowing visitors easy access to relevant information and documents.

30. The Digital Notices will also be placed on the leading social media platforms in the United States, including *Facebook* and *Instagram*. The social media campaign will use an interest-based approach which focuses on the interests that users exhibit while on the social media platforms, capitalizing on the target audience’s propensity to engage in social media.

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<sup>4</sup> MRI-Simmons is a leading source of publication readership and product usage data for the communications industry. MRI-Simmons is a joint venture of GfK Mediemark Research & Intelligence, LLC (“MRI”) and Simmons Market Research. MRI-Simmons offers comprehensive demographic, lifestyle, product usage and exposure to all forms of advertising media collected from a single sample. As the leading U.S. supplier of multimedia audience research, the company provides information to magazines, televisions, radio, internet, and other media, leading national advertisers, and over 450 advertising agencies—including 90 of the top 100 in the United States. MRI-Simmons’s national syndicated data is widely used by companies as the basis for the majority of the media and marketing plans that are written for advertised brands in the United States.

<sup>5</sup> MRI-Simmons 2024 Survey of the American Consumer®.

31. *Facebook* is the leading social networking site in the United States with 193 million users, and *Instagram* has 169 million active users in the United States.<sup>6</sup>

32. The Digital Notices will also be placed on Crain's specialty business websites focusing on major metropolitan geographies including Chicago, New York, Cleveland, and Detroit.

33. All Digital Notices will appear on desktop, mobile, and tablet devices. Digital Notices on *Google Display Network*, *Facebook*, and *Instagram* will be displayed nationwide. Digital Notices will also be targeted (remarketed) to people who click on a Digital Notice.

34. More details regarding the target audiences, specific ad sizes of the Digital Notices, and the number of planned impressions are included in the following table:

| <b>Digital Plan</b>           | <b>Target</b>   | <b>Ad Sizes</b>                   | <b>Language</b>   | <b>Planned Impressions</b> |
|-------------------------------|---|-----------------------------------|-------------------|----------------------------|
| <i>Google Display Network</i> | 18+; Custom Affinity: <sup>7</sup> Small Business, Small Business Finance Solutions, and various Owner / Manager occupations <sup>8</sup> | 300x250, 728x90, 300x600, 970x250 | English & Spanish | 72,055,000                 |
| <i>Google Display Network</i> | 18+; Custom Intent: <sup>9</sup> Small Business, Small Business Finance Solutions, and various Owner / Manager occupations                | 300x250, 728x90, 300x600, 970x250 | English & Spanish | 72,055,000                 |

<sup>6</sup> Statista Digital 2024: Global Overview Report. Statista, founded in 2007, is a leading provider of worldwide market and consumer data and is trusted by thousands of companies around the world for data. Statista.com consolidates statistical data on over 80,000 topics from more than 22,500 sources and makes it available in German, English, French and Spanish.

<sup>7</sup> “Custom Affinity” allows for targeting specific websites, keywords, and/or relevant content the target audience may be viewing.

<sup>8</sup> List includes: Small Business Owner, Health Club Owner, Health Club Manager, CrossFit Gym Owner, Pilates Studio Owner, Pilates Studio Manager, Martial Arts School Owner, Wellness Center Manager, Spa Owner, Spa Manager, Cryotherapy Studio Owner, Fitness Franchise Owner, Health & Wellness Studio Director, Barbershop Owner, Nail Salon Owner, Nail Salon Manager, Med Spa Owner, Med Spa Manager, Tattoo Studio Owner, Tattoo Studio Manager, Beauty Studio Owner, Beauty Studio Manager, Cosmetology School Owner, Event Production Company Owner, Party Rental Business Owner, Venue Manager, Conference Center Manager, DJ Company Owner, Photo Booth Business Owner, and/or Entertainment Booking Manager.

<sup>9</sup> “Custom Intent” allows for targeting people who are researching or purchasing certain items on the internet.

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| <i>Digital Plan</i>         | <i>Target</i>  | <i>Ad Sizes</i>                  | <i>Language</i> | <i>Planned Impressions</i> |
|-----------------------------|--|----------------------------------|-----------------|----------------------------|
| <i>Facebook</i>             | 18+; Behavior: Small Business Owners   | Newsfeed & Right Hand Side       | English         | 14,420,000                 |
| <i>Facebook</i>             | 18+; Interest: Small Business Owners, National Association of Women Business Owners, and/or Small Business Administration of America | Newsfeed & Right Hand Side       | English         | 21,630,000                 |
| <i>Facebook</i>             | 18+; Demographics: Work Industries: Business and Finance / Small Business Owner  | Newsfeed & Right Hand Side       | English         | 13,210,000                 |
| <i>Instagram</i>            | 18+; Behavior: Small Business Owners   | Newsfeed                         | English         | 9,430,000                  |
| <i>Instagram</i>            | 18+; Interest: Small Business Owners, National Association of Women Business Owners, and/or Small Business Administration of America | Newsfeed                         | English         | 13,134,000                 |
| <i>Instagram</i>            | 18+; Demographics: Work Industries: Business and Finance / Small Business Owner  | Newsfeed                         | English         | 8,878,000                  |
| <i>Crains.com Chicago</i>   | 18+  | 728x90, 300x250, 300x600, 300x50 | English         | 200,000                    |
| <i>Crains.com New York</i>  | 18+  | 728x90, 300x250, 300x600, 300x50 | English         | 200,000                    |
| <i>Crains.com Cleveland</i> | 18+  | 728x90, 300x250, 300x600, 300x50 | English         | 200,000                    |
| <i>Crains.com Detroit</i>   | 18+  | 728x90, 300x250, 300x600, 300x50 | English         | 200,000                    |
| <b>TOTAL</b>                |  |                                  |                 | <b>225,612,000</b>         |

35. Combined, approximately 225 million targeted impressions will be generated by the Digital Notices, which will be displayed nationwide. The Digital Notices will run for approximately 31 days.<sup>10</sup> Clicking on the Digital Notices will link the reader to the Case Website, where they can easily obtain detailed information about the Settlements.

<sup>10</sup> The third-party ad management platform, ClickCease will be used to audit the Digital Notice ad placements. This type of platform tracks all Digital Notice ad clicks to provide real-time ad monitoring, fraud traffic analysis, blocks clicks from fraudulent sources, and quarantines

### ***Non-English Newspaper Notices***

36. In order to target the extensive number of small businesses that may be owned or operated by Class Members for whom English is a second language, a Publication Notice will appear twice in each of the following newspapers:

| <b><i>Print</i></b>                                     | <b><i>Circulation</i></b> | <b><i>Frequency</i></b> | <b><i>Language</i></b> | <b><i>Ad Size</i></b> |
|---|---------------------------|-------------------------|------------------------|-----------------------|
| <i>Korea Times - Chicago</i>                            | 50,000                    | Weekly (Tue)            | Korean                 | 1/4 Page              |
| <i>Svet</i>   | 8,000                     | Weekly (Fri)            | Russian                | 1/2 Page              |
| <i>Dallas Chinese News</i>                              | 8,000                     | Weekly (Fri)            | Chinese                | 1/4 Page              |
| <i>Chinese Daily News - (World Journal Los Angeles)</i> | 60,000                    | Weekly (Thu, Fri)       | Chinese                | 1/4 Page              |
| <i>Lighthouse (Los Angeles Edition)</i>                 | 60,000                    | Monthly                 | Japanese               | 1/2 Page              |
| <i>Korea Daily - Los Angeles</i>                        | 60,000                    | Mon-Fri                 | Korean                 | 1/4 Page              |
| <i>Viet Bao Daily News - LA Edition</i>                 | 25,000                    | Weekly (Fri)            | Vietnamese             | 1/4 Page              |
| <i>World Journal New York - Chinese Daily News</i>      | 75,000                    | Mon-Thu                 | Chinese                | 1/4 Page              |
| <i>NY Japion</i>  | 22,000                    | Weekly (Fri)            | Japanese               | 1/4 Page              |
| <i>Korea Daily - New York</i>                           | 58,000                    | Mon - Fri               | Korean                 | 1/4 Page              |
| <i>Russkaya Reklama - New York Edition</i>              | 20,000                    | Weekly (Fri)            | Russian                | 1/2 Page              |
| <i>China Press - New York Edition</i>                   | 25,000                    | Mon-Fri                 | Chinese                | 1/4 Page              |
| <i>Korean Phila Times</i>                               | 20,000                    | Weekly (Fri)            | Korean                 | 1/3 Page              |
| <i>Metro Viet News</i>                                  | 12,000                    | Weekly (Fri)            | Vietnamese             | 1/2 Page              |

### ***Sponsored Search Listings***

37. To facilitate locating the Case Website, sponsored search listings will be acquired on the three most highly-visited internet search engines: *Google*, *Yahoo!*, and *Bing*. When visitors to these search engines search for selected keyword combinations related to the Settlements, the sponsored search listing advertisement created for this Settlement will be displayed. Generally, the sponsored search listing advertisement will appear at the top of the visitor's website page prior to the search results or in the upper right-hand column of the web-browser screen. The sponsored

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dangerous IP addresses. This helps reduce wasted, fraudulent, or otherwise invalid traffic (e.g., ads being seen by 'bots' or non-humans, ads not being viewable, etc.).

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search listings will be displayed nationwide. All sponsored search listings will link directly to the Case Website.

***Informational Release***

38. To build additional reach and extend exposures, a party-neutral Informational Release (in both English and Spanish) will be issued nationwide over PR Newswire's U.S.1 to approximately 13,000 general media (print and broadcast) outlets, including local and national newspapers, magazines, national wire services, television and radio broadcast media across the United States as well as over 4,000 websites, online databases, internet networks, and social networking media. The Hispanic newsline reaches over 1,900 Hispanic US general media contacts as well as up to 4,840 additional industry-specific Hispanic media contacts. The Hispanic release also includes a guaranteed placement on 40+ Hispanic websites and/or news portals. In addition, there will also be dissemination to "Small Business" influencers.

39. The Informational Release will include the address of the Case Website and the toll-free telephone number. Although there is no guarantee that any news stories will result, the Informational Release will serve a valuable role by providing additional notice exposures beyond that which was provided by the paid media.

***Case Website***

40. The existing website ([www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com)) that was established for the class certification notice efforts will be updated with additional information regarding the Settlements. Relevant documents will be posted on the Case Website, including the Settlement Agreement, Preliminary Approval Order, Long Form Notice, and any other case-related documents. In addition, the Case Website will include relevant dates, answers to frequently asked questions ("FAQs"), instructions for how Class Members may object to the Settlements, contact information for the Case Administrator, and how to obtain other case-related information. The Case Website address will be prominently displayed in all notice documents.

***Toll-Free Telephone Number & Postal Mailing Address***

41. The existing toll-free telephone number (1-855-662-0073) that was established for the class certification notice efforts will be updated with additional information regarding the Settlements. Callers will be able to hear an introductory message and will have the option to learn more about the Settlement in the form of recorded answers to FAQs, and to request that a Long Form Notice be mailed to them. This automated telephone system will be available 24 hours per day, 7 days per week. The toll-free telephone number will be prominently displayed in all notice documents.

42. A postal mailing address will be provided, allowing Class Members the opportunity to request additional information or ask questions.

***Claims Processing Expectations***

43. Epiq has administered more than 4,500 settlements, including some of the largest and most complex cases ever settled, resulting in extensive experience in claims administration. This includes evaluating claim forms and supporting documentation, ranging from simple to complex submissions with detailed document review to determine eligibility across various types of cases, along with handling and evaluating extremely large volumes of claim form submissions. Not only is Epiq an experienced claims administrator, Epiq is also the notice and claims administrator for the *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* Rule 23(b)(3) proceeding. The Class here will benefit from Epiq's experience with handling many aspects associated with the complex data and claims presented in the Rule 23(b)(3) Interchange Settlement. While not identical, there are many commonalities with the Settlements in this Action, which will benefit the Class because Epiq is handling both matters.

44. At the appropriate time as provided in the proposed Plan of Distribution, it is anticipated Class Members will have the option of filing a Claim Form online or by mail prior to the claim filing deadline. To provide efficiency for claimants, the electronic Notices will provide a link directly to the Case Website where Class Members can file a Claim Form online. It is

anticipated that Class Counsel will work with Epiq as the Claims Administrator to ensure claimants are supported, taking into account the need to verify valid claims, while not overburdening Class Members as they file a Claim Form. Epiq will work with Class Counsel to pre-populate claims for those claimants with the largest amounts in FLS Chargeback damages, to the extent it is administratively feasible. The degree to which this is possible will depend upon the data available during the claims noticing process and the quantity and relative complexity of the data. There will be a review process as part of the claims process, for claimants to dispute the amounts they are owed. Epiq will also implement quality control review procedures, including processes to provide further verification of larger claims. As further described in the proposed Plan of Distribution, Epiq as the Claims Administrator will be responsible for developing an appropriate plan to review Claim Forms (“Audit Plan”), which will be provided in advance to Class Counsel for review and approval. To the extent claimants dispute their award amount (prior to any *pro rata* calculation), Epiq will manage a multistate process by which the claimants may challenge the Claims Administrator’s determination.

45. Unfortunately, in recent years, fraudulent claim filing has become a more common reality, and the claims administration industry has seen an exponential growth in fraudulent claims filed in class action settlements. The modernization of online claim filing, together with relentless efforts by fraudulent claim filers is now an ever changing element that has to be handled by all claims administrators. As the Claims Administrator, Epiq will utilize standard procedures for detecting invalid claims, including potentially fraudulent submissions using automated systems. Epiq has partnered with the best resources in the industry to detect and combat fraud and provide the best results.

46. Using EpiqShield™, Epiq maintains a vigorous, multi-layered fraud detection process to prevent, detect, and provide in-depth analysis regarding possible fraudulent claim submissions. EpiqShield™ uses numerous anti-fraud measures, extensive technology, and information security resources, including digital footprint monitoring and secure banking

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solutions. These tools serve to detect and prevent fraud attempts perpetuated by bots, etc. Epiq also addresses smaller-scale fraud from individual bad actors seeking to falsify claim information.

### **CONCLUSION**

47. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal and local rules and statutes, and further by case law pertaining to notice. This framework directs that the notice program be designed to reach the greatest practicable number of potential class members and, that the notice or notice program provides class members with easy access to the details of how the class action may impact their rights. All of these requirements will be met in this Action.

48. The Notice Plan's individual notice efforts via email and/or mail to identified Class Members combined with an extensive media program including digital and social media notice will reach at least 80% of the Class. The reach will be further enhanced by newspaper publication, internet sponsored search listings, an informational release, and a Case Website. The Federal Judicial Center's ("FJC") *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, which is relied upon for federal cases, and is illustrative for state courts, states that, "the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%."<sup>11</sup> Here, we have developed a Notice Plan that will readily achieve a reach within that standard.

49. The Notice Plan follows the guidance for satisfying due process obligations that a notice expert gleans from the United States Supreme Court's seminal decisions, which emphasize the need: (a) to endeavor to actually inform the Class, and (b) to ensure that notice is reasonably calculated to do so.

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<sup>11</sup> FED. JUDICIAL CTR, JUDGES' CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010), available at <https://www.fjc.gov/content/judges-class-action-notice-and-claims-process-checklist-and-plain-language-guide-0>.

- a) “[W]hen notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it,” *Mullane v. Central Hanover Trust*, 339 U.S. 306, 315 (1950); and
- b) “[N]otice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections,” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) (citing *Mullane*, 339 U.S. at 314).

50. The Notice Plan will provide the best notice practicable under the circumstances, conform to all aspects of Federal Rule of Civil Procedure 23 regarding notice, comport with the guidance for effective notice articulated in the Manual for Complex Litigation, Fourth and applicable FJC materials, and satisfy the requirements of due process, including its “desire to actually inform” requirement.

51. The Notice Plan schedule will afford enough time to provide full and proper notice to the Class Members before any objection deadlines.

52. At the conclusion of the Notice Plan, I will provide a declaration verifying the effective implementation of the Notice Plan.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 9, 2025.

  
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Cameron R. Azari, Esq.

# Attachment 1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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B & R SUPERMARKET, INC., d/b/a Milam's  
Market, GROVE LIQUORS LLC, STROUK  
GROUP LLC, d/b/a Monsieur Marcel, and  
PALERO FOOD CORP. and CAGUEYES FOOD  
CORP., d/b/a Fine Fare Supermarket,

Plaintiffs,

**DECLARATION OF CAMERON R.  
AZARI, ESQ. ON IMPLEMENTATION  
AND ADEQUACY OF NOTICE PLAN**  
17-CV-02738 (MKB) (JO)

v.

MASTERCARD INTERNATIONAL INC., VISA  
INC., VISA U.S.A., INC., DISCOVER  
FINANCIAL SERVICES, and AMERICAN  
EXPRESS COMPANY,

Defendants.

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MARGO K. BRODIE, United States District Judge:

I, Cameron R. Azari, Esq., hereby declare and state as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.
2. I am a nationally recognized expert in the field of legal notice, and I have served as an expert in hundreds of federal and state cases involving class action notice plans.
3. I am a Senior Vice President of Epiq Class Action and Claims Solutions, Inc. (“Epiq”) and the Director of Legal Notice for Hilsoft Notifications, a firm that specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans. Hilsoft Notifications is a business unit of Epiq.
4. This declaration will describe the implementation of the Class Certification Notice Plan (“Notice Plan” or “Notice Program”) for *B & R Supermarket, Inc. et al. v. Mastercard International Inc. et al.*, Case No. 17-cv-02738 (MKB) (JO) in the United States District Court for the Eastern District of New York. Hilsoft designed the Notice Plan based on our prior

experience and research into the notice issues in this case. I previously executed my *Declaration of Cameron R. Azari, Esq. Regarding Notice Plan*, (“Notice Plan Declaration”) on May 16, 2022, which described the Notice Plan, detailed Hilsoft’s class action notice experience, and attached Hilsoft’s *curriculum vitae*. I also provided my educational and professional experience relating to class actions and my ability to render opinions on overall adequacy of notice programs.

## OVERVIEW

5. Epiq received data files from four defendants (Visa, MC, Amex, and Discover), with 2,551,887 total rows of data. In my Notice Plan Declaration, I reported a total of 1,000,476 unique merchant addresses and 135,376 unique email addresses were provided from the four datasets. These counts were preliminary estimates before Epiq had standardized and normalized the data and completed address updates. After completing these steps, Epiq then combined, deduplicated and rolled up the records (with a common physical address location), which resulted in 1,125,421 unique Class Member records. Of these records, 1,120,580 had a physical mailing address and were sent a Postcard Notice, and 110,595 records had a unique email address and were sent an Email Notice (some records had both a physical mailing address and an email address and were mailed both a Postcard Notice and an Email Notice).

6. Federal Rules of Civil Procedure, Rule 23 directs that notice must be “the best notice practicable under the circumstances” and must include “individual notice to all members who can be identified through reasonable effort.”<sup>1</sup> The Notice Plan satisfied this requirement. In addition to providing individual notice via direct mail and email, the individual notice efforts were supplemented with an extensive media notice program and a case website. In my opinion, the Notice Plan as designed and implemented reached the greatest practicable number of members of the certified Class.

7. The individual notice portion of the Notice Program reached approximately 96.6% of the identified Class. The extensive media notice effort expanded that reach even higher. In my experience, the reach of the Notice Program is consistent with or exceeded other court-

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<sup>1</sup> Fed. R. Civ. P. 23(c)(2)(B).

approved Class Certification notice programs, was the best notice practicable under the circumstances of this case and satisfied the requirements of due process, including its “desire to actually inform” requirement.<sup>2</sup>

### **NOTICE PLAN DETAIL**

8. The Notice Plan was designed to provide notice to the following Class as defined in the Class Certification Order, approved on August 28, 2020, as:

Merchants who incurred one or more unreimbursed chargeback(s) between October 1, 2015, through and including September 30, 2017, pursuant to the Fraud Liability Shift for the assessment of Mastercard, Visa, Discover and/or Amex payment card chargebacks (the “Class”).

Excluded from the Class are members of the judiciary government entities or agencies.

#### ***Individual Notice - Direct Mail***

9. From June 28, 2022, through July 1, 2022, Epiq sent a Postcard Notice to 1,120,580 identified members of the Class. The Postcard Notice was sent via United States Postal Service (“USPS”) first class mail. The Postcard Notice clearly and concisely summarized the case and the legal rights of the Class. The Postcard Notice also directed the recipients to the case website to access additional information. The Postcard Notice is included as **Attachment 1**.

10. Prior to sending the Postcard Notice, all mailing addresses were checked against the National Change of Address (“NCOA”) database maintained by the USPS to ensure the address information is up-to-date and accurately formatted for mailing.<sup>3</sup> In addition, the addresses were certified via the Coding Accuracy Support System (“CASS”) to ensure the quality of the zip

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<sup>2</sup> *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950) (“But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . .”).

<sup>3</sup> The NCOA database is maintained by the USPS and consists of approximately 160 million permanent change-of-address (COA) records consisting of names and addresses of individuals, families, and businesses who have filed a change-of-address with the Postal Service™. The address information is maintained on the database for 48 months and reduces undeliverable mail by providing the most current address information, including standardized and delivery point coded addresses, for matches made to the NCOA file for individual, family, and business moves.

code and were verified through Delivery Point Validation (“DPV”) to verify the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

11. The return address on the Postcard Notice is a post office box that Epiq maintains for this case. The USPS automatically forwards Postcard Notices with an available forwarding address order that has not expired (“Postal Forwards”). For Postcard Notices returned as undeliverable, Epiq remailed the Postcard Notice to any new address available through USPS information (for example, to the address provided by the USPS on returned pieces if the forwarding order had expired but was still within the time period in which the USPS returns the piece with a forwarding address indicated), or to better addresses that may have been found using a third-party lookup service. Upon successfully locating better addresses, Postcard Notices were promptly remailed. As of January 18, 2023, Epiq has remailed 15,915 Postcard Notices where a forwarding address was provided, or a better address was identified using a third-party lookup service.

12. Additionally, a Certification Notice was mailed to all persons who request one via the toll-free telephone number or by mail. The Certification Notice is available to download or print at the case website. As of January 18, 2023, nine Certification Notices have been mailed as a result of such requests. The Certification Notice is included as **Attachment 2**.

*Individual Notice - Email*

13. On July 1, 2022, Epiq sent 110,595 Email Notices to identified members of the Class with an associated email address. For all records in the data with an associated valid email address, an Email Notice was sent (meaning records with both a physical address and an email address were sent both a Postcard and an Email Notice). Industry standard best practices were followed for the Email Notice efforts. The Email Notice was drafted in such a way that the subject line, the sender, and the body of the message overcame SPAM filters and ensured readership to the fullest extent reasonably practicable. For instance, the Email Notice used an embedded html text format. This format provided easy to read text without graphics, tables, images, attachments,

and other elements increasing the likelihood that the message would not be blocked by Internet Service Providers (ISPs) and/or SPAM filters. The Email Notice was sent from an IP address known to major email providers as one not used to send bulk “SPAM” or “junk” email blasts. Each Email Notice was transmitted with a digital signature to the header and content of the Email Notice, which allowed ISPs to programmatically authenticate that the Email Notices were from authorized mail servers. Each Email Notice was also transmitted with a unique message identifier. The Email Notice included an embedded link to the case website. By clicking the link, recipients were able to easily access other information about the case. The Email Notice clearly and concisely summarized the case and the legal rights of the Class Members. The Email Notice is included as **Attachment 3**.

14. If the receiving email server could not deliver the message, a “bounce code” was returned along with the unique message identifier. For any Email Notice for which a bounce code was received indicating that the message was undeliverable for reasons such as an inactive or disabled account, the recipient’s mailbox was full, technical autoreplies, etc., at least two additional attempts were made to deliver the Email Notice by email.

15. After completion of the Email Notice efforts, 32,017 Email Notices were not deliverable.

#### *Notice Results*

16. As of January 18, 2023, an Email Notice and/or Postcard Notice were delivered to 1,088,256 of the 1,125,421 unique, identified Class Members. This means the individual notice efforts reached approximately 96.6% of identified Class Members.

#### *Media Plan*

##### *Internet Notice Campaign*

17. Internet advertising has become a standard component in legal notice programs. The internet has proven to be an efficient and cost-effective method to target and provide measurable reach of persons covered by a lawsuit. According to MRI-Simmons data<sup>4</sup>, 97% of all

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<sup>4</sup> MRI-Simmons is a leading source of publication readership and product usage data for the communications industry. MRI-Simmons is the new name for the joint venture of GfK Mediemark

adults and 98% of business owners are online. Additionally, 85% of all adults and 89% of business owners use social media.<sup>5</sup>

18. The Notice Plan included targeted Banner Notice advertising on a selected advertising network, which was targeted to Class Members. The Banner Notices linked directly to the website, thereby allowing visitors easy access to relevant information and documents. Consistent with common practice, the Banner Notices used language from the notice headline, which allowed users to identify themselves as potential Class Members. As an additional way to draw the interest of the Class Members, and to be consistent with Federal Judicial Center (“FJC”) recommendations that a picture or graphic may help class members self-identify, the Banner Notices featured a high-resolution image. The Banner Notices was also placed on social media on *Facebook* and *Instagram*, and on Crain’s business news websites.

19. All Banner Notices appeared on desktop, mobile, and tablet devices and were distributed to the selected targeted audiences nationwide. Banner Notices were also targeted (remarketed) to people who clicked on a Banner Notice.

20. More details regarding the target audiences, distribution, and specific ad sizes of the Banner Notices are included in the following table.

| <i>Network/Property</i>       | <i>Target</i>  | <i>Ad Sizes</i>                   | <i>Language</i>   | <i>Delivered Impressions</i> |
|-------------------------------|--|-----------------------------------|-------------------|------------------------------|
| <i>Google Display Network</i> | 18+; Custom Affinity: Small Business                   | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 32,394,296                   |
| <i>Google Display Network</i> | 18+; Custom Intent: Small Business Information         | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 33,674,253                   |
| <i>Google Display Network</i> | 18+; Custom Affinity: Small Business Finance Solutions | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 12,781,089                   |

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Research & Intelligence, LLC (“MRI”) and Simmons Market Research. MRI-Simmons offers comprehensive demographic, lifestyle, product usage and exposure to all forms of advertising media collected from a single sample. As the leading U.S. supplier of multimedia audience research, the company provides information to magazines, televisions, radio, Internet, and other media, leading national advertisers, and over 450 advertising agencies—including 90 of the top 100 in the United States. MRI-Simmons’s national syndicated data is widely used by companies as the basis for the majority of the media and marketing plans that are written for advertised brands in the United States.

<sup>5</sup> MRI-Simmons Spring 2022 Doublebase.

| Network/Property       | Target   | Ad Sizes                          | Language          | Delivered Impressions |
|------------------------|--|-----------------------------------|-------------------|-----------------------|
| Google Display Network | 18+; Custom Intent: Small Business Finance Solutions         | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 12,639,175            |
| Google Display Network | 18+; Custom Affinity: Restaurant Owner                       | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 6,036,564             |
| Google Display Network | 18+; Custom Intent: Restaurant Owner                         | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 5,234,260             |
| Google Display Network | 18+; Custom Affinity: Hospitality Management                 | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 6,469,859             |
| Google Display Network | 18+; Custom Intent: Hospitality Management                   | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 5,430,014             |
| Google Display Network | 18+; Custom Affinity: Fitness Gym Owners                     | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 5,750,486             |
| Google Display Network | 18+; Custom Intent: Fitness Gym Owners                       | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 5,152,567             |
| Google Display Network | 18+; Custom Affinity: Salon Owner                            | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 5,323,780             |
| Google Display Network | 18+; Custom Intent: Salon Owner                              | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 5,105,268             |
| Google Display Network | 18+; Custom Affinity: Event Management                       | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 6,448,805             |
| Google Display Network | 18+; Custom Intent: Event Management                         | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 6,367,160             |
| Google Display Network | 18+; Custom Affinity: Yoga Studio Management                 | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 5,771,700             |
| Google Display Network | 18+; Custom Intent: Yoga Studio Management                   | 728x90, 300x250, 300x600, 970x250 | English & Spanish | 5,987,705             |
| Facebook               | 18+; Behavior: Small Business Owners                         | Newsfeed & Right-Hand Side        | English           | 15,656,982            |
| Facebook               | 18+; Interest: Small Business Owners of America              | Newsfeed & Right-Hand Side        | English           | 8,114,479             |
| Facebook               | 18+; Interest: National Association of Women Business Owners | Newsfeed & Right-Hand Side        | English           | 7,932,219             |
| Facebook               | 18+; Interest: Small Business Administration                 | Newsfeed & Right-Hand Side        | English           | 8,002,047             |
| Facebook               | 18+; Demographics: Work Industries: Business & Finance       | Newsfeed & Right-Hand Side        | English           | 8,165,233             |
| Facebook               | 18+; Demographics: Work Industries: Restaurant Owner         | Newsfeed & Right-Hand Side        | English           | 1,061,064             |
| Facebook               | 18+; Demographics: Work Industries: Gym Manager              | Newsfeed & Right-Hand Side        | English           | 1,029,904             |
| Facebook               | 18+; Demographics: Work Industries: Yoga Teacher             | Newsfeed & Right-Hand Side        | English           | 1,311,027             |

| <i>Network/Property</i>     | <i>Target</i>  | <i>Ad Sizes</i>                  | <i>Language</i> | <i>Delivered Impressions</i> |
|-----------------------------|--|----------------------------------|-----------------|------------------------------|
| <i>Facebook</i>             | 18+; Demographics: Work Industries: Salon Owner              | Newsfeed & Right-Hand Side       | English         | 1,140,456                    |
| <i>Facebook</i>             | 18+; Demographics: Work Industries: Hotel Manager            | Newsfeed & Right-Hand Side       | English         | 1,220,935                    |
| <i>Facebook</i>             | 18+; Demographics: Work Industries: Event Manager            | Newsfeed & Right-Hand Side       | English         | 1,078,855                    |
| <i>Instagram</i>            | 18+; Behavior: Small Business Owners                         | Newsfeed                         | English         | 9,641,214                    |
| <i>Instagram</i>            | 18+; Interest: Small Business Owners of America              | Newsfeed                         | English         | 4,677,980                    |
| <i>Instagram</i>            | 18+; Interest: National Association of Women Business Owners | Newsfeed                         | English         | 4,687,762                    |
| <i>Instagram</i>            | 18+; Interest: Small Business Administration                 | Newsfeed                         | English         | 4,604,639                    |
| <i>Instagram</i>            | 18+; Demographics: Work Industries: Business & Finance       | Newsfeed                         | English         | 4,693,967                    |
| <i>Instagram</i>            | 18+; Demographics: Work Industries: Restaurant Owner         | Newsfeed                         | English         | 915,851                      |
| <i>Instagram</i>            | 18+; Demographics: Work Industries: Gym Manager              | Newsfeed                         | English         | 933,106                      |
| <i>Instagram</i>            | 18+; Demographics: Work Industries: Yoga Teacher             | Newsfeed                         | English         | 756,241                      |
| <i>Instagram</i>            | 18+; Demographics: Work Industries: Salon Owner              | Newsfeed                         | English         | 799,743                      |
| <i>Instagram</i>            | 18+; Demographics: Work Industries: Hotel Manager            | Newsfeed                         | English         | 986,862                      |
| <i>Instagram</i>            | 18+; Demographics: Work Industries: Event Manager            | Newsfeed                         | English         | 788,096                      |
| <i>Crains.com Chicago</i>   | 18+  | 728x90, 300x250, 300x600, 300x50 | English         | 201,006                      |
| <i>Crains.com Cleveland</i> | 18+  | 728x90, 300x250, 300x600, 300x50 | English         | 200,999                      |
| <i>Crains.com Detroit</i>   | 18+  | 728x90, 300x250, 300x600, 300x50 | English         | 201,000                      |
| <i>Crains.com New York</i>  | 18+  | 728x90, 300x250, 300x600, 300x50 | English         | 201,003                      |
| <b>TOTAL</b>                |  |                                  |                 | <b>249,680,651</b>           |

21. Combined, the Banner Notices, which ran from July 1, 2022, through July 31,

2022, generated more than 249.6 million impressions nationwide.<sup>6</sup> Clicking on the Banner Notices linked the reader to the case website, where the reader could easily obtain detailed information about the case. Examples of the Banner Notices have been collected by Epiq and are available upon request.

#### *Ethnic Newspaper Notices*

22. To target the extensive number of small businesses that may be owned or operated by Class Members for whom English is a second language, a Publication Notice appeared twice in each of the following selected ethnic newspapers:

| <i>Print<sup>7</sup></i>                                | <i>Frequency</i> | <i>Language</i> | <i>Run Dates</i> | <i>Pages</i> |
|---|------------------|-----------------|------------------|--------------|
| <i>Korea Times - Chicago</i>                            | Mon-Sat          | Korean          | 7/12 & 7/19      | A8 & A4      |
| <i>Dallas Chinese News</i>                              | Weekly (Fri)     | Chinese         | 7/15 & 7/22      | A3 & B3      |
| <i>Svet</i>   | Weekly (Fri)     | Russian         | 7/15 & 7/22      | 9 & 34       |
| <i>Chinese Daily News - (World Journal Los Angeles)</i> | Thu, Fri, Sat    | Chinese         | 7/14 & 7/21      | A4 & B3      |
| <i>Lighthouse (Los Angeles Edition)</i>                 | 2x/monthly       | Japanese        | 7/16 & 8/1       | 46 & 54      |
| <i>Korea Daily - Los Angeles</i>                        | Mon-Sat          | Korean          | 7/11 & 7/18      | 10 & 10      |
| <i>Viet Bao Daily News - LA Edition</i>                 | Daily            | Vietnamese      | 7/15 & 7/22      | A9 & A9      |
| <i>World Journal New York - Chinese Daily News</i>      | Sun-Thu          | Chinese         | 7/11 & 7/18      | B4 & A11     |
| <i>NY Japion</i>  | Weekly (Fri)     | Japanese        | 7/15 & 7/22      | 20 & 21      |
| <i>Korea Daily - New York</i>                           | Mon-Sat          | Korean          | 7/11 & 7/18      | 6 & 6        |
| <i>Russkaya Reklama - New York Edition</i>              | Weekly (Fri)     | Russian         | 7/15 & 7/22      | A17 & A17    |
| <i>China Press - New York Edition</i>                   | Daily            | Chinese         | 7/11 & 7/18      | B4 & B3      |
| <i>Korean Phila Times</i>                               | Weekly (Fri)     | Korean          | 7/15 & 7/22      | 93 & 93      |

<sup>6</sup> The third-party ad management platform, ClickCease, was used to audit any digital Banner Notice ad placements. This type of platform tracks all Banner Notice ad clicks to provide real-time ad monitoring, fraud traffic analysis, blocks clicks from fraudulent sources, and quarantines dangerous IP addresses. This helped reduce wasted, fraudulent, or otherwise invalid traffic (e.g., ads being seen by ‘bots’ or non-humans, ads not being viewable, etc.).

<sup>7</sup> As detailed in my Notice Plan Declaration, notice was planned to be published in *Chicago Shimpo* and *A Chau Thai Bao*. However, *Chicago Shimpo* ceased publication before the Publication Notice could run in the newspaper and the publisher for *A Chau Thoi Bao* did not print an edition before August 1, 2022, so the Publication Notice could not run as planned in that newspaper.

| <i>Print</i> <sup>7</sup>                      | <i>Frequency</i> | <i>Language</i> | <i>Run Dates</i> | <i>Pages</i> |
|--|------------------|-----------------|------------------|--------------|
| <i>Russkaya Reklama - Philadelphia Edition</i> | Weekly (Sun)     | Russian         | 7/17 & 7/24      | 7 & 7        |
| <i>Metro Viet News</i>                         | Weekly (Fri)     | Vietnamese      | 7/15 & 7/22      | 3 & 3        |

23. An example of the Publication Notice is included as **Attachment 4**. Individual tear sheets have been collected by Epiq and are available upon request.

***Internet Sponsored Search Listings***

24. To facilitate locating the website, sponsored search listings were acquired online through the highly visited internet search engines: *Google*, *Yahoo!*, and *Bing*. When search-engine visitors searched on common keyword combinations to identify the case, the sponsored search listing generally was displayed at the top of the page prior to the search results or in the upper right-hand column of the web-browser screen. A list of keywords was developed in conjunction with counsel. The sponsored search listings were displayed nationwide. All sponsored search listing ads linked directly to the case website.

25. The sponsored search listings ran from July 1, 2022, through July 31, 2022. The sponsored listings were displayed 50,431 times, which resulted in 2,026 clicks that displayed the case website. A complete list of the sponsored search keyword combinations is included as **Attachment 5**. Examples of the sponsored search listing as displayed on each search engine are included as **Attachment 6**.

***Informational Release***

26. To build additional reach and extend exposures, on July 1, 2022, a party-neutral Informational Release was issued broadly over PR Newswire's U.S. Newsline in English and Hispanic Newsline in Spanish to approximately 5,000 general media (print and broadcast) outlets, including local and national newspapers, magazines, national wire services, television and radio broadcast media across the United States as well as approximately 4,500 websites, online databases, internet networks and social networking media. The Informational Release was also specifically targeted to "Small Business" influencers.

27. The Informational Release included the address of the case website and the toll-

free telephone number. The Informational Release served a valuable role by providing additional notice exposures beyond that which was provided by the paid media. The Informational Releases in English and Spanish are included as **Attachment 7**.

***Case Website***

28. On June 29, 2022, Epiq established a dedicated website (in English and Spanish) with an easy to remember domain name (www.FraudLiabilityShiftLitigation.com). The case website allows potential Class Members to obtain detailed information about the case and review key documents, including the Certification Notice, Amended Complaint, Class Certification Order, and other important documents, as well as answers to Frequently Asked Questions (“FAQs”). The case website address was prominently displayed in all Notice documents.

29. As of January 18, 2023, there have been 25,661 unique visitor sessions to the case website and 30,344 website pages presented.

***Toll-free Telephone Number and Postal Mailing Address***

30. On June 29, 2022, a toll-free telephone number (1-855-662-0073) was established (in English and Spanish). Callers can hear an introductory message and then have the option to continue to get information about the lawsuit in the form of recorded answers to FAQs. Callers can request a Certification Notice by mail and can speak to a service agent during standard business hours. The toll-free telephone number was prominently displayed in all Notice documents. The automated phone system is available 24 hours per day, 7 days per week. As of January 18, 2023, there have been 279 calls to the toll-free telephone number representing 1,409 minutes of use, and service agents have handled 97 incoming calls representing 1,146 minutes of use and 43 outbound calls representing 108 minutes of use.

31. A postal mailing address was established, allowing Class Members to request additional information or ask questions.

***Requests for Exclusion***

32. The deadline to request exclusion from the Class was August 31, 2022. Epiq received requests for exclusion from 334 Class Members. Of these, 108 were received on or

before the deadline to request exclusion and 226 were received after the deadline to request exclusion. The Request for Exclusion Report is included as **Attachment 8**.

### CONCLUSION

33. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, and by case law pertaining to the recognized notice standards under Federal Rules of Civil Procedure, Rule 23. This framework directs that the notice plan be optimized to reach the class, and that the notice or notice plan itself not limit knowledge of legal rights—nor the ability to exercise other options—to class members in any way. Based on the information that has been provided to me as of the date of this declaration, all of these requirements were met in this case.

34. The Notice Program included individual notice to all identified Class Members with a Postcard Notice and an Email Notice (for those records with a valid email address) and an extensive media program. Combined, the Notice Program reached at least 80% of the identified Class Members. The reach was further enhanced by the case website. In 2010, the Federal Judicial Center (“FJC”) issued a *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide*. This Guide states that, “the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%.”<sup>8</sup> Here, we have developed and implemented a Notice Program that readily achieved a reach within that standard.

35. The Notice Plan followed the guidance for how to satisfy due process obligations that a notice expert gleans from the United States Supreme Court’s seminal decisions, which are: a) to endeavor to actually inform the class, and b) to demonstrate that notice is reasonably calculated to do so:

- a) “But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it,” *Mullane v. Central Hanover Trust*, 339 U.S. 306, 315 (1950).

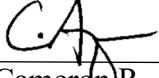
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<sup>8</sup> FED. JUDICIAL CTR, JUDGES’ CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010), available at <https://www.fjc.gov/content/judges-class-action-notice-and-claims-process-checklist-and-plain-language-guide-0>.

- b) “[N]otice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections,” *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156 (1974) citing *Mullane* at 314.
36. In my opinion, the Notice Program provided the best notice practicable under the circumstances of this case, conformed to all aspects of Federal Rules of Civil Procedure, Rule 23, comported with the guidance for effective notice articulated in the Manual for Complex Litigation 4<sup>th</sup> Ed, and followed the FJC’s *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide*.

37. The Notice Program schedule afforded enough time to provide full and proper notice to Class Members before the opt-out deadline.

I declare under penalty of perjury that the foregoing is true and correct. Executed January 19, 2023.



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Cameron R. Azari, Esq.

# Attachment 1

1:17-cv-02738-MKB-JAM  
FLS Litigation  
P.O. Box 6430  
Portland, OR 97228-6430

Document 975-7  
PageID #: 157085

Filed 06/24/23 Page 36

PREPAID  
FIRST CLASS MAIL  
AUTO  
U.S. POSTAGE  
PAID  
PORTLAND, OR  
PERMIT NO. 2882

NOTICE OF CLASS ACTION  
AUTHORIZED BY THE UNITED  
STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT  
OF NEW YORK

[REDACTED]

If you are a merchant who incurred an unimpeached EMV/chip Fraud Liability Shift charge back on a Visa, Mastercard, American Express, or Discover credit or debit card transaction that occurred from October 1, 2015, to September 30, 2017, a pending class action lawsuit may affect your rights. This is not a lawyer solicitation. You are not being sued.

Class action litigation (*B&R Supermarket, Inc., et al. v. Visa Inc., et al.*, 17-cv-02738) is pending in the U.S. District Court for the Eastern District of New York. In this litigation, Plaintiffs assert that Defendants Visa, Mastercard, American Express, and Discover violated antitrust laws by illegally acting in concert in shifting the liability for certain fraudulent charges to merchants when the card was enabled with EMV/chip technology and the merchant's terminal was not. The Court has not yet decided who is right. The Court has decided this case should proceed as a class action lawsuit. Liability has not yet been determined. No trial date has been set. There is no money available now. There is no guarantee there ever will be. However, your legal rights may be affected and you must make a choice now.

## **WHAT ARE MY RIGHTS AND OPTIONS?**

**Your options are either:**

- 1) **Do nothing. Stay in this case. Await the outcome. Give up certain rights.** If you do nothing, you keep the possibility of getting money or benefits that may be awarded at trial or through a settlement. You will be legally bound by all of the Orders the Court issues and Judgments the Court makes in this litigation. However, if you stay in the case, you give up any rights you may have to sue the Defendants separately concerning any claims based on the facts and conduct raised by this lawsuit. If you choose, you may enter an appearance in this case through an attorney.
- 2) **Exclude yourself. Get out of this case. Get no money from it, if any is recovered in the future. Keep any rights you may have to sue on your own.** If you ask to be excluded from the Class, you will not be entitled to any recovery, if any ultimately is awarded. But you, on your own or through an attorney you hire, may be able to sue the Defendants concerning the same legal claims that are the subject of this lawsuit. To exclude yourself, you must send a letter stating you want to exclude yourself from the Class to: **FLS Litigation Administrator, P.O. Box 6430, Portland, OR 97228-6430**. Your exclusion request must be postmarked no later than **08/31/2022**.

## **WANT MORE INFORMATION?**

If you have any questions or want to review documents that have been filed in this case, including the detailed Notice that describes how to request exclusion, you may visit [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com). All dates are subject to change, and current dates are available on the website.

## **QUESTIONS / ADDITIONAL DETAILED INFORMATION?**

**VISIT [WWW.FRAUDLIABILITYSHIFTLITIGATION.COM](http://WWW.FRAUDLIABILITYSHIFTLITIGATION.COM) OR CALL TOLL-FREE 1-855-662-0073.**

# Attachment 2

FLS Litigation Administrator  
P.O. Box 6430  
Portland, OR 97228-6430

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**NOTICE OF CLASS ACTION AUTHORIZED BY THE UNITED STATES  
DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK**

**If you are a merchant who incurred an unreimbursed EMV/chip Fraud Liability Shift chargeback on a Visa, Mastercard, American Express, or Discover credit or debit card transaction that occurred from October 1, 2015, to September 30, 2017, you may be a member of a Certified Class.**

*A court authorized this Notice. This is not a lawyer solicitation. You are not being sued.*

- A class action lawsuit is pending in the U.S. District Court for the Eastern District of New York against Visa, Inc., Mastercard, Incorporated, American Express, Inc., and Discover, Inc., (together the “Defendants”). The case is entitled *B&R Supermarket, Inc., et al. v. Visa, Inc., et al.*, Case No. 17-cv-02738. The lawsuit alleges that Defendants Visa, Mastercard, American Express, and Discover violated antitrust laws by illegally acting in concert in shifting the liability for certain fraudulent charges when a credit or debit card was enabled with EMV/chip technology and the merchant’s terminal was not enabled for EMV/chip technology.
- The Court has decided this case should proceed as a class action lawsuit on behalf of a group of entities that may include you. The Class consists of merchants who incurred an unreimbursed chargeback on a transaction that occurred between October 1, 2015, and September 30, 2017, due to a shift of liability for certain fraud on Visa, Mastercard, American Express, or Discover transactions when the credit or debit card was enabled with EMV/chip technology and the merchant’s terminal was not enabled for EMV/chip technology. Members of the judiciary and government entities and agencies are excluded from being part of the Class.
- The Court has not yet decided who is right. Liability has not yet been determined. No trial date has been set. There is no money available now. There is no guarantee there ever will be. However, your legal rights may be affected, and you must make a choice now.

**WHAT ARE MY RIGHTS AND OPTIONS?**

**1) Do nothing. Stay in this case. Await the outcome. Give up certain rights.**

If you do nothing, you are choosing to stay in the Class and you keep the possibility of getting money or benefits that may be awarded at trial or through a settlement. You will be legally bound by all of the orders the Court issues and Judgments the Court makes in this litigation. However, if you stay in the case, you give up any rights you may have to sue the Defendants separately for any claims based on the facts and conduct raised by the lawsuit. For more information about the lawsuit, you may visit [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com) or call toll-free at 1-855-662-0073.

**2) Exclude yourself. Get out of this case. Get no money from it, if any is recovered in the future. Keep any rights you may have to sue on your own.**

If you ask to be excluded from the Class, you must say in writing that you do not want to be included in this lawsuit and you will not be entitled to any recovery, if any ultimately is awarded. But you, on your own or through an attorney you hire, may be able to sue the Defendants for any claims based on the facts and conduct raised by the lawsuit. You will not be bound by any past or future rulings against the Defendants in this lawsuit. To exclude yourself, you must send a letter, as described below, stating you want to exclude yourself from the Class, to: **FLS Litigation Administrator, P.O. Box 6430, Portland, OR 97228-6430**. Your exclusion request must be postmarked no later than **August 31, 2022**.

**THESE RIGHTS AND OPTIONS—AND THE DEADLINES TO EXERCISE  
THEM—ARE EXPLAINED IN THIS NOTICE.**

**BASIC INFORMATION**

**1. Why Did I Get This Notice?**

You received this Notice because the Court in charge of this lawsuit has certified this case as a class action, and this Notice must be sent to members of the Class. You were identified as a possible member of the Class. The Court in charge of this case is the United States District Court for the Eastern District of New York, and the case is called *B&R Supermarket, Inc., et al. v. Visa, Inc., et al.*, Case No. 17-cv-02738.

The purpose of this Notice is to inform you about this lawsuit, the certification of the case as a class action, and your options of staying in the Class or asking to be excluded from the Class and the case.

## 2. What Is This Lawsuit About?

The lawsuit is a class action, alleging that Defendants Visa, Mastercard, American Express, and Discover violated antitrust laws by illegally acting in concert in shifting the liability for certain fraudulent charges on their networks to merchants when the card is enabled with EMV/chip technology and the merchant's terminal is not enabled for EMV/chip technology.

Plaintiffs allege that Defendants violated antitrust laws by entering into a conspiracy to (1) adopt the same policy via nearly identical rules for shifting billions of dollars in liability from banks to merchants ("Liability Shift" or "Fraud Liability Shift" or "FLS") for fraudulent charges ("chargebacks"); and (2) make the Liability Shift effective in the same month and in the same manner for all four networks. Defendants have denied the claims in this lawsuit and maintain that, even if Defendants are found liable, Plaintiffs and other members of the Class are not entitled to damages.

The Court has not decided whether Defendants violated any laws. By allowing this case to proceed as a class action and this Notice to be issued, the Court is not suggesting that Plaintiffs will win or lose.

Additional information about the claims and a copy of the Amended Complaint are available at [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com).

## 3. What Is a Class Action?

In a class action, one or more people called class representatives (in this case, B&R Supermarket, Grove Liquors LLC, Strouk Group LLC, Palero Food Corp., and Cagueyes Food Corp.) sue on behalf of people who have similar claims. If the Court "certifies" the class (i.e., approves the case for class treatment), the Court resolves the issues for all class members except for those who "exclude" themselves from the class (otherwise known as "opting out" of the class and the class action).

## 4. What Has Happened in This Case?

Plaintiffs filed this action in March of 2016 in the Northern District of California. On July 15, 2016, Plaintiffs filed an Amended Complaint, which Defendants moved to dismiss. On September 30, 2016, the Court in the Northern District of California granted in part and denied in part the motions to dismiss the Amended Complaint. The Court dismissed the claims against all Defendants other than Visa, Mastercard, Discover, and American Express. On May 4, 2017, the Court transferred the case to the federal District Court in the Eastern District of New York, where is it now pending. On August 28, 2020, the Court certified this lawsuit as a class action on behalf of eligible merchants.

The parties have engaged in class-wide fact and expert discovery and recently concluded all discovery. The Court will soon set a schedule for further proceedings in the case, including for summary judgment and other motions, pretrial conference, and trial.

## 5. What Are the Class Representatives Asking For?

The Class Representatives are asking for money to compensate Class Members for damages they allege were caused by Defendants' conduct, as well as pre-judgment and post-judgment interest and their reasonable attorneys' fees and costs.

## 6. How Do I Know If I Am a Class Member?

You are a member of the Class if you are a merchant in the United States who incurred a chargeback on a credit or debit card transaction under the so-called EMV/chip technology Fraud Liability Shifts of Visa, Mastercard, Discover, and/or American Express if the original transaction occurred between October 1, 2015 and September 30, 2017 and that chargeback was not reimbursed or absorbed by another entity. Excluded from the Class are members of the judiciary and government entities or agencies.

If you are unsure about whether you are a Class Member, you can get free help by calling, emailing, or writing to the Plaintiffs' lawyers in this case at the phone numbers and addresses listed below.

## 7. What Are My Options as a Class Member?

You must decide whether to stay in the Class or opt out of the Class.

## 8. What Happens If I Choose to Stay in the Class?

If you stay in the Class, you will be permitted to share in a recovery, if any, that may occur in this lawsuit. But you give up any rights to sue the Defendants separately for any claims based on the facts and conduct raised in this lawsuit. You also will be legally bound by all of the Orders the Court issues and Judgments the Court makes in this class action, even if there is no recovery.

## 9. How Do I Stay in the Class?

You do not have to do anything to stay in the Class.

## 10. What Happens If I Opt Out of the Class?

If you opt out of the Class (by stating in writing that you do not want to be in the Class in this lawsuit), you will give up the right to participate in any recovery that may occur. But you will keep any rights you may currently have to sue the Defendants regarding the legal claims at issue in this lawsuit. You also will not be bound by the Orders the Courts issues and Judgments the Court makes in this case.

## 11. How Do I Opt Out of the Class?

If you are a merchant that does not want to be a member of the Class, you must send a written “Request to Opt Out” to the Notice Administrator so it is received no later than **August 31, 2022**. Your written request must include:

- Your merchant name; address; taxpayer identification number; and telephone number or email address;
- That you are writing about this specific case with the case number, that is, *B&R Supermarket, Inc., et al. v. Visa Inc., et al.*, Case No. 17-cv-02738;
- A simple statement that you want to opt out, or not be a member of the Class;
- The business names, brand names, “doing business as” names, taxpayer identification number(s), and address of any store or sales location associated with the merchant that is opt outing out; and
- Your personal signature along with your printed name and title or position at the merchant that gives you authority to opt out the merchant.

Your request to opt out must be sent to the following address by no later than August 31, 2022:

FLS Litigation, P.O. Box 6430, Portland, OR 97228-6430

If you have any questions, you may call toll-free at 1-855-662-0073. However, optouts or exclusions via telephone or email will not be effective. Opt-outs or exclusions executed by someone besides you or on your behalf will not be effective. You must personally sign the exclusion request.

## 12. What Happens If I Do Not Do Anything?

By doing nothing, you are choosing to stay in the Class. If you stay in the Class and the Class obtains money or benefits, you will be notified about how to apply for a share. Regardless of whether the plaintiffs win or lose at trial or whether they settle, you will not be able to sue, or continue to sue the Defendants—as part of any other lawsuit—for any claims based on the facts and conduct raised by this lawsuit. You will also be legally bound by all of the Orders the Court issues and Judgments the Court makes in this lawsuit.

## THE LAWYERS REPRESENTING YOU

### 13. As a Class Member, Do I Have a Lawyer Representing My Interests in This Class Action?

Yes. The Court has appointed lawyers to represent you and other Class Members. These lawyers are called Class Counsel. The Court has approved and appointed George C. Aguilar, Michael J. Nicoud, and Jacob Ogbozo and the law firm of Robbins LLP as Class Counsel. These lawyers are also assisted by John Devine of Devine Goodman & Rasco, LLP, and by Thomas G. Amon of the Law Offices of Thomas G. Amon.

If you have questions about the lawsuit, you may contact Class Counsel at:

George C. Aguilar  
Michael J. Nicoud  
Jacob Ogbozo  
Robbins LLP  
5040 Shoreham Place  
San Diego, CA 92122  
619-525-3990 (office)  
[gaguilar@robbinsllp.com](mailto:gaguilar@robbinsllp.com)  
[mnicoud@robbinsllp.com](mailto:mnicoud@robbinsllp.com)  
[jogbozo@robbinsllp.com](mailto:jogbozo@robbinsllp.com)

**14. How Will the Lawyers Be Compensated, and Will the Class Representatives Receive Compensation?**

If recovery is obtained for the Class, Class Counsel will request and apply to the Court for an award of attorneys' fees and for the reimbursement of expenses for litigating the case. Class Counsel may also apply to the Court to approve a reasonable amount for the Class Representatives for their services in fulfilling their duties. These applications will be filed with the Court and will be available for review once filed on the Court's docket for public electronic access. If approved, these fees and expenses and representative awards will be paid from the recovery obtained for the Class.

**15. Should I Get My Own Lawyer?**

You do not need to hire your own lawyer because Class Counsel is working for you. You are welcome to hire your own lawyer at your expense. If you hire a lawyer to speak for you or to appear in Court, your lawyer must file a Notice of Appearance.

**WANT MORE INFORMATION?**

If you have any questions or want to review documents that have been filed in this case, you may visit [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com) or call toll-free at 1-855-662-0073.

**Please do not contact the Court. The Court cannot answer any questions or discuss the case.**

# Attachment 3

Fraud Liability Shift Litigation Notice of Class Certification

FLS Litigation <noreply@fraudliabilityshiftlitigation.com>

To: [REDACTED]

**NOTICE OF CLASS ACTION AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF NEW YORK**

**Dear Class Member,**

**If you are a merchant who incurred an unreimbursed EMV/chip Fraud Liability Shift chargeback on a Visa, Mastercard, American Express, or Discover credit or debit card transaction that occurred from October 1, 2015, to September 30, 2017, a pending class action lawsuit may affect your rights. This is not a lawyer solicitation. You are not being sued.**

Class action litigation (*B&R Supermarket, Inc., et al. v. Visa Inc., et al.*, 17-cv-02738) is pending in the U.S. District Court for the Eastern District of New York. In this litigation, Plaintiffs assert that Defendants Visa, Mastercard, American Express, and Discover violated antitrust laws by illegally acting in concert in shifting the liability for certain fraudulent charges to merchants when the card was enabled with EMV/chip technology and the merchant's terminal was not. The Court has not yet decided who is right. The Court has decided this case should proceed as a class action lawsuit. Liability has not yet been determined. No trial date has been set. There is no money available now. There is no guarantee there ever will be. However, your legal rights may be affected, and you must make a choice now.

**WHAT ARE MY RIGHTS AND OPTIONS?**

**Your options are either:**

**1. Do nothing. Stay in this case. Await the outcome. Give up certain rights.** If you do nothing, you keep the possibility of getting money or benefits that may be awarded at trial or through a settlement. You will be legally bound by all of the Orders the Court issues and Judgments the Court makes in this litigation. However, if you stay in the case, you give up any rights you may have to sue the Defendants separately concerning any claims based on the facts and conduct raised by this lawsuit. If you choose, you may enter an appearance in this case through an attorney.

**2. Exclude yourself. Get out of this case. Get no money from it, if any is recovered in the future. Keep any rights you may have to sue on your own.** If you ask to be excluded from the Class, you will not be entitled to any recovery, if any ultimately is awarded. But you, on your

own or through an attorney you hire, may be able to sue the Defendants concerning the same legal claims that are the subject of this lawsuit. To exclude yourself, you must send a letter stating you want to exclude yourself from the Class to: **FLS Litigation Administrator, P.O. Box 6430, Portland, OR 97228-6430**. Your exclusion request must be postmarked no later than **August 31, 2022**.

## **WANT MORE INFORMATION?**

If you have any questions or want to review documents that have been filed in this case, including the detailed Notice that describes how to request exclusion, you may visit [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com). All dates are subject to change, and current dates are available on the website.

## **HAVE QUESTIONS OR NEED ADDITIONAL DETAILED INFORMATION?**

**VISIT [WWW.FRAUDLIABILITYSHIFTLITIGATION.COM](http://WWW.FRAUDLIABILITYSHIFTLITIGATION.COM) OR CALL TOLL-FREE 1-855-662-0073.**

AG749\_v01

To unsubscribe from this list, please click on the following link: [Unsubscribe](#)

# **Attachment 4**

**If you are a merchant who incurred an unreimbursed EMV/chip Fraud Liability Shift chargeback on a Visa, Mastercard, American Express, or Discover credit or debit card transaction that occurred from October 1, 2015, to September 30, 2017, a pending class action lawsuit may affect your rights.**

Class action litigation (*B&R Supermarket, Inc., et al. v. Visa Inc., et al.*, 17-cv-02738) is pending in the U.S. District Court for the Eastern District of New York. In this litigation, Plaintiffs assert that Defendants Visa, Mastercard, American Express, and Discover violated antitrust laws by illegally acting in concert in shifting the liability for certain fraudulent charges to merchants when the card was enabled with EMV/chip technology and the merchant's terminal was not. The Court has not yet decided who is right. The Court has decided this case should proceed as a class action lawsuit. Liability has not yet been determined. No trial date has been set. There is no money available now. There is no guarantee there ever will be. However, your legal rights may be affected and you must make a choice now.

## **WHAT ARE MY RIGHTS AND OPTIONS?**

**Your options are either:**

- 1. Do nothing. Stay in this case. Await the outcome. Give up certain rights.** If you do nothing, you keep the possibility of getting money or benefits that may be awarded at trial or through a settlement. You will be legally bound by all of the Orders the Court issues and Judgments the Court makes in this litigation. However, if you stay in the case, you give up any rights you may have to sue the Defendants separately concerning any claims based on the facts and conduct raised by this lawsuit. If you choose, you may enter an appearance in this case through an attorney.
- 2. Exclude yourself. Get out of this case. Get no money from it, if any is recovered in the future. Keep any rights you may have to sue on your own.** If you ask to be excluded from the Class, you will not be entitled to any recovery, if any ultimately is awarded. But you, on your own or through an attorney you hire, may be able to sue the Defendants concerning the same legal claims that are the subject of this lawsuit. To exclude yourself, you must send a letter stating you want to exclude yourself from the Class to: **FLS Litigation Administrator, P.O. Box 6430, Portland, OR 97228-6430**. Your exclusion request must be postmarked no later than **08/31/2022**.

## **WANT MORE INFORMATION?**

If you have any questions or want to review documents that have been filed in this case, including the detailed Notice that describes how to request exclusion, you may visit [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com). All dates are subject to change, and current dates are available on the website.

## **QUESTIONS / ADDITIONAL DETAILED INFORMATION?**

**VISIT [WWW.FRAUDLIABILITYSHIFTLITIGATION.COM](http://WWW.FRAUDLIABILITYSHIFTLITIGATION.COM) OR CALL TOLL-FREE 1-855-662-0073.**

# Attachment 5

***B&R Supermarket v. Visa***  
**Sponsored Search Keywords**

Visa Class Action  
Visa Litigation  
Visa Lawsuit  
Visa Claim  
Visa Antitrust  
Visa Fraud  
Mastercard Class Action  
Mastercard Litigation  
Mastercard Lawsuit  
Mastercard Claim  
Mastercard Antitrust  
Mastercard Fraud  
American Express Class Action  
American Express Litigation  
American Express Lawsuit  
American Express Claim  
American Express Antitrust  
American Express Fraud  
Discover Class Action  
Discover Litigation  
Discover Lawsuit  
Discover Claim  
Discover Antitrust  
Discover Fraud  
Chip Chargeback  
Chargeback Class Action  
Chargeback Litigation  
Chargeback Lawsuit  
Chargeback Claim  
Chargeback Antitrust  
Chargeback Fraud  
EMV Class Action  
EMV Litigation  
EMV Lawsuit  
EMV Claim  
EMV Antitrust  
EMV Fraud  
Credit Card Chip Fraud  
Debit Card Chip Fraud  
Credit Card Chargeback  
Debit Card Chargeback  
Visa Chargeback  
Mastercard Chargeback  
American Express Chargeback  
Discover Chargeback

# Attachment 6

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Ad · <https://www.fraudliabilityshiftlitigation.com/> ::

## Legal Notice - Pending Class Action Lawsuit

Are you a merchant who incurred an unreimbursed EMV/chip fraudulent **chargeback**? A pending class action could affect you.

<https://pocketsense.com> › Managing Your Money ::

## Can a Merchant Sue You for a Chargeback? - PocketSense

If a merchant suspects that you have used **chargebacks** as a form of "friendly fraud", they are within their legal right to file a **lawsuit** against you and ...

[What Is A Chargeback?](#) · [What Is The Chargeback...](#) · [The Problem With Chargebacks](#)

## People also ask ::

[Can you get sued for doing a chargeback?](#) ▼

[Can you go to jail for chargeback?](#) ▼

[What are the consequences of chargebacks?](#) ▼

[Is it legal to do a chargeback?](#) ▼

[Feedback](#)

<https://donotpay.com> › learn › can-you-go-to-jail-for-c... ::

## Can You Go to Jail for Chargebacks? - DoNotPay

The best option for merchants is to file a civil **lawsuit** that may include causes of action of fraud, conversion, or breach of contract.

[Flaws Of The Chargeback...](#) · [Requesting A Chargeback With...](#) · [What Else Can Donotpay Do...](#)

<https://www.prnewswire.com> › news-releases › if-you-a... ::

## If you are a merchant who incurred an unreimbursed EMV ...

47 minutes ago — ... Fraud Liability Shift **chargeback** on a Visa, Mastercard, American Express, or. ... a pending **class action lawsuit** may affect your rights.

<https://www.chargebackgurus.com> › blog › chargeback... ::

## Difference between Chargebacks and Disputes

Nov 30, 2021 — When a dispute becomes a **chargeback**, the merchant is held liable by default.

That means that if the merchant wants to fight the **chargeback** and

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## Pending Class Action Lawsuit - EMV/chip Class Action

Pending **Class Action** in the EMV/chip Fraud Liability Shift chargeback litigation.

<https://www.paymentcardsettlement.com> ::

## Payment Card Settlement | Official Court-Authorized Website ...

The **lawsuit** is about claims that merchants paid excessive fees to accept **Visa** and Mastercard cards because **Visa** and Mastercard, individually, and together ...

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<https://www.paymentcardsettlement.com> › Home › FAQ ::

## Payment Card Settlement - Frequently Asked Questions

May 19, 2022 — Under the settlement, Visa, Mastercard and the Bank Defendants ...

## People also ask ::

Is there a class action lawsuit against Visa and Mastercard? ▼

Why is this case against Visa and Mastercard being heard by the court? ▼

What is Visa settlement? ▼

What is a class action settlement notice? ▼

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<https://merchants.fiserv.com> › en-us › merchants › visa-... ::

## Visa / MasterCard Interchange Fee Settlement Recovery - Fiserv

A proposed \$5.54–\$6.24 billion **settlement** to provide payments to merchants who accepted **Visa** and MasterCard at any time from January 1, 2004.

<https://www.natso.com> › topics › guidance-on-visa-mas... ::

## Guidance on Visa, Mastercard Swipe Fee Class-Action ...

The **lawsuit** is about claims that merchants paid excessive fees to accept **Visa** and Mastercard cards because **Visa** and Mastercard, individually, and together ...

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Ad related to: Visa Class Action

[www.fraudliabilityshiftlitigation.com](http://www.fraudliabilityshiftlitigation.com)

## Legal Notice - Pending Class Action Lawsuit

Are you a merchant who incurred an unreimbursed EMV/chip fraudulent chargeback? A pending **class action** could affect you.

### People also ask

[How do I initiate a class action lawsuit?](#) [How to win a class action lawsuit?](#) [How to get involved in a class action lawsuit?](#) [Who can participate in a class action lawsuit?](#) [www.tidalcommerce.com](http://www.tidalcommerce.com) › learn › visa-mastercard

## Visa / Mastercard Class Action Lawsuit Settlement FAQ

October 18, 2021. Merchant Tips. If you've been accepting Visa or **Mastercard** in your business anytime between 2004 and early 2019 (essentially any business in the last 15 years), then you mo...

[www.retailers.com](http://www.retailers.com) › blogs › general

## Update: Visa/Mastercard's class action lawsuit

May 30, 2021 · As a reminder, this class action settlement claims that merchants paid more fees than they should have for accepting **Visa** and **MasterCard** as payment from consumers. This...

[touchsuite.com](http://touchsuite.com) › visa-mastercard-class-action-lawsuit

## Visa MasterCard Class Action Lawsuit Settlement | TouchSuite

Visa and Mastercard have agreed to pay as much as \$6.24 billion in a class action settlement brought by U.S. merchants. The lawsuit is about claims that **Visa** and Mastercard violated antitrust...

[www.ctvnews.ca](http://www.ctvnews.ca) › business › new-credit-card-class

## Visa, Mastercard class action offer rebates for businesses in ...

Jun 01, 2022 · New credit card **class action** allows Canadian businesses to claim rebates of up to \$5,000. Mastercard and **Visa** credit cards in Zelienople, Pa., on Feb. 20, 2019. (Keith Srakocic / AP...

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Ad related to: EMV Class Action

[www.fraudliabilityshiftlitigation.com](http://www.fraudliabilityshiftlitigation.com)

## Pending Class Action Lawsuit - EMV/chip Class Action

Pending **Class Action** in the **EMV/chip** Fraud Liability Shift chargeback litigation. Your legal rights may be affected.

NEW YORK, July 1, 2022 /PRNewswire/ -- If you are a merchant who incurred an unreimbursed EMV/chip Fraud Liability Shift chargeback on a Visa, Mastercard, American Express, or Discover credit or debit card transaction that occurred from October 1, 2015, to September 30, 2017, a pending class action lawsuit may affect your rights.

[apnews.com/press-release/pr-newswire/lawsuits-class-action-visa-inc-614e2562429ae02b3a978...](http://apnews.com/press-release/pr-newswire/lawsuits-class-action-visa-inc-614e2562429ae02b3a978...)

[If you are a merchant who incurred an unreimbursed EMV/chip ...](#)

infinicept.com › payment-facilitator › archive ▾

## Class Action Merchant EMV Lawsuit Could Make The EMV ...

**Class Action Merchant EMV Lawsuit** Could Make The **EMV** Transition A Lot Messier **EMV** has always delivered more than its fair share of headaches and surprises—and this week even has the...

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www.fmglaw.com › business-litigation › wendys-hit ▾

## Wendy's Hit with EMV Related Data Breach Class Action Lawsuit

Feb 19, 2016 · Wendy's Hit with **EMV** Related Data Breach **Class Action Lawsuit** 2/19/16 By: Behnam Salehi and Jonathan Romvary A **class action** lawsuit has been filed against the fast food...

markets.businessinsider.com › news › stocks ▾

[If you are a merchant who incurred an unreimbursed EMV/chip ...](#)

47 minutes ago · NEW YORK, July 1, 2022 /PRNewswire/ – If you are a merchant who incurred an unreimbursed **EMV/chip** Fraud Liability Shift chargeback on a Visa, Mastercard, American Express...

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## Legal Notice | Pending Class Action Lawsuit | EMV/chip Class Action

<https://www.fraudliabilityshiftlitigation.com> ▾

Ad Are you a merchant who incurred an unreimbursed EMV/chip fraudulent chargeback? A pending **class action** could affect you.

### Visa, Mastercard ATM Fee Class Action Lawsuit Overview:

- Who: In three consolidated antitrust matters, plaintiffs filed a class action lawsuit against Visa and Mastercard.
- Why: Consumers and ATM operators allege that Visa and Mastercard set fees that broke antitrust laws.
- Where: The class action lawsuit was filed in California federal court.

### Visa, Mastercard ATM Fee Class Action is 'Questionable,' Court Sa...

 [topclassactions.com/lawsuit-settlements/money/credit-cards/visa-mastercard-...](https://topclassactions.com/lawsuit-settlements/money/credit-cards/visa-mastercard-...)

Was this helpful?  

### People also ask

How do I initiate a class action lawsuit? 

How to win a class action lawsuit? 

How to get involved in a class action lawsuit? 

Who can participate in a class action lawsuit? 

Feedback

### Visa / Mastercard Class Action Lawsuit Settlement FAQ

<https://www.tidalcommerce.com/learn/visa-mastercard-class-action-lawsuit> ▾

The court found that merchants (you!) overpaid interchange fees because Visa and **Mastercard** violated antitrust laws and **ordered a preliminary settlement of \$5.54-\$6.24 billion** for merchants who **accepted Visa and Mastercard from January 1st, 2004 to January 25th, 2019**. In other words, you have the opportunity to get paid ba...



Who Has to File A Claim?

Can My Merchant Services Provid...

What This M



You, the merchant. The lawsuit is only between merchants and Visa/Mastercard, so you are the only party who can file a claim.

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## Pending Class Action Lawsuit | EMV/chip Class Action

<https://www.fraudliabilityshiftlitigation.com> ▾

Ad Pending Class Action in the EMV/chip Fraud Liability Shift chargeback litigation. Your legal rights may be affected.

If you are a merchant who incurred an **unreimbursed EMV/chip Fraud Liability Shift** chargeback on a Visa, Mastercard, American Express, or Discover credit or debit card, a pending class action lawsuit may affect your rights July 1, 2022 GMT

If you are a merchant who incurred an unreimbursed EMV/chip Fra...

 [apnews.com/press-release/pr-newswire/lawsuits-class-action-visa-inc-614e256...](http://apnews.com/press-release/pr-newswire/lawsuits-class-action-visa-inc-614e256...)

Was this helpful?  

### EMV – New Class Action Lawsuit - Dharma Merchant ...

<https://dharmamerchantservices.com/blog/emv-new...> ▾

Apr 14, 2016 · EMV – New Class Action Lawsuit. It has been our opinion that the implementation of the new EMV (chip cards) has been one of the most ...



Estimated Reading Time: 2 mins

### Class Action Merchant EMV Lawsuit Could Make The EMV ...

<https://infinicet.com/payment-facilitator/archive/...> ▾

Mar 16, 2016 · All they can do is request certification and wait for it to occur. And no one can say when that will be," the filing said. The lawsuit is seeking **class-action** certification, which would ...

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### Wendy's Hit with EMV Related Data Breach Class Action Lawsuit

<https://www.fmglaw.com/business-litigation/wendys...> ▾

Feb 19, 2016 · BlogLine Wendy's Hit with EMV Related Data Breach Class Action Lawsuit. 2/19/16. By: Behnam Salehi and Jonathan Romvary A **class action** lawsuit has been filed against...

### EMV Chargeback Controversy Culminates in a Lawsuit

<https://www.afponline.org/ideas-inspiration/topics/...> ▾

Mar 16, 2016 · Published: 3/16/2016. Since the October 2015 EMV liability shift, retailers who are still not EMV-ready have seen a serious uptick in ...



## Pending Class Action Lawsuit | EMV/chip Class Action

<https://www.fraudliabilityshiftlitigation.com> ▾

Ad Pending Class Action in the EMV/chip Fraud Liability Shift chargeback litigation. Your legal rights may be affected.

# Attachment 7

If you are a merchant who incurred an unreimbursed EMV/chip Fraud Liability Shift chargeback on a Visa, Mastercard, American Express, or Discover credit or debit card, a pending class action lawsuit may affect your rights

USA - English ▾

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NEWS PROVIDED BY

**U.S. District Court for the Eastern District of New York →**

Jul 01, 2022, 09:00 ET

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NEW YORK, July 1, 2022 /PRNewswire/ -- If you are a merchant who incurred an unreimbursed EMV/chip Fraud Liability Shift chargeback on a Visa, Mastercard, American Express, or Discover credit or debit card transaction that occurred from October 1, 2015, to September 30, 2017, a pending class action lawsuit may affect your rights.

Class action litigation (*B&R Supermarket, Inc, et al. v. Visa Inc., et al.*, 17-cv-02738) is pending in the U.S. District Court for the Eastern District of New York. In this litigation, Plaintiffs assert that Defendants Visa, Mastercard, American Express, and Discover violated antitrust laws by illegally acting in concert in shifting the liability for certain fraudulent charges to merchants when the card was enabled with EMV/chip technology and the merchant's terminal was not. The Court has not yet decided who is right. The Court has decided this case should proceed as a class action lawsuit. Liability has not yet been determined. No trial date has been set. There is no money available now. There is no guarantee there ever will be. However, your legal rights may be affected and you must make a choice now.



# WHAT ARE MY RIGHTS AND OPTIONS?

Your options are either:

- 1. Do nothing. Stay in this case. Await the outcome. Give up certain rights.** If you do nothing, you keep the possibility of getting money or benefits that may be awarded at trial or through a settlement. You will be legally bound by all of the Orders the Court issues and Judgments the Court makes in this litigation. However, if you stay in the case, you give up any rights you may have to sue the Defendants separately concerning any claims based on the facts and conduct raised by this lawsuit. If you choose, you may enter an appearance in this case through an attorney.
- 2. Exclude yourself. Get out of this case. Get no money from it, if any is recovered in the future. Keep any rights you may have to sue on your own.** If you ask to be excluded from the Class, you will not be entitled to any recovery, if any ultimately is awarded. But you, on your own or through an attorney you hire, may be able to sue the Defendants concerning the same legal claims that are the subject of this lawsuit. To exclude yourself, you must send a letter stating you want to exclude yourself from the Class to: **FLS Litigation Administrator, P.O. Box 6430, Portland, OR 97228-6430**. Your exclusion request must be postmarked no later than **08/31/2022**.

## WANT MORE INFORMATION?

If you have any questions or want to review documents that have been filed in this case, including the detailed Notice that describes how to request exclusion, you may visit [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com). All dates are subject to change, and current dates are available on the website.

## QUESTIONS / ADDITIONAL DETAILED INFORMATION?

VISIT [WWW.FRAUDLIABILITYSHIFTLITIGATION.COM](http://WWW.FRAUDLIABILITYSHIFTLITIGATION.COM) OR CALL TOLL-FREE 1-855-662-0073.

URL: [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com)

SOURCE U.S. District Court for the Eastern District of New York



Si usted es un comerciante que incurrió en un contracargo por transferencia de responsabilidad por fraude de EMV/chip no reembolsado en una transacción con tarjeta de crédito o débito Visa, Mastercard, American Express o Discover, una demanda colectiva pendiente puede afectar sus derechos

USA - English ▾

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NEWS PROVIDED BY

**U.S. District Court for the Eastern District of New York** →

Jul 01, 2022, 09:00 ET

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NUEVA YORK, 1 de julio de 2022 /PRNewswire-HISPANIC PR WIRE/ -- Si usted es un comerciante que incurrió en un contracargo por transferencia de responsabilidad por fraude de EMV/chip no reembolsado en una transacción con tarjeta de crédito o débito Visa, Mastercard, American Express o Discover que ocurrió del 1 de octubre de 2015 al 30 de septiembre de 2017, una demanda colectiva pendiente puede afectar sus derechos.

El litigio de demanda colectiva (*B&R Supermarket, Inc., et al. v. Visa Inc., et al.*, 17-cv-02738) está pendiente en el Tribunal de Distrito de los Estados Unidos para el Distrito Este de Nueva York. En este litigio, los Demandantes afirman que los Demandados Visa, Mastercard, American Express y Discover violaron las leyes antimonopolio al actuar ilegalmente en conjunto para transferir la responsabilidad por ciertos cargos fraudulentos a los comerciantes cuando la tarjeta estaba habilitada con tecnología EMV/chip y el terminal del comerciante no

lo estaba. El Tribunal todavía no ha decidido quién tiene la razón. El Tribunal decidió que este caso debía proceder como un litigio de demanda colectiva. Aún no se ha determinado la responsabilidad. No se ha establecido una fecha de juicio. No hay dinero disponible en la actualidad. No hay garantía alguna de que habrá en el futuro. Sin embargo, sus derechos legales pueden verse afectados, y usted debe tomar una decisión ahora.

## ¿CUÁLES SON MIS DERECHOS Y OPCIONES?

**Sus opciones son las siguientes:**

- 1. No hacer nada. Permanecer en este caso. Esperar el resultado. Renunciar a ciertos derechos.** Si usted no hace nada, mantiene la posibilidad de obtener dinero o beneficios que pueden otorgarse en un juicio o mediante una conciliación. Usted quedará obligado legalmente por todas las Órdenes judiciales y las Sentencias dictadas por el Tribunal en este litigio. Sin embargo, si permanece en el caso, usted renuncia a cualquier derecho que pueda tener de demandar a los Demandados por separado por cualquier reclamación basada en los hechos y la conducta planteados por esta demanda. Si lo desea, usted puede presentar una comparecencia en este caso mediante un abogado.
- 2. Excluirse. Retirarse de este caso. No obtener dinero de él, si se recupera alguno en el futuro. Conservar cualquier derecho que usted pueda tener a demandar por su cuenta.** Si solicita ser excluido del Grupo de demandantes, usted no tendrá derecho a ningún resarcimiento si finalmente se otorga alguno. Pero usted, por su cuenta o mediante un abogado que contrate, puede demandar a los Demandados en relación con las mismas reclamaciones legales que son objeto de la presente demanda. Para excluirse, usted debe enviar una carta en la que indique que desea excluirse del Grupo de demandantes, a: **FLS Litigation Administrator, P.O. Box 6430, Portland, OR 97228-6430**. Su solicitud de exclusión debe tener un sello postal que no sea posterior al **08/31/2022**.

## ¿DESEA OBTENER INFORMACIÓN ADICIONAL?

Si tiene alguna pregunta o desea revisar los documentos que se han presentado en este caso, incluido el Aviso detallado que describe cómo solicitar la exclusión, usted puede visitar [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com). Todas las fechas están sujetas a cambios y las fechas

**¿TIENE PREGUNTAS O NECESITA INFORMACIÓN DETALLADA ADICIONAL?**

**VISITE [WWW.FRAUDLIABILITYSHIFTLITIGATION.COM](http://WWW.FRAUDLIABILITYSHIFTLITIGATION.COM) O LLAME AL NÚMERO GRATUITO 1-855-662-0073.**

URL: [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com)

FUENTE U.S. District Court for the Eastern District of New York

SOURCE U.S. District Court for the Eastern District of New York

# Attachment 8



## Exclusion Report

| Number | Entity Name                                     | Received Date |
|--------|---|---------------|
| 1      | 7-ELEVEN, INC.                                  | 8/31/2022     |
| 2      | ACADEMY, LTD                                    | 8/31/2022     |
| 3      | AGODA INTERNATIONAL USA INC.                    | 8/31/2022     |
| 4      | ALIMENTATION COUCHE-TARD INC                    | 8/31/2022     |
| 5      | AMAZON COM INC                                  | 8/31/2022     |
| 6      | AMERICAN BLINDS & WALLPAPER ET AL               | 8/31/2022     |
| 7      | AMERICAN MULTI-CINEMA, INC.                     | 8/31/2022     |
| 8      | ANDEAVOR LLC                                    | 8/31/2022     |
| 9      | ASHLEY FURNITURE INDUSTRIES INC                 | 8/31/2022     |
| 10     | ATM   | 8/2/2022      |
| 11     | BARNES & NOBLE COLLEGE BOOKSELLERS              | 8/31/2022     |
| 12     | BARNES & NOBLE INC                              | 8/31/2022     |
| 13     | BEALL'S INC                                     | 8/31/2022     |
| 14     | BLACKLOCUS, INC.                                | 8/31/2022     |
| 15     | BOSCOV'S DEPARTMENT STORE LLC                   | 8/31/2022     |
| 16     | BROOKSHIRE GROCERY COMPANY                      | 8/31/2022     |
| 17     | CITY OF FRIENDSWOOD                             | 7/19/2022     |
| 18     | COBORN'S INC                                    | 8/31/2022     |
| 19     | CONDEV NEVADA INC.                              | 8/31/2022     |
| 20     | CONSTRUCTION DEVELOPERS, INC                    | 8/31/2022     |
| 21     | CONTRACTORS WAREHOUSE LLC ET AL                 | 8/31/2022     |
| 22     | CRACKER BARREL OLD COUNTRY STORE INC            | 8/31/2022     |
| 23     | CRATE & BARREL HOLDINGS INC                     | 8/31/2022     |
| 24     | CUMBERLAND FARMS INC                            | 8/31/2022     |
| 25     | D'AGONSTINO SUPERMARKETS, INC.                  | 8/31/2022     |
| 26     | DICK'S SPORTING GOODS INC                       | 8/31/2022     |
| 27     | DILLARD DOLLARS, INC                            | 8/31/2022     |
| 28     | DILLARD INTERNATIONAL, INC                      | 8/31/2022     |
| 29     | DILLARD INVESTMENT CO., INC                     | 8/31/2022     |
| 30     | DILLARD TENNESSEE OPERATING LIMITED PARTNERSHIP | 8/31/2022     |
| 31     | DILLARD TEXAS CENTRAL , LLC                     | 8/31/2022     |
| 32     | DILLARD TEXAS EAST, LLC                         | 8/31/2022     |
| 33     | DILLARD TEXAS FOUR-POINT, LLC                   | 8/31/2022     |
| 34     | DILLARD TEXAS SOUTH, LLC                        | 8/31/2022     |
| 35     | DILLARD'S, INC.                                 | 8/31/2022     |
| 36     | DRURY HOTELS COMPANY, LLC                       | 8/31/2022     |
| 37     | DSS NEIL OPERATIONS, LLC                        | 8/31/2022     |
| 38     | DSS UNITER, LLC                                 | 8/31/2022     |
| 39     | EXPRESS INC                                     | 8/31/2022     |
| 40     | FAMILY DOLLAR STORES, INC.                      | 8/31/2022     |
| 41     | FAMILY EXPRESS CORPORATION                      | 8/31/2022     |
| 42     | FLEET FARM WHOLESALE SUPPLY CO. LLC             | 8/31/2022     |
| 43     | FOOT LOCKER INC                                 | 8/31/2022     |
| 44     | GENESCO INC                                     | 8/31/2022     |

|    |  |           |
|----|--|-----------|
| 45 | GNC HOLDINGS INC   | 8/31/2022 |
| 46 | GULF OIL LP  | 8/31/2022 |
| 47 | HAT WORLD, INC.  | 8/31/2022 |
| 48 | HD DIRECT, LLC ET AL                                     | 8/31/2022 |
| 49 | HD SUPPLY FACILITIES MAINTENANCE ET AL                   | 8/31/2022 |
| 50 | HIGBEE KYG, LP   | 8/31/2022 |
| 51 | HIGBEE GAK, LP   | 8/31/2022 |
| 52 | HIGBEE LOUISIANA, LLC                                    | 8/31/2022 |
| 53 | HIGBEE SALVA, LP   | 8/31/2022 |
| 54 | HIGBEE WEST MAIN, LP                                     | 8/31/2022 |
| 55 | HMSHOST CORPORATION                                      | 8/31/2022 |
| 56 | HOME DEPOT INCENTIVES, INC                               | 8/31/2022 |
| 57 | IKEA NORTH AMERICA SERVICES LLC                          | 8/31/2022 |
| 58 | INTERLINE BRANDS, INC. ET AL                             | 8/31/2022 |
| 59 | JRD UNICO, INC. AND JETRO CASH & CARRY ENTERPRISES, LLC. | 8/31/2022 |
| 60 | JUST BLINDS, LP  | 8/31/2022 |
| 61 | LOWE'S COMPANIES, INC.                                   | 8/31/2022 |
| 62 | MARATHON PETROLEUM CO LP                                 | 8/31/2022 |
| 63 | MICHAELS STORES, INC.                                    | 8/31/2022 |
| 64 | NATIONAL ASSOCIATION OF CONVENIENCE STORES               | 8/31/2022 |
| 65 | NATIONAL GROCERS ASSOCIATION                             | 8/31/2022 |
| 66 | NATIONAL RAILROAD PASSENGER CORPORATION DBA AMTRAK       | 8/31/2022 |
| 67 | NIKE INC   | 8/31/2022 |
| 68 | PACIFIC SUNWEAR OF CALIFORNIA, LLC                       | 8/31/2022 |
| 69 | PANDA RESTAURANT GROUP, INC.                             | 8/31/2022 |
| 70 | PANERA, LLC  | 8/31/2022 |
| 71 | PC RICHARD & SON INC                                     | 8/31/2022 |
| 72 | PENNEY OPCO LLC  | 8/31/2022 |
| 73 | PETCO ANIMAL SUPPLIES INC                                | 8/31/2022 |
| 74 | RALPH LAUREN CORPORATION                                 | 8/31/2022 |
| 75 | RECREATIONAL EQUIPMENT INC                               | 8/31/2022 |
| 76 | RED BEACON, INC. ET AL                                   | 8/31/2022 |
| 77 | REPUBLIC SERVICES INC                                    | 8/31/2022 |
| 78 | RESTORATION HARDWARE INC                                 | 8/31/2022 |
| 79 | RTW RETAILWINDS INC F/K/A NEW YORK & COMPANY INC         | 8/31/2022 |
| 80 | SEARS HOLDING CORPORATION                                | 8/31/2022 |
| 81 | SPEEDWAY LLC   | 8/31/2022 |
| 82 | STARBUCKS CORPORATION                                    | 8/31/2022 |
| 83 | STEIN MART INC.  | 8/31/2022 |
| 84 | SWAROVSKI US HOLDING LIMITED                             | 8/31/2022 |
| 85 | TAMURA SUPERMARKET INC                                   | 8/16/2022 |
| 86 | TASKRABBIT INC   | 8/31/2022 |
| 87 | THD AT-HOME SERVICES, INC. ET AL                         | 8/31/2022 |
| 88 | THD AT-HOME SERVICES, INC. ET AL                         | 8/31/2022 |
| 89 | THE BUCKLE, INC.   | 8/31/2022 |
| 90 | THE CHILDRENS PLACE INC                                  | 8/31/2022 |
| 91 | THE GAP, INC.  | 8/31/2022 |
| 92 | THE HIGBEE COMPANY, LLC (F/K/A THE HIGBEE COMPANY)       | 8/31/2022 |
| 93 | THE HOME DEPOT HOME DEPOT U.S.A., INC ET AL              | 8/31/2022 |
| 94 | THE HOME DEPOT SPECIAL SERVICES, INC.                    | 8/31/2022 |
| 95 | THE HOME DEPOT, INC.                                     | 8/31/2022 |

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| 96  | THE RADIO DOCTOR   | 8/22/2022 |
| 97  | THE TALBOTS INC  | 8/31/2022 |
| 98  | THE WILLIAM CARTER COMPANY                                       | 8/31/2022 |
| 99  | THERMO FISHER SCIENTIFIC INC                                     | 8/31/2022 |
| 100 | THORNTONS LLC  | 8/31/2022 |
| 101 | U.S ALPHA, INC   | 8/31/2022 |
| 102 | U.S. HOME SYSTEMS, INC.  | 8/31/2022 |
| 103 | U.S. REMODELERS, INC. ET AL                                      | 8/31/2022 |
| 104 | WENDYS - GEORGETOWN  | 7/27/2022 |
| 105 | WHOLE FOODS MARKET INC   | 8/31/2022 |
| 106 | YOUR OTHER WAREHOUSE   | 8/31/2022 |
| 107 | YUM! BRANDS INC  | 8/31/2022 |
| 108 | MARSHALLS OF LAREDO, TX., INC.                                   | 9/2/2022  |
| 109 | ULINE, INC.  | 9/2/2022  |
| 110 | VICTORIA'S SECRET STORES, LLC                                    | 9/2/2022  |
| 111 | VSPR STORE OPERATIONS, LLC                                       | 9/2/2022  |
| 112 | AT Retail, Inc. f/k/a AnnTaylor Retail, Inc.                     | 9/6/2022  |
| 113 | Mahwah Bergen Retail Group, Inc. f/k/a Ascena Retail Group, Inc. | 9/6/2022  |
| 114 | Catherines, Inc.   | 9/6/2022  |
| 115 | Tween Brands, Inc. f/k/a Tween Brands Direct, LLC                | 9/6/2022  |
| 116 | Tween Brands, Inc.   | 9/6/2022  |
| 117 | LB, Inc. f/k/a Lane Bryant, Inc.                                 | 9/6/2022  |
| 118 | DBI Holdings, Inc f/k/a The Dress Barn, Inc.                     | 9/6/2022  |
| 119 | Dining LLC   | 9/6/2022  |
| 120 | Eat24, LLC   | 9/6/2022  |
| 121 | Foodler Acquisition LLC  | 9/6/2022  |
| 122 | Grubhub Campus, Inc. f/k/a Tapingo, Inc.                         | 9/6/2022  |
| 123 | Grubhub Holdings, Inc.   | 9/6/2022  |
| 124 | Grubhub, Inc.  | 9/6/2022  |
| 125 | Homecooked Factory LLC   | 9/6/2022  |
| 126 | KMLee Investments, Inc.  | 9/6/2022  |
| 127 | LAbite.com, Inc.   | 9/6/2022  |
| 128 | Mealport USA LLC d/b/a Delivered Dish                            | 9/6/2022  |
| 129 | Restaurants on the Run, LLC                                      | 9/6/2022  |
| 130 | SCVNGR, Inc. d/b/a LevelUp                                       | 9/6/2022  |
| 131 | Slick City Media, Inc. d/b/a Menu Pages                          | 9/6/2022  |
| 132 | Big Lots Stores - CSR LLC (fka C.S. Ross Company)                | 9/6/2022  |
| 133 | Big Lots Stores - PNS, LLC (fka PNS Stores, Inc.)                | 9/6/2022  |
| 134 | Big Lots Stores, LLC (fka Big Lots Stores, Inc.)                 | 9/6/2022  |
| 135 | Closeout Distribution, LLC (fka Closeout Distribution, Inc.)     | 9/6/2022  |
| 136 | Big Lots eCommerce LLC   | 9/6/2022  |
| 137 | Big Lots, Inc.   | 9/6/2022  |
| 138 | Abercrombie & Fitch Stores, Inc.                                 | 9/2/2022  |
| 139 | J.M Hollister, LLC   | 9/2/2022  |
| 140 | American Signature, Inc.   | 9/2/2022  |
| 141 | The Door Store, LLC  | 9/2/2022  |
| 142 | Bath & Body Works, LLC   | 9/2/2022  |
| 143 | Bath & Body Works Districe, Inc.                                 | 9/2/2022  |
| 144 | Bath & Body Works, Inc.  | 9/2/2022  |
| 145 | Henri Bendel, LLC  | 9/2/2022  |
| 146 | Puerto Rico Store Operations, LLC                                | 9/2/2022  |

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| 147 | Belk Ecommerce LLC   | 9/2/2022 |
| 148 | Belk, Inc.   | 9/2/2022 |
| 149 | Belk Stores of Virginia, LLC   | 9/2/2022 |
| 150 | Belk Texas Holdings LLC  | 9/2/2022 |
| 151 | Belk Stores of Mississippi LLC                                       | 9/2/2022 |
| 152 | Belk Department Stores LP  | 9/2/2022 |
| 153 | Belk-Simpson Company, Greenville, South Carolina                     | 9/2/2022 |
| 154 | Belk Accounts Receivable, LLC  | 9/2/2022 |
| 155 | Belk gift Card Company LLC   | 9/2/2022 |
| 156 | BJ's Wholesale Club, Inc.  | 9/2/2022 |
| 157 | BJME Operating Corp. c/o BJ's Wholesale Club, Inc.                   | 9/2/2022 |
| 158 | BJNH Operating Co., LLC c/o BJ's Wholesale Club, Inc.                | 9/2/2022 |
| 159 | BJ's NJ Distribution Center, LLC c/o BJ's Wholesale Club, Inc.       | 9/2/2022 |
| 160 | BJ's Uxbridge Business Trust c/o BJ's Wholesale Club, Inc.           | 9/2/2022 |
| 161 | BJ's Uxbridge Business Trust c/o BJ's Wholesale Club, Inc.           | 9/2/2022 |
| 162 | BJ's Uxbridge Business Trust c/o BJ's Wholesale Club, Inc.           | 9/2/2022 |
| 163 | BJ's Atlantic Distribution Center, Inc.                              | 9/2/2022 |
| 164 | BJ's FL Distribution Center, Inc.                                    | 9/2/2022 |
| 165 | BJ's Wholesale Club Holdings, Inc.                                   | 9/2/2022 |
| 166 | BJS.com  | 9/2/2022 |
| 167 | CWC Beverages Corp. c/o BJ's Wholesale Club, Inc.                    | 9/2/2022 |
| 168 | FWC Beverages Corp. c/o BJ's Wholesale Club, Inc.                    | 9/2/2022 |
| 169 | JWC Beverages Corp. c/o BJ's Wholesale Club, Inc.                    | 9/2/2022 |
| 170 | Mercer Holdings 2002 Business Trust c/o BJ's Wholesale, Inc.         | 9/2/2022 |
| 171 | Mercer Mortgage Holdings, Inc. c/o BJ's Wholesale Club, Inc.         | 9/2/2022 |
| 172 | Mormax Beverages Corp. c/o BJ's Wholesale Club, Inc.                 | 9/2/2022 |
| 173 | Mormax Corporation c/o BJ's Wholesale Club, Inc.                     | 9/2/2022 |
| 174 | Natick 1998 Realty Holdings, Inc. c/o BJ's Wholesale Club, Inc.      | 9/2/2022 |
| 175 | Natick Atlantic Corp. c/o BJ's Wholesale Club, Inc.                  | 9/2/2022 |
| 176 | Natick CT Derby Realty Corp. c/o BJ's Wholesale Club, Inc.           | 9/2/2022 |
| 177 | Natick CT Realty Corp. c/o BJ's Wholesale Club, Inc.                 | 9/2/2022 |
| 178 | Natick DE Ismere Realty Corp. c/o BJ's Wholesale Club, Inc.          | 9/2/2022 |
| 179 | Natick Fifth Realty Corp. c/o BJ's Wholesale Club, Inc.              | 9/2/2022 |
| 180 | Natick Fourth Realty Corp. c/o BJ's Wholesale Club, Inc.             | 9/2/2022 |
| 181 | Natick GA Beverage Corp c/o BJ's Wholesale Club, Inc.                | 9/2/2022 |
| 182 | Natick Lancaster Realty corp. c/o BJ's Wholesale Club, Inc.          | 9/2/2022 |
| 183 | Natick Ma 1995 Realty Corp. c/o BJ's Wholesale Club, Inc.            | 9/2/2022 |
| 184 | Natick MA Realty Corp. c/o BJ's Wholesale Club, Inc.                 | 9/2/2022 |
| 185 | Natick MA Revere Realty Corp c/o BJ's Wholesale Club, Inc.           | 9/2/2022 |
| 186 | Natick MA Waltham Realty Corp. c/o BJ's Wholesale Club, Inc.         | 9/2/2022 |
| 187 | Natick Maryland Oxon Hill Realty Corp. c/o BJ's Wholesale Club, Inc. | 9/2/2022 |
| 188 | YWC Beverages Corp. c/o BJ's Wholesale Club, Inc.                    | 9/2/2022 |
| 189 | Natick MD Lexington Park Realty Corp. c/o BJ's Wholesale Club, Inc.  | 9/2/2022 |
| 190 | Natick MD Prince George Realty Corp. c/o BJ's Wholesale Club, Inc.   | 9/2/2022 |
| 191 | Natick MD Westminister Realty Corp. c/o BJ's Wholesale Club, Inc.    | 9/2/2022 |
| 192 | Natick ME 1995 Realty Corp. c/o BJ's Wholesale Club, Inc.            | 9/2/2022 |
| 193 | Natick NC Mooresville Realty Corp. c/o BJ's Wholesale Club, Inc.     | 9/2/2022 |
| 194 | Natick NH 1994 Realty Corp. c/o BJ's Wholesale Club, Inc.            | 9/2/2022 |
| 195 | Natick NH Hooksett realty Corp. c/o BJ's Wholesale Club, Inc.        | 9/2/2022 |
| 196 | Natick NH Realty Corp. c/o BJ's Wholesale Club, Inc.                 | 9/2/2022 |
| 197 | Natick NJ 1993 Realty Corp. c/o BJ's Wholesale Club, Inc.            | 9/2/2022 |

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| 198 | Natick NJ Flemington Realty Corp. c/o BJ's Wholesale Club, Inc.        | 9/2/2022 |
| 199 | Natick NJ Hamilton Township Realty Corp. c/o BJ's Wholesale Club, Inc. | 9/2/2022 |
| 200 | Natick NJ Manahawkin Realty corp. c/o BJ's Wholesale Club, Inc.        | 9/2/2022 |
| 201 | Natick NJ Realty Corp. c/o BJ's Wholesale Club, Inc.                   | 9/2/2022 |
| 202 | Natick NJ Vineland Realty Corp, c/o BJ's Wholesale Club, Inc.          | 9/2/2022 |
| 203 | Natick NY 1992 Realty Corp. c/o BJ's Wholesale Club, Inc.              | 9/2/2022 |
| 204 | Natick NY 1995 Realty Corp. c/o BJ's Wholesale Club, Inc.              | 9/2/2022 |
| 205 | Natick NY College Point Realty Corp. c/o BJ's Wholesale Club, Inc.     | 9/2/2022 |
| 206 | Natick NY Freeport Realty Corp. c/o BJ's Wholesale Club, Inc.          | 9/2/2022 |
| 207 | Natick NY Nassau Realty Corp. c/o BJ's Wholesale Club, Inc.            | 9/2/2022 |
| 208 | Natick NY Realty Corp. c/o BJ's Wholesale Club, Inc.                   | 9/2/2022 |
| 209 | Natick OH Canton Realty Corp. c/o BJ's Wholesale Club, Inc.            | 9/2/2022 |
| 210 | Natick PA 1995 Realty Corp. c/o BJ's Wholesale Club, Inc.              | 9/2/2022 |
| 211 | Natick PA Langhorne Realty Corp. c/o BJ's Wholesale Club, Inc.         | 9/2/2022 |
| 212 | Natick PA Plymouth Realty Corp. c/o BJ's Wholesale Club, Inc.          | 9/2/2022 |
| 213 | Natick PA Realty Corp. c/o BJ's Wholesale Club, Inc.                   | 9/2/2022 |
| 214 | Natick PA Stroudsbourgh Realty Corp. c/o BJ's Wholesale Club, Inc.     | 9/2/2022 |
| 215 | Natick Portsmouth Realty Corp. c/o BJ's Wholesale Club, Inc.           | 9/2/2022 |
| 216 | Natick Realty Holdings Inc. c/o BJ's Wholesale Club, Inc.              | 9/2/2022 |
| 217 | Natick Realty Inc. c/o BJ's Wholesale Club, Inc.                       | 9/2/2022 |
| 218 | Natick SC Greenville Realty Corp. c/o BJ's Wholesale Club, Inc.        | 9/2/2022 |
| 219 | Natick Second Realty Corp. c/o BJ's Wholesale Club, Inc.               | 9/2/2022 |
| 220 | Natick Security Corp. c/o BJ's Wholesale Club, Inc.                    | 9/2/2022 |
| 221 | Natick Sennett Realty Corp. c/o BJ's Wholesale Club, Inc.              | 9/2/2022 |
| 222 | Natick Sixth Realty Corp. c/o BJ's Wholesale Club, Inc.                | 9/2/2022 |
| 223 | Natick VA Hampton Realty Corp. c/o BJ's Wholesale Club, Inc.           | 9/2/2022 |
| 224 | Natick VA Mechanicsville Realty Corp. c/o BJ's Wholesale Club, Inc.    | 9/2/2022 |
| 225 | Natick VA Realty Corp. c/o BJ's Wholesale Club, Inc.                   | 9/2/2022 |
| 226 | Natick VA Richmond Realty Corp. c/o BJ's Wholesale Club, Inc.          | 9/2/2022 |
| 227 | Natick VA Woodbridge Realty Corp. c/o BJ's Wholesale Club, Inc.        | 9/2/2022 |
| 228 | Natick Waterford Realty Corp. c/o BJ's Wholesale Club, Inc.            | 9/2/2022 |
| 229 | Natick Yorktown Realty Corp. c/o BJ's Wholesale Club, Inc.             | 9/2/2022 |
| 230 | ProFoods Restaurant Supply, LLC c/o BJ's Wholesale Club, Inc.          | 9/2/2022 |
| 231 | RWC Beavers Corp. c/o BJ's Wholesale Club, Inc.                        | 9/2/2022 |
| 232 | Bob Evans Restaurants LLC  | 9/2/2022 |
| 233 | BTD Recovery Holdings 4, LLC   | 9/2/2022 |
| 234 | The Bon-Ton Stores, Inc.   | 9/2/2022 |
| 235 | McRIL, LLC   | 9/2/2022 |
| 236 | Bon-Ton Distribution, Inc.   | 9/2/2022 |
| 237 | Carson Pirie Scott II, Inc   | 9/2/2022 |
| 238 | The Bon-Ton Department Stores, Inc                                     | 9/2/2022 |
| 239 | The Bon-Ton Stores of Lancaster, Inc.                                  | 9/2/2022 |
| 240 | Chico's FAS, Inc. d/b/a Chico's  | 9/2/2022 |
| 241 | White House Black Market, inc. d/b/a White House Black Market          | 9/2/2022 |
| 242 | Soma Intimates, LLC d/b/a Soma   | 9/2/2022 |
| 243 | Boston Proper, Inc. d/b/a Boston Proper                                | 9/2/2022 |
| 244 | Kohl's Inc, f/k/a Kohl's Department Stores, Inc.                       | 9/2/2022 |
| 245 | KIN, Inc. f/k/a Kohl's Illinois, Inc.                                  | 9/2/2022 |
| 246 | Kohl's Indiana, L.P.   | 9/2/2022 |
| 247 | Kohl's Michigan, L.P.  | 9/2/2022 |
| 248 | Kohl's Value Services, Inc.  | 9/2/2022 |

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| 249 | Kohl's Corporation                                  | 9/2/2022 |
| 250 | Leslie's Poolmart, Inc.                             | 9/2/2022 |
| 251 | Cortz, Inc. dba In The Swim                         | 9/2/2022 |
| 252 | Horizon pa & Pool Parts, Inc.                       | 9/2/2022 |
| 253 | Secretary and treasurer                             | 9/2/2022 |
| 254 | Poolcenter.com, Inc.                                | 9/2/2022 |
| 255 | SPP Holding Corporation dba Specialty Pool Products | 9/2/2022 |
| 256 | Warehouse Pools Inc.                                | 9/2/2022 |
| 257 | Leslie's Inc.                                       | 9/2/2022 |
| 258 | Luxottica of America Inc.                           | 9/2/2022 |
| 259 | Clark Optometric Center of SC, PA                   | 9/2/2022 |
| 260 | Clark Optometric Center of SC, PA                   | 9/2/2022 |
| 261 | GrandVision USA Retail Holding Corporation          | 9/2/2022 |
| 262 | Costa Del Mar, Inc.                                 | 9/2/2022 |
| 263 | Costa Inc.  | 9/2/2022 |
| 264 | Essilor Luxottica USA Inc.                          | 9/2/2022 |
| 265 | Eye Safety Systems, Inc.                            | 9/2/2022 |
| 266 | EYEXAM of California, Inc.                          | 9/2/2022 |
| 267 | Rosin Optical Co., Inc.                             | 9/2/2022 |
| 268 | Air Sun   | 9/2/2022 |
| 269 | Oakley Air JV                                       | 9/2/2022 |
| 270 | Oakley, Inc.  | 9/2/2022 |
| 271 | Optical Procurement Services LLC                    | 9/2/2022 |
| 272 | Rays Houston  | 9/2/2022 |
| 273 | Macy's Retail Holdings, LLC                         | 9/2/2022 |
| 274 | Blemercury, Inc.                                    | 9/2/2022 |
| 275 | Macy's Backstage, inc.                              | 9/2/2022 |
| 276 | Macy's Puerto Rico, Inc.                            | 9/2/2022 |
| 277 | Bloomingdale's, LLC                                 | 9/2/2022 |
| 278 | Bloomingdales.com, LLC                              | 9/2/2022 |
| 279 | Macys.com, LLC                                      | 9/2/2022 |
| 280 | Maurices Incorporated                               | 9/2/2022 |
| 281 | Office Depot, LLC f.k.a Office Depot, Inc.          | 9/2/2022 |
| 282 | Victoria's Secret & Co.                             | 9/2/2022 |
| 283 | Office Depot, LLC f.k.a Office Depot, Inc.          | 9/2/2022 |
| 284 | Office Depot, LLC f.k.a Office Depot, Inc.          | 9/2/2022 |
| 285 | VS Direct Fulfillment, LLC                          | 9/2/2022 |
| 286 | 4Sure.com, Inc.                                     | 9/2/2022 |
| 287 | BizMart (Texas), Inc.                               | 9/2/2022 |
| 288 | Bizmart, Inc.                                       | 9/2/2022 |
| 289 | Computers4sure.com, Inc.                            | 9/2/2022 |
| 290 | Solutions4sure.com, Inc.                            | 9/2/2022 |
| 291 | Viking Office Products, Inc.                        | 9/2/2022 |
| 292 | OfficeMax Contract, inc.                            | 9/2/2022 |
| 293 | Pandora Ventures, LLC                               | 9/2/2022 |
| 294 | Pandora Jewelry, Inc.                               | 9/2/2022 |
| 295 | Pandora ECOMM, LLC                                  | 9/2/2022 |
| 296 | Pandora Franchising, LLC                            | 9/2/2022 |
| 297 | Pandora Jewelry, Inc. LLC                           | 9/2/2022 |
| 298 | Lord & Taylor LLC                                   | 9/2/2022 |
| 299 | LT Propco LLC                                       | 9/2/2022 |

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| 300 | saks & company LLC  | 9/2/2022  |
| 301 | Saks fifth Avenue LLC   | 9/2/2022  |
| 302 | Office Superstore East LLC f/k/a Staples the Office Superstore East, Inc. | 9/2/2022  |
| 303 | Staples the Office Superstore, LLC  | 9/2/2022  |
| 304 | 360 Office Solutions, Inc.  | 9/2/2022  |
| 305 | DEX Imaging, LLC  | 9/2/2022  |
| 306 | HiTouch Business Services LLC   | 9/2/2022  |
| 307 | Office Superstore West LLC  | 9/2/2022  |
| 308 | Quill Lincolnshire, Inc. operating as Quill and Quill.com                 | 9/2/2022  |
| 309 | Quill LLC f/k/a Quill Corporation   | 9/2/2022  |
| 310 | S.W. School Supplu, Inc.  | 9/2/2022  |
| 311 | Staples Contract & Commercial LLC   | 9/2/2022  |
| 312 | Staples, Inc.   | 9/2/2022  |
| 313 | USR Parent, Inc.  | 9/2/2022  |
| 314 | Target Corporation  | 9/2/2022  |
| 315 | The TJX Companies, Inc.   | 9/2/2022  |
| 316 | HomeGood, Inc.  | 9/2/2022  |
| 317 | Marmaxx Operating Corp.   | 9/2/2022  |
| 318 | Marshalls Of beason, VA, Inc.   | 9/2/2022  |
| 319 | Marshalls Of CA, LLC  | 9/2/2022  |
| 320 | Marshalls Of Elizabeth, NJ, Inc.  | 9/2/2022  |
| 321 | Mrshalls of Glen Burnie, MD, Inc.   | 9/2/2022  |
| 322 | Marshalls of IL, LLC  | 9/2/2022  |
| 323 | Marshalls of MA, Inc.   | 9/2/2022  |
| 324 | Marshalls of Matteson, IL, Inc.   | 9/2/2022  |
| 325 | Marshalls of Richfield, MN, Inc.  | 9/2/2022  |
| 326 | New York Department Stores de Puerto Rico, Inc.                           | 9/2/2022  |
| 327 | Newton Buying Company of CA, Inc  | 9/2/2022  |
| 328 | Sierra Trading Post, Inc.   | 9/2/2022  |
| 329 | T.J. Maxx of CA, LLC  | 9/2/2022  |
| 330 | T.J. Maxx of IL, LLC  | 9/2/2022  |
| 331 | TJX Incentive Salesm Inc.   | 9/2/2022  |
| 332 | Marshalls Of Calumett City, IL, Inc.                                      | 9/2/2022  |
| 333 | Marshalls of Chicago-Clark, IL, Inc.                                      | 9/2/2022  |
| 334 | DILLARD STORE SERVICES, INC   | 8/31/2022 |

# Attachment 2



## Legal Noticing Experts

Epiq Legal Noticing is a leading global provider of legal noticing services. Our team of recognized noticing experts provide superior notice programs that satisfy due-process requirements and withstand judicial scrutiny. For over 30 years, our notice programs and notices have been approved and upheld by courts.

We have handled over 700 cases, including over 75 MDL case settlements. Our notices have appeared in over 53 languages and in almost every country, territory, and dependency in the world.

Epiq Legal Noticing (a/k/a Hilsoft Notifications) is a business unit of Epiq Class Action & Claims Solutions, Inc. ("Epiq"). [www.EpiqLegalNoticing.com](http://www.EpiqLegalNoticing.com).



## Case Expertise

### ***In re Juul Labs, Inc. Marketing, Sales Practices, and Products Liability Litigation* 19-md-02913 (N.D. Cal.)**

For two settlements totaling \$300 million involving JUUL Labs, Inc. and Altria, Epiq designed and implemented cutting-edge, companion notice programs. The settlements alleged consumers were misled about JUUL products' addictiveness and safety, causing them to pay more, and that JUUL products were unlawfully marketed to minors. For the notice programs, over 10.7 million email notices and nearly 500,000 postcard notices were sent to potential class members, and a comprehensive media plan was implemented (over 936 million impressions delivered). The notice programs each reached approximately 80% of the class nationwide with combined individual notice and media notice.

**10.7M**  
email notices

**836M**  
digital impressions

**80%**  
of class reached

**\$190M**  
settlement

**93.6M**  
email or mail  
notices

**96%**  
of class reached

### ***In re Capital One Consumer Data Security Breach Litigation* MDL No. 2915, 1:19-md-02915 (E.D. Va.)**

For a \$190 million data breach settlement involving Capital One, Epiq implemented an extensive notice program. Notice was sent to over 93.6 million settlement class members by email or mail. The individual notice efforts reached approximately 96% of the identified settlement class members. In addition, a supplemental media campaign was implemented and enhanced the notice program with digital and social media notices (over 123.4 million impressions delivered), sponsored search listings, and a settlement website.

### ***In re Zoom Video Communications, Inc. Privacy Litigation* 3:20-cv-02155 (N.D. Cal.)**

Epiq designed and implemented an extensive notice program for a \$85 million privacy settlement involving Zoom, the most popular video-conferencing platform. Notice was sent to over 158 million class members by email or mail, and millions of reminder notices were sent to stimulate claim filings. The individual notice efforts reached approximately 91% of the class. A supplemental media campaign provided notice via regional newspaper and nationally distributed digital and social media notices (over 280 million impressions delivered), along with sponsored search listings, an informational release, and a settlement website.

**\$85M**  
settlement

**158M**  
email or mail  
notices

**91%**  
of class reached

## Case Expertise

**\$5.5B**  
settlement

**36.1M**  
mail notices

**1.45B**  
digital impressions

***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*** MDL No. 1720, 1:05-md-01720, (E.D.N.Y.). Second Circuit affirmed. See *Fikes Wholesale, Inc. v. Visa U.S.A., Inc.* 62 F.4th 704 (2d Cir. 2023)

For a landmark \$5.5 billion settlement reached by Visa and MasterCard, Epiq implemented an extensive initial notice program with over 19.8 million direct mail notices together with insertions in over 1,500 newspapers, consumer magazines, national business publications, and trade and specialty publications, with notices in multiple languages, and a digital notice campaign that generated over 770 million impressions. Sponsored search listings and a website in eight languages expanded the notice efforts. Subsequently, Epiq implemented a notice program with over 16.3 million direct mail notices, over 354 print publication insertions, and digital notices that generated over 689 million impressions.

***In re fairlife Milk Products Marketing and Sales Practices Litigation*** 1:19-cv-03924 (N.D. Ill.)

For a \$21 million settlement that involved The Coca-Cola Company, fairlife, LLC, and other defendants regarding allegations of false labeling and marketing of fairlife milk products, Epiq designed and implemented a media based notice program. The program included a consumer print publication notice, targeted digital and social media notices (over 620.1 million impressions delivered in English and Spanish nationwide). Combined with individual notice to a small percentage of the class, the notice program reached approximately 80.2% of the class. The reach was further enhanced by sponsored search listings, an informational release, and a settlement website.

**\$21M**  
settlement

**620.1M**  
digital impressions

**80.2%**  
of class reached

**\$1.91B**  
settlements

**61.8M**  
mail notices

**95%**  
reach of notice  
program

***In re Takata Airbag Products Liability Litigation*** MDL No. 2599 (S.D. Fla.)

Epiq designed and implemented numerous monumental notice campaigns to notify current or former owners or lessees of certain BMW, Mazda, Subaru, Toyota, Honda, Nissan, Ford, and Volkswagen vehicles as part of \$1.91 billion in settlements regarding Takata airbags. The notice programs included mailed notice to over 61.8 million potential class members and notice via consumer publications, U.S. Territory newspapers, radio, digital notices, mobile notices, and behaviorally targeted digital media. Combined, the notice programs reached over 95% of adults aged 18+ in the U.S. who owned or leased a subject vehicle, 4.0 times each.

## Case Expertise

### ***In re Morgan Stanley Data Security Litigation*** 1:20-cv-05914 (S.D.N.Y.)

For a \$60 million settlement for Morgan Stanley Smith Barney's account holders in response to "Data Security Incidents," Epiq designed and implemented an individual notice program. Over 13.8 million email or mailed notices were delivered, reaching approximately 90% of the identified potential settlement class members. The individual notice efforts were supplemented with nationwide newspaper notice and a settlement website.

**\$60M**  
settlement

**13.8M**  
email or mail  
notices

### ***In re Disposable Contact Lens Antitrust Litigation*** 3:15-md-02626 (M.D. Fla.)

**\$88M**  
settlements

**7.92M**  
email or mail  
notices

Epiq implemented notice programs for retail purchasers of disposable contact lenses in four settlements totaling \$88 million. For each notice program, over 1.98 million email or postcard notices were sent to potential class members and a comprehensive media plan was implemented, with a robust, nationwide consumer publication, digital notices (over 312.9 million – 461.4 million impressions delivered per campaign), sponsored search listings, and a settlement website.

### ***Yamagata et al. v. Reckitt Benckiser LLC*** 3:17-cv-03529 (N.D. Cal.)

For a \$50 million settlement on behalf of certain purchasers of Schiff Move Free® Advanced glucosamine supplements, nearly 4 million email notices and 1.1 million postcard notices were sent. The individual notice efforts sent by Epiq were delivered to approximately 98.5% of the identified class sent notice. A media campaign with digital notices and sponsored search listings combined with the individual notice efforts reached at least 80% of the class.

**\$50M**  
settlement

**5.1M**  
email or mail  
notices

### ***In re U.S. Office of Personnel Management Data Security Breach Litigation*** MDL No. 2664, 15-cv-01394 (D.D.C.)

**\$63M**  
settlement

**758M**  
digital impressions

**85%**  
of class reached

For a \$63 million settlement, Epiq designed and implemented an extensive, nationwide media notice campaign using magazines, digital and social media notices (over 758 million impressions delivered), traditional and satellite radio, and other forms of media. The media notice reached at least 85% of the class. In addition, over 3.5 million email notices and/or postcard notices were sent to identified class members. The individual notice and media notice were supplemented with outreach to unions and associations, sponsored search listings, an informational release, and a settlement website.

## Case Expertise

### ***In re Toll Roads Litigation*** 8:16-cv-00262 (C.D. Cal.)

Epiq implemented a notice program for several settlements alleging improper collection and sharing of PII of drivers on certain toll roads in the state of California. The settlements provided benefits of over \$175 million, including penalty forgiveness. Combined, over 13.8 million email or postcard notices were sent, reaching approximately 93% - 95% of class members across all settlements. Individual notice was supplemented with digital notices and notices in newspapers, geo-targeted within California. Sponsored search listings and a settlement website further extended the reach of the notice program.

**\$175M**  
settlement  
benefits

**13.8M**  
email or mail  
notices

**93% - 95%**  
of class reached

### ***In re Flint Water Cases*** 5:16-cv-10444, (E.D. Mich.)

In response to largescale municipal water contamination in Flint, Michigan, Epiq's expertise was relied upon to design and implement a comprehensive notice program that reached over 95% of the class. The program included direct mail notice and reminder email notice sent to identified class members, and a media plan with local newspaper publications, online video and audio ads, local television and radio ads, sponsored search listings, an informational release, a website, and digital and social media notices geo-targeted to Flint, Michigan and the state of Michigan.

**geo-targeted**  
media noticing

**95%**  
of class reached

### ***Zanca et al. v. Epic Games, Inc.*** 21-CVS-534 (Sup. Ct. Wake Cnty., N.C.)

For a \$26.5 million settlement, Epiq designed and implemented a notice program to reach individuals 13+ in the U.S. who exchanged or purchased in-game virtual currency in *Fortnite* or *Rocket League*. Over 29 million email notices and 27 million reminder notices were sent to class members. In addition, a targeted media campaign was implemented with digital and social media notices, *Reddit* feed ads, and *YouTube* pre-roll ads, generating over 350.4 million impressions. Combined, the notice efforts reached approximately 93.7% of the class.

**\$26.5M**  
settlement

**29M**  
email notices

**93.7%**  
of class reached

### ***In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement)*** MDL No. 2672 (N.D. Cal.)

Epiq executed a comprehensive notice program within the *Volkswagen Emissions Litigation* with individual notice to over 946,000 vehicle owners via first class mail and to over 855,000 vehicle owners via email. A targeted digital notice campaign further enhanced the notice efforts.

**1.8M**  
mail or email  
notice to vehicle  
owners

## Case Expertise

### ***Hale v. State Farm Mutual Automobile Insurance Company et al.*** 3:12-cv-00660 (S.D. Ill.)

For a \$250 million settlement with 4.7 million class members, Epiq designed and implemented a notice program with postcard or email notice to over 1.43 million class members and a robust publication program that reached 78.8% of all U.S. adults aged 35+, approximately 2.4 times each.

**\$250M**  
settlement

**4.7M**  
class members

one of the **largest, most complex** cases in **Canadian** history

### ***In re Residential Schools Class Action Litigation*** 00-cv-192059 (Ont. Super. Ct.)

One of the largest and most complex class actions cases in Canadian history. Epiq handled groundbreaking notice to disparate, remote Indigenous people to provide notice of a multi-billion-dollar settlement.

### ***In re Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*** MDL No. 2179 (E.D. La.)

For BP's \$7.8 billion settlement for the Deepwater Horizon oil spill, possibly the most complex class action case in U.S. history, Epiq opined on all forms of notice, and designed and implemented a dual notice program for “Economic and Property Damages” and “Medical Benefits.” The notice program reached at least 95% of Gulf Coast region adults with over 7,900 TV spots, 5,200 radio spots, 5,400 print insertions in newspapers, consumer publications and trade journals, digital media, and individual notice. Epiq also implemented one of the largest claim deadline notice campaigns, with paid print, television, radio, and digital notice, reaching over 90% of adults aged 18+ in 26 identified Designated Market Areas (“DMAs”) covering the Gulf Coast Areas, an average of 5.5 times each.

**\$7.8B**  
settlement

**7,900**  
tv spots

**5,200**  
radio spots

**5,400**  
print insertions

**6.9M**  
email or mail notices  
**90%**  
of class reached

### ***Vergara et al., v. Uber Technologies, Inc.*** 1:15-cv-06972 (N.D. Ill.)

For a \$20 million Telephone Consumer Protection Act settlement, Epiq sent mail or email notice to over 6.9 million class members and provided media notice via newspaper and digital notices and reached over 90% of the class.

### ***In re Kaiser Gypsum Company, Inc. et al.*** 16-cv-31602 (Bankr. W.D. N.C.)

Epiq implemented an extensive notice effort for asbestos personal injury claims with nationwide consumer print, trade and union labor publications, digital notices, an informational release, and a website.

**asbestos, personal injury claims**  
notice program

## Legal Noticing Experts

### **Cameron Azari, Esq., Senior Vice President Epiq, Managing Director Epiq Legal Noticing**



Cameron Azari, Esq. is a recognized international notice expert. He has over 24 years of experience in providing expert notice opinions regarding notice adequacy in compliance with Fed R. Civ. P. 23, state class action statutes, or international legal requirements in over 700 class action cases, including over 75 MDLs. He has testified in numerous cases and no notice program has been overturned. Cam is a trusted expert and consults directly with clients to share his extensive knowledge regarding all aspects of class action noticing.

He is an active author and speaker. Cam holds a J.D. from Northwestern School of Law at Lewis and Clark College and a B.S. from Willamette University. He is an active member of the Oregon State Bar. Cam can be reached at [caza@epiqglobal.com](mailto:caza@epiqglobal.com).

### **Stephanie Fiereck, Esq., Senior Director Epiq Legal Noticing & Notice Expert Services**



Stephanie Fiereck, Esq. leads our Notice Expert Services team. As a notice expert with over 24 years of legal experience, she consults with clients about all aspects of class action noticing. She has written over 1,000 expert notice adequacy declarations, and written or reviewed hundreds of notices, all approved by federal or state courts. Stephanie has a keen understanding of what judges are looking for, how to withstand judicial scrutiny, satisfy due process, and provide plain language notice to class members.

Prior to joining Epiq, she was a Vice President at Wells Fargo Bank for five years where she led the class action services business unit. She is an active author regarding class action notice. Stephanie holds a J.D. from the University of Oregon School of Law and a B.A. from St. Cloud State University. She is an active member of the Oregon State Bar. Stephanie can be reached at [sfie@epiqglobal.com](mailto:sfie@epiqglobal.com).

### **Kyle Bingham, Senior Director Epiq Legal Noticing & Media Noticing**



Kyle Bingham leads the Media Noticing team, an in-house legal noticing advertising agency, and has over 15 years of experience in the advertising industry. He is a pivotal resource for researching, planning, and executing legal notice programs for class action, bankruptcy, and similar legal cases. Kyle's continued success with clients is a direct result of achieving media goals and ensuring that advertising is as efficient and impactful as possible. Kyle has also worked on over 500 CAFA notice mailings.

Prior to Epiq, Kyle worked at Wieden+Kennedy advertising agency for seven years, where he planned and purchased print, digital and broadcast media, managed multiple paid search accounts, and presented strategy and media campaigns to clients for multi-million-dollar branding campaigns. He received his B.A. from Willamette University. Kyle can be reached at [kbingham@epiqglobal.com](mailto:kbingham@epiqglobal.com).

## Experts' Articles and Presentations

- **Cameron Azari** Speaker, "Legal Noticing." Hausfeld, Washington, D.C., Sept. 2024.
- **Cameron Azari** Speaker, "Increase in Fraudulent Claims in Class Action and Mass Tort." Harris Martin MDL Conference, Portland, Maine, July 24, 2024.
- **Cameron Azari** Speaker, "Settlements." Class Action Litigation Forum – Plaintiffs' Bar, Dana Point, CA, May 9, 2024.
- **Cameron Azari** Speaker, "Consumer Class Action Notice/Fraud." Mass and Class Conference, Fort Lauderdale, FL, Mar. 6, 2024.
- **Cameron Azari** Speaker, "Rising Number of Privacy-Data-Breach Class Actions, including Those Centralized in MDLs, Temporary or Here to Stay? Consideration of Special Case-Management Procedures." Rabiej Litigation Law Center Class Action Conference, Virtual, July 20, 2023.
- **Cameron Azari** Chair, "Panel Discussion: Class Actions Case Management." Global Class Actions Symposium 2022, Amsterdam, The Netherlands, Nov. 17, 2022.
- **Cameron Azari** Speaker, "Driving Claims in Consumer Settlements: Notice/Claim Filing and Payments in the Digital Age." Mass Torts Made Perfect Bi-Annual Conference, Las Vegas, NV, Oct. 12, 2022.
- **Cameron Azari** Chair, "Panel Discussion: Class Actions Case Management." Global Class Actions Symposium 2021, London, UK, Nov. 16, 2021.
- **Cameron Azari** Speaker, "Mass Torts Made Perfect Bi-Annual Conference." Class Actions Abroad, Las Vegas, NV, Oct. 13, 2021.
- **Cameron Azari** Speaker, "Virtual Global Class Actions Symposium 2020, Class Actions Case Management Panel." Nov. 18, 2020.
- **Cameron Azari** Speaker, "Consumers and Class Action Notices: An FTC Workshop." Federal Trade Commission, Washington, DC, Oct. 29, 2019.
- **Cameron Azari** Speaker, "The New Outlook for Automotive Class Action Litigation: Coattails, Recalls, and Loss of Value/Diminution Cases." ACI's Automotive Product Liability Litigation Conference, American Conference Institute, Chicago, IL, July 18, 2019.
- **Cameron Azari** Moderator, "Prepare for the Future of Automotive Class Actions." Bloomberg Next, Webinar-CLE, Nov. 6, 2018.
- **Cameron Azari** Speaker, "The Battleground for Class Certification: Plaintiff and Defense Burdens, Commonality Requirements and Ascertainability." 30<sup>th</sup> National Forum on Consumer Finance Class Actions and Government Enforcement, Chicago, IL, July 17, 2018.
- **Cameron Azari** Speaker, "Recent Developments in Class Action Notice and Claims Administration." PLI's Class Action Litigation 2018 Conference, New York, NY, June 21, 2018.

## Experts' Articles and Presentations

- **Cameron Azari** Speaker, "One Class Action or 50? Choice of Law Considerations as Potential Impediment to Nationwide Class Action Settlements." 5<sup>th</sup> Annual Western Regional CLE Program on Class Actions and Mass Torts, Clyde & Co LLP, San Francisco, CA, June 22, 2018.
- **Cameron Azari** and **Stephanie Fiereck** Co-Authors, *A Practical Guide to Chapter 11 Bankruptcy Publication Notice*. E-book, published, May 2017.
- **Cameron Azari** Featured Speaker, "Proposed Changes to Rule 23 Notice and Scrutiny of Claim Filing Rates." DC Consumer Class Action Lawyers Luncheon, Washington, DC, Dec. 6, 2016.
- **Cameron Azari** Speaker, "Recent Developments in Consumer Class Action Notice and Claims Administration." Berman DeValerio Litigation Group, San Francisco, CA, June 8, 2016.
- **Cameron Azari** Speaker, "2016 Cybersecurity & Privacy Summit. Moving From 'Issue Spotting' To Implementing a Mature Risk Management Model." King & Spalding, Atlanta, GA, Apr. 25, 2016.
- **Stephanie Fiereck** Author, "Tips for Responding to a Mega-Sized Data Breach." *Law360*, May 2016.
- **Cameron Azari** Speaker, "Live Cyber Incident Simulation Exercise." Advisen's Cyber Risk Insights Conference, London, UK, Feb. 10, 2015.
- **Cameron Azari** Speaker, "Pitfalls of Class Action Notice and Claims Administration." PLI's Class Action Litigation 2014 Conference, New York, NY, July 9, 2014.
- **Cameron Azari** and **Stephanie Fiereck** Co-Authors, "What You Need to Know About Frequency Capping In Online Class Action Notice Programs." *Class Action Litigation Report*, June 2014.
- **Cameron Azari** Speaker, "Class Settlement Update – Legal Notice and Court Expectations." PLI's 19th Annual Consumer Financial Services Institute Conference, New York, NY, Apr. 7-8, 2014.
- **Cameron Azari** Speaker, "Class Settlement Update – Legal Notice and Court Expectations." PLI's 19th Annual Consumer Financial Services Institute Conference, Chicago, IL, Apr. 28-29, 2014.
- **Stephanie Fiereck** Author, "Planning For The Next Mega-Sized Class Action Settlement." *Law360*, Feb. 2014.
- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements - Recent Developments." ACI's Consumer Finance Class Actions and Litigation, New York, NY, Jan. 29-30, 2014.
- **Cameron Azari** Speaker, "Legal Notice in Building Products Cases." HarrisMartin's Construction Product Litigation Conference, Miami, FL, Oct. 25, 2013.

## Experts' Articles and Presentations

- **Cameron Azari** and **Stephanie Fiereck** Co-Authors, "Class Action Legal Noticing: Plain Language Revisited." *Law360*, Apr. 2013.
- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements Getting your Settlement Approved." ACI's Consumer Finance Class Actions and Litigation, New York, NY, Jan. 31-Feb. 1, 2013.
- **Cameron Azari** Speaker, "Perspectives from Class Action Claims Administrators: Email Notices and Response Rates." CLE International's 8<sup>th</sup> Annual Class Actions Conference, Los Angeles, CA, May 17-18, 2012.
- **Cameron Azari** Speaker, "Class Action Litigation Trends: A Look into New Cases, Theories of Liability & Updates on the Cases to Watch." ACI's Consumer Finance Class Actions and Litigation, New York, NY, Jan. 26-27, 2012.
- **Cameron Azari** Speaker, "Data Breaches Involving Consumer Financial Information: Litigation Exposures and Settlement Considerations." ACI's Consumer Finance Class Actions and Litigation, New York, NY, Jan. 2011.
- **Cameron Azari** Speaker, "Notice in Consumer Class Actions: Adequacy, Efficiency and Best Practices." CLE International's 5<sup>th</sup> Annual Class Action Conference: Prosecuting and Defending Complex Litigation, San Francisco, CA, 2009.
- **Cameron Azari** Author, "Clearing the Five Hurdles of Email - Delivery of Class Action Legal Notices." *Thomson Reuters Class Action Litigation Reporter*, June 2008.
- **Cameron Azari** Speaker, "Planning for a Smooth Settlement." ACI: Class Action Defense – Complex Settlement Administration for the Class Action Litigator, Phoenix, AZ, 2007.
- **Cameron Azari** Speaker, "Structuring a Litigation Settlement." CLE International's 3rd Annual Conference on Class Actions, Los Angeles, CA, 2007.
- **Cameron Azari** Speaker, "Noticing and Response Rates in Class Action Settlements." Class Action Bar Gathering, Vancouver, British Columbia, 2007.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements." Skadden Arps Slate Meagher & Flom, LLP, New York, NY, 2006.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements." Bridgeport Continuing Legal Education, Class Action and the UCL, San Diego, CA, 2006.
- **Stephanie Fiereck** Author, "Consultant Service Companies Assisting Counsel in Class-Action Suits." *New Jersey Lawyer*, Vol. 14, No. 44, Oct. 2005.
- **Stephanie Fiereck** Author, "Expand Your Internet Research Toolbox." The American Bar Association, *The Young Lawyer*, Vol. 9, No. 10, July/Aug. 2005.

## Experts' Articles and Presentations

- **Stephanie Fiereck** Author, "Class Action Reform: Be Prepared to Address New Notification Requirements." BNA, Inc. The Bureau of National Affairs, Inc. *Class Action Litigation Report*, Vol. 6, No. 9, May 2005.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements." Stoel Rives Litigation Group, Portland, OR / Seattle, WA / Boise, ID / Salt Lake City, UT, 2005.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements." Stroock & Stroock & Lavan Litigation Group, Los Angeles, CA, 2005.
- **Stephanie Fiereck** Author, "Bankruptcy Strategies Can Avert Class Action Crisis." TMA - *The Journal of Corporate Renewal*, Sept. 2004.
- **Cameron Azari** Author, "FRCP 23 Amendments: Twice the Notice or No Settlement." Current Developments - Issue II, Aug. 2003.
- **Cameron Azari** Speaker, "A Scientific Approach to Legal Notice Communication." Weil Gotshal Litigation Group, New York, NY, 2003.

## Judicial Quotes

**Judge Christine P. O'Hearn, *In re U.S. Vision Data Breach Litigation*** (Oct. 15, 2024) 1:22-cv-06558 (D.N.J.):

The Court finds that the Notice Plan, set forth in the Settlement and effectuated pursuant to the Preliminary Approval Order, was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class Members of the pendency of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement, their right to exclude themselves, their right to object to the Settlement and to appear at the final approval hearing, and satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

**Judge Madeline Cox Arleo, *In re American Financial Resources, Inc. Data Breach Litigation*** (Oct. 2, 2024) 22-cv-01757 (D.N.J.):

The Court finds that Notice of the Settlement was timely and properly disseminated and effectuated pursuant to the approved Notice Plan, and that said Notice constitutes the best notice practicable under the circumstances and satisfies all requirements of Rule 23(e) and due process.

**Judge Zahid N. Quraishi, *In re Lipitor Antitrust Litigation (End Payor)*** (Oct. 1, 2024) MDL 2332; 3:12-cv-02389 (D.N.J.):

The notices of Settlement . . . that was directed to Class Members constituted the best notice practicable under the circumstances and was timely and properly disseminated and effectuated. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finds that the Notice provided Class Members due and adequate notice of the Settlement, the Settlement Agreement, these proceedings, the rights of Class Members to object to the Settlement, and the rights of Class Members to opt out of the Settlement, and satisfied all requirements of Rule 23 and due process.

**Judge James B. Clark, III, *Hu et al. v. BMW of North America LLC*** (Sept. 25, 2024) 2:18-cv-04363 (D.N.J.):

Notice to the Settlement Class required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Preliminary Approval Order, by sending such Notice by first-class mail and email... These individual notice efforts reached approximately 97.9% of the Settlement Class... The Settlement Administrator also utilized digital notice and social media and placed the Notice on the settlement website.. . The Court finds that notice (a) constituted the best practicable notice; (b) constituted notice that was reasonably calculated under the circumstances to apprise members of the Settlement Class of the pendency of the Action, or their right to object or to exclude themselves from the proposed Settlement, of their right to appear at the Fairness Hearing and of their right to seek relief; (c) constituted reasonable, due, adequate and sufficient notice to all Persons entitled to receive notice; and (d) met all applicable, requirements of Rule 23(e), due process and any other applicable law. The Court further finds that Settlement Class Members have been provided the best notice practicable of the Settlement and that such notice fully satisfies all requirements of law as well as all requirements of due process.

**Judge Susan Illston, *Perez et al. v. Discover Bank*** (Sept. 23, 2024) 3:20-cv-06896 (N.D. Cal.):

The Court finds that the form and means of disseminating notice to the Settlement Class as provided for in the Order Preliminarily Approving Settlement constituted the best notice practicable under the circumstances and was directed to Settlement Class Members in accordance with the Court's Order Preliminarily Approving Settlement. The notice provided due and adequate notice of these proceedings to all Settlement Class Members entitled to such notice and satisfied the requirements of Federal Rule of Civil Procedure 23 and of constitutional due process.

**Judge Allen Price Walker, *Agnew v. Foris DAX, Inc. d/b/a Crypto.com*** (Sept. 13, 2023) 2024-CH-00435 (Cir. Ct. Cook Cnty., Ill.):

The Court has determined that the Notice given to the settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of 735 ILCS 5/2-803, applicable law, and the Due Process Clauses of the U.S. Constitution and Illinois Constitution.

## Judicial Quotes

**Judge Patricia M. DeMaio, Beauford v. The Johns Hopkins Hospital, Inc. et al.** (Sept. 6, 2024) C-03-CV-23-000501 (Cir. Ct. Baltimore Cnty.):

The notice provided to the Settlement Class pursuant to the Settlement Agreement and order granting Preliminary Approval - including: (i) direct notice to the Settlement Class via email and U.S. mail, based on the comprehensive Settlement Class List provided by Defendants; and (ii) the creation of the Settlement Website fully complied with the requirements of Md. R. Civ. P. Cir. Ct. 2-231 and due process, and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing.

**Judge Charles S. Treat, Doe v. Clinivate, LLC** (Aug. 29, 2024) C22-01620 (Sup. Ct. Cnty. of Contra Costa, Cal.):

The Court finds that Epiq abided by the terms and conditions of the Agreement that pertain to the Claims Administrator, and has provided appropriate notice to all members of the Settlement Class.

**Judge Claude M. Hilton, Domitrovich et al. v. M.C. Dean, Inc.** (Aug. 27, 2024) 1:23-cv-00210 (E.D. Vir.):

The Court finds and determines that the Notice Program . . . constituted the best notice practicable under the circumstances, constituted due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure . . . and all other applicable laws and rules. The Court finds that all of the notices are written in plain language and are readily understandable by Settlement Class Members.

**Judge Susan Illston, Moradpour et al. v. Velodyne Lidar, Inc. et al.** (Aug. 19, 2024) 3:21-cv-01486 (N.D. Cal.):

The Court hereby finds that the distribution of the Notice and the publication of the Summary Notice as provided for in the Preliminary Approval Order constituted the best notice practicable under the circumstances – including individual notice to all Class Members who could be identified through reasonable effort – of those proceedings and of the matters set forth therein, including the proposed Settlement, to all Persons entitled to such notice, and said notice fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, and any other applicable law . . . Pursuant to and in full compliance with Rule 23 of the Federal Rules of Civil Procedure, the Court finds and concludes that due and adequate notice was directed to all Class Members advising them of the Plan of Allocation and of their right to object, and a full and fair opportunity was given to all Class Members to be heard with respect to the Plan of Allocation.

**Judge Christina R. Klineman, In re Goodman Campbell Brain and Spine Data Incident Litigation** (Aug. 19, 2024) 49D01-2207-PL-024807 (Ind. Comm. Ct.):

The Court finds that the notice program, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order, was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and their right to object and to appear at the final approval hearing or to exclude themselves from the Settlement Agreement, and satisfied the requirements of the Indiana Rules of Civil Procedure, the United States Constitution, and other applicable law.

**Judge Jeffrey L. Reed, Doe v. Lima Memorial Hospital et al.** (Aug. 12, 2024) CV2022 0490 (Ct. of Common Pleas Allen Cnty., Ohio):

The Court finds that such Notice constitutes the best possible notice practicable under the circumstances and constitutes valid, due and sufficient notice to all Settlement Class Members.

**Judge Alison C. Conlon, Mikulecky et al. v. Lutheran Social Services of Illinois** (Aug. 8, 2024) 2023-CH-00895 (Cir. Ct. Cook Cnty., Ill.):

The Court has determined that the Notice given to the Settlement Class Members in accordance with the Preliminary Approval Order fully and accurately informed Settlement Class Members of all materials terms of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of 735 ILSC 5/2-803, applicable law, and the due process clauses of both the U.S. and Illinois Constitutions.

## Judicial Quotes

**Judge Benjamin F. Coats, Wells Fargo Bank, N.A. v. Agak** (Aug. 5, 2024) 56-2017-00500587 (Sup. Ct. Cnty. of Ventura, Cal.):

The form and means of disseminating the Class Notice as provided for in the Order Preliminarily Approving Settlement and Providing for Notice constituted the best notice practicable under the circumstances, including individual notice to all members of the Class who could be identified through reasonable effort. Said Notice provided the best notice practicable under the circumstances of the proceedings and the matters set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice, and said Notice fully satisfied the requirements of California Rules of Civil Procedure and complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution.

**Judge Gretchen Walsh, Finn et al. v. Empress Ambulance Services, LLC** (July 31, 2024) 61058/2024 (Sup. Ct. Cnty. of Westchester, N.Y.):

There was a reach of 87.3% of the identified class members (i.e., 265,863 of the 304,362 notices mailed were successfully mailed and not returned to sender). The Court finds that this notice was in full compliance with the Preliminary Approval Order and in accordance with the requirements of New York law and constitutional due process. Furthermore, the result of reaching 87.3% of the Settlement Class is reasonable.

The Court finds that the dissemination of Notice to Settlement Class Members: (a) was successfully implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of the Action; (ii) their right to submit a claim (where applicable) by submitting a Claim Form; (iii) their right to exclude themselves from the Settlement Class; (iv) the effect of the proposed Settlement (including the releases to be provided thereunder); (v) Class Counsel's motion for a Fee Award and Costs and for Service Awards to the Class Representatives, (vi) their right to object to any aspect of the Settlement, and/or Class Counsel's motion for Service Awards to the Class Representatives and for a Fee Award and Costs; (vii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate, and sufficient notice to all natural persons entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of NY CPLR 901, et seq., the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.

**Judge James Wesley Hendrix, Lara v. Lubbock Heart Hospital, LLC, dba Lubbock Heart & Surgical Hospital** (July 31, 2024) 5:23-cv-00036 (N.D. Tex.):

[T]he Court finds that the notice provided to the class members complied with Rule 23's due process requirements . . . [T]he Court concludes that this notice process comported with due process by providing proper notice to the class members and enabled them to assess whether to object or seek exclusion . . . Almost 90% of class members received direct notice mailed to them of the settlement that identified its key terms, what steps they needed to take to obtain relief, and the consequences of failing to act by certain dates . . . The class members further were given multiple avenues to seek out additional information on the settlement. All of this information was given in plain language, ensuring that the members receiving direct notice were made aware of their rights and the consequences of inaction. Accordingly, the Court concludes that the notice given pursuant to the Court's preliminary approval order provided the class members with the material terms of the settlement and constituted the best notice practicable under the circumstances.

**Judge Lindsey Robinson Vaala, Morrow et al. v. Navy Federal Credit Union** (July 25, 2024) 1:21-cv-00722 (E.D. Va.):

The Notice and Claims Process provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances and constituted due and sufficient notice of the proceedings and matters set forth therein, to all persons entitled to notice. The Notice and Claims Process fully satisfied the requirements of due process, Federal Rule of Civil Procedure 23(e)(1), and all other applicable law and rules. No Settlement Class Member has objected to the Settlement.

**Judge Marsha J. Pechman, Guy et al. v. Convergent Outsourcing, Inc.** (July 19, 2024) 2:22-cv-01558 (W.D. Wash.):

The Court finds and determines that the Notice Program, preliminarily approved on February 20, 2024, and implemented on March 21, 2024, constituted the best notice practicable under the circumstances, constituted due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules. . . The Court further finds that all of the notices are written in plain

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language and are readily understandable by Settlement Class Members. The Court further finds that notice has been provided to the appropriate state and federal officials in accordance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, drawing no objections.

**Judge Katherine A. Bacal, Ward-Howie v. Frontwave Credit Union** (July 18, 2024) 37-2022-00016328 (Sup. Ct. Cal. San Diego Cnty., Cal.):

The Court finds that the distribution of the Notice of the Settlement has been completed in conformity with the Court's Preliminary Approval Order. The Court finds that the Notice was the most practicable under the circumstances and provided due and adequate notice of the proceedings and of the terms of the Settlement, and fully satisfied the requirements of California Rules of Court, rules 3.766 and 3.769(f), and Due Process.

**Judge Catherine C. Eagles, Farley et al. v. Eye Care Leaders Holding, LLC** (June 27, 2024) 1:22-cv-00468 (M.D.N.C.):

The court-approved notice process was reasonable and provided the class members with adequate notice.

**Judge William J. Martini, Holden et al. v. Guardian Analytics, Inc. et al.** (June 5, 2024) 2:23-cv-2115 (D.N.J.):

The Court finds that such notice as therein ordered constituted the best practicable notice under the circumstances, apprised Settlement Class Members of the pendency of the action, gave them an opportunity to opt out or object, complied with the requirements of Federal Rule of Civil Procedure 23(c)(2), and satisfied due process under the United States Constitution, and other applicable law.

**Judge Angelo J. Kappas, Bobo et al. v. Clover Network, LLC** (May 29, 2024) 2023CH000168 (18th Jud. Cir., Cir. Ct., DuPage Cnty. Ill.):

[T]he Notice provided to the Settlement Class fully complied with the requirements of 735 ILCS 5/2-803 and due process was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing.

**Judge Stanley A. Bastian, Dam v. Perkins Coie, LLP et al.** (May 23, 2024) 2:20-CV-00464 (E.D. Wash.):

The notice afforded to Class Members is adequate and sufficient to inform Class Member of their rights.

**Judge Angelo J. Kappas, Hoover et al. v. Camping World Group, LLC et al.** (May 23, 2024) 2023LA00037 (18th Jud. Cir., Cir. Ct., DuPage Cnty. Ill.):

The Court finds that such Notice as therein ordered, constitutes reasonable notice of the commencement of the action as directed by the Court and meets all applicable requirements of law pursuant to 735 ILCS 5-2/801 and constitutes Due Process under the U.S. and Illinois Constitutions.

**Judge Paul L. Maloney, In re Hope College Data Security Breach Litigation** (May 20, 2024) 1:22-cv-01224 (W.D. Mich.):

The Court finds that the Class Notice, website, and Notice Plan implemented pursuant to the Settlement Agreement and the Court's Preliminary Approval Order: (a) constituted the best practicable notice; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of this Action, of their right to exclude themselves from or object to the proposed Settlement, of their right to appear at the Final Approval Hearing, of Plaintiffs Counsel's application for an award of attorneys' fee and expenses, and of Plaintiffs' application for a Service Award associated with the Action; (c) provided a full and fair opportunity to all Settlement Class Members to be heard with respect to the foregoing matters; and (d) met all applicable requirements of Federal Rule of Civil Procedure 23, due process, and any other applicable rules or law.

**Judge Richard J. Leon, Shaffer et al. v. George Washington University et al.** (May 13, 2024) 20-1145 (D.D.C.):

[T]he Court concludes that the notice provided to the Settlement Class...complied with the requirements of Federal Rule of Civil Procedure 23(c)(2) and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the final approval hearing.

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### **Judge Ann M. Donnelly, *In re Canon U.S.A. Data Breach Litigation*** (May 9, 2024) 1:20-cv-06239 (E.D.N.Y.):

The Court finds that the emailed and mailed notice, publication notice, website, and Class Notice plan implemented pursuant to the Settlement Agreement and Magistrate Judge Sanket J. Bulsara's Preliminary Approval Order: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of this Action, of the effect of the proposed Settlement (including the Releases to be provided thereunder), of their right to exclude themselves from or object to the proposed Settlement, of their right to appear at the Fairness Hearing, of the Claims Process, and of Class Counsel's application for an award of attorneys' fees, for reimbursement of expenses associated with the Action, and any Service Award; (d) provided a full and fair opportunity to all Settlement Class Members to be heard with respect to the foregoing matters; (e) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (f) met all applicable requirements of Rule 23 of the Federal Rule of Civil Procedure, the United States Constitution, including the Due Process Clause, and any other applicable rules or law.

### **Judge Christopher R. Cooper, *Qureshi et al. v. American University*** (May 7, 2024) 1:20-cv-01141 (D.D.C.):

The Court further finds that the notice program approved in the Court's Preliminary Approval Order and implemented in accordance with that Order was the best practicable under the circumstances. The notice program was reasonably calculated under the circumstances to apprise the Class of (a) the pendency of the Action; (b) the Court's preliminary certification of the Settlement Class; (c) the terms of the Settlement Agreement and the Settlement Class Members' rights to opt-out of the Settlement Class or to object to the settlement; (d) and the maximum amounts of Class Counsel's expected application for attorneys' fees and request for a Service Award for the Plaintiffs. The notice program provided sufficient notice to all persons entitled to notice. The notice program satisfied all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the constitutional requirement of Due Process.

### **Judge Eric V. Moyé, *Patterson et al. v. DPP II LLC et al.*** (April 29, 2024) DC-23-01733 (Dist. Ct of Dallas Cnty., Tex.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due and sufficient notice to all Settlement Class Members.

### **Judge Josephine L. Staton, *In re Hyundai and Kia Engine Litigation II*** (April 26, 2024) 8:18-cv-02223 (C.D. Cal.):

The Class Notice was disseminated in accordance with the procedures required by the Court's Orders ..., in accordance with applicable law, and satisfied the requirements of Rule 23(e) and due process and constituted the best notice practicable for the reasons discussed in the Preliminary Approval Order and Final Approval Order.

### **Judge Elaine P. Lujan, *Briscoe et al. v. First Financial Credit Union*** (April 25, 2024) D-202-CV-2022-02974 (2nd. Jud. Dist. Cnty. of Bernalillo, N.M.):

The Court has determined that the Notice given to the Settlement Class Members in accordance with the Preliminary Approval Order fully and accurately informed Settlement Class Members of all material terms of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Rule 1-023, applicable law, and the due process clauses of both the U.S. and New Mexico Constitutions.

### **Judge Eleanor L. Ross, *Sherwood et al. v. Horizon Actuarial Services, LLC*** (April 2, 2024) 1:22-cv-01495 (N.D. Ga.):

The Court's Preliminary Approval Order approved the Short Form Settlement Notice, Long Form Notice, Claim Form, and found the mailing, distribution, and publishing of the various notices as proposed met the requirements of Fed. R. Civ. P. 23 and due process, and was the best notice practicable under the circumstances, constituting due and sufficient notice to all persons entitled to notice. The Court finds that the distribution of the Notices has been achieved pursuant to the Preliminary Approval Order and the Settlement Agreement, and that the Notice to Class Members complied with Fed. R. Civ. P. 23 and due process.

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**Judge Beth Phillips, Niewinski et al. v. State Farm Life Insurance Company et al.** (April 1, 2024) 23-04159-CV (W.D. Mo.):

[T]he Court confirms the Class Notice was implemented in accordance with the Court's October 18, 2023 Order... The Court further confirms its prior findings that the form and substance of the Class Notice meet, and have met, the requirements of Rule 23(c) and the Due Process Clause of the United States Constitution.

**Judge Beth Labson Freeman, Prescott et al. v. Reckitt Benckiser LLC** (Mar. 28, 2024) 5:20-cv-02101 (N.D. Cal.):

The Court finds that notice has been disseminated to the Classes in compliance with the Court's Order Granting Preliminary Approval. The Court further finds that the notice given was the best notice practicable under the circumstances; constituted notice that was reasonably calculated, under the circumstances, to apprise Class members of the pendency of the action, the terms of the proposed Settlement, the right to object to or exclude themselves from the proposed Settlement, and the right to appear at the Final Approval Hearing; constituted due, adequate, and sufficient notice to all persons entitled to receive notice; fully satisfied due process; and met the requirements of Rule 23 of the Federal Rules of Civil Procedure. The Court further finds that notice provisions of 28 U.S.C. § 1715 were complied with in this case.

**Judge Kimberly Fitzpatrick, Kaether et al. v. Metropolitan Area EMS Authority D/B/A MedStar Mobile Healthcare** (Mar. 20, 2024) 342-339562-23 (Dist. Ct. Tarrant Cnty., Tex.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due and sufficient notice to all Settlement Class Members.

**Judge Denise L. Cote, In re Waste Management Data Breach Litigation** (Mar. 15, 2024) 1:21-cv-06199 (S.D. N.Y.):

The Court finds and concludes that the Postcard Notice, Detailed Notice, Claim Form, Settlement Website, and all other aspects of the Notice Program, opt-out, and claims submission procedures set forth in the Settlement Agreement fully satisfied Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances, and support the Court's exercise of jurisdiction over the Settlement Class.

**Judge Douglas L. Rayes, Medina et al. v. PracticeMax, Inc.** (Mar. 14, 2024) CV-22-01261 (D. Ariz.):

The Court's Preliminary Approval Order approved the Short Form Settlement Notice, Long Form Notice, Claim Form, and found the mailing, distribution, and publishing of the various notices as proposed met the requirements of Fed. R. Civ. P. 23 and due process, and was the best notice practicable under the circumstances, constituting due and sufficient notice to all persons entitled to notice.

**Judge William H. Orrick, In re Juul Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation (Altria Settlement)** (Mar. 14, 2024) 19-md-02913 (N.D. Cal.):

Notice of the Altria Settlement was provided by: (1) direct notice via email to those Settlement Class Members for whom an email address was available; (2) direct notice via postcard mailed to those Settlement Class Members for whom a physical mailing address was available but an email address was not available; (3) publication notice of the Settlement, which comprised 409,315,597 impressions, targeted at likely Settlement Class Members served across relevant internet websites and social media platforms; and (4) publication on the settlement website. In total, the Notice Plan is estimated to have reached at least 80% of Settlement Class Members. The Court finds that the Notice Plan provided the best practicable notice to the Settlement Class Members and satisfied the requirements of due process.

**Judge Aleta A. Trauger, Bandy v. TOC Enterprises, Inc. d/b/a Tennessee Orthopaedic Clinics, a division of Tennessee Orthopaedic Alliance, P.A.**, (Mar. 14, 2024) 3:23-cv-00598 (M.D. Tenn.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Class Members in compliance with the requirements of Rule 23(c)(2). The Court finds that the notice program was reasonably calculated to, and did, provide due and sufficient notice to the Class of the pendency of the Action, certification of the Class for settlement purposes only, the existence and terms of the Settlement Agreement, and their rights to object to and appear at the Final Fairness Hearing or to exclude themselves from the Settlement, and satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

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**Judge Allen Price Walker, Sayas et al. v. Biometric Impressions Corp.**, (Mar. 6, 2024) 2020 CH 00201 (Cir. Ct. Cook Cnty. Ill.):

Notice to the Settlement Class was provided in accordance with the Court's Preliminary Approval Order, and the substance of and dissemination program for the Notice which included direct notice via U.S. Mail and email (where available), and by substitute media notification according to a targeted media campaign designed by the Settlement Administrator, and the creation of the Settlement Website...provided the best practicable notice under the circumstances. The Notice was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from the Settlement and to appear at the Final Approval Hearing. Therefore, the Notice was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice and fulfilled the requirements of 735 ILCS 5/2-803, due process, and the rules of the Court.

**Judge Angel Kelley, Fiorentino v. Flosports, Inc.**, (Mar. 5, 2024) 1:22-cv-11502 (D. Mass.):

The Court finds that the notice program, as set forth in Section 4 of the Settlement Agreement and effectuated pursuant to the Court's August 23, 2023 Preliminary Approval Order (Doc No. 63) and November 6, 2023 Order Granting Joint Motion for Extension of Time (Doc No. 65), satisfies the requirements of Federal Rule of Civil Procedure 23(c) and due process and constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of (i) the pendency of the Action and of the Settlement, including the terms thereof; (ii) class members' rights to object to or exclude themselves from the Settlement, including the procedure for objecting to or opting out of the Settlement, and to appear at the Final Approval Hearing; (iii) contact information for Class Counsel, the Settlement Administrator, the Settlement Website, and a toll-free number to ask questions about the Settlement; (iv) important dates in the settlement approval process, including the date of the Final Approval Hearing; (v) Class Counsel's request for an award of reasonable attorneys' fees and expenses; and (vi) the Class Representative's application for a service award.

**Judge David O. Carter, Nielsen v. Walt Disney Parks and Resorts U.S., Inc.**, (Mar. 4, 2024) 8:21-cv-02055 (C.D. Cal.):

The Court finds that the Class Notice plan provided for in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature of this case, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and the rights of Settlement Class members to exclude themselves from the settlement, to object and appear at the Final Approval Hearing, and to receive benefits under the Settlement Agreement; and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

**Judge Craig Schwall, Mayheu et al. v. Chick-fil-A Inc.**, (Feb. 29, 2024) 2022CV365400 (Sup. Ct. Fulton Cnty., Ga.):

The Court finds that the distribution of the Class Notice and notice methodology was properly implemented in accordance with O.C.G.A. § 9-11-23(c)(2), the terms of the Agreement, and the Preliminary Approval Order. The Court finds that the Class Notice was simply written and readily understandable and that the Class Notice (a) constitutes the best notice practicable under the circumstances; (b) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class and Settlement Subclasses of the Agreement and their right to exclude themselves or object to the Agreement and to appear at the Fairness Hearing; (c) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to notice; and (d) meets all applicable requirements of Georgia law, the Uniform Superior Court Rules, and all other applicable law and due process requirements.

**Judge Sheila D. Stinson, Nimsey v. Tinker Federal Credit Union**, (Feb. 23, 2024) CJ-2019-6084 (Dist. Ct. Oklahoma Cnty., Okla.):

The form, content, and method of dissemination of Notice given to members of the Settlement Class—individual emailed or mailed notice—were adequate and reasonable constituted the best notice practicable under the circumstances and satisfied the requirements of 12 Okla. Stat. § 12-2023(C)(4) and (E)(1) and Due Process.

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**Judge Phillip A. Brimmer, Beasley et al. v. TTEC Services Corporation; Anderson v. TTEC Services Corporation** (Feb. 21, 2024) 22-cv-00097; 22-cv-00347 (D. Col.):

[T]he Court finds that the notice given to members of the class was the best notice practicable under the circumstances, was reasonably calculated under the circumstances to apprise such members of the pendency of this action and to afford them an opportunity to object to, and meets the requirements of Rule 23 (c)(2)(B) and (e)(1).

**Judge Yvonne Gonzalez Rogers, In re PFA Insurance Marketing Litigation** (Feb. 5, 2024) 4:18-cv-03771 YGR (N.D. Cal.):

The Court finds that the relief provided to class members under the SA is fair and reasonable when considering the Rule 23(e)(2)(C) factors...

**Judge Charles R. Breyer, In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation Schools** (Feb. 2, 2024) 3:21-md-02996 (N.D. Cal.):

The Court finds that the notice provided to the Settlement Class pursuant to the Settlement Agreement (ECF No. 599-2) and the Preliminary Approval Order fully complied with Due Process and Rule 23, and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing.

**Judge Charles R. Breyer, In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation Subdivision** (Feb. 2, 2024) 3:21-md-02996 (N.D. Cal.):

[T]he Court has considered each of the Rule 23(e) factors and finds that the Class Representatives and Class Counsel have adequately represented the Class, the settlement agreement was negotiated at arm's length, the relief provided for the Class is adequate, and the plan of allocation treats Class Members equitably relative to one another.

**Judge David E Schwartz, Stauber v. Sudler Property Management** (Jan. 22, 2024) 023LA000411 (18th Jud. Cir., Cir. Ct., DuPage Cnty., Ill.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of 735 ILCS 5/2-801, et seq.

**Judge Edward J. Davila, Harbour et al. v. California Health & Wellness et al.** (Jan. 16, 2024) 5:21-cv-03322 (N.D. Cal.):

[T]he Court finds that the terms of the Settlement, including the awards of attorneys' fees, costs and incentive awards, is fair, adequate, and reasonable that it satisfies Federal Rule of Civil Procedure 23 (e) and the fairness and adequacy factors; and that it should be approved and implemented.

**Judge Susan Illston, Roberts v. Zuora Inc. et al.** (Jan. 16, 2024) 3:19-cv-03422 (N.D. Cal.):

The form and method of notifying the Settlement Class of the motion for attorneys' fees, litigation expenses, and a service award satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable laws and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

**Judge Leigh Martin May, Black v. USAA Casualty Insurance Company** (Dec. 14, 2023) 1:21-cv-01363 (N.D. Ga.):

[T]he Court finds that the notice provided to Settlement Class Members (i) was the best practicable notice under the circumstances; (ii) was calculated to apprise Settlement Class Members of the pendency of the Action and their right to object to or seek exclusion from the Proposed Settlement and to appear at the final Fairness Hearing; and (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice.

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**Judge Timothy McJoynt, Jackson et al. v. Fandango Media, LLC** (Dec. 4 2023) 2023LA000631 (18th Jud. Cir. Ct., DuPage Cnty., Ill.):

The Court has determined that the notice provided to the Settlement Class pursuant to the Settlement Agreement and order granting Preliminary Approval—including: (i) direct notice in the form of an email to Settlement Class Members for whom a valid email address is available in the Class List, containing an electronic link to the Claim Form; (ii) reminder notice via a second email thirty (30) days prior to the Claims Deadline containing an electronic link to the Claim Form; and (iii) the creation of a Settlement website . . . apprising the Settlement Class of the proposed Settlement and enabling the Settlement Class to submit Claim Forms online—fully complied with the requirements of 735 ILCS 5/2-803 and due process, and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, the Settlement and Settlement Agreement, their right to object to or to exclude themselves from the Settlement and Settlement Agreement, and their right to appear at the Final Approval Hearing.

**Judge Nadine Nieto, Arevalo et al. v. USAA Casualty Insurance Company et al.** (Nov. 27, 2023) 2020-CI-16240 (Dist. Ct., Bexar County, Tex. 285th Jud. Dist.):

The Court confirms and approves, as to form and content, the Notice delivered to Settlement Class members, and finds that the Notice Program was fair, adequate, and satisfied due process. The Court finds the notice constituted the best notice practicable under the circumstances by providing individual notice to all Settlement Class Members who could be identified through reasonable effort and constituted valid and sufficient notice to all persons entitled thereto, complying fully with the requirements of due process and Texas Rule of Civil Procedure 42 (e)(1)(B).

**Judge Todd Taylor, Alexander et al. v. Salud Family Health, Inc.** (Nov. 22, 2023) 2023CV030580 (19th Dist. Ct. Greeley Cnty., Col.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Colorado Rule of Civil Procedure 23(e). The Court finds that the Claims Administrator's notice fully and accurately informed Settlement Class Members about the Litigation and the existence and terms of the Settlement Agreement; advised Settlement Class Members of all terms of the Settlement; advised Settlement Class Members of their right to request exclusion from the Settlement and provided sufficient information so Settlement Class Members were able to decide whether to accept the benefits offered, opt out and pursue their own remedies, or object to the proposed Settlement; provided procedures for Settlement Class Members to file written objections to the proposed Settlement, to appear at the Final Approval Hearing, and to state objections to the proposed Settlement; and provided the time, date, and place of the Final Approval Hearing.

**Judge John R. Tunheim, In re Cattle and Beef Antitrust Litigation** (Nov. 21, 2023) 22-3031 (D.Minn.):

The notice given to the Settlement Class, including individual notice to all members of the Settlement Class who could be identified through reasonable effort, was the most effective and practicable under the circumstances. This notice provided due and sufficient notice of the proceedings and of the matters set forth therein, including the proposed settlement, to all persons entitled to such notice, and this notice fully satisfied the requirements of Rules 23(c)(2) and 23(e)(1) of the Federal Rules of Civil Procedure and the requirements of due process.

**Judge Lawrence P. Riff, Ross et al. v. Panda Restaurant Group, Inc.** (Nov. 20, 2023) 21STCV03662 (Sup. Ct. Cal., Cnty. of Los Angeles):

The Court finds that the distribution of the Notice of the Settlement has been completed in conformity with the Court's Preliminary Approval Order. The Court finds that the notice was the most practicable under the circumstances and provided due and adequate notice of the proceedings and of the terms of the Settlement. The Court finds that the notice fully satisfied the requirements of due process. The Court also finds that all Settlement Class Members were given a full and fair opportunity to participate in the Fairness Hearing, all Class Members wishing to be heard have been heard, and all Class Members have had a full and fair opportunity to exclude themselves from the Settlement Class.

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**Judge Stephen Dries, Fernandez et al. v. 90 Degree Benefits Wisconsin et al.** (Nov. 17, 2023) 2:22-cv-00799 (E.D. Wis.):

The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action, (ii) the effect of the proposed Settlement (including the releases to be provided thereunder), (iii) Class Counsel's motion for a Fee Award and Costs, (iv) Class Representatives' motion for a Service Award Payments, (v) their right to object to any aspect of the Settlement, Class Counsel's motion for a Fee Award and Costs, and/or Class Representatives' motion for a Service Award Payments, (vi) their right to exclude themselves from the Settlement Class, and (vii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

**Judge Joseph V. Salvi, Gudgel et al. v. Reynolds Consumer Products, Inc. et al.** (Nov. 15, 2023) 23LA00000486 (Cir. Ct. 19th Jud. Cir., Lake Cnty., Ill.):

The Court has determined that the Notice given to the Settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the Settlement and constituted the best notice practicable under the circumstances, applicable law, and the due process clauses of the United States and Illinois Constitutions.

**Judge Kimberly Dowling, Sharma et al. v. Accutech Systems Corporation** (Nov. 13, 2023) 18C02-2210-CT-000135 (Cir. Ct. 2, Del. Cnty., Ind.):

The Court finds that such Notice as therein ordered was the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Indiana Rule of Trial Procedure 23(c)(2).

**Judge William T. Ridley, Julien et al. v. Cash Express, LLC** (Nov. 9, 2023) 2022-CV-221 (Cir. Ct. Putnam Cnty. Tenn.):

The form, content, and method of dissemination of the notice given to members of the Settlement Class were adequate and reasonable, constituted the best notice practicable under the circumstances, and satisfied the requirements of Due Process.

**Judge Jennifer Barron, Young et al. v. Military Advantage, Inc. d/b/a Military.com** (Nov. 9, 2023) 2023LA00535 (18th Jud. Dist. Cir. Ct. Dupage Cnty. Ill.):

The notice provided to the Settlement Class pursuant to the Settlement Agreement and order granting Preliminary Approval - including (i) direct notice to the Settlement Class via email and U.S. mail, based on the comprehensive subscriber list provided by Defendant, and (ii) the creation of the Settlement Website - fully complied with the requirements of 735 ILCS 5/2-803 and due process, and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing.

**Judge Laura Scott, Lukens v. Utah Imaging Associates, Inc.** (Nov. 8, 2023) 210906618 (3<sup>rd</sup> Dist., Salt Lake Cnty., Utah):

The Court has determined that the notice given to the Settlement Class Members in accordance with the Preliminary Approval Order fully and accurately informed Settlement Class Members of all material terms of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Utah R. Civ. P. 23, applicable law, and the due process clauses of both the U.S. and Utah Constitutions.

**Judge Christopher C. Nash, Gulf Coast Injury Center, LLC, A/A/O Jordan Rimert v. Esurance Property and Casualty Insurance Company** (Nov. 3, 2023) 21-CA-002738 (Cir. Ct. 13th Jud. Cir. Hillsborough Cnty. Fla.):

The Court hereby finds that the Notice Plan (i) constituted the best practicable notice under the circumstances; (ii) was reasonably calculated to apprise potential Settlement Class Members of the pendency of the Action, their right to object to or exclude themselves from the Proposed Settlement, and to appear at the final approval hearing; and (iii) constituted due, adequate, and sufficient process and notice to all persons entitled to receive notice.

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**Judge Robert R. Reed, Gold et al. v. New York Life Insurance Co. et al.** (Oct. 26, 2023) 653923/2012 (Sup. Ct. N.Y., Cnty., NY):

The Court finds that the procedures for notifying the Class Members about the Settlement, including the Class Settlement Notice, Summary Notice of Settlement, and Advertisement via LinkedIn, as provided for in the Settlement Agreement, constituted the best notice practicable under the circumstances to all Class Members, and fully satisfied all necessary requirements of due process. Based on the evidence, arguments and other materials submitted in connection with the Fairness Hearing, the Court finds that the notice provided was adequate, due, sufficient and valid notice to Class Members.

**Judge Sidney H. Stein, Sonterra Capital Master Fund Ltd. v. Credit Suisse Group AG et al.** (Oct. 24, 2023) 1:15-cv-00871 (S.D.N.Y.):

The Court finds that the mailed notice, publication notice, website, and Class Notice plan implemented pursuant to the Settlement Agreement and approved by the Court in the Order dated February 15, 2023 (ECF No. 426), amended by Order dated May 16, 2023 (ECF No. 458); (a) constituted the best practicable notice; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, of their right to exclude themselves from or object to the proposed Settlement, of their right to appear at the Fairness Hearing, of the Distribution Plan, and of Class Counsel's application for an award of attorneys' fees, Incentive Award(s), and for reimbursement of expenses associated with the Action; (c) provided a full and fair opportunity to all Settlement Class Members to be heard with respect to the foregoing matters; and (d) met all applicable requirements of Federal Rule of Civil Procedure 23, Due Process, and any other applicable rules or law.

**Judge Jennifer P. Wilson, Banks et al. v. Allstate Fire & Casualty Insurance Company** (Oct. 23, 2023) 19-cv-01617 (M.D. Penn.):

WHEREAS the Allstate Defendants, through the Notice Agent, have served the notices required under the Class Action Fairness Act on the appropriate state and federal government officials. Id.... due and adequate notice has been given to the Settlement Class Members in satisfaction of the requirements of Rules 23(c)(2) and 23 (e)(1) of the Federal Rules of Civil Procedure and Constitutional Due Process ...

**Judge Michael F. Stelzer, Perry v. Schnuck Markets, Inc.** (Oct. 10, 2023) 2022-CC10425 (Cir. Ct. City of St. Louis, Mo.):

Notice to the Members of the Settlement Class required by Mo. R. Civ. P. 52.08(b)(3) has been provided as directed by this Court in the Preliminary Approval Order, and such notice constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and providing notice to the Settlement Class Members, and satisfied the requirements of the Missouri Rules of Civil Procedure, and all other applicable laws. The Court finds that adequate notice was given to all Settlement Class Members pursuant to the terms of the Parties' Settlement Agreement and the Preliminary Approval Order. The Court has further determined that the Notice Plan fully and accurately informed Settlement Class Members of all material elements of the Settlement, constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Mo. R. Civ. P. 52.08(b)(3), applicable law, and the Due Process Clause of the United States Constitution.

**Judge Eleanor L. Ross, Dusko v. Delta Airlines, Inc.** (Oct. 5, 2023) 1:20-cv-01664 (N.D. Ga.):

The Court finds the Settlement Class received the best notice practicable under the circumstances in compliance with due process and Federal Rules of Civil Procedure 23(c)(2) and (e)(1).

**Judge Timothy S. Black, Miranda v. Xavier University** (Oct. 3, 2023) 1:20-cv-00539 (S.D. Ohio):

Considering the notice procedures, nearly all, if not all, Class Members received notice, and the Court finds that the notice issued to class members satisfied (if not exceeded) the requirements of the federal rules and due process.

**Judge R. Barclay Surrick, J., Checchia v. Bank of America, N.A.** (Sept. 21, 2023) 2:21-cv-03585 (E.D. Penn.):

Notice to the Class required by Rule 23(d) of the Federal Rules of Civil Procedure' has been provided in accordance with the Court's Preliminary Approval Order, entered February 16, 2023, and such Notice by mail and publication has been given in an adequate and sufficient manner; constitutes the best notice practicable under the circumstances; and satisfies Rule 23(e) and due process. Notice of Settlement was

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timely mailed to governmental entities as provided for in 28 U.S.C. § 1715.

**Judge William H. Orrick, *In re Juul Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation* (Juul Settlement) Sept. 19, 2023) 19-md-02913 (N.D. Cal.):**

The Court also approved the appointment of Epiq as the Claims Administrator based on representations of Epiq's qualifications and experience and an outline of administrative and communication services to be provided to class members... The record establishes that the Class Settlement Administrator served the required notices under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, with the documentation required by 28 U.S.C. § 1715(b)(1)-(8). ECF No. 3742.

**Judge Richard G. Stearns, *Ambrose et al v. Boston Globe Media Partners, LLC* (Sept. 8, 2023) 1:22-cv-10195 (D. Mass.):**

The notice provided to the Settlement Class pursuant to the Settlement Agreement (ECF No. 51) and order granting Preliminary Approval (ECF No. 52)-including (i) direct notice to the Settlement Class via email and U.S. mail, based on the comprehensive subscriber list provided by Defendant, and (ii) the creation of the Settlement Website -fully complied with the requirements of Fed. R. Civ. P. 23 and due process, and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing... The Court finds that Defendant properly and timely notified the appropriate government officials of the Settlement Agreement, pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715. The Court has reviewed the substance of Defendant's notice, and finds that it complied with all applicable requirements of CAFA. Further, more than ninety (90) days have elapsed since Defendant provided notice pursuant to CAFA and the Final Approval Hearing.

**Judge Matthew P. Brookman, *In re Midwestern Pet Foods Marketing, Sales Practices and Product Liability Litigation* (Aug. 21, 2023) 3:21-cv-00007 (S.D. Ind.):**

The notice given to the Class was the best notice practicable under the circumstances. Said notice provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of due process.

**Judge David B. Atkins, *King et al. v. PeopleNet Corporation* (Aug. 10, 2023) 2021-CH-01602 (Cir. Ct. Cook Cnty., Ill.):**

The Court has determined that the Notice given to the Settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the Settlement, constituted the best notice practicable under the circumstances, and fully satisfied the requirements of 735 ILCS 5/2-803, applicable law, and the Due Process Clauses of the U.S. Constitution and Illinois Constitution.

**Judge William F. Highberger, *Holly Wedding et al. vs. California Public Employees' Retirement System et al.* (July 28, 2023) BC517444 (Sup. Ct. Cnty of Los Angeles, Cal.):**

The Court finds and determines that this notice procedure afforded adequate protections to all members of the Settlement Class including those who requested exclusion and provides the basis for the Court to make an informed decision regarding approval of the Second Settlement based on the responses of the Settlement Class. The Court finds and determines that the notice provided in this case was the best notice practicable, which satisfied the requirements of law and due process.

**Judge James Donato, *In re Robinhood Outage Litigation* (July 18, 2023) 3:20-cv-01626 (N.D. Cal.):**

The Court finds that the Long Form Notice and the Notice Plan including a combination email and physical mail to Settlement Class Members based on Robinhood's records, a social media campaign, and a dedicated website, was implemented in accordance with the Preliminary Approval Order and (a) constituted the best practicable notice under the circumstances; (b) constituted notice that is appropriate, in a manner, content, and format reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and the effect of the Settlement (including the releases contained therein); their right to object to any aspect of the Settlement, the Plan of Allocation, and/or Class Counsel's Motion for Attorneys' Fees and Expenses and Service Awards; their right to exclude themselves from the Settlement Class; and their right to appear at the Fairness Hearing; (c) was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to receive

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notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court. These combined efforts directly reached approximately 99% of the identified Settlement Class members.

**Judge Antonio Arzola, Hrebenar v. Davis Yulee LLC, d/b/a Davis Chrysler Dodge Ram of Julee** (July. 18, 2023) 2023-001405-CA-01 (11th Jud. Cir. Ct. Miami-Dade Cnty., Fla.):

The Court finds that the distribution of the Class Notice, as provided for in the Settlement Agreement, (i) constituted the best practicable notice under the circumstances to Settlement Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of, among other things, the pendency of the Action, the nature and terms of the proposed Settlement, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fla. R. Civ. P. 1.220, the United States Constitution, the Rules of this Court, and any other applicable law. (b) The Court finds that the Class Notice and methodology set forth in the Settlement Agreement, the Preliminary Approval Order, and this Final Approval Order (i) constitute the most effective and practicable notice of the Final Approval Order, the relief available to Settlement Class Members pursuant to the Final Approval Order, and applicable time periods; (ii) constitute due, adequate, and sufficient notice for all other purposes to all Settlement Class Members; and (iii) comply fully with the requirements of Fla. R. Civ. P. 1.220, the United States Constitution, the Rules of this Court, and any other applicable laws.

**Judge Rodolfo A. Ruiz II, Wenston Desue et al. v. 20/20 Eye Care Network, Inc. et al.** (July. 8, 2023) 21-CIV-61275 (S.D. Fla.):

The Notice was provided to Class Members in accordance with the plan approved in the Court's Order Certifying Settlement Class and Granting Preliminary Approval of Class Action Settlement and Notice Program...Under these circumstances, the Court finds the Notice fairly apprised the Class of the proposed settlement terms and of the options open to them...The Court finds the Notice was the best practical, and the response and claims rates are within the acceptable range for final approval.

**Judge William M. Skretny, Ingram v. Jamestown Import Auto Sales, Inc. d/b/a Kia of Jamestown** (June 13, 2023) 1:22-cv-00309 (W.D.N.Y.):

The Court finds that the distribution of the Class Notice, as provided for in the Settlement Agreement, (i) constituted the best practicable notice under the circumstances to Settlement Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of, among other things, the pendency of the Action, the nature and terms of the proposed Settlement, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law. (b) The Court finds that the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, et seq ("CAFA"), including all notice requirements therein, have been met.

**Judge Jesse M. Furman, Dickens et al. v. Thinx, Inc.** (June 8, 2023) 1:22-cv-04286 (S.D.N.Y.):

The form and methods of notifying the Settlement Class of the terms and conditions of the proposed Settlement Agreement met the requirements of Fed R. Civ. P. 23, due process, and any other applicable law, and constituted the best notice practicable under the circumstances. Further, the settlement administrator, Epiq, on behalf of Defendant, caused timely notice of the Settlement and related materials to be sent to the Attorney General of the United States and the Attorneys General of all U.S. states, territories, and the District of Columbia pursuant to the Class Action Fairness Act of 2005 ("CAFA"). The Court finds that such notification complies fully with the applicable requirements of CAFA.

**Judge Ed Kinkeade, Kostka et al. v. Dickey's Barbecue Restaurants, Inc. et al.** (June 6, 2023) 3:20-cv-03424 (N.D. Tex.):

The Court has determined that the Notice given to the Settlement Class members in accordance with the Preliminary Approval Order fully and accurately informed Settlement Class members of all material terms of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Fed. R. Civ. P. 23, applicable law, and the due process clause of the U.S. Constitution.

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**Judge James C. Dever, III, Silva et al v. Connected Investors, Inc.** (June 2, 2023) 7:21-cv-00074 (E.D.N.C.):

The Court finds that the distribution of the Class Notice...*(i)* constituted the best practicable notice under the circumstances to Settlement Class Members, *(ii)* constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of, among other things, the pendency of the Action, the nature and terms of the proposed Settlement, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, *(iii)* was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and *(iv)* complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law.

**Judge Charles S. Treat, Service et al. v Volkswagen Group of America et al.** (May 31, 2023) c22-01841 (Sup. Ct. Cal. Cnty. of Contra Costa):

Class Notice was provided to the Class in accordance with the Preliminary Approval Order and satisfied the requirements of due process, California Code of Civil Procedure section 382 and rule 3.766 of the California Rules of Court and: *(a)* provided the best notice practicable; and *(b)* was reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of the Action, the terms of the settlement, their right to appear at the Final Approval Hearing, their right to object to the settlement, and their right to exclude themselves from the settlement. The Court finds that the Notice Plan set forth in the SA and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of the SA, and the Final Approval Hearing, and satisfies the requirements of California law and due process of law.

**Judge Erin B. O'Connell, McCullough v. True Health New Mexico, Inc.** (May 30, 2023) d-202-cv-2021-06816 (2nd Dist. Ct. N.M.):

The Court has determined that the Notice given to the Settlement Class members in accordance with the Preliminary Approval Order fully and accurately informed Settlement Class members of all material terms of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Rule 1-023, applicable law, and the due process clauses of both the U.S. and New Mexico Constitutions.

**Judge Greg Hill, Meier v. Prosperity Bank** (May 23, 2023) 109569-CV (239th Jud. Dist., Brazoria Cnty., Tex.):

The Court finds that Notice to the Settlement Class was the best notice practicable and complied with the requirements of Due Process, and that the Notice Program was completed in compliance with the Preliminary Approval Order and the Agreement.

**Judge Thomas L. Ludington, Thomsen et al. v. Morley Cos, Inc.** (May 12, 2023) 1:22-cv-10271 (E.D. Mich.):

Class notice was sent as ordered, the time for objections passed, and a final-approval hearing was held to determine whether the Agreement is "fair, reasonable, and adequate" under Rule 23(e)(2) on April 19, 2023...In sum, the Settlement Agreement and Class Notice satisfy all the relevant factors.

**Judge Roseann A. Ketchmark, Rogowski et al. v. State Farm Life Insurance Company et al.** (April 18, 2023) 4:22-cv-00203 (W.D. Mo.):

[T]he Court confirms the Class Notice was implemented in accordance with the Court's December 16, 2022 preliminary approval order.... The Court further confirms its prior findings that the form and substance of the notice meet, and have met, the requirements of Rule 23(c) and the Due Process Clause of the United States Constitution.

**Judge Gregory W. Pollack, In re Scripps Health Data Incident Litigation** (April 7, 2023) 37-2021-00024103 (Sup. Ct. Cal. Cnty. of San Diego):

The Court finds that...Notice *(i)* was reasonable and constituted the best practicable notice under the circumstances; *(ii)* was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, the terms of the Settlement including its release of Released Claims, their right to exclude themselves from the Settlement Class or object to all or any part of the Settlement, their right to appear at the Final Approval Hearing (either on their own or through counsel

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hired at their own expense), and the binding effect of final approval of the Settlement on all persons who do not exclude themselves from the Settlement Class; (iii) constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) fully satisfied the requirements of California Code of Civil Procedure § 382, the United States Constitution (including the Due Process Clause), and any other applicable law.

**Judge Christopher C. Conner, Chapman v. Insight Global LLC.** (April 6, 2023) 1:21-cv-00824 (M.D. Penn.):

The Court finds that the distribution of the mail and publication Notices to Class Members as set forth in the Declaration of Claims Administrator was in compliance with the Court's October 27, 2022 Order approving the proposed class notices and notice plan, and that notice has been given in an adequate and sufficient manner; constitutes the best notice practicable under the circumstances; and satisfies Federal Rule of Civil Procedure 23 and due process...Defendant has provided notice of the settlement to the appropriate government officials pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715.

**Judge William P. Dimitrouleas, South et al. v. Progressive Select Insurance Company** (March 31, 2023) 19-21760-CIV (S.D. Fla.):

The Notice program was the best notice practicable under the circumstances. The Notice program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice and said Notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

**Judge Douglas R. Cole, Middleton et al. v. Liberty Mutual Personal Insurance Company et al.** (Mar. 15, 2023) 1:20-cv-00668 (S.D. Ohio):

The Court hereby finds that the Notice Plan and the Class Notice constituted the best notice practicable under the circumstances, and constituted valid, due and sufficient notice to members of the Settlement Classes.

**Judge Jennifer P. Wilson, Miller v. Bath Saver, Inc. et al.** (Mar. 6, 2023) 1:21-cv-01072 (M.D. Penn.):

The Notice and the Notice Plan implemented pursuant to the Agreement (1) constitute the best practicable notice under the circumstances; (2) constitute notice that is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Litigation, their right to object to or exclude themselves from the proposed Settlement, and to appear at the Final Approval Hearing; (3) are reasonable and constitute due, adequate, and sufficient notice to all Persons entitled to receive notice; and (4) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court.

**Judge David O. Carter, In re California Pizza Kitchen Data Breach Litigation** (Feb. 22, 2023) 8:21-cv-01928 (C.D. Cal.):

The Court finds that the Class Notice plan provided for in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide due and sufficient notice to the Settlement Class regarding the existence and nature of the Consolidated Cases, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and the rights of Settlement Class members to exclude themselves from the settlement, to object and appear at the Final Approval Hearing, and to receive benefits under the Settlement Agreement; and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

**Judge David Knutson, Duggan et al. v. Wings Financial Credit Union** (Feb. 3, 2023) 19AV-cv-20-2163 (Dist. Ct., Dakota Cnty., Minn.):

The Court finds that notice of the Settlement to the Class was the best notice practicable and complied with the requirements of Due Process.

**Judge Clarence M. Darrow, Rivera v. IH Mississippi Valley Credit Union** (Jan. 26, 2023) 2019 CH 299 (Cir. Ct 14th Jud. Cir., Rock Island Cnty., Ill.):

The Court finds that the distribution of the Notices and the notice methodology were properly

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implemented in accordance with the terms of the Settlement Agreement and the Preliminary Approval Order. The Court further finds that the Notice was simply written and readily understandable and Class members have received the best notice practicable under the circumstances of the pendency of this action, their right to opt out, their right to object to the settlement, and all other relevant matters. The notices provided to the class met all requirements of due process, 735 ILCS 5/8-2001, et seq., and any other applicable law.

**Judge Andrew M. Lavin, Brower v. Northwest Community Credit Union** (Jan. 18, 2023) 20CV38608 (Ore. Dist. Ct. Multnomah Cnty.):

This Court finds that the distribution of the Class Notice was completed in accordance with the Preliminary Approval/Notice Order, signed September 8, 2022, was made pursuant to ORCP 32 D, and fully met the requirements of the Oregon Rules of Civil Procedure, due process, the United States Constitution, the Oregon Constitution, and any other applicable law.

**Judge Gregory H. Woods, Torretto et al. v. Donnelley Financial Solutions, Inc. and Mediant Communications, Inc.** (Jan. 5, 2023) 1:20-cv-02667 (S.D.N.Y.):

The Court finds that the notice provided to the Class Members was the best notice practicable under the circumstances, and that it complies with the requirements of Rule 23(c)(2).

**Judge Ledricka Thierry, Opelousas General Hospital Authority v. Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana** (Dec. 21, 2022) 16-C-3647 (27<sup>th</sup> Jud. D. Ct. La.):

Notice given to Class Members and all other interested parties pursuant to this Court's order of October 31, 2022, was reasonably calculated to apprise interested parties of the pendency of the action, the certification of the Class as defined, the terms of the Settlement Agreement, Class Members rights to be represented by private counsel, at their own costs, and Class Members' rights to appear in Court to have their objections heard, and to afford persons or entities within the Class definition an opportunity to exclude themselves from the Class. Such notice complied with all requirements of the federal and state constitutions, including the Due Process Clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Class as defined..."

**Judge Dale S. Fischer, DiFlauro et al. v. Bank of America, N.A.** (Dec. 19, 2022) 2:20-cv-05692 (C.D. Cal.):

The form and means of disseminating the Class Notice as provided for in the Order Preliminarily Approving Settlement and Providing for Notice constituted the best notice practicable under the circumstances, including individual notice to all Members of the Class who could be identified through reasonable effort. Said Notice provided the best notice practicable under the circumstances of the proceedings and the matters set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice, and said Notice fully satisfied the requirements of Federal Rule of Civil Procedure 23 and complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution.

**Judge Stephen R. Bough, Browning et al. v. Anheuser-Busch, LLC** (Dec. 19, 2022) 4:20-cv-00889 (W.D. Mo.):

The Court has determined that the Notice given to the Classes, in accordance with the Notice Plan in the Settlement Agreement and the Preliminary Approval Order, fully and accurately informed members of the Classes of all material elements of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of due process, Federal Rule of Civil Procedure 23, and all applicable law. The Court further finds that the Notice given to the Classes was adequate and reasonable.

**Judge Robert E. Payne, Haney et al. v. Genworth Life Insurance Co. et al.** (Dec. 12, 2022) 3:22-cv-00055 (E.D. Va.):

The Court preliminarily approved the Amended Settlement Agreement on July 7, 2022, and directed that notice be sent to the Class. ECF No. 34. The Notice explained the policy election options afforded to class members, how they could communicate with Class Counsel about the Amended Settlement Agreement, their rights and options thereunder, how they could examine certain information on a website that was set up as part of the settlement process, and their right to object to the proposed settlement and opt out

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of the proposed case. Class members were also informed that they could contact independent counsel of their choice for advice.

In assessing the adequacy of the Notice, as well as the fairness of the settlement itself, it is important that, according to the record, as of November 1, 2022, the Notice reached more than 99% of the more than 352,000 class members. All things considered, the Notice is adequate under the applicable law....

**Judge Danielle Viola, Dearing v. Magellan Health, Inc. et al.** (Dec. 5, 2022) CV2020-013648 (Sup. Ct. Cnty. Maricopa, Ariz.):

The Court finds that the Notice to the Settlement Class fully complied with the requirements of the Arizona Rules of Civil Procedure and due process, has constituted the best notice practicable under the circumstances, was reasonably calculated to provide, and did provide, due and sufficient notice to Settlement Class Members regarding the existence and nature of the Litigation, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, the rights of Settlement Class Members to exclude themselves from or object to the Settlement, the right to appear at the Final Fairness Hearing, and to receive benefits under the Settlement Agreement.

**Judge Michael A. Duddy, Churchill et al. v. Bangor Savings Bank** (Dec. 5, 2022) BCD-CIV-2021-00027 (Maine Bus. & Consumer Ct.):

The Class Notice provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances, and constituted due and sufficient notice of the proceedings and matters set forth therein, to all persons entitled to notice.

**Judge Andrew Schulman, Guthrie v. Service Federal Credit Union** (Nov. 22, 2022) 218-2021-CV-00160 (Sup. Ct. Rockingham Cnty., N.H.):

The notice given to the Settlement Class of the Settlement and the other matters set forth therein was the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort. Said notice provided due and adequate notice of these proceedings and of the matters set forth in the Agreement, including the proposed Settlement, to all Persons entitled to such notice, and said notice fully satisfied the requirements of New Hampshire law and due process.

**Judge Charlene Edwards Honeywell, Stoll et al. v. Musculoskeletal Institute, Chartered d/b/a Florida Orthopaedic Institute** (Nov. 14, 2022) 8:20-cv-01798 (M.D. Fla.):

The Court finds and determines that the Notice Program, preliminarily approved on May 16, 2022, and implemented on June 15, 2022, constituted the best notice practicable under the circumstances, constituted due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules. The Notice Program involved direct notice via e-mail and postal mail providing details of the Settlement, including the benefits available, how to exclude or object to the Settlement, when the Final Fairness Hearing would be held, and how to inquire further about details of the Settlement. The Court further finds that all of the notices are written in plain language and are readily understandable by Class Members. The Court further finds that notice has been provided to the appropriate state and federal officials in accordance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, drawing no objections.

**Judge Thomas W. Thrash, Jr., Callen v. Daimler AG and Mercedes-Benz USA, LLC** (Nov. 7, 2022) 1:19-cv-01411 (N.D. Ga.):

The Court finds that notice was given in accordance with the Preliminary Approval Order (Dkt. No. 79), and that the form and content of that Notice, and the procedures for dissemination thereof, afforded adequate protections to Class Members and satisfy the requirements of Rule 23(e) and due process and constitute the best notice practicable under the circumstances.

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**Judge Mark Thomas Bailey, Snyder et al. v. The Urology Center of Colorado, P.C.** (Oct. 30, 2022) 2021CV33707 (2nd Dist. Ct, Cnty. of Denver Col.):

The Court finds that the Notice Program, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature of the Litigation, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and the rights of Settlement Class Members to exclude themselves from the Settlement, to object and appear at the Final Approval Hearing, and to receive benefits under the Settlement Agreement; and (iii) satisfied the requirements of the Colorado Rules of Civil Procedure, the United States Constitution, and all other applicable law.

**Judge Amy Berman Jackson, In re U.S. Office of Personnel Management Data Security Breach Litigation** (Oct. 28, 2022) MDL No. 2664, 15-cv-01394 (D.D.C.):

The Court finds that notice of the Settlement was given to Class Members in accordance with the Preliminary Approval Order, and that it constituted the best notice practicable of the matters set forth therein, including the Settlement, to all individuals entitled to such notice. It further finds that the notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.

**Judge John R. Tunheim, In re Pork Antitrust Litigation (Commercial and Institutional Indirect Purchaser Actions - CIIPPs) (Smithfield Foods, Inc.)** (Oct. 19, 2022) 18-cv-01776 (D. Minn.):

The notice given to the Settlement Class, including individual notice to all members of the Settlement Class who could be identified through reasonable effort, was the most effective and practicable under the circumstances. This notice provided due and sufficient notice of the proceedings and of the matters set forth therein, including the proposed settlement, to all persons entitled to such notice, and this notice fully satisfied the requirements of Rules 23(c)(2) and 23(e)(1) of the Federal Rules of Civil Procedure and the requirements of due process.

**Judge Harvey E. Schlesinger, In re Disposable Contact Lens Antitrust Litigation (Alcon Laboratories, Inc. and Johnson & Johnson Vision Care, Inc.)** (Oct. 12, 2022) 3:15-md-02626 (M.D. Fla.):

The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constitutes the best notice practicable under the circumstances; (c) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Classes of (i) the pendency of the Action; (ii) the effect of the Settlement Agreements (including the Releases to be provided thereunder); (iii) Class Counsel's possible motion for an award of attorneys' fees and reimbursement of expenses; (iv) the right to object to any aspect of the Settlement Agreements, the Plan of Distribution, and/or Class Counsel's motion for attorneys' fees and reimbursement of expenses; (v) the right to opt out of the Settlement Classes; and (vi) the right to appear at the Fairness Hearing; (d) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement Agreements; and (e) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause).

**Judge George H. Wu, Hameed-Bolden et al. v. Forever 21 Retail, Inc. et al.** (Oct. 11, 2022) 2:18-cv-03019 (C.D. Cal.):

[T]he Court finds that the Notice and notice methodology implemented pursuant to the Settlement Agreement and the Court's Preliminary Approval Order: (a) constituted methods that were reasonably calculated to inform the members of the Settlement Class of the Settlement and their rights thereunder; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law.

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**Judge Robert M. Dow, Jr., *In re fairlife Milk Products Marketing and Sales Practices Litigation*** (Sept. 28, 2022) MDL No. 2909, 1:19-cv-03924 (N.D. Ill.):

The Court finds that the Class Notice Program implemented pursuant to the Settlement Agreement and the Order preliminarily approving the Settlement ... (i) constituted the best practicable notice, (ii) constituted notice that was reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of the Litigation, of their right to object to or exclude themselves from the proposed Settlement, of their right to appear at the Fairness Hearing, and of their right to seek monetary and other relief, (iii) constituted reasonable, due, adequate, and sufficient notice to all persons entitled to receive notice, and (iv) met all applicable requirements of due process and any other applicable law.

**Judge Ethan P. Schulman, Rodan & Fields LLC; Gorzo et al. v. Rodan & Fields, LLC** (Sept. 28, 2022) CJC-18-004981, CIVDS 1723435 & CGC-18-565628 (Sup. Ct. Cnty. of San Bernadino, Cal. & Sup. Ct. Cnty. of San Francisco, Cal.):

The Court finds the Full Notice, Email Notice, Postcard Notice, and Notice of Opt-Out (collectively, the "Notice Packet") and its distribution to Class Members have been implemented pursuant to the Agreement and this Court's Preliminary Approval Order. The Court also finds the Notice Packet: a) Constitutes notice reasonably calculated to apprise Class Members of: (i) the pendency of the class action lawsuit; (ii) the material terms and provisions of the Settlement and their rights; (iii) their right to object to any aspect of the Settlement; (iv) their right to exclude themselves from the Settlement; (v) their right to claim a Settlement Benefit; (vi) their right to appear at the Final Approval Hearing; and (vii) the binding effect of the orders and judgment in the class action lawsuit on all Participating Class Members; b) Constitutes notice that fully satisfied the requirements of Code of Civil Procedure section 382, California Rules of Court, rule 3.769, and due process; c) Constitutes the best practicable notice to Class Members under the circumstances of the class action lawsuit; and d) Constitutes reasonable, adequate, and sufficient notice to Class Members.

**Judge Anthony J. Trenga, *In re Capital One Customer Data Security Breach Litigation*** (Sept. 13, 2022) MDL No. 1:19-md-2915, 1:19-cv-02915 (E.D. Va.):

Pursuant to the Court's direction, the Claims Administrator appointed by the Court implemented a robust notice program ... The Notice Plan has been successfully implemented and reached approximately 96 percent of the Settlement Class by the individual notice efforts alone.... Targeted internet advertising and extensive news coverage enhanced public awareness of the Settlement.

The Court finds that the Notice Program has been implemented by the Settlement Administrator and the Parties in accordance with the requirements of the Settlement Agreement, and that such Notice Program, including the utilized forms of Notice, constitutes the best notice practicable under the circumstances and satisfies due process and the requirements of Rule 23 of the Federal Rules of Civil Procedure. The Court finds that the Settlement Administrator and Parties have complied with the directives of the Order Granting Preliminary Approval of Class Action Settlement and Directing Notice of Proposed Settlement and the Court reaffirms its findings concerning notice ....

**Judge Evelio Grillo, Aseltine v. Chipotle Mexican Grill, Inc.** (Sept. 13, 2022) RG21088118 (Cir. Ct. Cal. Alameda Cnty.):

The proposed class notice form and procedure are adequate. The email notice is appropriate given the amount at issue for each member of the class.

**Judge David S. Cunningham, Muransky et al. v. The Cheesecake Factory et al.** (Sept. 9, 2022) 19 stcv 43875 (Sup. Ct. Cal. Cnty. of Los Angeles):

The record shows that Class Notice has been given to the Settlement Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: (i) constitutes reasonable and the best notice that is practicable under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the terms of the Agreement and the Class Settlement set forth in the Agreement ("Class Settlement"), and the right of Settlement Class Members to object to or exclude themselves from the Settlement Class and appear at the Fairness Hearing held on May 20, 2022; (iii) constitutes due, adequate, and sufficient notice to all person or entities entitled to

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receive notice; and (iv) meets the requirements of due process, California Code of Civil Procedure § 382, and California Rules of Court, Rules 3.760-3.771.

**Judge Steven E. McCullough, Fallis et al. v. Gate City Bank** (Sept. 9, 2022) 09-2019-cv-04007 (East Cent. Dist. Ct. Cass Cnty. N.D.):

The Courts finds that the distribution of the Notices and the Notice Program were properly implemented in accordance with N.D. R. Civ. P. 23, the terms of the Agreement, and the Preliminary Approval Order. The Court further finds that the Notice was simply written and readily understandable and that the Notice (a) constitutes the best notice practicable under the circumstances; (b) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Classes of the Agreement and their right to exclude themselves or object to the Agreement and to appear at the Final Approval Hearing; (c) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to notice; and (d) meets all applicable requirements of North Dakota law and any other applicable law and due process requirements.

**Judge Susan N. Burke, Mayo v. Affinity Plus Federal Credit Union** (Aug. 29, 2022) 27-cv-20-11786 (4<sup>th</sup> Jud. Dist. Ct. Minn.):

The Court finds that Notice to the Settlement Class was the best notice practicable and complied with the requirements of Due Process, and that the Notice Program was completed in compliance with the Preliminary Approval Order and the Agreement.

**Judge Paul A. Engelmayer, In re Morgan Stanley Data Security Litigation** (Aug. 5, 2022) 1:20-cv-05914 (S.D.N.Y.):

The Court finds that the emailed and mailed notice, publication notice, website, and Class Notice plan implemented pursuant to the Settlement Agreement and Judge Analisa Torres' Preliminary Approval Order: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of this Action, of the effect of the proposed Settlement (including the Releases to be provided thereunder), of their right to exclude themselves from or object to the proposed Settlement, of their right to appear at the Fairness Hearing, of the Claims Process, and of Class Counsel's application for an award of attorneys' fees, for reimbursement of expenses associated with the Action, and any Service Award; (d) provided a full and fair opportunity to all Settlement Class Members to be heard with respect to the foregoing matters; (e) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (f) met all applicable requirements of Rule 23 of the Federal Rule of Civil Procedure, the United States Constitution, including the Due Process Clause, and any other applicable rules of law.

**Judge Denise Page Hood, Bleachtech L.L.C. v. United Parcel Service Co.** (July 20, 2022) 14-cv-12719 (E.D. Mich.):

The Settlement Class Notice Program, consisting of, among other things, the Publication Notice, Long Form Notice, website, and toll-free telephone number, was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

**Judge Robert E. Payne, Skochin et al. v. Genworth Life Insurance Company et al.** (June 29, 2022) 3:21-cv-00019 (E.D. Va.):

The Court finds that the plan to disseminate the Class Notice and Publication Notice the Court previously approved has been implemented and satisfies the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process. The Class Notice, which the Court approved, clearly defined the Class and explained the rights and obligations of the Class Members. The Class Notice explained how to obtain benefits under the Settlement, and how to contact Class Counsel and the Settlement Administrator. The Court appointed Epiq Class Action & Claims Solutions, Inc. ("Epiq") to fulfill the Settlement Administrator duties and disseminate the Class Notice and Publication Notice. The Class Notice and Publication Notice permitted Class Members to access information and documents about the case to inform their decision about whether to opt out of or object to the Settlement.

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**Judge Fernando M. Olguin, Johnson v. Moss Bros. Auto Group, Inc. et al.** (June 24, 2022) 5:19-cv-02456 (C.D. Cal.):

Here, after undertaking the required examination, the court approved the form of the proposed class notice. (See Dkt. 125, PAO at 18-21). As discussed above, the notice program was implemented by Epiq. (Dkt. 137-3, Azari Decl. at ¶¶ 15-23 & Exhs. 3-4 (Class Notice)). Accordingly, based on the record and its prior findings, the court finds that the class notice and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, the class members' right to exclude themselves from the action, and their right to object to the proposed settlement....

**Judge Harvey E. Schlesinger, Beiswinger v. West Shore Home, LLC** (May 25, 2022) 3:20-cv-01286 (M.D. Fla.):

The Notice and the Notice Plan implemented pursuant to the Agreement (1) constitute the best practicable notice under the circumstances; (2) constitute notice that is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Litigation, their right to object to or exclude themselves from the proposed Settlement, and to appear at the Final Approval Hearing; (3) are reasonable and constitute due, adequate, and sufficient notice to all Persons entitled to receive notice; and (4) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court.

**Judge Scott Kording, Jackson v. UKG Inc., f/k/a The Ultimate Software Group, Inc.** (May 20, 2022) 2020L0000031 (Cir. Ct. of McLean Cnty., Ill.):

The Court has determined that the Notice given to the Settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the Settlement, constituted the best notice practicable under the circumstances, and fully satisfied the requirements of 735 ILCS 5/2-803, applicable law, and the Due Process Clauses of the U.S. Constitution and Illinois Constitution.

**Judge Denise J. Casper, Breda v. Cellco Partnership d/b/a Verizon Wireless** (May 2, 2022) 1:16-cv-11512 (D. Mass.):

The Court hereby finds Notice of Settlement was disseminated to persons in the Settlement Class in accordance with the Court's preliminary approval order, was the best notice practicable under the circumstances, and that the Notice satisfied Rule 23 and due process.

**Judge William H. Orrick, Maldonado et al. v. Apple Inc. et al.** (Apr. 29, 2022) 3:16-cv-04067 (N.D. Cal.):

[N]otice of the Class Settlement to the Certified Class was the best notice practicable under the circumstances. The notice satisfied due process and provided adequate information to the Certified Class of all matters relating to the Class Settlement, and fully satisfied the requirements of Federal Rules of Civil Procedure 23(c)(2) and (e)(1).

**Judge Laurel Beeler, In re Zoom Video Communications, Inc. Privacy Litigation** (Apr. 21, 2022) 20-cv-02155 (N.D. Cal.):

Between November 19, 2021, and January 3, 2022, notice was sent to 158,203,160 class members by email (including reminder emails to those who did not submit a claim form) and 189,003 by mail. Of the emailed notices, 14,303,749 were undeliverable, and of that group, Epiq mailed notice to 296,592 class members for whom a physical address was available. Of the mailed notices, efforts were made to ensure address accuracy and currency, and as of March 10, 2022, 11,543 were undeliverable. In total, as of March 10, 2022, notice was accomplished for 144,242,901 class members, or 91% of the total. Additional notice efforts were made by newspaper ... social media, sponsored search, an informational release, and a Settlement Website. Epiq and Class Counsel also complied with the court's prior request that best practices related to the security of class member data be implemented.

[T]he Settlement Administrator provided notice to the class in the form the court approved previously. The notice met all legal prerequisites: it was the best notice practicable, satisfied the requirements of Rule 23(c)(2), adequately advised class members of their rights under the settlement agreement, met the requirements of due process, and complied with the court's order regarding court notice. The forms of notice fairly, plainly, accurately, and reasonably provided class members with all required information ....

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**Judge Federico A. Moreno, *In re Takata Airbag Products Liability Litigation (Volkswagen)*** (Mar. 28, 2022) MDL No. 2599 (S.D. Fla.):

[T]he Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order ... The Court finds that such Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED. R. Civ. P. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

**Judge James Donato, *Pennington et al. v. Tetra Tech, Inc. et al.*** (Mar. 28, 2022) 3:18-cv-05330 (N.D. Cal.):

On the Rule 23(e)(1) notice requirement, the Court approved the parties' notice plan, which included postcard notice, email notice, and a settlement website. Dkt. No. 154. The individual notice efforts reached an impressive 100% of the identified settlement class. Dkt. No. 200-223. The Court finds that notice was provided in the best practicable manner to class members who will be bound by the proposal. Fed. R. Civ. P. 23(e)(1).

**Judge Edward J. Davila, *Cochran et al. v. The Kroger Co. et al.*** (Mar. 24, 2022) 5:21-cv-01887 (N.D. Cal.):

The Court finds that the dissemination of the Notices: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that is appropriate, in a manner, content, and format reasonably calculated, under the circumstances, to apprise Settlement Class Members ...; (d) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United (including the Due Process Clause), and all other applicable laws and rules.

**Judge Sunshine Sykes, *In re Renovate America Finance Cases*** (Mar. 4, 2022) RICJCCP4940 (Sup. Ct. of Cal., Riverside Cnty.):

The Court finds that notice previously given to Class Members in the Action was the best notice practicable under the circumstances and satisfies the requirements of due process ... The Court further finds that, because (a) adequate notice has been provided to all Class Members and (b) all Class Members have been given the opportunity to object to, and/or request exclusion from, the Settlement, the Court has jurisdiction over all Class Members.

**Judge David O. Carter, *Fernandez v. Rushmore Loan Management Services LLC*** (Feb. 14, 2022) 8:21-cv-00621 (C. D. Cal.):

Notice was sent to potential Class Members pursuant to the Settlement Agreement and the method approved by the Court. The Class Notice adequately describes the litigation and the scope of the involved Class. Further, the Class Notice explained the amount of the Settlement Fund, the plan of allocation, that Plaintiff's counsel and Plaintiff will apply for attorneys' fees, costs, and a service award, and the Class Members' option to participate, opt out, or object to the Settlement. The Class Notice consisted of direct notice via USPS, as well as a Settlement Website where Class Members could view the Long Form Notice.

**Judge Otis D. Wright, II, *In re Toll Roads Litigation*** (Feb. 11, 2022) 8:16-cv-00262 (C. D. Cal.):

The Class Administrator provided notice to members of the Settlement Classes in compliance with the Agreements, due process, and Rule 23. The notice: (i) fully and accurately informed class members about the lawsuit and settlements; (ii) provided sufficient information so that class members were able to decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the proposed settlements; (iii) provided procedures for class members to file written objections to the proposed settlements, to appear at the hearing, and to state objections to the proposed settlements; and (iv) provided the time, date, and place of the final fairness hearing. The Court finds that the Notice provided to the Classes

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pursuant to the Settlement Agreements and the Preliminary Approval Order and consisting of individual direct postcard and email notice, publication notice, settlement website, and CAFA notice has been successful and (i) constituted the best practicable notice under the circumstances; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their right to object to the Settlements or exclude themselves from the Classes, and to appear at the Final Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) otherwise met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court.

**Judge Virginia M. Kendall, *In re Turkey Antitrust Litigations (Commercial and Institutional Indirect Purchaser Plaintiffs' Action) Sandee's Bakery d/b/a Sandee's Catering Bakery & Deli et al. v. Agri Stats, Inc.* (Feb. 10, 2022) 1:19-cv-08318 (N.D. Ill.):**

The notice given to the Settlement Class, including individual notice all members of the Settlement Class who could be identified through reasonable efforts, was the most effective and practicable under the circumstances. This notice provided due and sufficient notice of proceedings and of the matters set forth therein, including the proposed Settlement, to all persons entitled to such notice, and this notice fully satisfied the requirements of Rules 23(c)(2) and 23(e)(1) of the Federal Rules of Civil Procedure and the requirements of due process.

**Judge Beth Labson Freeman, *Ford et al. v. [24]7.ai, Inc.* (Jan. 28, 2022) 5:18-cv-02770 (N.D. Cal.):**

The Court finds that the manner and form of notice (the "Notice Program") set forth in the Settlement Agreement was provided to Settlement Class Members. The Court finds that the Notice Program, as implemented, was the best practicable under the circumstances. The Notice Program was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, and their rights to opt-out of the Settlement Class and object to the Settlement, Class Counsel's fee request, and the request for Service Award for Plaintiffs. The Notice and notice program constituted sufficient notice to all persons entitled to notice. The Notice and notice program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of due process.

**Judge Terrence W. Boyle, *Abramson et al. v. Safe Streets USA LLC et al.* (Jan. 12, 2022) 5:19-cv-00394 (E.D.N.C.):**

Notice was provided to Settlement Class Members in compliance with Section 4 of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure. The notice: (a) fully and accurately informed Settlement Class Members about the Actions and Settlement Agreement; (b) provided sufficient information so that Settlement Class Members could decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the settlement; (c) provided procedures for Settlement Class Members to submit written objections to the proposed settlement, to appear at the hearing, and to state objections to the proposed settlement; and (d) provided the time, date, and place of the Final Approval Hearing.

**Judge Joan B. Gottschall, *Mercado et al. v. Verde Energy USA, Inc.* (Dec. 17, 2021) 1:18-cv-02068 (N.D. Ill.):**

Epiq mailed and emailed notice to the Class on October 1, 2021. Therefore, direct notice was sent and delivered successfully to the vast majority of Class Members. The Class Notice, together with all included and ancillary documents thereto, complied with all the requirements of Rule 23(c)(2)(B) and fairly, accurately, and reasonably informed members of the Class of: (a) appropriate information about the nature of this Litigation, including the class claims, issues, and defenses, and the essential terms of the Settlement Agreement; (b) the definition of the Class; (c) appropriate information about, and means for obtaining additional information regarding, the lawsuit and the Settlement Agreement; (d) appropriate information about, and means for obtaining and submitting, a claim; (e) appropriate information about the right of Class Members to appear through an attorney, as well as the time, manner, and effect of excluding themselves from the Settlement, objecting to the terms of the Settlement Agreement, or objecting to Lead and Class Counsel's request for an award of attorneys' fees and costs, and the procedures to do so; (f) appropriate information about the consequences of failing to submit a claim or failing to comply with the procedures and deadline for requesting exclusion from, or objecting to, the Settlement; and (g) the binding effect of a class judgment on Class Members under Rule 23(c)(3) of the Federal Rules of Civil Procedure.

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The Court finds that Class Members have been provided the best notice practicable of the Settlement and that such notice fully satisfies all requirements of applicable laws and due process.

**Judge Patricia M. Lucas, Wallace v. Wells Fargo** (Nov. 24, 2021) 17CV317775 (Sup. Ct. Cal. Cnty. of Santa Clara):

On August 29, 2021, a dedicated website was established for the settlement at which class members can obtain detailed information about the case and review key documents, including the long form notice, postcard notice, settlement agreement, complaint, motion for preliminary approval . . . As of October 18, 2021, there were 2,639 visitors to the website and 4,428 website pages presented.

On August 30, 2021, a toll-free telephone number was established to allow class members to call for additional information in English or Spanish, listen to answers to frequently asked questions, and request that a long form notice be mailed to them . . . As of October 18, 2021, the telephone number handled 345 calls, representing 1,207 minutes of use, and the settlement administrator mailed 30 long form notices as a result of requests made via the telephone number.

Also, on August 30, 2021, individual postcard notices were mailed to 177,817 class members . . . As of November 10, 2021, 169,404 of those class members successfully received notice.

**Judge John R. Tunheim, In re Pork Antitrust Litigation (Commercial and Institutional Indirect Purchaser Plaintiff Action) (JBS USA Food Company, JBS USA Food Company Holdings)** (Nov. 18, 2021) 18-cv-01776 (D. Minn.):

The notice given to the Settlement Class, including individual notice to all members of the Settlement Class who could be identified through reasonable effort, was the most effective and practicable under the circumstances. This notice provided due and sufficient notice of the proceedings and of the matters set forth therein, including the proposed settlement, to all persons entitled to such notice, and this notice fully satisfied the requirements of Rules 23(c)(2) and 23(e)(1) of the Federal Rules of Civil Procedure and the requirements of due process.

**Judge H. Russel Holland, Coleman v. Alaska USA Federal Credit Union** (Nov. 17, 2021) 3:19-cv-00229 (D. Alaska):

The Court approved Notice Program has been fully implemented. The Court finds that the Notices given to the Settlement Class fully and accurately informed Settlement Class Members of all material elements of the proposed Settlement and constituted valid, due, and sufficient Notice to Settlement Class Members consistent with all applicable requirements. The Court further finds that the Notice Program satisfies due process.

**Judge A. Graham Shirley, Zanca et al. v. Epic Games, Inc.** (Nov. 16, 2021) 21-CVS-534 (Sup. Ct. Wake Cnty., N.C.):

Notice has been provided to all members of the Settlement Class pursuant to and in the manner directed by the Preliminary Approval Order. The Notice Plan was properly administered by a highly experienced third-party Settlement Administrator. Proof of the provision of that Notice has been filed with the Court and full opportunity to be heard has been offered to all Parties to the Action, the Settlement Class, and all persons in interest. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given full compliance with each of the requirements of North Carolina Rule of Civil Procedure 23, due process, and applicable law.

**Judge Judith E. Levy, In re Flint Water Cases** (Nov. 10, 2021) 5:16-cv-10444 (E.D. Mich.):

(1) a “Long Form Notice packet [was] mailed to each Settlement Class member . . . a list of over 57,000 addresses—[and] over 90% of [the mailings] resulted in successful delivery;” (2) notices were emailed “to addresses that could be determined for Settlement Class members;” and (3) the “Notice Administrator implemented a comprehensive media notice campaign.” . . . The media campaign coupled with the mailing was intended to reach the relevant audience in several ways and at several times so that the class members would be fully informed about the settlement and the registration and objection process.

The media campaign included publication in the local newspaper . . . local digital banners . . . television . . . and radio spots . . . banner notices and radio ads placed on Pandora and SoundCloud; and video ads placed on YouTube . . . [T]his settlement has received widespread media attention from major news outlets nationwide.

Plaintiffs submitted an affidavit signed by Azari that details the implementation of the Notice plan . . . The affidavit is bolstered by several documents attached to it, such as the declaration of Epiq Class Action and Claims Solutions, Inc.’s Legal Notice Manager, Stephanie J. Fiereck. Azari declared that Epiq “delivered individual notice

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to approximately 91.5% of the identified Settlement Class" and that the media notice brought the overall notice effort to "in excess of 95%." The Court finds that the notice plan was implemented in an appropriate manner.

In conclusion, the Court finds that the Notice Plan as implemented, and its content, satisfies due process.

**Judge Vince Chhabria, Yamagata et al. v. Reckitt Benckiser LLC** (Oct. 28, 2021) 3:17-cv-03529 (N.D. Cal.):

The Court directed that Class Notice be given to the Class Members pursuant to the notice program proposed by the Parties and approved by the Court. In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, the Settlement Administrator caused the forms of Class Notice to be disseminated as ordered. The Long-form Class Notice advised Class Members of the terms of the Settlement Agreement; the Final Approval Hearing, and their right to appear at such hearing; their rights to remain in, or opt out of, the Settlement Class and to object to the Settlement Agreement; procedures for exercising such rights; and the binding effect of this Order and accompanying Final Judgment, whether favorable or unfavorable, to the Settlement Class.

The distribution of the Class Notice pursuant to the Class Notice Program constituted the best notice practicable under the circumstances, and fully satisfies the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. § 1715, and any other applicable law.

**Judge Otis D. Wright, II, Silveira v. M&T Bank** (Oct. 12, 2021) 2:19-cv-06958 (C.D. Cal.):

Notice was sent to potential class members pursuant to the Settlement Agreement and the method approved by the Court. The Class Notice consisted of direct notice via USPS first class mail, as well as a Settlement Website where Class Members could view and request to be sent the Long Form Notice. The Class Notice adequately described the litigation and the scope of the involved class. Further, the Class Notice explained the amount of the Settlement Fund, the plan of allocation, that Plaintiff's counsel and Plaintiff will apply for attorneys' fees, costs, and a service award, and the class members' option to participate, opt out, or object to the settlement.

**Judge Timothy J. Korrigan, Smith v. Costa Del Mar, Inc.** (Sept. 21, 2021) 3:18-cv-01011 (M.D. Fla.):

Following preliminary approval, the settlement administrator carried out the notice program .... The settlement administrator sent a summary notice and long-form notice to all class members, sent CAFA notice to federal and state officials ... and established a website with comprehensive information about the settlement .... Email notice was sent to class members with email addresses, and postcards were sent to class members with only physical addresses .... Multiple attempts were made to contact class members in some cases, and all notices directed recipients to a website where they could access settlement information .... A paid online media plan was implemented for class members for whom the settlement administrator did not have data .... When the notice program was complete, the settlement administrator submitted a declaration stating that the notice and paid media plan reached at least seventy percent of potential class members .... [N]otices had been delivered via postcards or email to 939,400 of the 939,479 class members to whom the settlement administrator sent notice—a ninety-nine and a half percent deliverable rate....

Notice was disseminated in accordance with the Preliminary Approval Order .... Federal Rule of Civil Procedure 23(c)(2)(B) requires that notice be "the best notice that is practicable under the circumstances." Upon review of the notice materials ... and of Azari's Declaration ... regarding the notice program, the Court is satisfied with the way in which the notice program was carried out. Class notice fully complied with Rule 23(c)(2)(B) and due process, constituted the best notice practicable under the circumstances, and was sufficient notice to all persons entitled to notice of the settlement of this lawsuit.

**Judge Jose E. Martinez, Kukorinis v. Walmart, Inc.** (Sept. 20, 2021) 1:19-cv-20592 (S.D. Fla.):

[T]he Court approved the appointment of Epiq Class Action and Claims Solutions, Inc. as the Claims Administrator with the responsibility of implementing the notice requirements approved in the Court's Order of Approval .... The media plan included various forms of notice, utilizing national consumer print publications, internet banner advertising, social media, sponsored search, and a national informational release .... According to the Azari Declaration, the Court-approved Notice reached approximately seventy-five percent (75%) of the Settlement Class on an average of 3.5 times per Class Member ....

Pertinently, the Claims Administrator implemented digital banner notices across certain social media platforms, including Facebook and Instagram, which linked directly to the Settlement Website ... the digital banner notices generated approximately 522.6 million adult impressions online .... [T]he Court finds that notice was "reasonably

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calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

**Judge Steven L. Tiscione, Fiore et al. v. Ingenious Designs, LLC** (Sept. 10, 2021) 1:18-cv-07124 (E.D.N.Y.):

Following the Court's Preliminary Approval of the Settlement, the Notice Plan was effectuated by the Parties and the appointed Claims Administrator, Epiq Systems. The Notice Plan included a direct mailing to Class members who could be specifically identified, as well as nationwide notice by publication, social media and retailer displays and posters. The Notice Plan also included the establishment of an informational website and toll-free telephone number. The Court finds the Parties completed all settlement notice obligations imposed in the Order Preliminarily Approving Settlement. In addition, Defendants through the Class Administrator, sent the requisite CAFA notices to 57 federal and state officials. The class notices constitute "the best notice practicable under the circumstances," as required by Rule 23(c)(2).

**Judge John S. Meyer, Lozano v. CodeMetro, Inc.** (Sept. 8, 2021) 37-2020-00022701 (Sup. Ct. Cal. Cnty. of San Diego):

The Court finds that Notice has been given to the Settlement Class in the manner directed by the Court in the Preliminary Approval Order. The Court finds that such Notice: (i) was reasonable and constituted the best practicable notice under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Litigation, the terms of the Settlement, their right to exclude themselves from the Settlement Class or object to all or any part of the Settlement, their right to appear at the Final Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of final approval of the Settlement on all persons who do not exclude themselves from the Settlement Class; (iii) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), and any other applicable law.

**Judge Mae A. D'Agostino, Thompson et al. v. Community Bank, N.A.** (Sept. 8, 2021) 8:19-cv-0919 (N.D.N.Y.):

Prior to distributing Notice to the Settlement Class members, the Settlement Administrator established a website, ... as well as a toll-free line that Settlement Class members could access or call for any questions or additional information about the proposed Settlement, including the Long Form Notice. Once Settlement Class members were identified via Defendant's business records, the Notices attached to the Agreement and approved by the Court were sent to each Settlement Class member. For Current Account Holders who have elected to receive bank communications via email, Email Notice was delivered. To Past Defendant Account Holders, and Current Account Holders who have not elected to receive communications by email or for whom the Defendant does not have a valid email address, Postcard Notice was delivered by U.S. Mail. The Settlement Administrator mailed 36,012 Postcard Notices and sent 16,834 Email Notices to the Settlement Class, and as a result of the Notice Program, 95% of the Settlement Class received Notice of the Settlement.

**Judge Anne-Christine Massullo, UFCW & Employers Benefit Trust v. Sutter Health et al.** (Aug. 27, 2021) CGC 14-538451 consolidated with CGC-18-565398 (Sup. Ct. Cnty. of San Francisco, Cal.):

The notice of the Settlement provided to the Class constitutes due, adequate and sufficient notice and the best notice practicable under the circumstances, and meets the requirements of due process, the laws of the State of California, and Rule 3.769(f) of the California Rules of Court.

**Judge Graham C. Mullen, In re Kaiser Gypsum Company, Inc. et al.** (July 27, 2021) 16-cv-31602 (W.D.N.C.):

[T]he Declaration of Cameron R. Azari, Esq. on Implementation of Notice Regarding the Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc. ... (the "Notice Declaration") was filed with the Bankruptcy Court on July 1, 2020, attesting to publication notice of the Plan.

[T]he Court has reviewed the Plan, the Disclosure Statement, the Disclosure Statement Order, the Voting Agent Declaration, the Affidavits of Service, the Publication Declaration, the Notice Declaration, the Memoranda of Law, the Declarations, the Truck Affidavits and all other pleadings before the Court in connection with the Confirmation of the Plan, including the objections filed to the Plan. The Plan is hereby confirmed in its entirety ....

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**Judge Anne-Christine Massullo, Morris v. Provident Credit Union** (June 23, 2021) CGC-19-581616 (Sup. Ct. Cal. Cnty. of San Fran.):

The Notice approved by this Court was distributed to the Classes in substantial compliance with this Court's Order Certifying Classes for Settlement Purposes and Granting Preliminary Approval of Class Settlement

("Preliminary Approval Order") and the Agreement. The Notice met the requirements of due process and California Rules of Court, rules 3.766 and 3.769(f). The notice to the Classes was adequate.

**Judge Esther Salas, Sager et al. v. Volkswagen Group of America, Inc. et al.** (June 22, 2021) 18-cv-13556 (D.N.J.):

The Court further finds and concludes that Class Notice was properly and timely disseminated to the Settlement Class in accordance with the Class Notice Plan set forth in the Settlement Agreement and the Preliminary Approval Order (Dkt. No. 69). The Class Notice Plan and its implementation in this case fully satisfy Rule 23, the requirements of due process and constitute the best notice practicable under the circumstances.

**Judge Josephine L. Staton, In re Hyundai and Kia Engine Litigation and Flaherty v. Hyundai Motor Company, Inc. et al.** (June 10, 2021) 8:17-cv-00838 and 18-cv-02223 (C.D. Cal.):

The Class Notice was disseminated in accordance with the procedures required by the Court's Orders ... in accordance with applicable law and satisfied the requirements of Rule 23(e) and due process and constituted the best notice practicable for the reasons discussed in the Preliminary Approval Order and Final Approval Order.

**Judge Harvey Schlesinger, In re Disposable Contact Lens Antitrust Litigation (ABB Concise Optical Group, LLC)** (May 31, 2021) 3:15-md-02626 (M.D. Fla.):

The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constitutes the best notice practicable under the circumstances; (c) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class of (i) the pendency of the Action; (ii) the effect of the Settlement Agreement (including the Releases to be provided thereunder); (iii) Class Counsel's possible motion for an award of attorneys' fees and reimbursement of expenses; (iv) the right to object to any aspect of the Settlement Agreement, the Plan of Distribution, and/or Class Counsel's motion for attorneys' fees and reimbursement of expenses; (v) the right to opt out of the Settlement Class; (vi) the right to appear at the Fairness Hearing; and (vii) the fact that Plaintiffs may receive incentive awards; (d) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement Agreement; and (e) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause).

**Judge Haywood S. Gilliam, Jr. Richards et al. v. Chime Financial, Inc.** (May 24, 2021) 4:19-cv-06864 (N.D. Cal.):

The Court finds that the notice and notice plan previously approved by the Court was implemented and complies with Rule 23(c)(2)(B) ... The Court ordered that the third-party settlement administrator send class notice via email based on a class list Defendant provided ... Epiq Class Action & Claims Solutions, Inc., the third-party settlement administrator, represents that class notice was provided as directed .... Epiq received a total of 527,505 records for potential Class Members, including their email addresses .... If the receiving email server could not deliver the message, a "bounce code" was returned to Epiq indicating that the message was undeliverable .... Epiq made two additional attempts to deliver the email notice .... As of March 1, 2021, a total of 495,006 email notices were delivered, and 32,499 remained undeliverable .... In light of these facts, the Court finds that the parties have sufficiently provided the best practicable notice to the Class Members.

**Judge Henry Edward Autrey, Pearlstone v. Wal-Mart Stores, Inc.** (Apr. 22, 2021) 4:17-cv-02856 (C.D. Cal.):

The Court finds that adequate notice was given to all Settlement Class Members pursuant to the terms of the Parties' Settlement Agreement and the Preliminary Approval Order. The Court has further determined that the Notice Plan fully and accurately informed Settlement Class Members of all material elements of the Settlement, constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule 23(c)(2) and 23(e)(1), applicable law, and the Due Process Clause of the United States Constitution.

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### **Judge Lucy H. Koh, *Grace v. Apple, Inc.* (Mar. 31, 2021) 17-cv-00551 (N.D. Cal.):**

Federal Rule of Civil Procedure 23(c)(2)(B) requires that the settling parties provide class members with “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” The Court finds that the Notice Plan, which was direct notice sent to 99.8% of the Settlement Class via email and U.S. Mail, has been implemented in compliance with this Court’s Order (ECF No. 426) and complies with Rule 23(c)(2)(B).

### **Judge Gary A. Fenner, *In re Pre-Filled Propane Tank Antitrust Litigation* (Mar. 30, 2021) MDL No. 2567, 14-cv-02567 (W.D. Mo.):**

Based upon the Declaration of Cameron Azari, on behalf of Epiq, the Administrator appointed by the Court, the Court finds that the Notice Program has been properly implemented. That Declaration shows that there have been no requests for exclusion from the Settlement, and no objections to the Settlement. Finally, the Declaration reflects that AmeriGas has given appropriate notice of this settlement to the Attorney General of the United States and the appropriate State officials under the Class Action Fairness Act, 28 U.S.C. § 1715, and no objections have been received from any of them.

### **Judge Richard Seeborg, *Bautista v. Valero Marketing and Supply Company* (Mar. 17, 2021) 3:15-cv-05557 (N.D. Cal.):**

The Notice given to the Settlement Class in accordance with the Notice Order was the best notice practicable under the circumstances of these proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Settlement Agreement, to all Persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23 and due process.

### **Judge James D. Peterson, *Fox et al. v. Iowa Health System d.b.a. UnityPoint Health* (Mar. 4, 2021) 18-cv-00327 (W.D. Wis.):**

The approved Notice plan provided for direct mail notice to all class members at their last known address according to UnityPoint’s records, as updated by the administrator through the U.S. Postal Service. For postcards returned undeliverable, the administrator tried to find updated addresses for those class members. The administrator maintained the Settlement website and made Spanish versions of the Long Form Notice and Claim Form available upon request. The administrator also maintained a toll-free telephone line which provides class members detailed information about the settlement and allows individuals to request a claim form be mailed to them.

The Court finds that this Notice (i) constituted the best notice practicable under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class members of the Settlement, the effect of the Settlement (including the release therein), and their right to object to the terms of the settlement and appear at the Final Approval Hearing; (iii) constituted due and sufficient notice of the Settlement to all reasonably identifiable persons entitled to receive such notice; (iv) satisfied the requirements of due process, Federal Rule of Civil Procedure 23(e)(1) and the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all applicable laws and rules.

### **Judge Larry A. Burns, *Trujillo et al. v. Ametek, Inc. et al.* (Mar. 3, 2021) 3:15-cv-01394 (S.D. Cal.):**

The Class has received the best practicable notice under the circumstances of this case. The Parties’ selection and retention of Epiq Class Action & Claims Solutions, Inc. (“Epiq”) as the Claims Administrator was reasonable and appropriate. Based on the Declaration of Cameron Azari of Epiq, the Court finds that the Settlement Notices were published to the Class Members in the form and manner approved by the Court in its Preliminary Approval Order. See Dkt. 181-6. The Settlement Notices provided fair, effective, and the best practicable notice to the Class of the Settlement’s terms. The Settlement Notices informed the Class of Plaintiffs’ intent to seek attorneys’ fees, costs, and incentive payments, set forth the date, time, and place of the Fairness Hearing, and explained Class Members’ rights to object to the Settlement or Fee Motion and to appear at the Fairness Hearing .... The Settlement Notices fully satisfied all notice requirements under the law, including the Federal

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Rules of Civil Procedure, the requirements of the California Legal Remedies Act, Cal. Civ. Code § 1781, and all due process rights under the U.S. Constitution and California Constitutions.

**Judge Sherri A. Lydon, *Fitzhenry v. Independent Home Products, LLC* (Mar. 2, 2021) 2:19-cv-02993 (D.S.C.):**

Notice was provided to Class Members in compliance with Section VI of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure. The notice: (i) fully and accurately informed

Settlement Class Members about the lawsuit and settlement; (ii) provided sufficient information so that Settlement Class Members could decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the settlement; (iii) provided procedures for Class Members to file written objections to the proposed settlement, to appear at the hearing, and to state objections to the proposed settlement; and (iv) provided the time, date, and place of the final fairness hearing.

**Judge James V. Selna, *Alvarez v. Sirius XM Radio Inc.* (Feb. 9, 2021) 2:18-cv-08605 (C.D. Cal.):**

The Court finds that the dissemination of the Notices attached as Exhibits to the Settlement Agreement: (a) was implemented in accordance with the Notice Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) their right to submit a claim (where applicable) by submitting a Claim Form; (iii) their right to exclude themselves from the Settlement Class; (iv) the effect of the proposed Settlement (including the Releases to be provided thereunder); (v) Named Plaintiffs' application for the payment of Service Awards; (vi) Class Counsel's motion for an award of attorneys' fees and expenses; (vii) their right to object to any aspect of the Settlement, and/or Class Counsel's motion for attorneys' fees and expenses (including a Service Award to the Named Plaintiffs and Mr. Wright); and (viii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.

**Judge Jon S. Tigar, *Elder v. Hilton Worldwide Holdings, Inc.* (Feb. 4, 2021) 16-cv-00278 (N.D. Cal.):**

"Epiq implemented the notice plan precisely as set out in the Settlement Agreement and as ordered by the Court." ECF No. 162 at 9-10. Epiq sent initial notice by email to 8,777 Class Members and by U.S. Mail to the remaining 1,244 Class members. *Id.* at 10. The Notice informed Class Members about all aspects of the Settlement, the date and time of the fairness hearing, and the process for objections. ECF No. 155 at 28-37. Epiq then mailed notice to the 2,696 Class Members whose emails were returned as undeliverable. *Id.* "Of the 10,021 Class Members identified from Defendants' records, Epiq was unable to deliver the notice to only 35 Class Members. Accordingly, the reach of the notice is 99.65%." *Id.* (citation omitted). Epiq also created and maintained a settlement website and a toll-free hotline that Class Members could call if they had questions about the settlement . . . The Court finds that the parties have complied with the Court's preliminary approval order and, because the notice plan complied with Rule 23, have provided adequate notice to class members.

**Judge Michael W. Jones, *Wallace et al. v. Monier Lifetile LLC et al.* (Jan. 15, 2021) SCV-16410 (Sup. Ct. Cal.):**

The Court also finds that the Class Notice and notice process were implemented in accordance with the Preliminary Approval Order, providing the best practicable notice under the circumstances.

**Judge Kristi K. DuBose, *Drazen v. GoDaddy.com, LLC and Bennett v. GoDaddy.com, LLC* (Dec. 23, 2020) 1:19-cv-00563 (S.D. Ala.):**

The Court finds that the Notice and the claims procedures actually implemented satisfy due process, meet the requirements of Rule 23(e)(1), and the Notice constitutes the best notice practicable under the circumstances.

**Judge Haywood S. Gilliam, Jr., *Izor v. Abacus Data Systems, Inc.* (Dec. 21, 2020) 19-cv-01057 (N.D. Cal.):**

The Court finds that the notice plan previously approved by the Court was implemented and that the notice thus satisfied Rule 23(c)(2)(B). [T]he Court finds that the parties have sufficiently provided the best practicable notice to the class members.

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**Judge Christopher C. Conner, Al's Discount Plumbing et al. v. Viega, LLC** (Dec. 18, 2020) 19-cv-00159 (M.D. Pa.):

The Court finds that the notice and notice plan previously approved by the Court was implemented and complies with Fed. R. Civ. P. 23(c)(2)(B) and due process. Specifically, the Court ordered that the third-party Settlement Administrator, Epiq, send class notice via email, U.S. mail, by publication in two recognized industry magazines, Plumber and PHC News, in both their print and online digital forms, and to implement a digital media campaign. (ECF 99). Epiq represents that class notice was provided as directed. See Declaration of Cameron R. Azari, ¶¶ 12-15 (ECF 104-13).

**Judge Naomi Reice Buchwald, In re Libor-Based Financial Instruments Antitrust Litigation** (Dec. 16, 2020) MDL No. 2262, 1:11-md-02262 (S.D.N.Y.):

Upon review of the record, the Court hereby finds that the forms and methods of notifying the members of the Settlement Classes and their terms and conditions have met the requirements of the United States Constitution (including the Due Process Clause), Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all members of the Settlement Classes of these proceedings and the matters set forth herein, including the Settlements, the Plan of Allocation and the Fairness Hearing. Therefore, the Class Notice is finally approved.

**Judge Larry A. Burns, Cox et al. Ametek, Inc. et al.** (Dec 15, 2020) 3:17-cv-00597 (S.D. Cal.):

The Class has received the best practicable notice under the circumstances of this case. The Parties' selection and retention of Epiq Class Action & Claims Solutions, Inc. ("Epiq") as the Claims Administrator was reasonable and appropriate. Based on the Declaration of Cameron Azari of Epiq, the Court finds that the Settlement Notices were published to the Class Members in the form and manner approved by the Court in its Preliminary Approval Order. See Dkt. 129-6. The Settlement Notices provided fair, effective, and the best practicable notice to the Class of the Settlement's terms. The Settlement Notices informed the Class of Plaintiffs' intent to seek attorneys' fees, costs, and incentive payments, set forth the date, time, and place of the Fairness Hearing, and explained Class Members' rights to object to the Settlement or Fee Motion and to appear at the Fairness Hearing ... The Settlement Notices fully satisfied all notice requirements under the law, including the Federal Rules of Civil Procedure, the requirements of the California Legal Remedies Act, Cal. Civ. Code § 1781, and all due process rights under the U.S. Constitution and California Constitutions.

**Judge Timothy J. Sullivan, Robinson v. Nationstar Mortgage LLC** (Dec. 11, 2020) 8:14-cv-03667 (D. Md.):

The Class Notice provided to the Settlement Class conforms with the requirements of Fed. Rule Civ. Proc. 23, the United States Constitution, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing individual notice to all Settlement Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Settlement Class Members. The Class Notice fully satisfied the requirements of Due Process.

**Judge Yvonne Gonzalez Rogers, In re Lithium Ion Batteries Antitrust Litigation** (Dec. 10, 2020) MDL No. 2420, 4:13-md-02420 (N.D. Cal.):

The proposed notice plan was undertaken and carried out pursuant to this Court's preliminary approval order prior to remand, and a second notice campaign thereafter. (See Dkt. No. 2571.) The class received direct and indirect notice through several methods – email notice, mailed notice upon request, an informative settlement website, a telephone support line, and a vigorous online campaign. Digital banner advertisements were targeted specifically to settlement class members, including on Google and Yahoo's ad networks, as well as Facebook and Instagram, with over 396 million impressions delivered. Sponsored search listings were employed on Google, Yahoo and Bing, resulting in 216,477 results, with 1,845 clicks through to the settlement website. An informational release was distributed to 495 media contacts in the consumer electronics industry. The case website has continued to be maintained as a channel for communications with class members. Between February 11, 2020 and April 23, 2020, there were 207,205 unique visitors to the website. In the same period, the toll-free telephone number available to class members received 515 calls.

**Judge Katherine A. Bacal, Garvin v. San Diego Unified Port District** (Nov. 20, 2020) 37-2020-00015064 (Sup. Ct. Cal.):

Notice was provided to Class Members in compliance with the Settlement Agreement, California Code of Civil Procedure §382 and California Rules of Court 3.766 and 3.769, the California and United States

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Constitutions, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing notice to all individual Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Class Members. The Notice fully satisfied the requirements of due process.

**Judge Catherine D. Perry, Pirozzi et al. v. Massage Envy Franchising, LLC** (Nov. 13, 2020) 4:19-cv-807 (E.D. Mo.):

The COURT hereby finds that the CLASS NOTICE given to the CLASS: (i) fairly and accurately described the ACTION and the proposed SETTLEMENT; (ii) provided sufficient information so that the CLASS MEMBERS were able to decide whether to accept the benefits offered by the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT; (iii) adequately described the time and manner by which CLASS MEMBERS could submit a CLAIM under the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT and/or appear at the FINAL APPROVAL HEARING; and (iv) provided the date, time, and place of the FINAL APPROVAL HEARING. The COURT hereby finds that the CLASS NOTICE was the best notice practicable under the circumstances, constituted a reasonable manner of notice to all class members who would be bound by the SETTLEMENT, and complied fully with Federal Rule of Civil Procedure Rule 23, due process, and all other applicable laws.

**Judge Robert E. Payne, Skochin et al. v. Genworth Life Insurance Company et al.** (Nov. 12, 2020) 3:19-cv-00049 (E.D. Va.):

For the reasons set forth in the Court's Memorandum Opinion addressing objections to the Settlement Agreement, ... the plan to disseminate the Class Notice and Publication Notice, which the Court previously approved, has been implemented and satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process.

**Judge Jeff Carpenter, Eastwood Construction LLC et al. v. City of Monroe** (Oct. 27, 2020) 18-cvs-2692 and **The Estate of Donald Alan Plyler Sr. et al. v. City of Monroe** (Oct. 27, 2020) 19-cvs-1825 (Sup. Ct. N.C.):

The Settlement Agreement and the Settlement Notice are found to be fair, reasonable, adequate, and in the best interests of the Settlement Class, and are hereby approved pursuant to North Carolina Rule of Civil Procedure 23. The Parties are hereby authorized and directed to comply with and to consummate the Settlement Agreement in accordance with the terms and provisions set forth in the Settlement Agreement, and the Clerk of the Court is directed to enter and docket this Order and Final Judgement in the Actions.

**Judge M. James Lorenz, Walters et al. v. Target Corp.** (Oct. 26, 2020) 3:16-cv-1678 (S.D. Cal.):

The Court has determined that the Class Notices given to Settlement Class members fully and accurately informed Settlement Class members of all material elements of the proposed Settlement and constituted valid, due, and sufficient notice to Settlement Class members consistent with all applicable requirements. The Court further finds that the Notice Program satisfies due process and has been fully implemented.

**Judge Maren E. Nelson, Harris et al. v. Farmers Insurance Exchange and Mid Century Insurance Company** (Oct. 26, 2020) BC 579498 (Sup. Ct. Cal.):

Distribution of Notice directed to the Settlement Class Members as set forth in the Settlement has been completed in conformity with the Preliminary Approval Order, including individual notice to all Settlement Class members who could be identified through reasonable effort, and the best notice practicable under the circumstances. The Notice, which reached 99.9% of all Settlement Class Members, provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed Settlement, to all persons entitled to Notice, and the Notice and its distribution fully satisfied the requirements of due process.

**Judge Vera M. Scanlon, Lashambae v. Capital One Bank, N.A.** (Oct. 21, 2020) 1:17-cv-06406 (E.D.N.Y.):

The Class Notice, as amended, contained all of the necessary elements, including the class definition, the identities of the named Parties and their counsel, a summary of the terms of the proposed Settlement, information regarding the manner in which objections may be submitted, information regarding the opt-out procedures and deadlines, and the date and location of the Final Approval Hearing. Notice was successfully delivered to approximately 98.7% of the Settlement Class and only 78 individual Settlement Class Members did not receive notice by email or first class mail.

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Having reviewed the content of the Class Notice, as amended, and the manner in which the Class Notice was disseminated, this Court finds that the Class Notice, as amended, satisfied the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules. The Class Notice, as amended, provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances and provided this Court with jurisdiction over the absent Settlement Class Members. See Fed. R. Civ. P. 23(c)(2)(B).

**Chancellor Walter L. Evans, K.B., by and through her natural parent, Jennifer Qassis, and Lillian Knob-Bender v. Methodist Healthcare - Memphis Hospitals** (Oct. 14, 2020) CH-13-04871-1 (30<sup>th</sup> Jud. Dist. Tenn.):

Based upon the filings and the record as a whole, the Court finds and determines that dissemination of the Class Notice as set forth herein complies with Tenn. R. Civ. P. 23.03(3) and 23.05 and (i) constitutes the best practicable notice under the circumstances, (ii) was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of Class Settlement, their rights to object to the proposed Settlement, (iii) was reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, (iv) meets all applicable requirements of Due Process; (v) and properly provides notice of the attorney's fees that Class Counsel shall seek in this action. As a result, the Court finds that Class Members were properly notified of their rights, received full Due Process ....

**Judge Sara L. Ellis, Nelson v. Roadrunner Transportation Systems, Inc.** (Sept. 15, 2020) 1:18-cv-07400 (N.D. Ill.):

Notice of the Final Approval Hearing, the proposed motion for attorneys' fees, costs, and expenses, and the proposed Service Award payment to Plaintiff have been provided to Settlement Class Members as directed by this Court's Orders.

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B).

**Judge George H. Wu, Lusnak v. Bank of America, N.A.** (Aug. 10, 2020) 14-cv-01855 (C.D. Cal.):

The Court finds that the Notice program for disseminating notice to the Settlement Class, provided for in the Settlement Agreement and previously approved and directed by the Court, has been implemented by the Settlement Administrator and the Parties. The Court finds that such Notice program, including the approved forms of notice: (a) constituted the best notice that is practicable under the circumstances; (b) included direct individual notice to all Settlement Class Members who could be identified through reasonable effort; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the nature of the Lawsuit, the definition of the Settlement Class certified, the class claims and issues, the opportunity to enter an appearance through an attorney if the member so desires; the opportunity, the time, and manner for requesting exclusion from the Settlement Class, and the binding effect of a class judgment; (d) constituted due, adequate and sufficient notice to all persons entitled to notice; and (e) met all applicable requirements of Federal Rule of Civil Procedure 23, due process under the U.S. Constitution, and any other applicable law.

**Judge James Lawrence King, Dasher v. RBC Bank (USA) predecessor in interest to PNC Bank, N.A.** (Aug. 10, 2020) 1:10-cv-22190 (S.D. Fla.) as part of **In re Checking Account Overdraft Litigation** MDL No. 2036 (S.D. Fla.):

The Court finds that the members of the Settlement Class were provided with the best practicable notice; the notice was "reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Shutts, 472 U.S. at 812 (quoting Mullane, 339 U.S. at 314-15). This Settlement was widely publicized, and any member of the Settlement Class who wished to express comments or objections had ample opportunity and means to do so.

**Judge Jeffrey S. Ross, Lehman v. Transbay Joint Powers Authority et al.** (Aug. 7, 2020) CGC-16-553758 (Sup. Ct. Cal.):

The Notice approved by this Court was distributed to the Settlement Class Members in compliance with this Court's Order Granting Preliminary Approval of Class Action Settlement, dated May 8, 2020. The Notice provided to the Settlement Class Members met the requirements of due process and constituted the best notice practicable in the circumstances. Based on evidence and other material submitted in conjunction with the final approval hearing, notice to the class was adequate.

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**Judge Jean Hoefer Toal, Cook et al. v. South Carolina Public Service Authority et al.** (July 31, 2020) 2019-CP-23-6675 (Ct. of Com. Pleas. 13<sup>th</sup> Jud. Cir. S.C.):

Notice was sent to more than 1.65 million Class members, published in newspapers whose collective circulation covers the entirety of the State, and supplemented with internet banner ads totaling approximately 12.3 million impressions. The notices directed Class members to the settlement website and toll-free line for additional inquiries and further information. After this extensive notice campaign, only 78 individuals (0.0047%) have opted-out, and only nine (0.00054%) have objected. The Court finds this response to be overwhelmingly favorable.

**Judge Peter J. Messitte, Jackson et al. v. Viking Group, Inc. et al.** (July 28, 2020) 8:18-cv-02356 (D. Md.):

[T]he Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order as amended. The Court finds that the Notice Plan: (i) constitutes the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this Lawsuit and the terms of the Settlement, their right to exclude themselves from the Settlement, or to object to any part of the Settlement, their right to appear at the Final Approval Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Final Approval Order and the Final Judgment, whether favorable or unfavorable, on all Persons who do not exclude themselves from the Settlement Class, (iii) due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

**Judge Michael P. Shea, Grayson et al. v. General Electric Company** (July 27, 2020) 3:13-cv-01799 (D. Conn.):

Pursuant to the Preliminary Approval Order, the Settlement Notice was mailed, emailed and disseminated by the other means described in the Settlement Agreement to the Class Members. This Court finds that this notice procedure was (i) the best practicable notice; (ii) reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the Civil Action and of their right to object to or exclude themselves from the proposed Settlement; and (iii) reasonable and constitutes due, adequate, and sufficient notice to all entities and persons entitled to receive notice.

**Judge Gerald J. Pappert, Rose v. The Travelers Home and Marine Insurance Company et al.** (July 20, 2020) 19-cv-00977 (E.D. Pa.):

The Class Notice ... has been given to the Settlement Class in the manner approved by the Court in its Preliminary Approval Order. Such Class Notice (i) constituted the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency and nature of this Action, the definition of the Settlement Class, the terms of the Settlement Agreement, the rights of the Settlement Class to exclude themselves from the settlement or to object to any part of the settlement, the rights of the Settlement Class to appear at the Final Approval Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Settlement Agreement on all persons who do not exclude themselves from the Settlement Class, (iii) provided due, adequate, and sufficient notice to the Settlement Class; and (iv) fully satisfied all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the due process requirements of the United States Constitution.

**Judge Christina A. Snyder, Waldrup v. Countrywide Financial Corporation et al.** (July 16, 2020) 2:13-cv-08833 (C.D. Cal.):

The Court finds that mailed and publication notice previously given to Class Members in the Action was the best notice practicable under the circumstances, and satisfies the requirements of due process and FED. R. CIV. P. 23. The Court further finds that, because (a) adequate notice has been provided to all Class Members and (b) all Class Members have been given the opportunity to object to, and/or request exclusion from, the Settlement, it has jurisdiction over all Class Members. The Court further finds that all requirements of statute (including but not limited to 28 U.S.C. § 1715), rule, and state and federal constitutions necessary to effectuate this Settlement have been met and satisfied.

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**Judge James Donato, Coffeng et al. v. Volkswagen Group of America, Inc.** (June 10, 2020) 17-cv-01825 (N.D. Cal.):

The Court finds that, as demonstrated by the Declaration and Supplemental Declaration of Cameron Azari, and counsel's submissions, Notice to the Settlement Class was timely and properly effectuated in accordance with FED. R. CIV. P. 23(e) and the approved Notice Plan set forth in the Court's Preliminary Approval Order. The Court finds that said Notice constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

**Judge Michael W. Fitzgerald, Behfarin v. Pruco Life Insurance Company et al.** (June 3, 2020) 17-cv-05290 (C.D. Cal.):

The Court finds that the requirements of Rule 23 of the Federal Rule of Civil Procedure and other laws and rules applicable to final settlement approval of class actions have been satisfied . . . This Court finds that the Claims Administrator caused notice to be disseminated to the Class in accordance with the plan to disseminate Notice outlined in the Settlement Agreement and the Preliminary Approval Order, and that Notice was given in an adequate and sufficient manner and complies with Due Process and Fed. R. Civ. P. 23.

**Judge Nancy J. Rosenstengel, First Impressions Salon, Inc. et al. v. National Milk Producers Federation et al.** (Apr. 27, 2020) 3:13-cv-00454 (S.D. Ill.):

The Court finds that the Notice given to the Class Members was completed as approved by this Court and complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process. The settlement Notice Plan was modeled on and supplements the previous court-approved plan and, having been completed, constitutes the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice provided Class members due and adequate notice of the Settlement, the Settlement Agreement, the Plan of Distribution, these proceedings, and the rights of Class members to opt-out of the Class and/or object to Final Approval of the Settlement, as well as Plaintiffs' Motion requesting attorney fees, costs, and Class Representative service awards.

**Judge Harvey Schlesinger, In re Disposable Contact Lens Antitrust Litigation (CooperVision, Inc.)** (Mar. 4, 2020) 3:15-md-02626 (M.D. Fla.):

The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Orders; (b) constitutes the best notice practicable under the circumstances; (c) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Classes of (i) the pendency of the Action; (ii) the effect of the Settlement Agreements (including the Releases to the provided thereunder); (iii) Class Counsel's possible motion for an award of attorneys' fees and reimbursement of expenses; (iv) the right to object to any aspect of the Settlement Agreements, the Plan of Distribution, and/or Class Counsel's motion for attorneys' fees and reimbursement of expenses; (v) the right to opt out of the Settlement Classes; (vi) the right to appear at the Fairness Hearing; and (vii) the fact that Plaintiffs may receive incentive awards; (d) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement Agreement and (e) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause).

**Judge Amos L. Mazzant, Stone et al. v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens** (Mar. 3, 2020) 4:17-cv-00001 (E.D. Tex.):

The Court has reviewed the Notice Plan and its implementation and efficacy, and finds that it constituted the best notice practicable under the circumstances and was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e) of the Federal Rules of Civil Procedure.

In addition, Class Notice clearly and concisely stated in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified Equitable Relief Settlement Class; (iii) the claims and issues of the Equitable Relief Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) the binding effect of a class judgment on members under Fed. R. Civ. P. 23(c)(3).

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**Judge Michael H. Simon, *In re Premera Blue Cross Customer Data Security Breach Litigation*** (Mar. 2, 2020) MDL No. 2633, 3:15-md-2633 (D. Ore.):

The Court confirms that the form and content of the Summary Notice, Long Form Notice, Publication Notice, and Claim Form, and the procedure set forth in the Settlement for providing notice of the Settlement to the Class, were in full compliance with the notice requirements of Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e), fully, fairly, accurately, and adequately advised members of the Class of their rights under the Settlement, provided the best notice practicable under the circumstances, fully satisfied the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure, and afforded Class Members with adequate time and opportunity to file objections to the Settlement and attorney's fee motion, submit Requests for Exclusion, and submit Claim Forms to the Settlement Administrator.

**Judge Maxine M. Chesney, *McKinney-Drobnis et al. v. Massage Envy Franchising*** (Mar. 2, 2020) 3:16-cv-06450 (N.D. Cal.):

The COURT hereby finds that the individual direct CLASS NOTICE given to the CLASS via email or First Class U.S. Mail (i) fairly and accurately described the ACTION and the proposed SETTLEMENT; (ii) provided sufficient information so that the CLASS MEMBERS were able to decide whether to accept the benefits offered by the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT; (iii) adequately described the manner in which CLASS MEMBERS could submit a VOUCHER REQUEST under the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT and/or appear at the FINAL APPROVAL HEARING; and (iv) provided the date, time, and place of the FINAL APPROVAL HEARING. The COURT hereby finds that the CLASS NOTICE was the best notice practicable under the circumstances and complied fully with Federal Rule of Civil Procedure Rule 23, due process, and all other applicable laws.

**Judge Harry D. Leinenweber, *Albrecht v. Oasis Power, LLC d/b/a Oasis Energy*** (Feb. 6, 2020) 1:18-cv-01061 (N.D. Ill.):

The Court finds that the distribution of the Class Notice, as provided for in the Settlement Agreement, (i) constituted the best practicable notice under the circumstances to Settlement Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of, among other things, the pendency of the Action, the nature and terms of the proposed Settlement, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law.

The Court finds that the Class Notice and methodology set forth in the Settlement Agreement, the Preliminary Approval Order, and this Final Approval Order (i) constitute the most effective and practicable notice of the Final Approval Order, the relief available to Settlement Class Members pursuant to the Final Approval Order, and applicable time periods; (ii) constitute due, adequate, and sufficient notice for all other purposes to all Settlement Class Members; and (iii) comply fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable laws.

**Judge Robert Scola, Jr., *Wilson et al. v. Volkswagen Group of America, Inc. et al.*** (Jan. 28, 2020) 17-cv-23033 (S.D. Fla.):

The Court finds that the Class Notice, in the form approved by the Court, was properly disseminated to the Settlement Class pursuant to the Notice Plan and constituted the best practicable notice under the circumstances. The forms and methods of the Notice Plan approved by the Court met all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, the United States Constitution (including the Due Process Clause), and any other applicable law.

**Judge Michael Davis, *Garcia v. Target Corporation*** (Jan. 27, 2020) 16-cv-02574 (D. Minn.):

The Court finds that the Notice Plan set forth in Section 4 of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of this case, certification of the Settlement Class for settlement purposes only, the terms of the Settlement

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Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

**Judge Bruce Howe Hendricks, *In re TD Bank, N.A. Debit Card Overdraft Fee Litigation*** (Jan. 9, 2020) MDL No. 2613, 6:15-MN-02613 (D.S.C.):

The Classes have been notified of the settlement pursuant to the plan approved by the Court. After having reviewed the Declaration of Cameron R. Azari (ECF No. 220-1) and the Supplemental Declaration of Cameron R. Azari . . . , the Court hereby finds that notice was accomplished in accordance with the Court's directives. The Court further finds that the notice program constituted the best practicable notice to the Settlement Classes under the circumstances and fully satisfies the requirements of due process and Federal Rule 23.

**Judge Margo K. Brodie, *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*** (Dec. 13, 2019) MDL No. 1720, 05-md-01720 (E.D.N.Y.):

The notice and exclusion procedures provided to the Rule 23(b)(3) Settlement Class, including but not limited to the methods of identifying and notifying members of the Rule 23(b)(3) Settlement Class, were fair, adequate, and sufficient, constituted the best practicable notice under the circumstances, and were reasonably calculated to apprise members of the Rule 23(b)(3) Settlement Class of the Action, the terms of the Superseding Settlement Agreement, and their objection rights, and to apprise members of the Rule 23(b)(3) Settlement Class of their exclusion rights, and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, any other applicable laws or rules of the Court, and due process.

**Judge Steven Logan, *Knapper v. Cox Communications, Inc.*** (Dec. 13, 2019) 2:17-cv-00913 (D. Ariz.):

The Court finds that the form and method for notifying the class members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order (Doc. 120). The Court further finds that the notice satisfied due process principles and the requirements of Federal Rule of Civil Procedure 23(c), and the Plaintiff chose the best practicable notice under the circumstances. The Court further finds that the notice was clearly designed to advise the class members of their rights.

**Judge Manish Shah, *Prather v. Wells Fargo Bank, N.A.*** (Dec. 10, 2019) 1:17-cv-00481 (N.D. Ill.):

The Court finds that the Notice Plan set forth in Section VIII of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of this case, certification of the Settlement Class for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

**Judge Liam O'Grady, *Liggio v. Apple Federal Credit Union*** (Dec. 6, 2019) 1:18-cv-01059 (E.D. Va.):

The Court finds that the manner and form of notice (the "Notice Plan") as provided for in this Court's July 2, 2019 Order granting preliminary approval of class settlement, and as set forth in the Parties' Settlement Agreement was provided to Settlement Class Members by the Settlement Administrator .... The Notice Plan was reasonably calculated to give actual notice to Settlement Class Members of the right to receive benefits from the Settlement, and to be excluded from or object to the Settlement. The Notice Plan met the requirements of Rule 23(c)(2)(B) and due process and constituted the best notice practicable under the circumstances.

**Judge Brian McDonald, *Armon et al. v. Washington State University*** (Nov. 8, 2019) 17-2-23244-1 (consolidated with 17-2-25052-0) (Sup. Ct. Wash.):

The Court finds that the Notice Program, as set forth in the Settlement and effectuated pursuant to the Preliminary Approval Order, satisfied CR 23(c)(2), was the best Notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient Notice to the Settlement Class of the pendency of the Litigation; certification of the Settlement Class for settlement purposes only; the existence and terms of the Settlement; the identity of Class Counsel and appropriate information about Class Counsel's then-forthcoming application for attorneys' fees and incentive awards to the Class Representatives; appropriate information about how to participate in the Settlement; Settlement Class Members' right to exclude themselves; their right to object to the Settlement and to appear at the Final Approval Hearing, through counsel if they

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desired; and appropriate instructions as to how to obtain additional information regarding this Litigation and the Settlement. In addition, pursuant to CR 23(c)(2)(B), the Notice properly informed Settlement Class Members that any Settlement Class Member who failed to opt-out would be prohibited from bringing a lawsuit against Defendant based on or related to any of the claims asserted by Plaintiffs, and it satisfied the other requirements of the Civil Rules.

**Judge Andrew J. Guilford, *In re Wells Fargo Collateral Protection Insurance Litigation*** (Nov. 4, 2019) 8:17-ml-02797 (C.D. Cal.):

Epiq Class Action & Claims Solutions, Inc. ("Epiq"), the parties' settlement administrator, was able to deliver the court-approved notice materials to all class members, including 2,254,411 notice packets and 1,019,408 summary notices.

**Judge Paul L. Maloney, *Burch v. Whirlpool Corporation*** (Oct. 16, 2019) 1:17-cv-00018 (W.D. Mich.):

[T]he Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of federal and applicable state laws and due process.

**Judge Gene E.K. Pratter, *Tashica Fulton-Green et al. v. Accolade, Inc.*** (Sept. 24, 2019) 2:18-cv-00274 (E.D. Pa.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B).

**Judge Edwin Torres, *Burrow et al. v. Forjas Taurus S.A. et al.*** (Sept. 6, 2019) 1:16-cv-21606 (S.D. Fla.):

Because the Parties complied with the agreed-to notice provisions as preliminarily approved by this Court, and given that there are no developments or changes in the facts to alter the Court's previous conclusion, the Court finds that the notice provided in this case satisfied the requirements of due process and of Rule 23(c)(2)(B).

**Judge Amos L. Mazzant, *Fessler v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens*** (Aug. 30, 2019) 4:19-cv-00248 (E.D. Tex.):

The Court has reviewed the Notice Plan and its implementation and efficacy, and finds that it constituted the best notice practicable under the circumstances and was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement or opt out of the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e) of the Federal Rules of Civil Procedure.

In addition, Class Notice clearly and concisely stated in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified 2011 Settlement Class; (iii) the claims and issues of the 2011 Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Settlement Class any member who requests exclusions; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Fed. R. Civ. P. 23(c)(3).

**Judge Karon Owen Bowdre, *In re Community Health Systems, Inc. Customer Data Security Breach Litigation*** (Aug. 22, 2019) MDL No. 2595, 2:15-cv-00222 (N.D. Ala.):

The court finds that the Notice Program: (1) satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process; (2) was the best practicable notice under the circumstances; (3) reasonably apprised Settlement Class members of the pendency of the Action and their right to object to the settlement or opt-out of the Settlement Class; and (4) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice. Approximately 90% of the 6,081,189 individuals identified as Settlement Class members received the Initial Postcard Notice of this Settlement Action.

The court further finds, pursuant to Fed. R. Civ. P. 23(c)(2)(B), that the Class Notice adequately informed Settlement Class members of their rights with respect to this action.

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**Judge Christina A. Snyder, *Zaklit et al. v. Nationstar Mortgage LLC et al.*** (Aug. 21, 2019) 5:15-cv-02190 (C.D. Cal.):

The Class Notice provided to the Settlement Class conforms with the requirements of Fed. Rule Civ. Proc. 23, the California and United States Constitutions, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing individual notice to all Settlement Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Settlement Class Members. The notice fully satisfied the requirements of Due Process. No Settlement Class Members have objected to the terms of the Settlement.

**Judge Brian M. Cogan, *Luib v. Henkel Consumer Goods Inc.*** (Aug. 19, 2019) 1:17-cv-03021 (E.D.N.Y.):

The Court finds that the Notice Plan, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and the rights of Settlement Class members to exclude themselves from the Settlement Agreement, to object and appear at the Final Approval Hearing, and to receive benefits under the Settlement Agreement; and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

**Judge Yvonne Gonzalez Rogers, *In re Lithium Ion Batteries Antitrust Litigation*** (Aug. 16, 2019) MDL No. 2420, 4:13-md-02420 (N.D. Cal.):

The proposed notice plan was undertaken and carried out pursuant to this Court's preliminary approval order. [T]he notice program reached approximately 87 percent of adults who purchased portable computers, power tools, camcorders, or replacement batteries, and these class members were notified an average of 3.5 times each. As a result of Plaintiffs' notice efforts, in total, 1,025,449 class members have submitted claims. That includes 51,961 new claims, and 973,488 claims filed under the prior settlements.

**Judge Jon Tigar, *McKnight et al. v. Uber Technologies, Inc. et al.*** (Aug. 13, 2019) 3:14-cv-05615 (N.D. Cal.):

The settlement administrator, Epiq Systems, Inc., carried out the notice procedures as outlined in the preliminary approval. ECF No. 162 at 17-18. Notices were mailed to over 22 million class members with a success rate of over 90%. Id. at 17. Epiq also created a website, banner ads, and a toll free number. Id. at 17-18. Epiq estimates that it reached through mail and other formats 94.3% of class members. ECF No. 164 ¶ 28. In light of these actions, and the Court's prior order granting preliminary approval, the Court finds that the parties have provided adequate notice to class members.

**Judge Gary W.B. Chang, *Robinson v. First Hawaiian Bank*** (Aug. 8, 2019) 17-1-0167-01 (Cir. Ct. of First Cir. Haw.):

This Court determines that the Notice Program satisfies all of the due process requirements for a class action settlement.

**Judge Karin Crump, *Hyder et al. v. Consumers County Mutual Insurance Company*** (July 30, 2019) D-1-GN-16-000596 (D. Ct. of Travis Cnty. Tex.):

Due and adequate Notice of the pendency of this Action and of this Settlement has been provided to members of the Settlement Class, and this Court hereby finds that the Notice Plan described in the Preliminary Approval Order and completed by Defendant complied fully with the requirements of due process, the Texas Rules of Civil Procedure, and the requirements of due process under the Texas and United States Constitutions, and any other applicable laws.

**Judge Wendy Bettlestone, *Underwood v. Kohl's Department Stores, Inc. et al.*** (July 24, 2019) 2:15-cv-00730 (E.D. Pa.):

The Notice, the contents of which were previously approved by the Court, was disseminated in accordance with the procedures required by the Court's Preliminary Approval Order in accordance with applicable law.

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**Judge Andrew G. Ceresia, J.S.C., Denier et al. v. Taconic Biosciences, Inc.** (July 15, 2019) 00255851 (Sup Ct. N.Y.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of the CPLR.

**Judge Vince G. Chhabria, Parsons v. Kimpton Hotel & Restaurant Group, LLC** (July 11, 2019) 3:16-cv-05387 (N.D. Cal.):

Pursuant to the Preliminary Approval Order, the notice documents were sent to Settlement Class Members by email or by first-class mail, and further notice was achieved via publication in People magazine, internet banner notices, and internet sponsored search listings. The Court finds that the manner and form of notice (the "Notice Program") set forth in the Settlement Agreement was provided to Settlement Class Members. The Court finds that the Notice Program, as implemented, was the best practicable under the circumstances. The Notice Program was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, and their rights to opt-out of the Settlement Class and object to the Settlement, Class Counsel's fee request, and the request for Service Award for Plaintiff. The Notice and Notice Program constituted sufficient notice to all persons entitled to notice. The Notice and Notice Program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of due process.

**Judge Daniel J. Buckley, Adlouni v. UCLA Health Systems Auxiliary et al.** (June 28, 2019) BC589243 (Sup. Ct. Cal.):

The Court finds that the notice to the Settlement Class pursuant to the Preliminary Approval Order was appropriate, adequate, and sufficient, and constituted the best notice practicable under the circumstances to all Persons within the definition of the Settlement Class to apprise interested parties of the pendency of the Action, the nature of the claims, the definition of the Settlement Class, and the opportunity to exclude themselves from the Settlement Class or present objections to the settlement. The notice fully complied with the requirements of due process and all applicable statutes and laws and with the California Rules of Court.

**Judge John C. Hayes III, Lightsey et al. v. South Carolina Electric & Gas Company, a Wholly Owned Subsidiary of SCANA et al.** (June 11, 2019) 2017-CP-25-335 (Ct. of Com. Pleas., S.C.):

These multiple efforts at notification far exceed the due process requirement that the class representative provide the best practical notice.... Following this extensive notice campaign reaching over 1.6 million potential class member accounts, Class counsel have received just two objections to the settlement and only 24 opt outs.

**Judge Stephen K. Bushong, Scharfstein v. BP West Coast Products, LLC** (June 4, 2019) 1112-17046 (Ore. Cir., Cnty. of Multnomah):

The Court finds that the Notice Plan ... fully met the requirements of the Oregon Rules of Civil Procedure, due process, the United States Constitution, the Oregon Constitution, and any other applicable law.

**Judge Cynthia Bashant, Lloyd et al. v. Navy Federal Credit Union** (May 28, 2019) 17-cv-1280 (S.D. Cal.):

This Court previously reviewed, and conditionally approved Plaintiffs' class notices subject to certain amendments. The Court affirms once more that notice was adequate.

**Judge Robert W. Gettleman, Cowen v. Lenny & Larry's Inc.** (May 2, 2019) 1:17-cv-01530 (N.D. Ill.):

Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the elements specified by the Court in the preliminary approval order. Adequate notice of the amended settlement and the final approval hearing has also been given. Such notice informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a means to obtain additional information; was adequate notice under the circumstances; was valid, due, and sufficient notice to all Settlement Class [M]embers; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.

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**Judge Edward J. Davila, *In re HP Printer Firmware Update Litigation*** (Apr. 25, 2019) 5:16-cv-05820 (N.D. Cal.):

Due and adequate notice has been given of the Settlement as required by the Preliminary Approval Order. The Court finds that notice of this Settlement was given to Class Members in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Settlement, to all Persons entitled to such notice, and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.

**Judge Claudia Wilken, *Naiman v. Total Merchant Services, Inc. et al.*** (Apr. 16, 2019) 4:17-cv-03806 (N.D. Cal.):

The Court also finds that the notice program satisfied the requirements of Federal Rule of Civil Procedure 23 and due process. The notice approved by the Court and disseminated by Epiq constituted the best practicable method for informing the class about the Final Settlement Agreement and relevant aspects of the litigation.

**Judge Paul Gardephe, *37 Besen Parkway, LLC v. John Hancock Life Insurance Company (U.S.A.)*** (Mar. 31, 2019) 15-cv-9924 (S.D.N.Y.):

The Notice given to Class Members complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process and provided due and adequate notice to the Class.

**Judge Alison J. Nathan, *Pantelyat et al. v. Bank of America, N.A. et al.*** (Jan. 31, 2019) 16-cv-08964 (S.D.N.Y.):

The Class Notice provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances, and constituted due and sufficient notice of the proceedings and matters set forth therein, to all persons entitled to notice. The notice fully satisfied the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules.

**Judge Kenneth M. Hoyt, *Al's Pals Pet Card, LLC et al. v. Woodforest National Bank, N.A. et al.*** (Jan. 30, 2019) 4:17-cv-3852 (S.D. Tex.):

[T]he Court finds that the class has been notified of the Settlement pursuant to the plan approved by the Court. The Court further finds that the notice program constituted the best practicable notice to the class under the circumstances and fully satisfies the requirements of due process, including Fed. R. Civ. P. 23(e)(1) and 28 U.S.C. § 1715.

**Judge Robert M. Dow, Jr., *In re Dealer Management Systems Antitrust Litigation*** (Jan. 23, 2019) MDL No. 2817, 18-cv-00864 (N.D. Ill.):

The Court finds that the Settlement Administrator fully complied with the Preliminary Approval Order and that the form and manner of providing notice to the Dealership Class of the proposed Settlement with Reynolds was the best notice practicable under the circumstances, including individual notice to all members of the Dealership Class who could be identified through the exercise of reasonable effort. The Court further finds that the notice program provided due and adequate notice of these proceedings and of the matters set forth therein, including the terms of the Agreement, to all parties entitled to such notice and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715(b), and constitutional due process.

**Judge Federico A. Moreno, *In re Takata Airbag Products Liability Litigation (Ford)*** (Dec. 20, 2018) MDL No. 2599 (S.D. Fla.):

The record shows and the Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED. R. Civ. P. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

## Judicial Quotes

### **Judge Herndon, Hale v. State Farm Mutual Automobile Insurance Company et al.** (Dec. 16, 2018) 3:12-cv-00660 (S.D. Ill.):

The Class here is estimated to include approximately 4.7 million members. Approximately 1.43 million of them received individual postcard or email notice of the terms of the proposed Settlement, and the rest were notified via a robust publication program "estimated to reach 78.8% of all U.S. Adults Aged 35+ approximately 2.4 times." Doc. 966-2 ¶¶ 26, 41. The Court previously approved the notice plan (Doc. 947), and now, having carefully reviewed the declaration of the Notice Administrator (Doc. 966-2), concludes that it was fully and properly executed, and reflected "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." See Fed. R. Civ. P. 23(c)(2)(B). The Court further concludes that CAFA notice was properly effectuated to the attorneys general and insurance commissioners of all 50 states and District of Columbia.

### **Judge Jesse M. Furman, Alaska Electrical Pension Fund et al. v. Bank of America, N.A. et al.** (Nov. 13, 2018) 14-cv-07126 (S.D.N.Y.):

The mailing and distribution of the Notice to all members of the Settlement Class who could be identified through reasonable effort, the publication of the Summary Notice, and the other Notice efforts described in the Motion for Final Approval, as provided for in the Court's June 26, 2018 Preliminary Approval Order, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all Persons entitled to notice.

### **Judge William L. Campbell, Jr., Ajose et al. v. Interline Brands, Inc.** (Oct. 23, 2018) 3:14-cv-01707 (M.D. Tenn.):

The Court finds that the Notice Plan, as approved by the Preliminary Approval Order: (i) satisfied the requirements of Rule 23(c)(3) and due process; (ii) was reasonable and the best practicable notice under the circumstances; (iii) reasonably apprised the Settlement Class of the pendency of the action, the terms of the Agreement, their right to object to the proposed settlement or opt out of the Settlement Class, the right to appear at the Final Fairness Hearing, and the Claims Process; and (iv) was reasonable and constituted due, adequate, and sufficient notice to all those entitled to receive notice.

### **Judge Joseph C. Spero, Abante Rooter and Plumbing v. Pivotal Payments Inc., d/b/a Capital Processing Network and CPN** (Oct. 15, 2018) 3:16-cv-05486 (N.D. Cal.):

[T]he Court finds that notice to the class of the settlement complied with Rule 23(c)(3) and (e) and due process. Rule 23(e)(1) states that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by" a proposed settlement, voluntary dismissal, or compromise. Class members are entitled to the "best notice that is practicable under the circumstances" of any proposed settlement before it is finally approved by the Court. Fed. R. Civ. P. 23(c)(2)(B) ... The notice program included notice sent by first class mail to 1,750,564 class members and reached approximately 95.2% of the class.

### **Judge Marcia G. Cooke, Dipuglia v. US Coachways, Inc.** (Sept. 28, 2018) 1:17-cv-23006 (S.D. Fla.):

The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

### **Judge Beth Labson Freeman, Gergetz v. Telenav, Inc.** (Sept. 27, 2018) 5:16-cv-04261 (N.D. Cal.):

The Court finds that the Notice and Notice Plan implemented pursuant to the Settlement Agreement, which consists of individual notice sent via first-class U.S. Mail postcard, notice provided via email, and the posting of relevant Settlement documents on the Settlement Website, has been successfully implemented and was the best notice practicable under the circumstances and: (1) constituted notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing; (2) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (3) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause, and the Rules of this Court.

## Judicial Quotes

**Judge M. James Lorenz, *Farrell v. Bank of America, N.A.*** (Aug. 31, 2018) 3:16-cv-00492 (S.D. Cal.):

The Court therefore finds that the Class Notices given to Settlement Class members adequately informed Settlement Class members of all material elements of the proposed Settlement and constituted valid, due, and sufficient notice to Settlement Class members. The Court further finds that the Notice Program satisfies due process and has been fully implemented.

**Judge Dean D. Pregerson, *Falco et al. v. Nissan North America, Inc. et al.*** (July 16, 2018) 2:13-cv-00686 (C.D. Cal.):

Notice to the Settlement Class as required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Preliminary Approval Order, and such Notice by first-class mail was given in an adequate and sufficient manner, and constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

**Judge Lynn Adelman, *In re Windsor Wood Clad Window Product Liability Litigation*** (July 16, 2018) MDL No. 2688, 16-md-02688 (E.D. Wis.):

The Court finds that the Notice Program was appropriately administered, and was the best practicable notice to the Class under the circumstances, satisfying the requirements of Rule 23 and due process. The Notice Program, constitutes due, adequate, and sufficient notice to all persons, entities, and/or organizations entitled to receive notice; fully satisfied the requirements of the Constitution of the United States (including the Due Process Clause), Rule 23 of the Federal Rules of Civil Procedure, and any other applicable law; and is based on the Federal Judicial Center's illustrative class action notices.

**Judge Stephen K. Bushong, *Surrett et al. v. Western Culinary Institute et al.*** (June 18, 2018) 0803-03530 (Ore. Cir. Cnty. of Multnomah):

This Court finds that the distribution of the Notice of Settlement ... fully met the requirements of the Oregon Rules of Civil Procedure, due process, the United States Constitution, the Oregon Constitution, and any other applicable law.

**Judge Jesse M. Furman, *Alaska Electrical Pension Fund et al. v. Bank of America, N.A. et al.*** (June 1, 2018) 14-cv-07126 (S.D.N.Y.):

The mailing of the Notice to all members of the Settlement Class who could be identified through reasonable effort, the publication of the Summary Notice, and the other Notice distribution efforts described in the Motion for Final Approval, as provided for in the Court's October 24, 2017 Order Providing for Notice to the Settlement Class and Preliminarily Approving the Plan of Distribution, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all Persons entitled to notice.

**Judge Brad Seligman, *Larson v. John Hancock Life Insurance Company (U.S.A.)*** (May 8, 2018) RG16813803 (Sup. Ct. Cal.):

The Court finds that the Class Notice and dissemination of the Class Notice as carried out by the Settlement Administrator complied with the Court's order granting preliminary approval and all applicable requirements of law, including, but not limited to California Rules of Court, rule 3.769(f) and the Constitutional requirements of due process, and constituted the best notice practicable under the circumstances and sufficient notice to all persons entitled to notice of the Settlement.

[T]he dissemination of the Class Notice constituted the best notice practicable because it included mailing individual notice to all Settlement Class Members who are reasonably identifiable using the same method used to inform class members of certification of the class, following a National Change of Address search and run through the LexisNexis Deceased Database.

**Judge Federico A. Moreno, *Masson v. Tallahassee Dodge Chrysler Jeep, LLC*** (May 8, 2018) 17-cv-22967 (S.D. Fla.):

The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

## Judicial Quotes

### **Chancellor Russell T. Perkins, *Morton v. GreenBank* (Apr. 18, 2018) 11-135-IV (20<sup>th</sup> Jud. Dist. Tenn.):**

The Notice Program as provided or in the Agreement and the Preliminary Amended Approval Order constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class members who could be identified through reasonable effort. The Notice Plan fully satisfied the requirements of Tennessee Rule of Civil Procedure 23.03, due process and any other applicable law.

### **Judge James V. Selna, *Callaway v. Mercedes-Benz USA, LLC* (Mar. 8, 2018) 8:14-cv-02011 (C.D. Cal.):**

The Court finds that the notice given to the Class was the best notice practicable under the circumstances of this case, and that the notice complied with the requirements of Federal Rule of Civil Procedure 23 and due process.

The notice given by the Class Administrator constituted due and sufficient notice to the Settlement Class, and adequately informed members of the Settlement Class of their right to exclude themselves from the Settlement Class so as not to be bound by the terms of the Settlement Agreement and how to object to the Settlement.

The Court has considered and rejected the objection ... [regarding] the adequacy of the notice plan. The notice given provided ample information regarding the case. Class members also had the ability to seek additional information from the settlement website, from Class Counsel or from the Class Administrator.

### **Judge Thomas M. Durkin, *Vergara et al., v. Uber Technologies, Inc.* (Mar. 1, 2018) 1:15-cv-06972 (N.D. Ill.):**

The Court finds that the Notice Plan set forth in Section IX of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Classes of the pendency of this case, certification of the Settlement Classes for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law. Further, the Court finds that Defendant has timely satisfied the notice requirements of 28 U.S.C. Section 1715.

### **Judge Federico A. Moreno, *In re Takata Airbag Products Liability Litigation (Honda & Nissan)* (Feb. 28, 2018) MDL No. 2599 (S.D. Fla.):**

The Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED R. CIV. R. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

### **Judge Susan O. Hickey, *Larey v. Allstate Property and Casualty Insurance Company* (Feb. 9, 2018) 4:14-cv-04008 (W.D. Kan.):**

Based on the Court's review of the evidence submitted and argument of counsel, the Court finds and concludes that the Class Notice and Claim Form was mailed to potential Class Members in accordance with the provisions of the Preliminary Approval Order, and together with the Publication Notice, the automated toll-free telephone number, and the settlement website: (i) constituted, under the circumstances, the most effective and practicable notice of the pendency of the Lawsuit, this Stipulation, and the Final Approval Hearing to all Class Members who could be identified through reasonable effort; and (ii) met all requirements of the Federal Rules of Civil Procedure, the requirements of due process under the United States Constitution, and the requirements of any other applicable rules or law.

## Judicial Quotes

**Judge Muriel D. Hughes, *Glaske v. Independent Bank Corporation* (Jan. 11, 2018) 13-009983 (Cir. Ct. Mich.):**

The Court-approved Notice Plan satisfied due process requirements ... The notice, among other things, was calculated to reach Settlement Class Members because it was sent to their last known email or mail address in the Bank's files.

**Judge Naomi Reice Buchwald, *Orlander v. Staples, Inc.* (Dec. 13, 2017) 13-cv-00703 (S.D.N.Y.):**

The Notice of Class Action Settlement ("Notice") was given to all Class Members who could be identified with reasonable effort in accordance with the terms of the Settlement Agreement and Preliminary Approval Order. The form and method of notifying the Class of the pendency of the Action as a class action and the terms and conditions of the proposed Settlement met the requirements of Federal Rule of Civil Procedure 23 and the Constitution of the United States (including the Due Process Clause); and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

**Judge Lisa Godbey Wood, *T.A.N. v. PNI Digital Media, Inc.* (Dec. 1, 2017) 2:16-cv-132 (S.D. Ga.):**

Notice to the Settlement Class Members required by Rule 23 has been provided as directed by this Court in the Preliminary Approval Order, and such notice constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and providing notice to the Settlement Class Members, and satisfied the requirements of Rule 23 and due process, and all other applicable laws.

**Judge Robin L. Rosenberg, *Gottlieb v. Citgo Petroleum Corporation* (Nov. 29, 2017) 9:16-cv-81911 (S.D. Fla.):**

The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

**Judge Donald M. Middlebrooks, *Mahoney v. TT of Pine Ridge, Inc.* (Nov. 20, 2017) 9:17-cv-80029 (S.D. Fla.):**

Based on the Settlement Agreement, Order Granting Preliminary Approval of Class Action Settlement Agreement, and upon the Declaration of Cameron Azari, Esq. (DE 61-1), the Court finds that Class Notice provided to the Settlement Class was the best notice practicable under the circumstances, and that it satisfied the requirements of due process and Federal Rule of Civil Procedure 23(e)(1).

**Judge Gerald Austin McHugh, *Sobiech v. U.S. Gas & Electric, Inc., i/t/d/b/a Pennsylvania Gas & Electric et al.* (Nov. 8, 2017) 2:14-cv-04464 (E.D. Pa.):**

Notice has been provided to the Settlement Class of the pendency of this Action, the conditional certification of the Settlement Class for purposes of this Settlement, and the preliminary approval of the Settlement Agreement and the Settlement contemplated thereby. The Court finds that the notice provided was the best notice practicable under the circumstances to all persons entitled to such notice and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.

**Judge Federico A. Moreno, *In re Takata Airbag Products Liability Litigation (BMW, Mazda, Toyota, & Subaru)* (Nov. 1, 2017) MDL No. 2599 (S.D. Fla.):**

[T]he Court finds that the Class Notice has been given to the Class in the manner approved in the Preliminary Approval Order. The Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), Federal Rule of Civil Procedure 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

## Judicial Quotes

**Judge Charles R. Breyer, *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*** (May 17, 2017) MDL No. 2672 (N.D. Cal.):

The Court is satisfied that the Notice Program was reasonably calculated to notify Class Members of the proposed Settlement. The Notice "apprise[d] interested parties of the pendency of the action and afford[ed] them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Indeed, the Notice Administrator reports that the notice delivery rate of 97.04% "exceed[ed] the expected range and is indicative of the extensive address updating and re-mailing protocols used."

**Judge Rebecca Brett Nightingale, *Ratzlaff et al. v. BOKF, NA d/b/a Bank of Oklahoma et al.*** (May 15, 2017) CJ-2015-00859 (Dist. Ct. Okla.):

The Court-approved Notice Plan satisfies Oklahoma law because it is "reasonable" (12 O.S. § 2023(E)(l)) and it satisfies due process requirements because it was "reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Shutts*, 472 U.S. at 812 (quoting *Mullane*, 339 U.S. at 314-15).

**Judge Joseph F. Bataillon, *Klug v. Watts Regulator Company*** (Apr. 13, 2017) 8:15-cv-00061 (D. Neb.):

The court finds that the notice to the Settlement Class of the pendency of the Class Action and of this settlement, as provided by the Settlement Agreement and by the Preliminary Approval Order dated December 7, 2017, constituted the best notice practicable under the circumstances to all persons and entities within the definition of the Settlement Class, and fully complied with the requirements of Federal Rules of Civil Procedure Rule 23 and due process. Due and sufficient proof of the execution of the Notice Plan as outlined in the Preliminary Approval Order has been filed.

**Judge Yvonne Gonzalez Rogers, *Bias v. Wells Fargo & Company et al.*** (Apr. 13, 2017) 4:12-cv-00664 (N.D. Cal.):

The form, content, and method of dissemination of Notice of Settlement given to the Settlement Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including both individual notice to all Settlement Class Members who could be identified through reasonable effort and publication notice.

Notice of Settlement, as given, complied with the requirements of Rule 23 of the Federal Rules of Civil Procedure, satisfied the requirements of due process, and constituted due and sufficient notice of the matters set forth herein.

Notice of the Settlement was provided to the appropriate regulators pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(c)(1).

**Judge Carlos Murguia, *Whitton v. Deffenbaugh Industries, Inc. et al.*** (Dec. 14, 2016) 2:12-cv-02247 and ***Gary, LLC v. Deffenbaugh Industries, Inc. et al.*** 2:13-cv-02634 (D. Kan.):

The Court determines that the Notice Plan as implemented was reasonably calculated to provide the best notice practicable under the circumstances and contained all required information for members of the proposed Settlement Class to act to protect their interests. The Court also finds that Class Members were provided an adequate period of time to receive Notice and respond accordingly.

**Judge Yvette Kane, *In re Shop-Vac Marketing and Sales Practices Litigation*** (Dec. 9, 2016) MDL No. 2380 (M.D. Pa.):

The Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all other applicable laws.

**Judge Timothy D. Fox, *Miner v. Philip Morris USA, Inc.*** (Nov. 21, 2016) 60CV03-4661 (Ark. Cir. Ct.):

The Court finds that the Settlement Notice provided to potential members of the Class constituted the best and most practicable notice under the circumstances, thereby complying fully with due process and Rule 23 of the Arkansas Rules of Civil Procedure.

## Judicial Quotes

**Judge Eileen Bransten, *In re HSBC Bank USA, N.A., as part of In re Checking Account Overdraft Litigation*** (Oct. 13, 2016) 650562/2011 (Sup. Ct. N.Y.):

*This Court finds that the Notice Program and the Notice provided to Settlement Class members fully satisfied the requirements of constitutional due process, the N.Y. C.P.L.R., and any other applicable laws, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all persons entitled thereto.*

**Judge Jerome B. Simandle, *In re Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation*** (Sept. 20, 2016) MDL No. 2540 (D.N.J.):

*The Court hereby finds that the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the terms of the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23, requirements of due process and any other applicable law.*

**Judge Marcia G. Cooke, *Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co.*** (Apr. 11, 2016) 14-cv-23120 (S.D. Fla.):

*Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator, Epiq Systems, Inc., has complied with the approved notice process as confirmed in its Declaration filed with the Court on March 23, 2016. The Court finds that the notice process was designed to advise Class Members of their rights. The form and method for notifying Class Members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order, constituted the best notice practicable under the circumstances, and satisfied the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, and due process under the United States Constitution and other applicable laws.*

**Judge Yvonne Gonzalez Rogers, *In re Lithium Ion Batteries Antitrust Litigation*** (Mar. 22, 2016) MDL No. 2420, 4:13-md-02420 (N.D. Cal.):

*From what I could tell, I liked your approach and the way you did it. I get a lot of these notices that I think are all legalese and no one can really understand them. Yours was not that way.*

**Judge Christopher S. Sontchi, *In re Energy Future Holdings Corp et al.*** (July 30, 2015) 14-cv-10979 (Bankr. D. Del.):

*Notice of the Asbestos Bar Date as set forth in this Asbestos Bar Date Order and in the manner set forth herein constitutes adequate and sufficient notice of the Asbestos Bar Date and satisfies the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.*

**Judge David C. Norton, *In re MI Windows and Doors Inc. Products Liability Litigation*** (July 22, 2015) MDL No. 2333, 2:12-mn-00001 (D.S.C.):

*The court finds that the Notice Plan, as described in the Settlement and related declarations, has been faithfully carried out and constituted the best practicable notice to Class Members under the circumstances of this Action, and was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to be provided with Notice.*

*The court also finds that the Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of: (1) the pendency of this class action; (2) their right to exclude themselves from the Settlement Class and the proposed Settlement; (3) their right to object to any aspect of the proposed Settlement (including final certification of the Settlement Class, the fairness, reasonableness, or adequacy of the proposed Settlement, the adequacy of the Settlement Class's representation by Named Plaintiffs or Class Counsel, or the award of attorney's and representative fees); (4) their right to appear at the fairness hearing (either on their own or through counsel hired at their own expense); and (5) the binding and preclusive effect of the orders and Final Order and Judgment in this Action, whether favorable or unfavorable, on all Persons who do not request exclusion from the Settlement Class. As such, the court finds that the Notice fully satisfied the requirements of the Federal Rules of Civil Procedure, including Federal Rule of Civil Procedure 23(c)(2) and (e), the United States Constitution (including the Due Process*

## Judicial Quotes

Clause), the rules of this court, and any other applicable law, and provided sufficient notice to bind all Class Members, regardless of whether a particular Class Member received actual notice.

**Judge Robert W. Gettleman, Adkins et al. v. Nestlé Purina PetCare Company et al.** (June 23, 2015) 1:12-cv-02871 (N.D. Ill.):

Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the notice requirements specified by the Court in the Preliminary Approval Order. Such notice fully and accurately informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a variety of means to obtain additional information; was the best notice practicable under the circumstances; was valid, due, and sufficient notice to all Settlement Class members; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.

**Judge James Lawrence King, Steen v. Capital One, N.A.** (May 22, 2015) 2:10-cv-01505 (E.D. La.) and 1:10-cv-22058 (S.D. Fla.) as part of **In re Checking Account Overdraft Litigation**, MDL No. 2036 (S.D. Fla.):

The Court finds that the Settlement Class Members were provided with the best practicable notice; the notice was reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections... This Settlement with Capital One was widely publicized, and any Settlement Class Member who wished to express comments or objections had ample opportunity and means to do so.

**Judge Rya W. Zobel, Gulbankian et al. v. MW Manufacturers, Inc.** (Dec. 29, 2014) 1:10-cv-10392 (D. Mass.):

This Court finds that the Class Notice was provided to the Settlement Class consistent with the Preliminary Approval Order and that it was the best notice practicable and fully satisfied the requirements of the Federal Rules of Civil Procedure, due process, and applicable law. The Court finds that the Notice Plan that was implemented by the Claims Administrator satisfies the requirements of FED. R. CIV. P. 23, 28 U.S.C. § 1715, and Due Process, and is the best notice practicable under the circumstances. The Notice Plan constituted due and sufficient notice of the Settlement, the Final Approval Hearing, and the other matters referred to in the notices. Proof of the giving of such notices has been filed with the Court via the Azari Declaration and its exhibits.

**Judge Edward J. Davila, Rose v. Bank of America Corporation et al.** (Aug. 29, 2014) 5:11-cv-02390 & 5:12-cv-00400 (N.D. Cal.):

The Court finds that the notice was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of this action, all material elements of the Settlement, the opportunity for Settlement Class Members to exclude themselves from, object to, or comment on the settlement and to appear at the final approval hearing. The notice was the best notice practicable under the circumstances, satisfying the requirements of Rule 23(c)(2)(B); provided notice in a reasonable manner to all class members, satisfying Rule 23(e)(1)(B); was adequate and sufficient notice to all Class Members; and, complied fully with the laws of the United States and of the Federal Rules of Civil Procedure, due process and any other applicable rules of court.

**Judge James A. Robertson, II, Wong et al. v. Alacer Corp.** (June 27, 2014) CGC-12-519221 (Sup. Ct. Cal.):

Notice to the Settlement Class has been provided in accordance with the Preliminary Approval Order. Based on the Declaration of Cameron Azari dated March 7, 2014, such Class Notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances and satisfies the requirements of California Civil Code Section 1781, California Civil Code of Civil Procedure Section 382, Rules 3.766 of the California Rules of Court, and due process.

**Judge John Gleeson, In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation** (Dec. 13, 2013) MDL No. 1720, 05-md-01720 (E.D.N.Y.):

The Class Administrator notified class members of the terms of the proposed settlement through a mailed notice and publication campaign that included more than 20 million mailings and publication in more than 400 publications. The notice here meets the requirements of due process and notice standards... The objectors' complaints provide no reason to conclude that the purposes and requirements of a notice to a class were not met here.

## Judicial Quotes

### **Judge Lance M. Africk, Evans et al. v. TIN, Inc. et al.** (July 7, 2013) 2:11-cv-02067 (E.D. La.):

The Court finds that the dissemination of the Class Notice... as described in Notice Agent Lauran Schultz's Declaration: (a) constituted the best practicable notice to Class Members under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances...; (c) constituted notice that was reasonable, due, adequate, and sufficient; and (d) constituted notice that fully satisfied all applicable legal requirements, including Rules 23(c)(2)(B) and (e)(1) of the Federal Rules of Civil Procedure, the United States Constitution (including Due Process Clause), the Rules of this Court, and any other applicable law, as well as complied with the Federal Judicial Center's illustrative class action notices.

### **Judge Edward M. Chen, Marolda v. Symantec Corporation** (Apr. 5, 2013) 3:08-cv-05701 (N.D. Cal.):

Approximately 3.9 million notices were delivered by email to class members, but only a very small percentage objected or opted out ... The Court ... concludes that notice of settlement to the class was adequate and satisfied all requirements of Federal Rule of Civil Procedure 23(e) and due process. Class members received direct notice by email, and additional notice was given by publication in numerous widely circulated publications as well as in numerous targeted publications. These were the best practicable means of informing class members of their rights and of the settlement's terms.

### **Judge Ann D. Montgomery, In re Zurn Pex Plumbing Products Liability Litigation** (Feb. 27, 2013) MDL No. 1958, 08-md-01958 (D. Minn.):

The form and content of the notices provided to the class were direct, understandable, and consistent with the "plain language" principles advanced by the Federal Judicial Center . . . The notice plan's multi-faceted approach to providing notice to settlement class members whose identity is not known to the settling parties constitutes "the best notice [\*26] that is practicable under the circumstances" consistent with Rule 23(c)(2)(B).

### **Magistrate Judge Stewart, Gessele et al. v. Jack in the Box, Inc.** (Jan. 28, 2013) 3:10-cv-00960 (D. Ore.):

Moreover, plaintiffs have submitted [a] declaration from Cameron Azari, a nationally recognized notice expert, who attests that fashioning an effective joint notice is not unworkable or unduly confusing. Azari also provides a detailed analysis of how he would approach fashioning an effective notice in this case.

### **Judge Carl J. Barbier, In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010** (Medical Benefits Settlement) (Jan. 11, 2013) MDL No. 2179 (E.D. La.):

Through August 9, 2012, 366,242 individual notices had been sent to potential [Medical Benefits] Settlement Class Members by postal mail and 56,136 individual notices had been e-mailed. Only 10,700 mailings—or 3.3%—were known to be undeliverable. (Azari Decl. ¶¶ 8, 9.) Notice was also provided through an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, highly-trafficked websites, and Sunday local newspapers (via newspaper supplements). Notice was also provided in non-measured trade, business and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The combined measurable paid print, television, radio, and Internet effort reached an estimated 95% of adults aged 18+ in the Gulf Coast region an average of 10.3 times each, and an estimated 83% of all adults in the United States aged 18+ an average of 4 times each. (Id. ¶¶ 8, 10.). All notice documents were designed to be clear, substantive, and informative. (Id. ¶ 5.).

The Court received no objections to the scope or content of the [Medical Benefits] Notice Program. (Azari Supp. Decl. ¶ 12.) The Court finds that the Notice and Notice Plan as implemented satisfied the best notice practicable standard of Rule 23(c) and, in accordance with Rule 23(e)(1), provided notice in a reasonable manner to Class Members who would be bound by the Settlement, including individual notice to all Class Members who could be identified through reasonable effort. Likewise, the Notice and Notice Plan satisfied the requirements of Due Process. The Court also finds the Notice and Notice Plan satisfied the requirements of CAFA.

### **Judge Carl J. Barbier, In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010** (Economic and Property Damages Settlement) (Dec. 21, 2012) MDL No. 2179 (E.D. La.):

The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const. amend. V), constituting the best notice

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that is practicable under the circumstances of this litigation. The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.

The Notice Program, as duly implemented, surpasses other notice programs ... executed with court approval. The Notice Program included notification to known or potential Class Members via postal mail and e-mail; an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, and Sunday local newspapers. Notice placements also appeared in non-measured trade, business, and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The Notice Program met the objective of reaching the greatest possible number of class members and providing them with every reasonable opportunity to understand their legal rights. See Azari Decl. ¶¶ 8, 15, 68. The Notice Program was substantially completed on July 15, 2012, allowing class members adequate time to make decisions before the opt-out and objections deadlines.

The media notice effort alone reached an estimated 95% of adults in the Gulf region an average of 10.3 times each, and an estimated 83% of all adults in the United States an average of 4 times each. These figures do not include notice efforts that cannot be measured, such as advertisements in trade publications and sponsored search engine listings. The Notice Program fairly and adequately covered and notified the class without excluding any demographic group or geographic area, and it exceeded the reach percentage achieved in most other court-approved notice programs.

**Judge Alonzo Harris, Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and Arklamiss Surgery Center, L.L.C. v. FairPay Solutions, Inc.** (Aug. 17, 2012) 12-C-1599 (27<sup>th</sup> Jud. D. Ct. La.):

Notice given to Class Members and all other interested parties pursuant to this Court's order of April 18, 2012, was reasonably calculated to apprise interested parties of the pendency of the action, the certification of the Class as Defined for settlement purposes only, the terms of the Settlement Agreement, Class Members rights to be represented by private counsel, at their own costs, and Class Members rights to appear in Court to have their objections heard, and to afford persons or entities within the Class Definition an opportunity to exclude themselves from the Class. Such notice complied with all requirements of the federal and state constitutions, including the Due Process Clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Class as Defined.

**Judge James Lawrence King, Sachar v. Iberiabank Corporation** (Apr. 26, 2012) as part of **In re Checking Account Overdraft** MDL No. 2036 (S.D. Fla.):

The Court finds that the Notice previously approved was fully and properly effectuated and was sufficient to satisfy the requirements of due process because it described "the substantive claims ... [and] contained information reasonably necessary to [allow Settlement Class Members to] make a decision to remain a class member and be bound by the final judgment."... The Notice, among other things, defined the Settlement Class, described the release as well as the amount and method and manner of proposed distribution of the Settlement proceeds, and informed Settlement Class Members of their rights to opt-out or object, the procedures for doing so, and the time and place of the Final Approval Hearing. The Notice also informed Settlement Class Members that a class judgment would bind them unless they opted out, and told them where they could obtain more information, such as access to a full copy of the Agreement. Further, the Notice described in summary form the fact that Class Counsel would be seeking attorneys' fees of up to 30 percent of the Settlement. Settlement Class Members were provided with the best practicable notice "reasonably calculated, under [the] circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections." Mullane, 339 U.S. at 314. The content of the Notice fully complied with the requirements of Rule 23.

**Judge Bobby Peters, Vereen v. Lowe's Home Centers** (Apr. 13, 2012) SU10-cv-2267B (Ga. Super. Ct.):

The Court finds that the Notice and the Notice Plan was fulfilled, in accordance with the terms of the Settlement Agreement, the Amendment, and this Court's Preliminary Approval Order and that this Notice and Notice Plan constituted the best practicable notice to Class Members under the circumstances of this action, constituted due and sufficient Notice of the proposed Settlement to all persons entitled to

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participate in the proposed Settlement, and was in full compliance with Ga. Code Ann § 9-11-23 and the constitutional requirements of due process. Extensive notice was provided to the class, including point of sale notification, publication notice and notice by first-class mail for certain potential Class Members.

The affidavit of the notice expert conclusively supports this Court's finding that the notice program was adequate, appropriate, and comported with Georgia Code Ann. § 9-11-23(b)(2), the Due Process Clause of the Constitution, and the guidance for effective notice articulate in the FJC's Manual for Complex Litigation, 4<sup>th</sup>.

**Judge Lee Rosenthal, *In re Heartland Payment Systems, Inc. Customer Data Security Breach Litigation* (Mar. 2, 2012) MDL No. 2046 (S.D. Tex.):**

The notice that has been given clearly complies with Rule 23(e)(1)'s reasonableness requirement... the notice plan after its implementation and conservatively estimated that notice reached 81.4 percent of the class members. (Docket Entry No. 106, ¶ 32). Both the summary notice and the detailed notice provided the information reasonably necessary for the presumptive class members to determine whether to object to the proposed settlement. See *Katrina Canal Breaches*, 628 F.3d at 197. Both the summary notice and the detailed notice "were written in easy-to-understand plain English." *In re Black Farmers Discrimination Litig.*, — F. Supp. 2d —, 2011 WL 5117058, at \*23 (D.D.C. 2011); accord AGGREGATE LITIGATION § 3.04(c).15 The notice provided "satisf[ies] the broad reasonableness standards imposed by due process" and Rule 23. *Katrina Canal Breaches*, 628 F.3d at 197.

**Judge John D. Bates, *Trombley v. National City Bank* (Dec. 1, 2011) 1:10-cv-00232 (D.D.C.) as part of *In re Checking Account Overdraft Litigation* MDL No. 2036 (S.D. Fla.):**

The form, content, and method of dissemination of Notice given to the Settlement Class were in full compliance with the Court's January 11, 2011 Order, the requirements of Fed. R. Civ. P. 23(e), and due process. The notice was adequate and reasonable, and constituted the best notice practicable under the circumstances. In addition, adequate notice of the proceedings and an opportunity to participate in the final fairness hearing were provided to the Settlement Class.

**Judge Robert M. Dow, Jr., *Schulte v. Fifth Third Bank* (July 29, 2011) 1:09-cv-06655 (N.D. Ill.):**

The Court has reviewed the content of all of the various notices, as well as the manner in which Notice was disseminated, and concludes that the Notice given to the Class fully complied with Federal Rule of Civil Procedure 23, as it was the best notice practicable, satisfied all constitutional due process concerns, and provided the Court with jurisdiction over the absent Class Members.

**Judge Ellis J. Daigle, *Williams v. Hammerman & Gainer Inc.* (June 30, 2011) 11-C-3187-B (27th Jud. D. Ct. La.):**

Notices given to Settlement Class members and all other interested parties throughout this proceeding with respect to the certification of the Settlement Class, the proposed settlement, and all related procedures and hearings—including, without limitation, the notice to putative Settlement Class members and others ... were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination, to apprise interested parties and members of the Settlement Class of the pendency of the action, the certification of the Settlement Class, the Settlement Agreement and its contents, Settlement Class members' right to be represented by private counsel, at their own cost, and Settlement Class members' right to appear in Court to have their objections heard, and to afford Settlement Class members an opportunity to exclude themselves from the Settlement Class. Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedures, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.

**Judge Stefan R. Underhill, *Mathena v. Webster Bank, N.A.* (Mar. 24, 2011) 3:10-cv-01448 (D. Conn.) as part of *In re Checking Account Overdraft Litigation* MDL No. 2036 (S.D. Fla.):**

The form, content, and method of dissemination of Notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

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### **Judge Ted Stewart, *Miller v. Basic Research, LLC* (Sept. 2, 2010) 2:07-cv-00871 (D. Utah):**

Plaintiffs state that they have hired a firm specializing in designing and implementing large scale, unbiased, legal notification plans. Plaintiffs represent to the Court that such notice will include: 1) individual notice by electronic mail and/or first-class mail sent to all reasonably identifiable Class members; 2) nationwide paid media notice through a combination of print publications, including newspapers, consumer magazines, newspaper supplements and the Internet; 3) a neutral, Court-approved, informational press release; 4) a neutral, Court-approved Internet website; and 5) a toll-free telephone number. Similar mixed media plans have been approved by other district courts post class certification. The Court finds this plan is sufficient to meet the notice requirement.

### **Judge Sara Loi, *Pavlov v. Continental Casualty Co.* (Oct. 7, 2009) 5:07-cv-02580 (N.D. Ohio):**

[T]he elaborate notice program contained in the Settlement Agreement provides for notice through a variety of means, including direct mail to each class member, notice to the United States Attorney General and each State, a toll free number, and a website designed to provide information about the settlement and instructions on submitting claims. With a 99.9% effective rate, the Court finds that the notice program constituted the "best notice that is practicable under the circumstances," Fed. R. Civ. P. 23(c)(2)(B), and clearly satisfies the requirements of Rule 23(c)(2)(B).

### **Judge James Robertson, *In re Department of Veterans Affairs (VA) Data Theft Litigation* (Sept. 23, 2009) MDL No. 1796 (D.D.C.):**

The Notice Plan, as implemented, satisfied the requirements of due process and was the best notice practicable under the circumstances. The Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the action, the terms of the Settlement, and their right to appear, object to or exclude themselves from the Settlement. Further, the notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice.

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Epi Legal Noticing has served as a notice expert for planning, implementation and/or analysis in the following cases (this is a partial list of cases):

| Case Name  | Court & Case No.  |
|--|---|
| <i>Beauford v. The Johns Hopkins Hospital, Inc. et al.</i> (Pixel)   | Cir. Ct. Baltimore Cnty., No. C-03-CV-23-000501                 |
| <i>Doe v. Clinivate, LLC</i>   | Sup. Ct. Cnty. of Contra Costa, Cal., No. C22-01620             |
| <i>Barletti et al. v. Connexin Software, Inc. d/b/a Office Practicum</i> (Data Breach)                       | E.D. Penn., No. 2:22-cv-04676                                   |
| <i>Guy et al. v. Convergent Outsourcing, Inc.</i> (Data Breach)  | W.D. Wash., No. 2:22-cv-01558                                   |
| <i>Farley et al. v. Eye Care Leaders Holding, LLC</i> (Data Breach)  | M.D.N.C., No. 1:22-cv-00468                                     |
| <i>In re Wright &amp; Filippis, LLC Data Security Breach Litigation</i>                                      | E.D. Mich., No. 2:22-cv-12908                                   |
| <i>Holden et al. v. Guardian Analytics, Inc. et al.</i> (Data Breach)  | D.N.J., No. 2:23-cv-2U5   |
| <i>Bobo et al. v. Clover Network, LLC</i> (TCPA)   | 18th Jud. Cir., Cir. Ct., DuPage Cnty. Ill., No. 2023CH000168   |
| <i>Dam v. Perkins Coie, LLP et al.</i> (Crypto)  | E.D. Wash., No. 2:20-CV-00464                                   |
| <i>Hoover et al. v. Camping World Group, LLC et al.</i> (Data Breach)  | 18th Jud. Cir., Cir. Ct., DuPage Cnty, Ill., No. 2023LA00037    |
| <i>In re Hope College Data Security Breach Litigation</i>  | W.D. Mich., No. 1:22-cv-01224                                   |
| <i>Shaffer et al. v. George Washington University et al.</i> (Tuition Fees)                                  | D.D.C., No. 20-1145   |
| <i>In re U.S. Vision Data Breach Litigation</i>  | D.N.J., No. 1:22-cv-06558                                       |
| <i>Qureshi et al. v. American University</i> (Tuition Fees)  | D.D.C., No. 1:20-cv-01141                                       |
| <i>In re Canon U.S.A. Data Breach Litigation</i>   | E.D.N.Y., No. 1:20-cv-06239                                     |
| <i>Patterson et al. v. DPP II LLC et al.</i> (Data Breach)   | Dist. Ct of Dallas Cnty., Tex., No. DC-23-01733                 |
| <i>In re Hyundai and Kia Engine Litigation II</i>  | C.D. Cal, No. 8:18-cv-02223                                     |
| <i>Perez et al. v. Discover Bank</i> (Alienage & Immigration Status Discrimination - Civil Rights for Loans) | N.D. Cal., No. 3:20-cv-06896                                    |
| <i>In re Google Location History Litigation</i>  | N.D. Cal., No. 5:18-cv-05062                                    |
| <i>Finn and Contristano v. Empress Ambulance Services, Inc.</i> (Data Breach)                                | Sup. Ct. N.Y., Cnty. of Westchester, No. 61058/2023             |
| <i>Ward-Howie v. Frontwave Credit Union</i> (Bank Fees)  | Sup. Ct. Cal. San Diego Cnty., Cal., No. 37-2022-00016328       |
| <i>Morrow et al. v. Navy Federal Credit Union</i> (Bank Fees)  | E.D. Va., No. 1:21-cv-00722                                     |
| <i>In re Goodman Campbell Brain and Spine Data Incident Litigation</i>                                       | Ind. Comm. Ct., No. 49D01-2207-PL-024807                        |
| <i>Healy et al. v. Reiter Affiliated Companies, LLC</i> (Data Breach)  | Sup. Ct. Cal., Cnty. of Monterey, No. 22-cv-003056              |
| <i>Wells Fargo Bank, N.A. v. Agak</i> (Bank Fees)  | Sup. Ct. Cnty. of Ventura, Cal., No. 56-2017-00500587-CL-CL-VTA |

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| Case Name  | Court & Case No.   |
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| <i>Crema v. Apple Inc. and Apple Canada Inc.</i> (Apple iPhone 6, 6 Plus, 6s, 6s Plus, SE, 7 or 7 Plus Smartphone, iPhone Power Management Settlement; Product Defect) | Sup. Ct. of B.C., No. S188008                                      |
| <i>Lara v. Lubbock Heart Hospital, LLC, dba Lubbock Heart &amp; Surgical Hospital</i> (Data Breach)  | N.D. Tex., No. 5:23-cv-00036                                       |
| <i>Hu et al. v. BMW of North America LLC et al.</i> (Product Liability Auto Emissions)   | D.N.J., No. 2:18-cv-04363  |
| <i>Williams et al. v. Tallahassee Memorial Healthcare, Inc.</i> (Data Breach)  | 2nd Jud. Cir. Ct., Leon Cnty. Fla., No. 2023 CA 001430             |
| <i>Doe v. Lima Memorial Hospital et al.</i> (Pixel)  | Ct. of Common Pleas Allen Cnty. Ohio, No. CV2022 0490              |
| <i>Mikulecky et al. v. Lutheran Social Services of Illinois</i> (Data Breach)  | Cir. Ct. Cook Cnty. Ill., No. 2023-CH-00895                        |
| <i>In re Lipitor Antitrust Litigation</i> (End Payors - TPPs & Consumers) (Antitrust)  | D.N.J., No. 3:12-cv-2389; MDL. 2332                                |
| <i>In re American Financial Resources, Inc. Data Breach Litigation</i>   | D.N.J., No. 2:22-cv-01757  |
| <i>Lemar Agnew v. Foris DAX, Inc. d/b/a Crypto.com</i> (Cryptocurrency BIPA)   | Cir. Ct. Cook Cnty. Ill., No. 2024-CH-00435                        |
| <i>Domitrovich et al. v. M.C. Dean, Inc.</i> (Data Breach)   | E.D. Vir., No. 1:23-cv-00210                                       |
| <i>Moradpour v. Velodyne Lidar, Inc. et al.</i> (Securities)   | N.D. Cal., No. 3:21-cv-01486                                       |
| <i>Guy et al. v. Convergent Outsourcing, Inc.</i> (Data Breach)  | W.D. Wash., No. 2:22-cv-01558                                      |
| <i>Briscoe et al. v. First Financial Credit Union</i> (Data Breach)  | 2nd. Jud. Dist. Cnty. of Bernalillo, N.M., No. D-202-CV-2022-02974 |
| <i>Niewinski et al. v. State Farm Life Insurance Company et al.</i> (Universal Life Insurance Policies)  | W.D. Mo., No. 23-04159-CV  |
| <i>Sherwood et al. v. Horizon Actuarial Services, LLC</i> (Data Breach)  | N.D. Ga., No. 1:22-cv-01495  |
| <i>Prescott et al. v. Reckitt Benckiser LLC</i> (False Advertising)  | N.D. Cal., No. 5:20-cv-02101                                       |
| <i>Kaether et al. v. Metropolitan Area EMS Authority D/B/A MedStar Mobile Healthcare</i> (Data Breach)   | Dist. Ct. Tarrant Cnty., Tex. No. 342-339562-23                    |
| <i>In re Waste Management Data Breach Litigation</i>   | S.D. N.Y., No. 1:21-cv-06199                                       |
| <i>Medina et al. v. PracticeMax, Inc.</i> (Data Breach)  | D. Ariz., No. CV-22-01261  |
| <i>Cavanaugh et al. v. Greenville Christian College et al.</i>   | Sup. Ct. of Justice Ontario, No. 08-CV-347100-00                   |
| <i>Bandy v. TOC Enterprises, Inc. d/b/a Tennessee Orthopaedic Clinics, a division of Tennessee Orthopaedic Alliance, P.A.</i> (Data Breach)                            | M.D. Tenn., No. 3:23-cv-00598                                      |
| <i>Sayas et al. v. Biometric Impressions Corp.</i> (BIPA)  | Cir. Ct. Cook Cnty. Ill., No. 2020 CH 00201                        |
| <i>Nimsey v. Tinker Federal Credit Union</i> (Overdraft Fees)  | Dist. Ct. Oklahoma Cnty., Okla., No. CJ-2019-6084                  |
| <i>Fiorentino v. Flosports, Inc.</i> (VPPA)  | D. Mass., No. 1:22-cv-11502  |
| <i>Nielsen v. Walt Disney Parks and Resorts U.S., Inc.</i> , (Consumer False Advertising)  | C.D. Cal., No. 8:21-cv-02055                                       |

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| Case Name  | Court & Case No.  |
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| Mayheu et al. v. Chick-fil-A Inc. (Delivery Fees & Menu Prices)  | Sup. Ct. Fulton Cnty., Ga., No.2022CV365400                         |
| Arevalo et al. v. USAA Casualty Insurance Company et al. (Consumer)  | Dist. Ct., Bexar County, Tex. 285th Jud. Dist, No. 202-Cl-16240     |
| <i>In re McKinsey &amp; Co., Inc. National Prescription Opiate Consultant Litigation All School District</i>                             | N.D. Cal., No. 3:21-md-02996-CRB                                    |
| <i>In re McKinsey &amp; Co., Inc. National Prescription Opiate Consultant Litigation Subdivision</i>                                     | N.D. Cal., No. 3:21-md-02996-CRB                                    |
| Beasley et al. v. TTEC Services Corporation; Anderson v. TTEC Services Corporation (Data Breach)   | D. Col, No. 22-cv-00097; No. 22-cv-00347                            |
| <i>In re PFA Insurance Marketing Litigation</i>  | N.D. Cal, No. 4:18-cv-03771 YGR                                     |
| Stauber v. Sudler Property Management (Data Breach)  | 18th Jud. Cir., Cir. Ct., DuPage Cnty, Ill, No. 2023LA000411        |
| <i>In re Accellion, Inc. Data Breach Litigation Accellion; Harbour et al. v. California Health &amp; Wellness et al. (Health Net)</i>    | N.D. Cal., MDL 3002, No. 5:21-CV-01155; 5:21-cv-03322-EJD           |
| Roberts et al. v. Zuora Inc. et al. (Securities)   | N.D. Cal., No. 3:19-cv-03422  |
| Black v. USAA Casualty Insurance (Auto Insurance)  | N.D. Ga., No. 1:21-cv-01363   |
| Alexander et al. v. Salud Family Health, Inc.  | 19th Dist. Ct. Greeley Cnty., Col., No. 2023CV030580                |
| Jackson et al. v. Fandango Media, LLC (VPPA)   | 18 <sup>th</sup> Jud. Cir. Ct. Dupage Cnty., Ind., No. 2023LA000631 |
| <i>In re Cattle and Beef Antitrust Litigation</i>  | D.Minn., No. 22-3031  |
| Ross et al. v. Panda Restaurant Group, Inc.  | Sup. Ct. Cal., Cnty of Los Angeles, No. 21STCV03662                 |
| Fernandez et al. v. 90 Degree Benefits Wisconsin et al.  | E.D. Wis., No. 2:22-cv-00799  |
| Gudgel et al. v. Reynolds Consumer Products, Inc. et al.   | Cir. Ct. 19th Jud. Cir., Lake Cnty, Ill., No. 23LA00000486          |
| Julien et al. v. Cash Express, LLC (Data Breach)   | Cir. Ct. Putnam Cnty., Tenn., No. 2022-CV-221                       |
| Sharma et al. v. Accutech Systems Corporation (Data Breach)  | Cir. Ct. 2, Del. Cnty, Ind., No. 18C02-2210-CT-000135               |
| Young et al. v. Military Advantage, Inc. d/b/a Military.com  | 18th Jud. Cir., Cir. Ct., DuPage Cnty, Ill., No. 2023LA00535        |
| Lukens v. Utah Imaging Associates, Inc.  | 3 <sup>rd</sup> Dist. Ct., Salt Lake Cnty., Utah, No. 210906618     |
| Miranda v. Xavier University (Tuition)   | S.D. Ohio, No. 1:20-cv-00539  |
| Holly Wedding et al. vs. California Public Employees' Retirement System et al. (Calpers II Settlement)                                   | Sup. Ct. Cnty of Los Angeles, Cal., No. BC517444                    |
| Hrebenar v. Davis Yulee LLC, d/b/a Davis Chrysler Dodge Jeep Ram of Julee (Florida Telephone Solicitation Act)                           | 11th Jud. Cir. Ct. Miami-Dade Cnty., Fla., No. 2023-001405-CA-01    |
| Gulf Coast Injury Center, LLC, A/A/O Jordan Rimert v. Esurance Property and Casualty Insurance Company (Property and Casualty Insurance) | Cir. Ct. 13th Jud. Cir. Hillsborough Cnty, Fla., No. 21-CA-002738   |
| Perry v. Schnuck Markets, Inc. (Consumer Product)  | Cir. Ct. City of St. Louis, Mo., No. 2022-CC10425                   |

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| Case Name   | Court & Case No.                                       |
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| <i>Gold et al. v. New York Life Insurance Co. et al. (FLSA Wage / Overtime)</i>   | Sup. Ct. N.Y., Cnty of New York, No. 653923/2012       |
| <i>Banks et al. v. Allstate Fire &amp; Casualty Insurance Company (Auto Insurance PIP)</i>                                | M.D. Penn., No. 19-cv-01617                            |
| <i>Dyck v. Tahoe Resources, Inc. (Securities)</i>   | Sup. Ct. of Justice Ontario, No. CV-18-00606411-00CP   |
| <i>Ambrose et al. v. Boston Globe Media Partners, LLC. (VPPA)</i>   | D. Mass., No. 1:22-cv-10195                            |
| <i>King et al. v. PeopleNet Corporation (Undisclosed Data Collection)</i>   | Cir. Ct. Cook Cnty., Ill., No. 2021-CH-01602           |
| <i>South et al. v. Progressive Select Insurance Company (Automobile Total Loss)</i>                                       | S.D.Fla., No. 19-21760-CIV                             |
| <i>Paris et al. v. Progressive American Insurance Company et al. (Automobile Total Loss)</i>                              | S.D.Fla., No. 19-21761-CIV                             |
| <i>Silva et al. v. Connected Investors, Inc. (TCPA)</i>   | E.D.N.C., No. 7:21-cv-00074                            |
| <i>In re Juul Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation (Juul and Altria Settlements)</i> | N.D. Cal., No. 19-md-02913                             |
| <i>Dusko v. Delta Airlines, Inc. (Airline Ticket Refunds)</i>   | N.D. Ga., 1:20-cv-01664                                |
| <i>Rogowski et al. v. State Farm Life Insurance Company et al. (Whole Life or Universal Life Insurance)</i>               | W.D. Mo., No. 4:22-cv-00203                            |
| <i>Ingram v. Jamestown Import Auto Sales, Inc. d/b/a Kia of Jamestown (TCPA)</i>  | W.D.N.Y., No. 1:22-cv-00309                            |
| <i>In re Hyundai and Kia Engine Litigation II</i>   | C.D. Cal., No. 8:18-cv-02223                           |
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| <i>Lloyd et al. v. Navy Federal Credit Union</i>   | S.D. Cal., No. 17-cv-01280  |
| <i>Luib v. Henkel Consumer Goods Inc.</i>  | E.D.N.Y., No. 1:17-cv-03021   |
| <i>McIntosh v. Takata Corporation et al.; Vitoratos et al. v. Takata Corporation et al.; and Hall v. Takata Corporation et al.</i> | Ontario Sup Ct., No. CV-16-543833-00CP; uebec Sup. Ct. of Justice, No. 500-06-000723-144; & Court of Queen's Bench for Saskatchewan, No. BG. 1284 or 2015 |
| <i>In re HP Printer Firmware Update Litigation</i>   | N.D. Cal., No. 5:16-cv-05820  |
| <i>In re Dealer Management Systems Antitrust Litigation</i>  | N.D. Ill., MDL No. 2817, No. 18-cv-00864  |
| <i>Mosser v. TD Bank, N.A. and Mazzadra et al. v. TD Bank, N.A., as part of In re Checking Account Overdraft</i>                   | E.D. Pa., No. 2:10-cv-00731, S.D. Fla., No. 10-cv-21386 and S.D. Fla., No. 1:10-cv-21870, as part of S.D. Fla., MDL No. 2036                              |
| <i>Naiman v. Total Merchant Services, Inc. et al. (TCPA)</i>   | N.D. Cal., No. 4:17-cv-03806  |
| <i>In re Valley Anesthesiology Consultants, Inc. Data Breach Litigation</i>  | Sup. Ct. of Maricopa Ariz., No. CV2016-013446   |
| <i>Parsons v. Kimpton Hotel &amp; Restaurant Group, LLC (Data Breach)</i>  | N.D. Cal., No. 3:16-cv-05387  |

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| Case Name  | Court & Case No.   |
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| <i>Stahl v. Bank of the West</i>   | Sup. Ct. Cal., No. BC673397  |
| <i>37 Besen Parkway, LLC v. John Hancock Life Insurance Company (U.S.A.)</i>   | S.D.N.Y., No. 15-cv-09924  |
| <i>Tashica Fulton-Green et al. v. Accolade, Inc.</i>   | E.D. Pa., No. 2:18-cv-00274  |
| <i>In re Community Health Systems, Inc. Customer Data Security Breach Litigation</i>   | N.D. Ala., MDL No. 2595, No. 2:15-cv-00222   |
| <i>Al's Pals Pet Card, LLC et al. v. Woodforest National Bank, N.A. et al.</i>   | S.D. Tex., No. 4:17-cv-03852   |
| <i>Cowen v. Lenny &amp; Larry's Inc.</i>   | N.D. Ill., No. 1:17-cv-01530   |
| <i>Martin v. Trott (MI - Foreclosure)</i>  | E.D. Mich., No. 2:15-cv-12838  |
| <i>Knapper v. Cox Communications, Inc. (TCPA)</i>  | D. Ariz., No. 2:17-cv-00913  |
| <i>Dipuglia v. US Coachways, Inc. (TCPA)</i>   | S.D. Fla., No. 1:17-cv-23006   |
| <i>Abante Rooter and Plumbing v. Pivotal Payments Inc., d/b/a/ Capital Processing Network and CPN (TCPA)</i>   | N.D. Cal., No. 3:16-cv-05486   |
| <i>First Impressions Salon, Inc. et al. v. National Milk Producers Federation et al.</i>   | S.D. Ill., No. 3:13-cv-00454   |
| <i>Raffin v. Medicredit, Inc. et al.</i>   | C.D. Cal., No. 15-cv-04912   |
| <i>Gergetz v. Telenav, Inc. (TCPA)</i>   | N.D. Cal., No. 5:16-cv-04261   |
| <i>Ajose et al. v. Interline Brands Inc. (Plumbing Fixtures)</i>   | M.D. Tenn., No. 3:14-cv-01707  |
| <i>Underwood v. Kohl's Department Stores, Inc. et al.</i>  | E.D. Pa., No. 2:15-cv-00730  |
| <i>Surrett et al. v. Western Culinary Institute et al.</i>   | Ore. Cir., Ct. Cnty. of Multnomah, No. 0803-03530  |
| <i>Watson v. Bank of America Corporation et al.; Bancroft-Snell et al. v. Visa Canada Corporation et al.; Bakopanos v. Visa Canada Corporation et al.; Macaronies Hair Club and Laser Center Inc. operating as Fuze Salon v. BofA Canada Bank et al.; Hello Baby Equipment Inc. v. BofA Canada Bank and others (Visa and Mastercard Canadian Interchange Fees)</i> | Sup. Ct. of B.C., No. VLC-S-S-112003; Ontario Sup. Ct., No. CV-11-426591; Sup. Ct. of Quebec, No. 500-06-00549-101; Ct. of B of Alberta, No. 1203-18531; Ct. of B of Saskatchewan, No. 133 of 2013 |
| <i>In re Takata Airbag Products Liability Litigation (OEMs BMW, Mazda, Subaru, and Toyota)</i>   | S.D. Fla., MDL No. 2599  |
| <i>Vergara et al. v. Uber Technologies, Inc. (TCPA)</i>  | N.D. Ill., No. 1:15-cv-06972   |
| <i>In re Takata Airbag Products Liability Litigation (OEMs Honda and Nissan)</i>   | S.D. Fla., MDL No. 2599  |
| <i>In re Takata Airbag Products Liability Litigation (OEM Ford)</i>  | S.D. Fla., MDL No. 2599  |
| <i>Poseidon Concepts Corp. et al. (Canadian Securities Litigation)</i>   | Ct. of B of Alberta, No. 1301-04364  |
| <i>Callaway v. Mercedes-Benz USA, LLC (Seat Heaters)</i>   | C.D. Cal., No. 8:14-cv-02011   |
| <i>Hale v. State Farm Mutual Automobile Insurance Company et al.</i>   | S.D. Ill., No. 3:12-cv-00660   |

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| Case Name  | Court & Case No.   |
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| <i>Farrell v. Bank of America, N.A. (Overdraft)</i>  | S.D. Cal., No. 3:16-cv-00492   |
| <i>In re Windsor Wood Clad Window Products Liability Litigation</i>  | E.D. Wis., MDL No. 2688, No. 16-md-02688                                 |
| <i>Wallace et al. v. Monier Lifetile LLC et al.</i>  | Sup. Ct. Cal., No. SCV-16410   |
| <i>In re Parking Heaters Antitrust Litigation</i>  | E.D.N.Y., No. 15-MC-00940  |
| <i>Pantelyat et al. v. Bank of America, N.A. et al. (Overdraft / Uber)</i>   | S.D.N.Y., No. 16-cv-08964  |
| <i>Falco et al. v. Nissan North America, Inc. et al. (Engine CA &amp; WA)</i>  | C.D. Cal., No. 2:13-cv-00686   |
| <i>Alaska Electrical Pension Fund et al. v. Bank of America N.A. et al. (ISDAfix Instruments)</i>  | S.D.N.Y., No. 14-cv-07126  |
| <i>Larson v. John Hancock Life Insurance Company (U.S.A.)</i>  | Sup. Ct. Cal., No. RG16813803  |
| <i>Larey v. Allstate Property and Casualty Insurance Company</i>   | W.D. Kan., No. 4:14-cv-04008   |
| <i>Orlander v. Staples, Inc.</i>   | S.D.N.Y., No. 13-cv-00703  |
| <i>Masson v. Tallahassee Dodge Chrysler Jeep, LLC (TCPA)</i>   | S.D. Fla., No. 1:17-cv-22967   |
| <i>Gordon et al. v. Amadeus IT Group, S.A. et al.</i>  | S.D.N.Y., No. 1:15-cv-05457  |
| <i>Alexander M. Rattner v. Tribe App., Inc., and Kenneth Horsley v. Tribe App., Inc.</i>   | S.D. Fla., Nos. 1:17-cv-21344 & 1:14-cv-02311                            |
| <i>Sobiech v. U.S. Gas &amp; Electric, Inc., i/t/d/b/a Pennsylvania Gas &amp; Electric et al.</i>  | E.D. Pa., No. 2:14-cv-04464  |
| <i>Mahoney v. TT of Pine Ridge, Inc.</i>   | S.D. Fla., No. 9:17-cv-80029   |
| <i>Ma et al. v. Harmless Harvest Inc. (Coconut Water)</i>  | E.D.N.Y., No. 2:16-cv-07102  |
| <i>Reilly v. Chipotle Mexican Grill, Inc.</i>  | S.D. Fla., No. 1:15-cv-23425   |
| <i>The Financial Oversight and Management Board for Puerto Rico as representative of Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy)</i> | D. Puerto Rico, No. 17-cv-04780  |
| <i>In re Syngenta Litigation</i>   | 4th Jud. Dist. Minn., No. 27-cv-15-3785                                  |
| <i>T.A.N. v. PNI Digital Media, Inc.</i>   | S.D. Ga., No. 2:16-cv-00132  |
| <i>Lewis v. Flue-Cured Tobacco Cooperative Stabilization Corporation (n/k/a United States Tobacco Cooperative, Inc.)</i>                             | N.C. Gen. Ct. of Justice, Sup. Ct. Div., No. 05 CVS 188, No. 05 CVS 1938 |
| <i>McKnight et al. v. Uber Technologies, Inc. et al.</i>   | N.D. Cal., No. 14-cv-05615   |
| <i>Gottlieb v. Citgo Petroleum Corporation (TCPA)</i>  | S.D. Fla., No. 9:16-cv-81911   |
| <i>Farnham v. Caribou Coffee Company, Inc. (TCPA)</i>  | W.D. Wis., No. 16-cv-00295   |
| <i>Jacobs et al. v. Huntington Bancshares Inc. et al. (FirstMerit Overdraft Fees)</i>  | Ohio C.P., No. 11CV000090  |
| <i>Morton v. Greenbank (Overdraft Fees)</i>  | 20th Jud. Dist. Tenn., No. 11-135-IV                                     |

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| Case Name  | Court & Case No.   |
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| <i>Ratzlaff et al. v. BOKF, NA d/b/a Bank of Oklahoma et al. (Overdraft Fees)</i>  | Dist. Ct. Okla., No. CJ-2015-00859                               |
| <i>Klug v. Watts Regulator Company (Product Liability)</i>   | D. Neb., No. 8:15-cv-00061                                       |
| <i>Bias v. Wells Fargo &amp; Company et al. (Broker's Price Opinions)</i>  | N.D. Cal., No. 4:12-cv-00664                                     |
| <i>Greater Chautauqua Federal Credit Union v. Kmart Corp. et al. (Data Breach)</i>   | N.D. Ill., No. 1:15-cv-02228                                     |
| <i>Hawkins v. First Tennessee Bank, N.A. et al. (Overdraft Fees)</i>   | 13th Jud. Cir. Tenn., No. CT-004085-11                           |
| <i>In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement)</i>  | N.D. Cal., MDL No. 2672  |
| <i>In re HSBC Bank USA, N.A.</i>   | Sup. Ct. N.Y., No. 650562/11                                     |
| <i>Glaske v. Independent Bank Corporation (Overdraft Fees)</i>   | Cir. Ct. Mich., No. 13-009983                                    |
| <i>MSPA Claims 1, LLC v. IDS Property Casualty Insurance Company</i>   | 11th Jud. Cir. Fla., No. 15-27940-CA-21                          |
| <i>In re Lithium Ion Batteries Antitrust Litigation</i>  | N.D. Cal., MDL No. 2420, No. 4:13-md-02420                       |
| <i>Chimeno-Buzzi v. Hollister Co. and Abercrombie &amp; Fitch Co.</i>  | S.D. Fla., No. 14-cv-23120                                       |
| <i>Small v. BOKF, N.A.</i>   | D. Colo., No. 13-cv-01125  |
| <i>Forgione v. Webster Bank N.A. (Overdraft Fees)</i>  | Sup. Ct. Conn., No. 10-UWY-cv-12-6015956-S                       |
| <i>Swift v. BancorpSouth Bank, as part of In re Checking Account Overdraft</i>   | N.D. Fla., No. 1:10-cv-00090, as part of S.D. Fla., MDL No. 2036 |
| <i>Whitton v. Deffenbaugh Industries, Inc. et al.</i><br><i>Gary, LLC v. Deffenbaugh Industries, Inc. et al.</i>   | D. Kan., No. 2:12-cv-02247<br>D. Kan., No. 2:13-cv-02634         |
| <i>In re Citrus Canker Litigation</i>  | 11th Jud. Cir., Fla., No. 03-8255 CA 13                          |
| <i>In re Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation</i>  | D.N.J., MDL No. 2540   |
| <i>In re Shop-Vac Marketing and Sales Practices Litigation</i>   | M.D. Pa., MDL No. 2380   |
| <i>Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and ArklaMiss Surgery Center, L.L.C. v. FairPay Solutions, Inc.</i> | 27 <sup>th</sup> Jud. D. Ct. La., No. 12-C-1599                  |
| <i>Opelousas General Hospital Authority v. PPO Plus, L.L.C. et al.</i>   | 27th Jud. D. Ct. La., No. 13-C-5380                              |
| <i>Russell Minoru Ono v. Head Racquet Sports USA</i>   | C.D. Cal., No. 2:13-cv-04222                                     |
| <i>Kerry T. Thibodeaux, M.D. (A Professional Medical Corporation) v. American Lifecare, Inc.</i>   | 27th Jud. D. Ct. La., No. 13-C-3212                              |
| <i>Gattinella v. Michael Kors (USA), Inc. et al.</i>   | S.D.N.Y., No. 14-cv-05731  |
| <i>In re Energy Future Holdings Corp. et al. (Asbestos Claims Bar Notice)</i>  | Bankr. D. Del., No. 14-10979                                     |
| <i>Dorothy Williams d/b/a Dot's Restaurant v. Waste Away Group, Inc.</i>   | Cir. Ct., Lawrence Cnty., Ala., No. 42-cv-2012- 900001.00        |
| <i>Adkins et al. v. Nestlé Purina PetCare Company et al.</i>   | N.D. Ill., No. 1:12-cv-02871                                     |

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| Case Name   | Court & Case No.  |
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| <i>Steen v. Capital One, N.A., as part of In re Checking Account Overdraft</i>  | E.D. La., No. 2:10-cv-01505 and 1:10-cv-22058, as part of S.D. Fla., MDL No. 2036 |
| <i>Childs et al. v. Synovus Bank et al., as part of In re Checking Account Overdraft</i>                                | S.D. Fla., MDL No. 2036   |
| <i>Kota of Sarasota, Inc. v. Waste Management Inc. of Florida</i>   | 12th Jud. Cir. Ct., Sarasota Cnty., Fla., No. 2011-CA-008020NC                    |
| <i>In re MI Windows and Doors Inc. Products Liability Litigation (Building Products)</i>                                | D.S.C., MDL No. 2333  |
| <i>Given v. Manufacturers and Traders Trust Company a/k/a M&amp;T Bank, as part of In re Checking Account Overdraft</i> | S.D. Fla., MDL No. 2036   |
| <i>Scharfstein v. BP West Coast Products, LLC</i>   | Ore. Cir., Cnty. of Multnomah, No. 1112-17046                                     |
| <i>Smith v. City of New Orleans</i>   | Civil D. Ct., Parish of Orleans, La., No. 2005-05453                              |
| <i>Hawthorne v. Umpqua Bank (Overdraft Fees)</i>  | N.D. Cal., No. 11-cv-06700  |
| <i>Gulbankian et al. v. MW Manufacturers, Inc.</i>  | D. Mass., No. 1:10-cv-10392   |
| <i>Costello v. NBT Bank (Overdraft Fees)</i>  | Sup. Ct. Del Cnty., N.Y., No. 2011-1037   |
| <i>In re American Express Anti-Steering Rules Antitrust Litigation (II) (Italian Colors Restaurant)</i>                 | E.D.N.Y., MDL No. 2221, No. 11-md-2221  |
| <i>Wong et al. v. Alacer Corp. (Emergen-C)</i>  | Sup. Ct. Cal., No. CGC-12-519221  |
| <i>Mello et al. v. Susquehanna Bank, as part of In re Checking Account Overdraft</i>                                    | S.D. Fla., MDL No. 2036   |
| <i>In re Plasma-Derivative Protein Therapies Antitrust Litigation</i>   | N.D. Ill., No. 09-cv-07666  |
| <i>Simpson v. Citizens Bank (Overdraft Fees)</i>  | E.D. Mich., No. 2:12-cv-10267   |
| <i>George Raymond Williams, M.D., Orthopedic Surgery, a Professional Medical, LLC et al. v. Bestcomp, Inc. et al.</i>   | 27th Jud. D. Ct. La., No. 09-C-5242-B   |
| <i>Simmons v. Comerica Bank, N.A., as part of In re Checking Account Overdraft</i>                                      | S.D. Fla., MDL No. 2036   |
| <i>McGann et al., v. Schnuck Markets, Inc. (Data Breach)</i>  | Mo. Cir. Ct., No. 1322-CC00800  |
| <i>Rose v. Bank of America Corporation et al. (TCPA)</i>  | N.D. Cal., Nos. 5:11-cv-02390 & 5:12-cv-00400                                     |
| <i>Johnson v. Community Bank, N.A. et al. (Overdraft Fees)</i>  | M.D. Pa., No. 3:12-cv-01405   |
| <i>National Trucking Financial Reclamation Services, LLC et al. v. Pilot Corporation et al.</i>                         | E.D. Ark., No. 4:13-cv-00250  |
| <i>Price v. BP Products North America</i>   | N.D. Ill., No. 12-cv-06799  |
| <i>Yarger v. ING Bank</i>   | D. Del., No. 11-154-LPS   |
| <i>Glube et al. v. Pella Corporation et al. (Building Products)</i>   | Ont. Super. Ct., No. CV-11-4322294-00CP   |
| <i>Miner v. Philip Morris Companies, Inc. et al. (Light Cigarettes)</i>   | Ark. Cir. Ct., No. 60CV03-4661  |
| <i>Fontaine v. Attorney General of Canada (Mistassini Hostels Residential Schools)</i>                                  | u . Super. Ct., No. 500-06-000293-056 & No. 550-06-000021-056                     |

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| Case Name   | Court & Case No.                        |
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| <i>Williams v. SIF Consultants of Louisiana, Inc. et al.</i>  | 27th Jud. D. Ct. La., No. 09-C-5244-C   |
| <i>Opelousas General Hospital Authority v. Qmedtrix Systems, Inc.</i>   | 27th Jud. D. Ct. La., No. 12-C-1599-C   |
| <i>Evans et al. v. TIN, Inc. et al. (Environmental)</i>   | E.D. La., No. 2:11-cv-02067             |
| <i>Casayuran v. PNC Bank, as part of In re Checking Account Overdraft</i>   | S.D. Fla., MDL No. 2036                 |
| <i>Anderson v. Compass Bank, as part of In re Checking Account Overdraft</i>  | S.D. Fla., MDL No. 2036                 |
| <i>Eno v. M &amp; I Marshall &amp; Ilsley Bank as part of In re Checking Account Overdraft</i>  | S.D. Fla., MDL No. 2036                 |
| <i>Blahut v. Harris, N.A., as part of In re Checking Account Overdraft</i>  | S.D. Fla., MDL No. 2036                 |
| <i>In re Zurn Pex Plumbing Products Liability Litigation</i>  | D. Minn., MDL No. 1958, No. 08-md-1958  |
| <i>Saltzman v. Pella Corporation (Building Products)</i>  | N.D. Ill., No. 06-cv-04481              |
| <i>In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (Mastercard &amp; Visa)</i>                                    | E.D.N.Y., MDL No. 1720, No. 05-md-01720 |
| <i>RBS v. Citizens Financial Group, Inc., as part of In re Checking Account Overdraft</i>   | S.D. Fla., MDL No. 2036                 |
| <i>Gessele et al. v. Jack in the Box, Inc.</i>  | D. Ore., No. 3:10-cv-00960              |
| <i>Vodanovich v. Boh Brothers Construction (Hurricane Katrina Levee Breaches)</i>   | E.D. La., No. 05-cv-04191               |
| <i>Marolda v. Symantec Corporation (Software Upgrades)</i>  | N.D. Cal., No. 3:08-cv-05701            |
| <i>In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010 (Medical Benefits Settlement)</i>                | E.D. La., MDL No. 2179                  |
| <i>In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010 (Economic &amp; Property Damages Settlement)</i> | E.D. La., MDL No. 2179                  |
| <i>Opelousas General Hospital Authority v. FairPay Solutions</i>  | 27th Jud. D. Ct. La., No. 12-C-1599-C   |
| <i>Fontaine v. Attorney General of Canada (Stirland Lake and Cristal Lake Residential Schools)</i>  | Ont. Super. Ct., No. 00-cv-192059 CP    |
| <i>Nelson v. Rabobank, N.A. (Overdraft Fees)</i>  | Sup. Ct. Cal., No. RIC 1101391          |
| <i>Case v. Bank of Oklahoma, as part of In re Checking Account Overdraft</i>  | S.D. Fla., MDL No. 2036                 |
| <i>Harris v. Associated Bank, as part of In re Checking Account Overdraft</i>   | S.D. Fla., MDL No. 2036                 |
| <i>Wolfgeher v. Commerce Bank, as part of In re Checking Account Overdraft</i>  | S.D. Fla., MDL No. 2036                 |
| <i>McKinley v. Great Western Bank, as part of In re Checking Account Overdraft</i>  | S.D. Fla., MDL No. 2036                 |
| <i>Lawson v. BancorpSouth (Overdraft Fees)</i>  | W.D. Ark., No. 1:12-cv-01016            |
| <i>LaCour v. Whitney Bank (Overdraft Fees)</i>  | M.D. Fla., No. 8:11-cv-01896            |
| <i>Gwiazdowski v. County of Chester (Prisoner Strip Search)</i>   | E.D. Pa., No. 2:08-cv-04463             |

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| Case Name  | Court & Case No.   |
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| Williams v. S.I.F. Consultants (CorVel Corporation)                                      | 27th Jud. D. Ct. La., No. 09-C-5244-C                          |
| Sachar v. Iberiabank Corporation, as part of <i>In re Checking Account Overdraft</i>     | S.D. Fla., MDL No. 2036  |
| Williams v. Hammerman & Gainer, Inc. (SIF Consultants)                                   | 27th Jud. D. Ct. La., No. 11-C-3187-B                          |
| Williams v. Hammerman & Gainer, Inc. (Risk Management)                                   | 27th Jud. D. Ct. La., No. 11-C-3187-B                          |
| Williams v. Hammerman & Gainer, Inc. (Hammerman)   | 27th Jud. D. Ct. La., No. 11-C-3187-B                          |
| Gunderson v. F.A. Richard & Assocs., Inc. (First Health)                                 | 14th Jud. D. Ct. La., No. 2004-002417                          |
| Delandro v. County of Allegheny (Prisoner Strip Search)                                  | W.D. Pa., No. 2:06-cv-00927                                    |
| Mathena v. Webster Bank, N.A., as part of <i>In re Checking Account Overdraft</i>        | D. Conn, No. 3:10-cv-01448, as part of S.D. Fla., MDL No. 2036 |
| Vereen v. Lowe's Home Centers (Defective Drywall)  | Ga. Super. Ct., No. SU10-cv-2267B                              |
| Trombley v. National City Bank, as part of <i>In re Checking Account Overdraft</i>       | D.D.C., No. 1:10-cv-00232, as part of S.D. Fla., MDL No. 2036  |
| Schulte v. Fifth Third Bank (Overdraft Fees)   | N.D. Ill., No. 1:09-cv-06655                                   |
| Satterfield v. Simon & Schuster, Inc. (Text Messaging)                                   | N.D. Cal., No. 06-cv-02893                                     |
| Coyle v. Hornell Brewing Co. (Arizona Iced Tea)  | D.N.J., No. 08-cv-02797  |
| Holk v. Snapple Beverage Corporation   | D.N.J., No. 3:07-cv-03018                                      |
| <i>In re Heartland Data Payment System Inc. Customer Data Security Breach Litigation</i> | S.D. Tex., MDL No. 2046  |
| Weiner v. Snapple Beverage Corporation   | S.D.N.Y., No. 07-cv-08742                                      |
| Gunderson v. F.A. Richard & Assocs., Inc. (Cambridge)                                    | 14th Jud. D. Ct. La., No. 2004-002417                          |
| Miller v. Basic Research, LLC (Weight-loss Supplement)                                   | D. Utah, No. 2:07-cv-00871                                     |
| <i>In re Countrywide Customer Data Breach Litigation</i>                                 | W.D. Ky., MDL No. 1998   |
| Boone v. City of Philadelphia (Prisoner Strip Search)                                    | E.D. Pa., No. 05-cv-01851                                      |
| Little v. Kia Motors America, Inc. (Braking Systems)                                     | N.J. Super. Ct., No. UNN-L-0800-01                             |
| Opelousas Trust Authority v. Summit Consulting   | 27th Jud. D. Ct. La., No. 07-C-3737-B                          |
| Steele v. Pergo (Flooring Products)  | D. Ore., No. 07-cv-01493                                       |
| Pavlov v. Continental Casualty Co. (Long Term Care Insurance)                            | N.D. Ohio, No. 5:07-cv-02580                                   |
| Dolen v. ABN AMRO Bank N.V. (Callable CDs)   | Ill. Cir. Ct., Nos. 01-L-454 & 01-L-493                        |
| <i>In re Department of Veterans Affairs (VA) Data Theft Litigation</i>                   | D.D.C., MDL No. 1796   |
| <i>In re Katrina Canal Breaches Consolidated Litigation</i>                              | E.D. La., No. 05-cv-04182                                      |

# EXHIBIT 6

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE NAMENDA INDIRECT PURCHASER  
ANTITRUST LITIGATION

No. 1:15-cv-6549 (CM) (RWL)

MEMORANDUM AND  
ORDER

McMahon, J.:

In accordance with Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiff Sergeants Benevolent Association Health & Welfare Fund (“SBA” or “Plaintiff”) moves for final approval of a settlement resolving all claims against Defendants and approval of the Plan of Allocation (collectively, the “Settlement”). For the following reasons, the Settlement is APPROVED.

Plaintiff also moves for an award of attorneys’ fees in the amount of 33-1/3% of the gross Settlement Fund, or \$18,812,666; reimbursement for Plaintiffs’ Counsel’s litigation expenses in the amount of \$5,879,787.65; and a case contribution award of \$100,000 to SBA. For the following reasons, these amounts are APPROVED.

## FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On August 19, 2015, SBA filed an antitrust class action lawsuit on behalf of itself and a putative class of similarly situated indirect purchasers of the brand and generic versions of Namenda – a drug used to treat Alzheimer’s disease. ECF 1. SBA sued Namenda brand manufacturers Forest Laboratories, a wholly owned subsidiary of Defendant Actavis PLC, and Merz GmbH & Co. KGaA., Merz Pharma GmbH & Co. KGaA, and Merz Pharmaceuticals GmbH (collectively “Merz”) (the “Brand Defendants”), as well as eight generic manufacturers (the “Generic Defendants”) for taking actions designed to limit generic competition for Namenda. Plaintiff originally advanced two theories of antitrust liability: (1) that Defendant Forest entered into several reverse-payment (“pay for delay”) settlements with generic manufacturers of Namenda, which unlawfully delayed the market entry of generic competitors; and (2) Defendant Forests’ conduct in effectuating a “hard switch” for consumers between two versions of Namenda harmed competition.

On September 22, 2015, a Direct Purchaser (“DPP”) action was filed against Defendants Forest and Merz on substantially the same grounds.

The Brand Defendants filed a joint motion to dismiss both the indirect and direct plaintiff actions. At the same time, the Brand and Generic Defendants also filed an additional motion to dismiss the indirect purchaser action. On September 13, 2016, the Court largely denied the motion to dismiss directed to both the DPP and Indirect Purchaser suits. In the same opinion, the Court also stayed Plaintiff’s case. *See Sergeants Benevolent Association Health & Welfare Fund*, 2016 WL 4992690, at \*1 (S.D.N.Y. Sept. 13, 2016). On September 10, 2018, the Court lifted the stay on Plaintiff’s case. The Court then permitted Defendants to file renewed motions to dismiss against Plaintiff after it determined that “intervening events in the Direct Purchaser action and new case

law in the Second Circuit warrant supplemental briefing.” ECF 134. Plaintiff largely prevailed on Defendants’ motions to dismiss. ECF 107, 186.

On February 11, 2021, Plaintiff successfully obtained class certification of a third-party payor class, on Plaintiff’s reverse payment claims, under the laws of thirty jurisdictions. *See, In re Namenda Indirect Purchaser Antitrust Litig.*, 338 F.R.D. 527, 576-77 (S.D.N.Y. 2021). The third-party payor class is limited to those who paid for or were reimbursed for generic and brand Namenda IR and XR in the enumerated states during the period of June 1, 2012 through December 31, 2017. *See Id.*

Prior to obtaining class certification, Class Counsel settled with the Generic Defendants and defined in those Settlement Agreements a class of all end payors in the United States who paid for Namenda XR and IR during the period of April 14, 2010 through the time when the Generic Defendants’ anticompetitive conduct ceased. *See ECF 284, 505, 514.*

While Plaintiff’s motion for class certification was *sub judice*, both the Forest and Merz Defendants filed individual motions for summary judgment. *See ECF 650 and 653, see also ECF 957 at 10 and 17.* At the same time, Defendants also filed *Daubert* motions against five of Plaintiff’s merits experts. *See ECF 543-553.* Plaintiff also affirmatively moved for summary judgment and to exclude, in part, the opinions of several of Defendants’ experts. *See ECF 561-62, 568-71, 573-76.* On June 11, 2021, the Court substantially denied the parties’ cross motions for summary judgment and *Daubert* motions. *See In re Namenda Indirect Purchaser Antitrust Litig.*, 2021 WL 2403727 (S.D.N.Y June 11, 2021.)

On June 30, 2022, Defendants filed a motion seeking clarification of the Court’s June 11, 2021 decision granting in part Defendant’s *Daubert* motion to exclude the testimony of one of Plaintiff’s experts. On August 15, 2022, the Court issued its decision on the parties’ motions *in*

*limine* and Defendants' motion for "clarification." ECF 890.

On August 24, 2022, Defendants moved to decertify the class as to damages. ECF 895. Class Counsel defeated Defendants' motion for decertification in its entirety and maintained the third-party class. *See In re Namenda Indirect Purchaser Antitrust Litig.*, 2022 WL 4298767 (S.D.N.Y. Sept. 19, 2022).

On September 22, 2022, the Final Pretrial Conference was held. On October 4, 2022, only two weeks before trial, Plaintiff notified the court that it had reached an agreement in principle with Actavis and Merz, the remaining defendants, for \$54,400,000.00. ECF 950. Class Counsel signed a Settlement Agreement on November 11, 2022. *See* ECF 919-1.

## DISCUSSION

### I. Final Settlement Approval

"The compromise of complex litigation is encouraged by the courts and favored by public policy." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir. 2005) (internal quotations omitted). This particularly complex pharmaceutical class action, brought on behalf of end payors, is well-suited for settlement.

Fed. R. Civ. P. 23(e) provides that a court may approve a class action settlement if "it is fair, reasonable, and adequate." Rule 23(e)(2) lists four factors to consider in determining fairness:

(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's-length; (C) the relief provided for the class was adequate, taking into account: (i) the cost, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23 (e)(3); and (D) the proposal treats class members equitably relative to each other.

Courts within the Second Circuit also analyze the factors listed in *City of Detroit v.*

*Grinnell*, 495 F.2d 448, 463 (2d Cir. 1974) to determine whether a settlement is substantively fair and thus warrants final approval: (1) complexity, expense, and likely duration of the litigation; (2) reaction of the class; (3) stage of the proceedings and amount of discovery completed; (4) risks of establishing liability; (5) risks of establishing damages; (6) risks of maintaining the class action through trial; (7) defendants' ability to withstand a greater judgment; (8) range of reasonableness of the settlement in light of the best possible recovery; and (9) range of reasonableness of the settlement in light of all the attendant risk of litigation. All nine factors need not be satisfied; the court must look at the totality of these factors in light of the specific circumstances involved." *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-cv-8557, 2014 U.S. Dist. LEXIS 177175, at \*14 (S.D.N.Y. Dec. 19, 2014).

"The factors set forth in Rule 23(e)(2) have been applied in tandem with the Second Circuit's *Grinnell* factors and 'focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.'" *Christine Asia Co. v. Jack Yun Ma*, 2019 WL 5257534, at \*9 (S.D.N.Y. Oct. 16, 2019) (quoting Advisory Committee Notes to 2018 Amendments, 324 F.R.D. 904, 918 (Apr. 26, 2018)).

#### A. The Settlement is Procedurally Fair

Rules 23(e)(2)(A)-(D) "constitute the procedural analysis of the fairness inquiry." *Christine Asia Co.*, 2019 WL 5257534, at \*9 (quoting *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019)) (internal quotation marks omitted). "A strong initial presumption of fairness attaches to a proposed settlement if it is reached by experienced counsel after arm's-length negotiations, and great weight is accorded to counsel's recommendation." *Guevoura Fund Ltd. v. Sillerman*, 2019 WL 6889901, at \*6 (S.D.N.Y. Dec. 18, 2019) (citations omitted). The presumption of fairness and adequacy applies here.

Class counsel negotiated a settlement of the claims vigorously. Plaintiff and the Brand Defendants attempted to resolve this case in March 2019 but did not formally engage in mediation. In April 2019, Plaintiff and the Generic Defendants engaged in mediation with Jonathan Marks, a pre-eminent mediator. That mediation included the exchange of lengthy mediation statements, an in-person session, and multiple-telephonic conference sessions. ECF 963 at ¶ 3. On August 16, 2019, a settlement was reached with Generic Defendants, Amneal, Sun, Upsher- Smith, and Wockhardt. ECF 277. Within twelve months, other Generic Defendants, Teva, Barr, and Cobalt agreed to resolve the claims alleged against them. ECF 468. Finally, a settlement was reached with the remaining Generic Defendant, Dr. Reddy's. ECF 471. The two remaining Brand Defendants continued to litigate vigorously and in March 2022, the parties participated in a one-day mediation with retired United States District Judge Faith Hochberg, which again, included additional written submissions. ECF 957 at ¶ 17. That mediation did not produce any resolution. As a consequence, and during the mediation period, the parties continued to engage in intensive trial preparation. The parties began another round of mediation session in August 2022. Ultimately, on October 4, 2022, the parties reached a settlement in principle. ECF No. 950.

Accordingly, the requirements of Rules 23(e)(2) (A)-(B) are met.

B. The Settlement is Substantively Fair

1. *Complexity, Expense, and Likely Duration of the Litigation*

The first *Grinnell* factor evaluates whether the continuation of the litigation would be complex, expensive, and lengthy. This case, had it not settled, would have been all three. *See, e.g., Jermyn v. Best Buy Stores, L.P.*, 2012 WL 2505644, at \*5 (S.D.N.Y. June 27, 2012) (recognizing the complexity of a potential trial with 25 fact witnesses, additional expert witness, and hundreds of exhibits).

This case was scheduled to be tried in two phases, with Phase 1 covering “pay-for-delay” liability and causation issues, and Phase 2 covering quantum of damages issues for Plaintiff’s state antitrust, consumer protection claims, and equitable claims.<sup>1</sup> For Phase 1 alone, the parties projected calling over twenty live fact and expert witnesses, some of whom would be on the witness stand for lengthy amounts of time. Additionally, the parties also anticipated calling several witnesses by video. Defendants raised numerous defenses that Plaintiff would have needed to overcome in order to prevail in Phases 1 and 2 of this jury trial. Plaintiff would have also had to litigate at trial substantially novel issues, including issues which applied solely to Plaintiff’s case.

Moreover, whichever side lost at trial surely would have appealed (most likely after filing extensive post-trial motions). Given the size and complexity of the case, this process would have likely included a petition for *certiorari* as well. Such continued litigation would have required further time and resources with no certainty of a favorable outcome. By contrast, the Settlement provides the Class with immediate, substantial, and definite relief without the delay, risk, and uncertainty of trial and continued litigation.

Accordingly, analysis of the first *Grinnell* factor strongly supports approval of the Settlement.

## *2. The Reaction of the Class to the Settlement*

No Class member has objected to final approval of the Settlement. ECF 963 ¶¶ 8, 10. Although more than 40,000 notices were sent by direct mail to members of the Brand Defendants class and there was publication of the notice to all members of the Class and information available

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<sup>1</sup> While Plaintiff’s claims were brought under state law, those laws are interpreted in conformity with the federal antitrust laws. See, e.g., *In re Namenda Indirect Purchaser Antitrust Litig.*, 338 F.R.D. 527, 572-75 (S.D.N.Y. 2021).

on the dedicated website, only 15 members of the Brand Defendant class requested exclusion. *Id.* at ¶ 9. Such a minimal number of opt-outs overwhelmingly demonstrates a favorable reaction of the Class toward the settlement.

Accordingly, analysis of the second *Grinnell* factor strongly supports approval of the Settlement.

### *3. The Stage of the Proceedings and the Amount of Discovery Completed*

The third *Grinnell* factor considers the amount of discovery completed, with a “focus[] on whether the plaintiffs obtained sufficient information through discovery to properly evaluate their case and to assess the adequacy of any settlement proposal.” *Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at \*7 (S.D.N.Y. Sep. 9, 2015) (internal quotation omitted). Here, years of comprehensive fact and expert discovery was completed, multiple mediations were held, and this case was on the verge of trial. Thus, the parties’ “knowledge of the strength and weakness of their claims was more than the norm” in class action litigation. *In re Veeco Instruments Sec. Litig.*, 2007 WL 4115809, at \*8 (S.D.N.Y. Nov. 7, 2007). In negotiating the Settlement, Class counsel was intimately familiar with the strengths and weaknesses of Plaintiffs’ claims and the Defendants’ defenses.

Accordingly, analysis of the third *Grinnell* factor strongly supports approval of the Settlement.

### *4. The Risks of Establishing Liability, Damages, and Maintaining the Class Through Trial*

“Courts generally consider the fourth, fifth, and sixth *Grinnell* factors together.” *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 432 (S.D.N.Y. 2016).

In assessing the risks of liability, a court need not decide the merits of the case, resolve unsettled legal questions, or attempt to predict the outcome. *See Bryant v. Potbelly Sandwich*

*Works, LLC*, 2020 WL 563804, at \*3 (S.D.N.Y Feb. 4, 2020). Rather, a court “must only weigh the likelihood of success by the plaintiff class against the relief offered by the settlement.” *Id.* (internal quotation omitted). Regardless of the perceived strength of a plaintiff’s case, liability is “no sure thing,” and “[l]itigation inherently involves risks.” *Wal-Mart Stores*, 396 F.3d at 118. “Indeed, the primary purpose of settlement is to avoid the uncertainty of a trial on the merits.” *Tiro v. Pub. House Invs., LLC*, 2013 WL 4830949, at \*8 (S.D.N.Y. Sep. 10, 2013) (quoting *Matheson v. T-Bone Rest. LLC*, 2011 WL 6268216, at \*5 (S.D.N.Y. Dec. 13, 2011)).

Forest and Merz still deny all Plaintiff’s allegations, “including that any [Third-Party Payor] Class member is entitled to damages or other relief.” *See* ECF. No. 956, at 5. The Generic Defendants also deny Plaintiff’s allegations. *See* ECF 278-1 at 2, 470-1 at 2, 473-1, at 2. Plaintiff faced a risk proving liability and causation on the reverse payment claim to the jury.

Even presuming that Plaintiff prevailed on liability, the Defendants would have mounted an aggressive attack on the existence of and amount of Plaintiff’s damages in front of the jury. *See, e.g. Fleisher*, 2015 WL 10847814, at \*9 (“Even if Plaintiffs won the liability phase, Plaintiffs also faced risks in establishing damages during the separate damages phase of trial.”). In fact, “[t]here are numerous examples of antitrust plaintiffs receiving little or no damages (or having damages sharply reduced) despite extensive litigation and despite prevailing on liability.” *In re Namenda Direct Purchaser Antitrust Litig.*, 462 F.Supp.3d 307, 315 (S.D.N.Y. 2020) (citing cases). Here, even after the Court denied Defendants’ motion for decertification in its entirety, Defendants filed a motion for leave to file a renewed motion to decertify the Class as to damages less than 3 weeks before trial was scheduled to begin. ECF 946. Defendants’ motion was *sub judice* at the time of settlement. The risk accompanying Defendants’ pending decertification motion as to damages weighs substantially in favor of the fairness of a settlement.

See *Fleisher*, 2015 WL 10847814, at \*9 (quoting *Charron v. Wiener*, 731 F.3d 241, 249 (2d Cir. 2013)) (internal quotation marks omitted).

In addition, while the Court certified the Class here and denied Defendants' motion for decertification, that does not obviate the risk of later decertification because “[FRCP] 23(c) authorizes a court to decertify a class at any time.” *In re Advanced Battery Techs. Sec. Litig.*, 298 F.R.D. 171, 178 (S.D.N.Y. 2014). Accordingly, the risks and uncertainties of maintaining class action status (and for the entire Class Period) supports approval of the Settlement.

Overall, these factors counsel in favor of approving the settlement.

#### *5. The Ability of Defendants to Withstand a Greater Judgment*

The seventh *Grinnell* factor addresses whether the defendant is able to withstand a greater judgment. This inquiry “is typically relevant only when a settlement is less than what it might otherwise be but for the fact that the defendant’s financial circumstances do not permit a greater settlement.” *In re Namenda Direct Purchaser Antitrust Litig.*, 462 F. Supp.3d at 314. In the absence of this condition, courts generally do not consider this factor, and “this factor, standing alone, does not suggest that the settlement is unfair.” *Id.* at 314-15 (quoting *Fleisher*, 2015 WL 10847814, at \*9) (internal quotations omitted). Here, Plaintiff does not contend that Defendants could not withstand a greater judgment; therefore, this factor “drops out.” *Id.* at 315.

#### *6. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and All the Attendant Risks of the Litigation*

Courts typically analyze the final two *Grinnell* factors in tandem. *Guevoura*, 2019 WL 6889901, at \*9 n.1. Determining “whether a settlement amount is reasonable does not involve the use of a mathematical equation yielding a particularized sum.” *In re Bear Stearns Cos. Inc. Sec., Deriv. & ERISA Litig.*, 909 F. Supp. 2d 259, 269 (S.D.N.Y. 2012). Settlement should be in a “range of reasonableness . . . recogniz[ing] the uncertainties of law and fact in any particular

case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Guippone v. BH S&B Holdings LLC*, 2016 WL 5811888, at \*7 (S.D.N.Y. Sep. 23, 2016) (quoting *Henry v. Little Mint, Inc.*, 2014 WL 2199427, at \*10 (S.D.N.Y. May 23, 2014)). Moreover, “[t]he fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” *In re Payment Card Interchange Fee*, 2019 WL 6875472, at \*29 (quoting *Grinnell*, 495 F. 2d at 455).

The range of potential damages was vast and in the discretion of the jury. Given the complexity and risk, the \$56,438,000 all-cash settlement represents an excellent recovery. See *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 2007 WL 313474, at \*10 (S.D.N.Y. Feb. 1, 2007) (approving \$40.3 million settlement with a recovery of approximately 6.25% of estimated damages); *In re Gilat Satellite Networks, Ltd.*, 2007 WL 2743675, at \*11-12 (E.D.N.Y. Sep. 18, 2007); (approving \$20 million settlement representing 10.6% of maximum damages); *In re Omnivision Techs., Inc. Sec. Litig.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (\$13.75 million settlement yielding 6% of potential damages after deducting fees and costs).

Accordingly, analysis of the eighth and ninth *Grinnell* factors strongly supports approval of the Settlements.

## II. The Plan of Allocation

The proposed Plan of Allocation would allocate the net settlement fund to Class members who submit claims on a *pro rata* basis efficiently and fairly. A plan of distribution for a settlement fund in a class action must meet the same standards applicable to approval of the settlement as a whole, *i.e.*, the distribution plan must be fair, reasonable and adequate. *Hart v. RCI Hosp. Holdings*, 2015 WL 5577713, at \*12. (S.D.N.Y. Sep. 22, 2015). “[A]n allocation

formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent Class counsel.” *Id.* at \*34 (quoting *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002)).

Here, the proposed Plan of Allocation meets this standard. As set forth in the Plan of Allocation, the proceeds of the proposed Settlement in this case, net of Court-approved attorneys’ fees, incentive award for named Plaintiff, and costs and expenses (“Net Settlement Fund”), will be paid to Class members who submit timely and valid claims based on each Class member’s *pro rata* share of the Class’ total purchases of brand and/or generic Namenda IR and brand Namenda XR. This plan is similar to plans that have previously been approved by courts in analogous cases. *See, e.g., In re Loestrin 24 Fe Antitrust Litig.*, 2020 WL 4038942 (D.R.I. July 17, 2020) (pro rata shares of settlement fund computed on the basis of claimants’ purchases); *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, 1:14-md02503-DJC, ECF Nos. 1067-7 (Ex. 3), 1077 (D. Mass.) (same); and *In re Lidoderm Antitrust Litig.*, 2018 WL 11375216, at \*3 (N.D. Cal. Sept. 20, 2018) (same).

The allocation will reflect the amount of relative damage sustained by each member of the Class. The Plan of Allocation will allocate the Net Settlement Fund to Class members efficiently and fairly based upon the amount of purchases claimed by each member of the Class that files a claim form. The Plan of Allocation provides a fair and reasonable method of determining each Class member’s proportionate share of the Net Settlement Fund in proportion to the share of overcharges each suffered. Among other things, the Plan of Allocation describes the method of calculating each Class member’s *pro rata* share of the Net Settlement Fund.

Because the Plan of Allocation appears to fairly and rationally allocate the proceeds of the net settlement fund among Class members and comes by the recommendation of experienced

Class Counsel, it is approved.

### III. Attorneys' Fees, Expenses, and Case Contribution Awards

Class Counsel seek an award of attorneys' fees in the amount of \$18,812,666, *i.e.*, 33-1/3% of the settlement amount (plus an equal percentage of any interest accrued since the settlement amount was escrowed), and reimbursement of litigation expenses in the amount of \$5,879,787.65. Class Counsel also seeks an incentive award in the amount of \$100,000 for sole class representative SBA.

#### A. Attorneys' Fees

The Supreme Court has held that where counsel has created a common fund, attorneys' fees are properly determined on a percentage-of-recovery basis. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("[U]nder the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class."). The Second Circuit has approved this method. *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 48-49 (2d Cir. 2000).

"As a 'cross-check on the reasonableness of the requested percentage,' however, courts also look to the lodestar multiplier, which should be a reasonable multiple of the total number of hours billed at a standard hourly rate." *Okla. Firefighters Pension & Ret. Sys. v. Lexmark Int'l, Inc.*, 2021 WL 76328, at \*4 (S.D.N.Y. Jan. 7, 2021) (quoting *Goldberger*, 209 F.3d at 53).

In *Goldberger*, the Second Circuit explained that whether the court uses the percentage of-the-fund method or the lodestar approach, it should consider the traditional criteria that reflect a reasonable fee in common fund cases, including: (i) time and labor expended by counsel; (ii) risks of the litigation; (iii) magnitude and complexity of the litigation; (iv) requested fee in relation to the settlement; (v) quality of representation; and (vi) public policy considerations. 209 F.3d at 50.

Class Counsel spent 51,769.4 hours, with a value of \$32,048,598.25, prosecuting this case from investigation through January 31, 2023. ECF 963 at ¶ 7. Class Counsel largely

defeated the Defendants' motions to dismiss, engaged in large-scale discovery, successfully obtained class certification of a third-party payor class, largely defeated Defendants' motions for summary judgment, largely defeated Defendants' motions to exclude the opinions of Plaintiff's experts; successfully moved to exclude in part several defense expert opinions; briefed twenty-nine motions *in limine* filed by both sides; defeated Defendants' motion for decertification in its entirety; prepared for and participated in multiple mediations; and fully prepared for a two-phase trial that would have begun two weeks after the parties settled. Moreover, Class Counsel has and will continue to expend a significant number of hours in connection with administering the Settlement. Since this case's inception in 2015, Plaintiff confronted significant risk at each stage that the claims would fail leaving Class Counsel with nothing.

“An antitrust class action is arguably the most complex action to prosecute.” *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Practices and Antitrust Litig.*, No. 17-MD-2785-DDC-TJJ, 2022 WL 2663873, at \*5 (D. Kan. July 11, 2022) (citation and internal quotation marks omitted); *see also In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, No. 18-MD-2819-NG-LB, 2022 WL 3043103, at \*9 (E.D.N.Y. Aug. 2, 2022) (characterizing antitrust case against pharmaceutical manufacturer as “complex, discovery-intensive, and expert-dependent”). This antitrust lawsuit involved numerous state antitrust and consumer protection statutes, the principles of unjust enrichment, patent law, the Hatch-Waxman Act, pharmaceutical manufacturing processes, and the Medicaid Drug Rebate Program.

Class Counsel has vigorously litigated this unusually complicated case from initial investigation through trial preparation and settlement. The collective and extensive experience of Plaintiff's counsel enabled them to compare the risks and benefits of continued litigation to the settlement for the collective benefit of Plaintiff and the Class. Indeed, the “quality of [class

counsel's] representation is evidenced by the quality of the result achieved." *In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-CV-06728-CM-SDA, 2020 WL 4196468, at \*20 (S.D.N.Y. July 21, 2020).

As to public policy, incentivizing the prosecution of complex end-payor antitrust actions, such as the one here, upholds the policy goals of private antitrust enforcement. Courts recognize that "It is important to encourage top-tier litigators to pursue challenging antitrust cases . . . [because] [o]ur antitrust laws address issues that go to the heart of our economy." *In re Credit Default Swaps Antitrust Litig.*, No. 13-MD-2476-DLC, 2016 WL 2731524, at \*18 (S.D.N.Y. Apr. 26, 2016).

A 33-1/3% fee is both well within the range of fee awards within this Circuit and for complex pharmaceutical antitrust cases. *See, e.g., In re Chicago Bridge & Iron Co. N.V. Sec. Litig.*, No. 1:17-CV-1580, 2022 WL 3220783, at \*1 (S.D.N.Y. Aug. 5, 2022) (finding a baseline fee percentage of 33-1/3% to be "reasonable and appropriate"); *Bryant*, 2020 WL 563804, at \*6 (holding "a one-third award of the settlement proceeds [for attorneys' fees] is considered typical and reasonable . . . because the attorneys' fees requested were entirely contingent upon success"); *Restasis*, 2022 WL 3043103, at \*9 (33-1/3% attorneys' fees on \$29,999,999.99 settlement fund for class of end payors); *Loestrin*, 2020 WL 4038942, at \*9 (33-1/3% attorneys' fees on \$62,500,000 settlement fund for class of end payors).

Additionally, a lodestar "cross-check" confirms that the fee requested in this case is eminently fair and reasonable given that it will result in an award substantially less than Plaintiff's counsel's actual lodestar. An award of 33-1/3% will yield a fee of \$18,812,666 and will result in a 41.3% discount from Plaintiff's counsels' lodestar. *See* ECF 963 at ¶ 7 (reflecting a lodestar value of \$32,048,598.25). When the fee requested "is significantly less than the

lodestar,” there is a strong suggestion that “the requested fee is reasonable.” *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146-47 (S.D.N.Y. 2010). The award of 33-1/3% of the settlement fund will help to maintain the incentive of counsel to continue to prosecute these types of cases on a purely contingent basis.

In light of the time and effort devoted to this case by Plaintiffs’ Counsel to achieve the \$56,438,000 recovery, as well as the lodestar cross-check – equating to a negative multiplier, 41.3% of the total lodestar – the Court finds the requested fee award is reasonable.

B. Class Counsel’s Request for Reimbursement of Expenses

It is well-settled that counsel who have created a common fund for the benefit of a class are entitled to reimbursement for out-of-pocket expenses reasonably incurred to establish the fund. *See In re Marsh ERISA Litig.*, 265 F.R.D. at 150. Here, Class Counsel’s unreimbursed expenses were reasonably incurred and necessary to the representation of the Class. *See ECF 963 at ¶ 7, Exh. B-F.* These expenses include costs for seven testifying experts and one consulting expert, computerized legal research, the creation and maintenance of electronic document databases for discovery and trial, travel and lodging expenses, copying, court reporters, deposition and hearing transcripts, and multiple mediations. *Id.* These are the typical kinds of expenses that are routinely deemed reasonable and necessary. *See In re Marsh ERISA Litig.*, 265 F.R.D. at 150; *see also Restasis*, 2022 WL 3043103, at \*9.

Accordingly, Class Counsel’s request for reimbursement is granted.

C. Case Contribution Awards

Finally, SBA requests a Case Contribution Award of \$100,000.

Incentive awards are to reimburse a named plaintiff, who “take on a variety of risks and tasks when they commence representative actions.” *In re Marsh ERISA Litig.*, 265 F.R.D. at 150. The award of \$100,000 to the sole class representative, SBA, is appropriate, in recognition of the

long hours it spent participating in this litigation since its inception in 2015, including filing suit, reviewing key motion practice, reviewing discovery requests, reviewing and collecting discovery, including claims data, preparing for and sitting for depositions, reviewing settlement proposals, and preparing to testify at trial. This award would represent less than one percent of the total value of the settlement fund. The amount requested is in accord with other incentive awards granted in this district. *See, e.g., In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400-CM-PED, 2010 WL 4537550, at \*31 (S.D.N.Y. Nov. 8, 2010) (authorizing \$100,000 incentive award for class representative who actively participated in the litigation since its inception, including reviewed complaints, produced documents, and sat for deposition); *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, 2018 WL 6250657, at \*18 (S.D.N.Y. Nov. 29, 2018) (awarding \$500,000 (\$50,000 to six plaintiffs and \$100,000 to two). It is also consistent with awards made to class representatives in similar pharmaceutical antitrust cases. *See e.g., In re Lidoderm Antitrust Litig.*, 2018 WL 11375216, at \*3 (N.D. Cal. Sept. 20, 2018) (\$100,000); *In re K-Dur Antitrust Litig.*, 2017 WL 11636125, at \*2 (D.N.J. Oct. 5, 2017) (\$100,000); *King Drug Co. of Florence, Inc. v. Cephalon, Inc.*, 2015 WL 12843830, at \*6 (E.D. Pa. Oct. 15, 2015) (\$100,000 to certain representatives); *In re Neurontin Antitrust Litig.*, No. CV 02-1830, 2014 WL 12962880, at \*3 (D.N.J. Aug. 6, 2014) (\$100,000).

Accordingly, the Case Contribution Awards to SBA is approved.

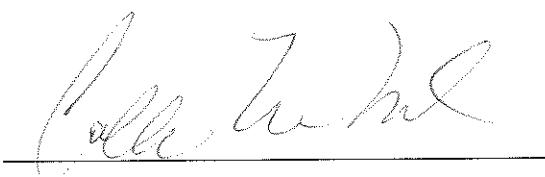
## **CONCLUSION**

For the foregoing reasons, the motion for final approval of the settlement is granted and the motion for an award of attorneys' fees and expenses and case contribution award is granted. The Proposed Settlement and Plan of Allocation are approved. In addition, Class Counsel is awarded attorneys' fees in the amount of \$18,812,666, representing 33-1/3% of the

Settlement Fund. Moreover, Class Counsel shall be reimbursed for \$5,879,787.65 in litigation expenses forthwith. Finally, SBA may be disbursed \$100,000 forthwith.

The Clerk of Court is directed to terminate all pending motions and to mark this case closed.

Dated: March 23, 2023



United States District Judge

BY ECF TO ALL PARTIES

# EXHIBIT 7

NOTICE OF CLASS ACTION SETTLEMENT

AUTHORIZED BY THE U.S. DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

**If you are a merchant who incurred an unreimbursed EMV/chip Fraud Liability Shift chargeback on a Visa, Mastercard, American Express or Discover credit or debit card transaction from October 1, 2015 to September 30, 2017, your rights may be affected by Settlements with two of the Defendants.**

*A federal court directed this Notice. This is not a solicitation from a lawyer.*

- Settlements have been reached in a class action lawsuit called *B & R Supermarket, Inc., et al. v. Visa, Inc., et al.*, Case No. 1:17-cv-02738-MKB-JAM (E.D.N.Y.). The lawsuit alleges Defendants violated antitrust laws by entering into a conspiracy to adopt the same policy via nearly identical rules for shifting billions of dollars in liability for fraudulent charges, or "chargebacks," from banks to merchants ("Fraud Liability Shift" or "FLS") when a credit or debit card was enabled with EMV/chip technology and the merchant's terminal was not enabled for EMV/chip technology and made the liability shift effective on the same day and in the same manner for all four networks. Defendants deny the legal claims and deny any wrongdoing or liability. The Court has not decided who is right.
- Discover Financial Services ("Discover") and American Express Company ("Amex") (together, "Settling Defendants") have each reached settlements (the "Settlements") totaling a combined \$32.2 million ("Gross Settlement Fund"). In addition to this monetary payment, the Settling Defendants have agreed to certain non-monetary relief. The remaining Defendants, Mastercard International, Inc. ("Mastercard"), Visa Inc. and Visa U.S.A. Inc. (together, "Visa," and with Mastercard, the "Non-Settling Defendants"), have not settled. There will be no payments to the Class at this time. You will be notified later of an opportunity to file a Claim Form.
- The Class includes: All merchants who incurred one or more unreimbursed chargeback(s) between October 1, 2015 through and including September 30, 2017, pursuant to the Fraud Liability Shift for the assessment of Mastercard, Visa, Discover and/or Amex payment card chargebacks. **You may have seen a previous notice regarding the Court's order certifying this Class.**

**This Notice may affect your rights. Please read it carefully.**

| <b>YOUR LEGAL RIGHTS &amp; OPTIONS</b>            |  | <b>DEADLINE</b>                          |
|---|--|--|
| <b>Object to the Settlements</b>                  | Tell the Court why you do not agree with the Settlements. You will still be bound by the Settlements if the Court approves them.   | <b>File by:</b><br><b>MONTH DD, 20YY</b> |
| <b>Do Nothing Until the Claims Process Begins</b> | You can participate in the Settlements and any future settlements or judgments obtained by Plaintiffs against the Non-Settling Defendants in the lawsuit. When the time comes, you will have to file a claim in order to get a payment from the Settlements. Class members will be provided notice when that time comes. | No Deadline                              |

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court must decide whether to approve the Settlements, attorneys' fees, and costs. No Settlement benefits will be provided unless the Court approves the Settlements.

**QUESTIONS? CALL 1-855-662-0073 OR VISIT [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com)**

## BASIC INFORMATION

### 1. Why did I get this Notice?

This Notice tells you about your rights and options in a class action lawsuit in the U.S. District Court for the Eastern District of New York. The Honorable Margo K. Brodie is overseeing this class action, which is called *B & R Supermarket, Inc., et al. v. Visa, Inc. et al.*, Case No. 1:17-cv-02738-MKB-JAM (E.D.N.Y.).

The companies or entities who started this lawsuit are called the "Plaintiffs." The companies they are suing are the "Defendants."

The "Plaintiffs" are B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket).

In this Notice, "Defendants" refers to Discover, Mastercard, Visa, and Amex.

Discover and Amex together are "Settling Defendants," and the remaining Defendants, Mastercard and Visa, are "Non-Settling Defendants."

### 2. What is this lawsuit about?

The lawsuit is a class action alleging Defendants violated antitrust laws by entering into a conspiracy to adopt the same policy via nearly identical rules for shifting billions of dollars in liability for fraudulent charges, or "chargebacks," from banks to merchants (the Fraud Liability Shift) when a credit or debit card was enabled with EMV/chip technology and the merchant's terminal was not enabled for EMV/chip technology and made the liability shift effective on the same day and in the same manner for all four networks.

Defendants deny the legal claims and deny any wrongdoing or liability. The Court has not made any determination of any wrongdoing by Defendants, or that any law has been violated. Instead, Plaintiffs and Settling Defendants have each agreed to a settlement to avoid the risk, cost, and time of continuing the lawsuit. Plaintiffs continue to litigate their legal claims against the Non-Settling Defendants.

Additional information about the legal claims and a copy of the Amended Complaint are available at [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com).

### 3. What is a class action?

In a class action, one or more people called Class Representatives (in this lawsuit, B&R Supermarket, Inc., Grove Liquors LLC, Strouk Group LLC, Palero Food Corp., and Cagueyes Food Corp.) sue on behalf of people who have similar legal claims. If the Court "certifies" the class (*i.e.*, approves the lawsuit for class treatment), the Court resolves the legal claims for all class members except for those who "exclude" themselves from the class (otherwise known as "opting out" of the class and the class action).

#### **4. Was a Class certified in this lawsuit, and am I still able to opt-out?**

A Class has been certified in this lawsuit. On August 28, 2020, the Court entered an order granting Plaintiffs' renewed motion for class certification, certifying the following Class: Merchants who incurred one or more unreimbursed chargeback(s) between October 1, 2015 through and including September 30, 2017, pursuant to the Fraud Liability Shift for the assessment of Mastercard, Visa, Discover and/or Amex payment card chargebacks. Excluded from the class are members of the judiciary and government entities or agencies.

The Court approved a plan to provide notice to the Class of this certification order on June 3, 2022. Notice of the Class certification was sent via mailed postcards, emails, and media notice from June 28, 2022, through July 31, 2022.

The deadline for Class members to opt-out of the Class was August 31, 2022. The Court has determined that there will not be an additional opportunity for Class members to opt-out. Thus, you are not able to opt-out of the Settlements. However, you have other rights available to you, including, as discussed below, the right to object to the Settlements.

#### **5. Why are there settlements?**

Plaintiffs and Defendants do not agree about the legal claims made in this lawsuit. The lawsuit has not gone to trial, and the Court has not decided in favor of Plaintiffs or Defendants. Instead, Plaintiffs and Settling Defendants have agreed to settle the lawsuit. The named plaintiffs, serving as Class Representatives, and Class Counsel believe the Settlements are in the best interests of the Class because the benefits provided by the Settlements outweigh the risks and uncertainty associated with continuing the lawsuit. Class Counsel and Plaintiffs reached this decision only after nearly ten years of litigation, extensive legal and factual research, including reviewing millions of pages of documents, and numerous expert reports, including from Plaintiffs' own two experts. The decision was also reached with the assistance of a former judicial officer as a mediator, with extensive experience settling litigation of this magnitude.

### **SETTLEMENT CLASS MEMBERSHIP**

#### **6. Am I part of the Settlements?**

**If you received a mailed or emailed Notice, the Defendants' records show that you are likely a member of the Class and you are entitled to participate in the Settlements. The Class for purposes of the Settlements are the same as the Class that was previously certified.**

The Class includes: All merchants who incurred one or more unreimbursed chargeback(s) between October 1, 2015 through and including September 30, 2017, pursuant to the Fraud Liability Shift for the assessment of Mastercard, Visa, Discover and/or Amex payment card chargebacks. Excluded from the Class are members of the judiciary and government entities or agencies, and any putative class members who previously excluded themselves from this lawsuit by filing a request for exclusion consistent with the requirements set forth in the Order Granting Unopposed Motion for Approval of Proposed Class Notice and Notice Plan dated June 3, 2022.

#### **7. Is this Settlement only for Chargebacks issued on Amex or Discover Cards?**

No. The Settlements provide for payment to eligible Class members regardless of the Networks on which they incurred their eligible FLS Chargebacks. While these Settlements are only with

**QUESTIONS? CALL 1-855-662-0073 OR VISIT [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com)**

Discover and Amex at this time, you may be eligible to participate in any additional settlement(s) which may arise with any of the other Defendants in the lawsuit.

#### **8. What if I am still not sure whether I am part of the Settlement?**

If you are still not sure whether you are a member of the Class, you may go to [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com) or call toll-free 1-855-662-0073.

### **SETTLEMENT BENEFITS**

#### **9. What do the Settlements provide?**

If the Amex Settlement is approved, Amex will pay \$20 million to resolve all Class members' legal claims against Amex for the Released Claims (as defined in the Amex Settlement Agreement).

If the Discover Settlement is approved, Discover will pay \$12.2 million to resolve all Class members' legal claims against Discover for the Released Claims (as defined in the Discover Settlement Agreement).

In addition to this monetary benefit, the Settling Defendants have also agreed to provide specified cooperation in the continued lawsuit against the Non-Settling Defendants. The Settlement Agreements are available at [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com).

There will be no payments to the Class at this time. Class members will be notified later of an opportunity to file a Claim Form.

#### **10. How will my payment be determined?**

Payments will be determined on a pro rata (a legal term meaning equal share) basis based on the dollar amount of unreimbursed FLS Chargebacks you have incurred compared to the total dollar amount of unreimbursed FLS Chargebacks incurred by all eligible Class members. At a later date Class Counsel will work with the Claims Administrator to determine a Minimum Payment Amount that eligible claimants can receive if their pro rata share would be lower than the Minimum Payment Amount. You should retain any records you have of FLS chargebacks you incurred between October 1, 2015 and September 30, 2017, but do not need to submit anything at this time.

#### **11. When will I get my payment?**

There will be no payments to Class members at this time. Class members will be notified later of an opportunity to file a Claim Form. No distribution will be made until after all of the following have occurred: (1) the Court has granted final approval of any settlements with the Settling Defendants; (2) Plaintiffs have otherwise finally resolved legal claims against any remaining Defendants; and (3) any actual or potential appeals are exhausted, such that the resolution of all of Plaintiffs' legal claims, against all Defendants, is final.

#### **12. Can I sue the Defendants for the same thing later?**

No. This means that you cannot sue, continue to sue, or be part of any other lawsuit against the Defendants (including Discover and Amex as well as the Non-Settling Defendants) that pertains to the legal claims in the lawsuit, and the Released Claims for the Settling Defendants. It also means that all the Court's orders and any judgments will apply to you and legally bind you. If you

have a pending lawsuit against the Settling Defendants, speak to your lawyer for that lawsuit immediately.

### 13. What are the Released Claims?

Paragraphs 32-34 and 49-54 of the Discover Settlement Agreement describes the Discover Released Claims in necessary legal terminology, and Paragraphs 32-34 and 49-54 of the Amex Settlement Agreement describes the Amex Released Claims in necessary legal terminology, so read these sections carefully.

The Discover and Amex Settlement Agreements are available at [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com).

## OBJECTING TO THE SETTLEMENTS

### 14. What if I disagree with the Settlements?

Objecting is telling the Court that you do not like something about the Settlements. If you are a member of the Class and have not previously excluded yourself from the Class, you can object to the Discover Settlement and/or the Amex Settlement if you do not like part or all of it.

#### How do I tell the Court I disagree with the Settlements?

You must file a Statement of Objections saying that you object to the Discover Settlement and/or the Amex Settlement in *B & R Supermarket, Inc., et al. v. Visa, Inc. et al.*, Case No. 1:17-cv-02738-MKB-JAM (E.D.N.Y.) and the reasons why you object with the Court at this address:

United States District Court for the Eastern District of New York  
Clerk of Court  
225 Cadman Plaza East  
Brooklyn, New York 11201

You must also send a copy of your Statement of Objections to the Claims Administrator, Class Counsel, counsel for Discover, and counsel for Amex at the addresses listed below.

|  |  |  |
|--|--|--|
| <b>Claims Administrator:</b><br>FLS Litigation Administrator<br>P.O. Box 6430<br>Portland, OR 97228-6430 | <b>Class Counsel:</b><br>George C. Aguilar<br>Michael J. Nicoud<br>Robbins LLP<br>5060 Shoreham Place<br>Suite 300<br>San Diego, CA 92122-5976 | <b>Counsel for Discover:</b><br>James F. Herbison<br>Jeanifer Parsigian<br>Winston & Strawn LLP<br>35 W. Wacker Dr.<br>Chicago, IL 60601-1695                    |
|  |  | <b>Counsel for Amex:</b><br>Peter T. Barbur<br>David H. Korn<br>Cravath, Swaine & Moore LLP<br>Two Manhattan West<br>375 Ninth Avenue<br>New York, NY 10001-1641 |

### What should my Statement of Objection say?

Your Statement of Objections must:

- (1) contain the words *B & R Supermarket, Inc., et al. v. Visa, Inc., et al.*;
- (2) state each and every objection of the Objector and the specific reasons for each objection;
- (3) provide all legal support and evidence on which the Objector relies in support of any objection;
- (4) state the full name, address, and telephone number of the Objector;
- (5) provide information sufficient to establish that the Objector is a member of the Class, including a statement by what position or authority they have the power to object on the member's behalf, and the business names, brand names, "doing business as" names, taxpayer identification number(s), and addresses of any stores or sales locations for which they seek to object on behalf of; and
- (6) state the full name, mailing address, email address, and telephone number of any counsel representing the Objector in connection with the objections.

You may include or attach any documents that you would like the Court to consider. Your Statement of Objections must be **postmarked** by **MONTH DD, 20YY**.

In addition, any Objector or counsel for an Objector that desires to appear at the Final Approval Hearing must file with the Court by **MONTH DD, 20YY**, and send to the designees of Class Counsel and defendants Discover and Amex identified above, by first class mail and postmarked by **MONTH DD, 20YY**, a separate Notice of Intention to Appear that identifies by name, position, address, and telephone number each person who intends to appear at the Final Approval Hearing on behalf of the Objector.

### Can I call the Court or the Judge's office about my objections?

No. If you have questions, you may visit the settlement website ([www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com)) or call the Claims Administrator.

#### 15. Is objecting the same as being excluded?

No. Objecting means you tell the Court which part(s) of the Settlements you disagree with (including the request for attorneys' fees and expenses, or service awards for the Class Representatives). Even if you object to the Settlement(s), you will remain in the Class and can file a Claim Form when the time comes.

Being excluded (also called opting-out) means you told the Court you do not want to be part of the Class. As explained in Question 4 above, the opportunity to request exclusion from the Class has passed.

## THE LAWYERS REPRESENTING YOU

#### 16. Who are the lawyers that represent the Class?

The Court has appointed the lawyers listed below to represent you. These lawyers are called Class Counsel. Many other lawyers have also worked with Class Counsel representing you in this lawsuit. Because you are a Class member, you do not have to pay any of these lawyers. They will be paid from the settlement funds.

**QUESTIONS? CALL 1-855-662-0073 OR VISIT [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com)**

George C. Aguilar

Michael J. Nicoud

**Robbins LLP**

5060 Shoreham Place, Suite 300  
San Diego, CA 92122-5976

### **17. Should I hire my own lawyer?**

Class Counsel is working on your behalf. You do not have to hire your own lawyer, but you can if you want to, at your own cost.

If you hire your own lawyer to appear in this lawsuit, you must tell the Court and send a copy of your notice to Class Counsel at the address above.

### **18. How much will the lawyers and Class Representatives be paid?**

For work done through final approval of the Settlements by the district court, and additional work to be performed in connection with administering the claims process, Class Counsel will ask the Court for an amount that is a reasonable proportion of the Gross Settlement Fund, not to exceed 33.3%, plus accrued interest, to compensate all of the lawyers and their law firms that have worked on the lawsuit. Class Counsel will also request an initial reimbursement for their litigation expenses (not including the administrative costs of settlement or notice), not to exceed \$2 million, and an initial service award for each of the Class Representatives up to \$25,000 for their representation of merchants which culminated in the Settlements. The amounts to be awarded as attorneys' fees, expenses, and Class Representatives' service awards must be approved by the Court. Class Counsel must file their requests for fees, expenses, and service awards with the Court by MONTH, DAY, YEAR. You can object to the requests for attorneys' fees, expenses, and service awards in compliance with the instructions in Question 14 above. Copies of the lawyers' requests for fees, expenses, and service awards will be posted on the settlement website ([www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com)) the same day they are filed.

## **THE COURT'S FAIRNESS HEARING**

### **19. When and where will the Court decide whether to approve the Discover and Amex Settlements?**

The Court will hold a Fairness Hearing on **MONTH DD, 20YY, at XX:XX a.m./p.m.** before the Honorable Margo K. Brodie at the U.S. District Court, 225 Cadman Plaza East, Brooklyn, NY 11201. At this hearing, the Court will consider whether the Discover and Amex Settlements are fair, reasonable, and adequate and decide whether to approve the Settlements, along with Class Counsel's request for attorneys' fees, costs and expenses, and service awards.

If there are objections that were filed by the deadline, and comply with the requirements set forth above, the Court will consider them. If you file a timely objection, and you would like to speak at the hearing, the Court at its discretion may hear objections at the hearing, if you so request. You must file a Notice of Intention to Appear with the Court.

**Note:** The date and time of the Fairness Hearing are subject to change without further notice. The Court may also decide to hold the hearing via video conference or by telephone. You should check the website [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com) to confirm the date and time of the Fairness Hearing have not changed.

**QUESTIONS? CALL 1-855-662-0073 OR VISIT [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com)**

## **20. Do I have to attend the Fairness Hearing?**

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend. If you submit an objection, you do not have to attend the hearing to talk about it. As long as you mail your written objection on time, and it complies with the requirements set forth above, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

## **21. May I speak at the hearing?**

If you file a timely objection, and you would like to speak at the hearing, the Court at its discretion may hear objections at the hearing, if you so request. You must file a Notice of Intention to Appear with the Court. Be sure to include all of the information required. You cannot speak at the hearing if you excluded yourself from the Class.

## **IF YOU DO NOTHING UNTIL THE CLAIMS PROCESS BEGINS**

### **22. What happens if I do nothing until the claims process begins?**

You will be legally bound by all the decisions the Court makes. You can participate in the Settlements and in any future settlements or judgments obtained by Plaintiffs against the Non-Settling Defendants in the lawsuit. When the time comes, you will have to file a Claim Form in order to get a payment from the Settlements and any future settlements. Class members will be provided notice when that time comes. You may also visit [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com) for updates on the timing of when you may file a Claim Form. You cannot sue (or continue to sue) the Defendants about the legal claims in this lawsuit or the Released Claims in the Discover and/or Amex Settlements.

## **GETTING MORE INFORMATION**

### **23. How do I get more information?**

This Notice summarizes the lawsuit, the Discover Settlement, the Amex Settlement, and your legal rights. More details are in the Settling Defendants' Settlement Agreements. You can find a copy of the Settlement Agreements, other important documents, and information about the current status of the lawsuit by visiting [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com). You may contact the Claims Administrator at [info@FraudLiabilityShiftLitigation.com](mailto:info@FraudLiabilityShiftLitigation.com) or toll-free at 1-855-662-0073.

**PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.**

**QUESTIONS? CALL 1-855-662-0073 OR VISIT [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com)**

# EXHIBIT 8

Court-Approved Legal Notice  
*B & R Supermarket, Inc., et al. v. Visa, Inc. et al.*, Case  
No. 1:17-cv-02738-MKB-JAM  
United States District Court for the Eastern District of  
New York

**If you are a merchant who incurred an unreimbursed  
EMV/chip Fraud Liability Shift chargeback on a Visa,  
Mastercard, American Express, or Discover credit or  
debit card transaction from October 1, 2015 to  
September 30, 2017, your rights may be affected by  
Settlements with two of the Defendants.**

*A Court has authorized this notice.  
This is not a solicitation from a lawyer.*

**This notice is a summary. More information is  
available at:**

**[www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com)  
1-855-662-0073**

<<MAIL ID>>  
<<NAME 1>>  
<<NAME 2>>  
<<ADDRESS LINE 1>>  
<<ADDRESS LINE 2>>  
<<ADDRESS LINE 3>>  
<<ADDRESS LINE 4>>  
<<ADDRESS LINE 5>>  
<<CITY, STATE ZIP>>  
<<COUNTRY>>

Settlements have been reached with Discover Financial Services ("Discover") and American Express Company ("Amex") in a class action lawsuit **#157231** titled *B&B Supermarket, Inc., et al. v. Visa, Inc. et al.*, Case No. 1:17-cv-02738-MKB-JAM (E.D.N.Y.). The lawsuit alleges Defendants, including Non-Settling Defendants Mastercard International, Inc. ("Mastercard"), Visa Inc. and Visa U.S.A. Inc. ("Visa") violated antitrust laws by entering into a conspiracy to adopt the same policy via nearly identical rules for shifting billions of dollars in liability for fraudulent charges, or "chargebacks," from banks to merchants in connection with the shift to EMV/chip technology ("Fraud Liability Shift"). Defendants deny the legal claims and deny any wrongdoing or liability.

**Who is Included? Records show you are likely a member of the Class**, defined as: All merchants who incurred one or more unreimbursed chargeback(s) between October 1, 2015 through and including September 30, 2017, pursuant to the Fraud Liability Shift for the assessment of Mastercard, Visa, Discover and/or Amex payment card chargebacks.

**What does the Settlement Provide?** Discover and Amex (together, "Settling Defendants") have each reached settlements totaling a combined \$32.2 million (the "Gross Settlement Fund"). In addition to this monetary payment, the Settling Defendants have agreed to provide specified cooperation in the continued lawsuit against Non-Settling Defendants Mastercard and Visa.

**Can I get a Payment now?** No. There will be no payments to Class members at this time. You will be notified later of an opportunity to file a Claim Form, which you will need to do to receive a payment.

**Other Options.** You may object to the Settlements and/or attorneys' fees and costs by **Month XX, 20YY**. The Long Form Notice on the Settlement Website explains how to object. The Court will hold a Fairness Hearing on **Month XX, 20YY**, to consider any objections and whether to approve the Settlements and Class Counsel's requests for attorneys' fees of up to 33.3% of the Gross Settlement Fund, initial service awards up to \$25,000 for each of the Class Representatives, and initial reimbursement of Class Counsel's litigation expenses not to exceed \$2 million. You or your lawyer may attend and ask to speak at the hearing if you object, but you are not required to do so. All the Court's orders and any judgments will apply to you and legally bind you.

**This notice is a summary.** The Settlement Agreements and more information about the lawsuit and Settlements are available at [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com) or by calling toll-free 1-855-662-0073.

# EXHIBIT 9

FROM: EMAIL ADDRESS

TO: EMAIL ADDRESS

RE: B & R SUPERMARKET COURT ORDERED NOTICE OF CLASS ACTION SETTLEMENT

United States District Court for the Eastern District of New York  
*B & R Supermarket, Inc., et al. v. Visa, Inc. et al.*

**If you are a merchant who incurred an unreimbursed EMV/chip Fraud Liability Shift chargeback on a Visa, Mastercard, American Express, or Discover credit or debit card transaction from October 1, 2015 to September 30, 2017, your rights may be affected by Settlements with two of the Defendants.**

*A Court authorized this Notice. This is not a solicitation from a lawyer.*

Settlements have been reached with Discover Financial Services ("Discover") and American Express Company ("Amex") (together, the "Settling Defendants") in a class action lawsuit called *B & R Supermarket, Inc., et al. v. Visa, Inc. et al.*, Case No. 1:17-cv-02738-MKB-JAM (E.D.N.Y.). The lawsuit alleges Defendants, including Non-Settling Defendants Mastercard International, Inc. ("Mastercard"), Visa Inc. and Visa U.S.A. Inc. ("Visa") (together, "Visa" and with Mastercard, the "Non-Settling Defendants") violated antitrust laws by entering into a conspiracy to adopt the same policy via nearly identical rules for shifting billions of dollars in liability for fraudulent charges, or "chargebacks," from banks to merchants ("Fraud Liability Shift") when a credit or debit card was enabled with EMV/chip technology and the merchant's terminal was not enabled for EMV/chip technology and made the liability shift effective on the same day and in the same manner for all four networks. Defendants deny the legal claims and deny any wrongdoing or liability. The Court has not decided who is right.

**Who's Included? Records show you are likely a member of the Class**, defined as: All merchants who incurred one or more unreimbursed chargeback(s) between October 1, 2015 through and including September 30, 2017, pursuant to the Fraud Liability Shift for the assessment of Mastercard, Visa, Discover and/or Amex payment card chargebacks. Excluded from the Class are members of the judiciary and government entities or agencies, and any putative class members who previously excluded themselves from this lawsuit by filing a request for exclusion consistent with the requirements set forth in the Order Granting Unopposed Motion for Approval of Proposed Class Notice and Notice Plan dated June 3, 2022.

**What Does the Settlement Provide?** Discover and Amex have each reached settlements with Plaintiffs totaling a combined \$32.2 million (the "Gross Settlement Fund"). In addition to this monetary payment, the Settling Defendants have agreed to cooperate in certain ways in further litigation against the Non-Settling Defendants. Mastercard and Visa have not settled and Plaintiffs continue to litigate their legal claims against them.

**Can I get a Payment now?** No. There will be no payments to Class members at this time. You will be notified later of an opportunity to file a Claim Form, which you will need to do to receive a payment.

**Other Options.**

The Court will hold a Fairness Hearing on **Month XX, 20YY**, to consider any objections and whether to approve the Settlements along with Class Counsel's requests for: attorneys' fees of up to 33.3% of the Gross Settlement Fund, plus accrued interest, initial service awards of up to \$25,000 for each of the named Plaintiffs as Class Representatives, and the initial reimbursement of expenses incurred during the course of this litigation not to exceed \$2 million. You or your lawyer may attend and ask to speak at the hearing if you object, but you are not required to do so. All the Court's orders and any judgments will apply to you and legally bind you.

You may object to the Settlements and/or Class Counsel's request for attorneys' fees, expenses, or service awards to the named Plaintiffs by **Month XX, 20YY**. The [Long Form Notice](#) on the Settlement Website explains how to object. When the time comes, you will have to file a Claim Form to get a payment from the Settlements. You and other Class members will be provided notice when that time comes.

**This Notice is a summary.** Learn more about the Settlements [here](#), or by calling toll free 1-855-662-0073.

# EXHIBIT 10

Court-Approved Legal Notice

*B&R Supermarket, Inc., et al. v. Visa, Inc. et al.*, Case No. 1:17-cv-02738-MKB-JAM  
United States District Court for the Eastern District of New York

**If you are a merchant who incurred an unreimbursed EMV/chip Fraud Liability Shift chargeback on a Visa, Mastercard, American Express, or Discover credit or debit card transaction from October 1, 2015 to September 30, 2017, your rights may be affected by Settlements with two of the Defendants.**

*A Court has authorized this notice. This is not a solicitation from a lawyer.*

Settlements have been reached with Discover Financial Services ("Discover") and American Express Company ("Amex") in a class action lawsuit called *B & R Supermarket, Inc., et al. v. Visa, Inc. et al.*, Case No. 1:17-cv-02738-MKB-JAM (E.D.N.Y.). The lawsuit alleges Defendants, including Non-Settling Defendants Mastercard International, Inc. ("Mastercard"), Visa Inc. and Visa U.S.A. Inc. ("Visa") violated antitrust laws by entering into a conspiracy to adopt the same policy via nearly identical rules for shifting billions of dollars in liability for fraudulent charges, or "chargebacks," from banks to merchants in connection with the shift to EMV/chip technology ("Fraud Liability Shift"). Defendants deny the legal claims and deny any wrongdoing or liability.

**Who is Included?** The Class includes: All merchants who incurred one or more unreimbursed chargeback(s) between October 1, 2015 through and including September 30, 2017, pursuant to the Fraud Liability Shift for the assessment of Mastercard, Visa, Discover and/or Amex payment card chargebacks.

**What does the Settlement Provide?** Discover and Amex (together, "Settling Defendants") have each reached settlements totaling a combined \$32.2 million. In addition to this monetary payment, the Settling Defendants have agreed to cooperate in certain ways against Non-Settling Defendants Mastercard and Visa.

**Can I get a Payment now?** No. There will be no payments to Class members at this time. Class members will be notified later of an opportunity to file a Claim Form.

**Other Options.** You may object to the Settlements and/or attorneys' fees, and costs by **Month XX, 20YY**. The Long Form Notice on the Settlement Website explains how to object. The Court will hold a Final Fairness Hearing on **Month XX, 20YY**, to consider any objections and whether to approve the Settlements and Class Counsel's requests for attorneys' fees of up to 33.3% of the Gross Settlement Amount, initial service awards up to \$25,000 for each of the Class Representatives, and initial reimbursement of Class Counsel's litigation expenses not to exceed \$2 million. You or your lawyer may attend and ask to speak at the hearing if you object, but you are not required to do so. All the Court's orders and any judgments will apply to you and legally bind you.

**This notice is a summary.** The Settlement Agreements and more information about the lawsuit and Settlements are available at [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com) or by calling toll-free 1-855-662-0073.

# EXHIBIT 11

*B&R Supermarket, Inc., et al., v. Visa Inc., et al.*

## Banner & Social Media Advertisements

300x250 Online Display Banner

Frame 1 (Visible 9 seconds):

**If you are a merchant who incurred an unreimbursed EMV/chip Fraud Liability Shift chargeback on a Visa, Mastercard, American Express, or Discover credit or debit card transaction from**



Frame 2 (Visible 6 seconds):

**October 1, 2015, to September 30, 2017, your rights may be affected by Settlements with two of the Defendants.**



*B&R Supermarket, Inc., et al., v. Visa Inc., et al.*

Frame 3 (Visible 4 seconds):



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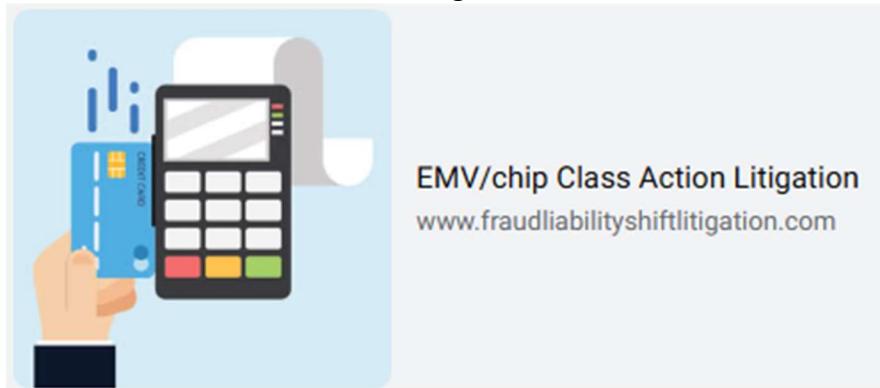
Settlements reached in the EMV/chip Fraud Liability Shift chargeback litigation may affect your rights.

www.fraudliabilityshiftlitigatio...  
**Legal Notice**  
A class action lawsuit is p...

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*B&R Supermarket, Inc., et al., v. Visa Inc., et al.*

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