

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DAVID MOSKOWITZ, *et al.*,

Plaintiffs,

v.

AMERICAN EXPRESS COMPANY and
AMERICAN EXPRESS TRAVEL RELATED
SERVICES COMPANY, INC.,

Defendants.

Case No. 1:19-cv-00566 (NGG)(JRC)

CLASS ACTION

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
FOR APPROVAL OF PLAN OF DISTRIBUTION**

Date filed: January 23, 2026

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I. INTRODUCTION

The proposed Plan of Distribution explains how the Net Settlement Fund¹ will be allocated among, and distributed to, Class Members. To effectively distribute relief and treat Class Members equitably relative to each other, the Distribution Plan allocates all the Net Settlement Fund to members of the Illinois non-reward credit cardholder class, the one class that was awarded damages at trial. Under the Distribution Plan, each eligible claiming member of the Illinois non-reward credit cardholder class will be entitled to an equal share of the Net Settlement Fund.

At trial, the jury considered class claims brought under the antitrust laws of eight states and a consumer-protection statute of one state (Illinois), by debit cardholders in all nine states and non-reward credit cardholders in three of those states (one of which was Illinois). The claim asserted by the Illinois non-reward credit-card class was the lone claim to survive the crucible of trial. The jury decided that Amex was liable only under the Illinois consumer-protection statute, and none of the antitrust statutes, and only members of the Illinois non-reward credit-card class suffered damages. The proposed Plan of Distribution reflects the jury verdict.

The Distribution Plan provides that each member of the Illinois non-reward credit-card class with a valid claim shall share equally in the net settlement fund. An equal, *per-capita* distribution is the fairest and most effective way to distribute funds to eligible Claimants. The alternative, a distribution plan in which the size of each claimant's award would vary based on the extent of each claimant's estimated injury, *i.e.*, affected transactions, is not workable. A distribution that attempts to calibrate individual claimants' recoveries based on the quantity and/or

¹ Capitalized terms are defined in the Stipulation and Agreement of Settlement, which is attached as the Appendix to Plaintiffs' Motion for Preliminary Approval of Proposed Settlement, filed concurrently herewith.

dollar amount of their eligible transactions would require documentation of non-reward credit-card purchases from 2016 to 2022. Requiring Class Members to collect, analyze, and share years of old credit-card statements would discourage Class Members from filing claims at all. Not all eligible Class Members will have access to required documents, let alone ready access, and a large proportion of those who do will balk, given the burden involved in collecting and analyzing records and the perceived privacy risk. Such a distribution is unworkable not only at the front end, but at the back end, the administrative cost of receiving, processing, analyzing, and verifying the required documentation would consume an unacceptably large portion of the Settlement Fund, depleting monies that could otherwise be put in the hands of eligible claimants.

II. STATEMENT

Plaintiffs filed this case in 2019. After years of litigation, class claims of nine states² survived to be tried in July and August of 2025. Each of the nine states had a certified class of debit cardholders, and three of the states had a certified class of non-rewards credit cardholders. Plaintiffs asked the jury to award \$242 million dollars in compensatory damages, a substantial portion of which would have been trebled. (*See* Pls.’ Detailed Statement of Damages, Dkt. No. 284.)

On August 28, 2025, the jury returned a split verdict. (Final Verdict Sheet, Dkt. No. 383.) The jury found in favor of Amex on the eight statewide claims brought under the antitrust laws of those states, making the finding of fact that Plaintiffs failed to prove that American Express’ anti-steering rules unreasonably restrain trade. (*Id.* at 4.) But the jury found in favor of Plaintiffs on the Illinois claim, which was brought under the Illinois consumer-protection statute, finding that

² Actually, eight states and the District of Columbia, but referred to herein collectively as “states” for convenience.

American Express engaged in an “unfair act or practice.” (*Id.* at 7–10.) After finding Amex liable under Illinois law, however, the jury awarded no damages to the debit-card class, which was a much larger class than the non-reward credit card class. (*Id.* at 10.) The jury awarded \$6,006,339.55 million in compensative damages and \$6,500,000 in punitive damages to the prevailing class of non-reward credit-card users. (*Id.* at 11–12.)

The Settlement reached by the Parties post-verdict improves on the jury award. But the Settlement Amount of \$17.5 million, while certainly not insubstantial, is not close to the \$242 million in single damages that Plaintiffs sought at trial and hoped would be the basis for a settlement fund of over \$500 million when accounting for multiple damages to distribute to class members in all nine states. (Pls’ Detailed Statement of Damages 3, Dkt. No. 284.)

The proposed claims process reflects what is, in Class Counsel’s view, the best way to allocate and distribute the Net Settlement Fund, after deductions from the fund for administrative costs, attorney’s fees and litigation expenses, and any service awards to the named plaintiffs.

The plan allocates all of the Net Settlement Fund to those members of the Illinois non-reward credit-card class who file a timely and valid claim. (Plan of Distribution, attached hereto as Exhibit A, ¶ 11.) The funds will be distributed equally among all eligible claimants in a *per capita* distribution.³ (*Id.*)

³ A note on the nomenclature. In a sense, the proposed equal distribution is a *pro-rata* distribution because the exact dollar amount of each claimant’s share is presently unknown and will be determined in proportion to the total number of timely and valid claims made. Accordingly, some courts use the terms *pro rata* as synonymous with *per capita*. See *Ward v. Flagship Credit Acceptance LLC*, No. CV 17-2069, 2020 WL 759389, at *2 n.2, *9 (E.D. Pa. Feb. 13, 2020); see also *Juris v. Inamed Corp.*, 685 F.3d 1294, 1309 (11th Cir. 2012) (cited *infra*, discussing “equal pro rata division”). Here, Plaintiffs use the term *per capita* to refer to an equal-share distribution, distinct from *pro rata*, based on the distinction drawn in Your Honor’s decision in *Gayle v. Harry’s Nurses Registry, Inc.*, No. 07-CV-4672 (NGG) (MDG), 2018 WL 11486496 (E.D.N.Y. Nov. 6, 2018) (Garaufis, J.).

Class Counsel, in consultation with the proposed Claims Administrator, considered but rejected a type of *pro-rata* plan of distribution that would distribute funds proportionally to claimants based on the dollar amount of all qualifying transactions. (A qualifying transaction is an Illinois in-person transaction with one of the 38 Qualifying Merchants during the Illinois class period that meets each requirement of the non-reward credit-card class definition.)

Such *pro-rata* distribution would depend on data found in claimants' credit-card statements going back to 2016. Experience teaches that an unacceptably small number of Class Members would be willing or able to collect, analyze, and provide the documents containing this data. As detailed below in Section III.C.1, the experience of Class Representatives in this case shows that requesting old payment-card statements from financial institutions on closed accounts can be futile, and even accessing old statements from open accounts is difficult, time-consuming, and sometimes impossible. Courts' experience in other class action settlements, most notably in *In re Currency Conversion Fee Antitrust Litigation*, MDL No. 1409 (S.D.N.Y.) (hereinafter "*Currency Conversion Fee*," discussed below in Section III.C.3), also shows that requiring Class Members to collect and pore over personal records, including credit-card statements, looking for qualifying transactions, leads to a dismal claims rate. The proposed Claims Administrator, based on years of experience, likewise expects that "requiring documentation from all potential claimants would impose a substantial burden on Class Members" and "discourage participation from otherwise valid claimants." (Declaration of Elaine Pang in Support of Plaintiffs' Motion for Preliminary Approval ("Pang Decl."), filed concurrently herewith, ¶ 49.)

Moreover, the review of submitted documentation and verification and quantification of affected transactions by the Claims Administrator would be a costly endeavor that would consume and deplete the settlement funds. (Pang Decl. ¶¶ 51, 53.) Indeed, even requiring initial

documentation from all potential claimants sufficient to simply establish eligibility would discourage claims and cause the claims administrator to expend “hundreds of labor hours and could increase the administration costs by several hundred thousand dollars” to process. (*Id.* ¶¶ 49, 53.) Moreover, requiring documentation would “not meaningfully reduce fraud” and indeed would become its own source of potential fraud. (*Id.* ¶¶ 49, 52.)

In lieu of requiring documentation, the Claim Form will require potential claimants to attest, under penalty of perjury, that they used a credit card with no rewards and no annual fee to make at least one in-person purchase from a Qualifying Merchant in Illinois during the class period (and other requirements of class eligibility are satisfied). (Claim Form, attached hereto as Exhibit B, at 1–2; Plan of Distribution ¶¶ 4, 12, 16–17; Pang Decl. ¶ 45.) The Claim Form will warn claimants that they may be required to provide documentation upon request of the Settlement Administrator. (Claim Form at 2; Plan of Distribution ¶ 12; Pang Decl. ¶ 47.)

The Claims Administrator will employ a variety of fraud-prevention techniques effective in identifying and preventing “claims filed from suspicious locations, by repeat or bad actors, and/or by Internet ‘bots’ attempting to defraud the claims process.” (Pang Decl. ¶¶ 54–58.) “These techniques include utilizing CAPTCHAs and other industry-standard security measures.” (*Id.* ¶ 54.) The Claims Administrator “continually monitors and technically enhances the claims submission portal to detect and block fraudulent activity, and all submitted Claim Forms are continually reviewed and scored.” (*Id.*)

There is a procedure to give claimants the opportunity to cure any deficiencies with their claims that are detected during the claim-review process. (*Id.* ¶ 59.)

Settlement payments will be sent digitally to each authorized Claimant by transmitting a form of electronic payment to the email address provided by the Claimant on their submitted Claim

Form. At the time of distribution, each eligible claimant will be provided with a number of digital options to instantaneously receive their payment, such as through a virtual debit card, PayPal, Venmo, or other e-commerce platform. They can also request a traditional paper check payment by mail. (Claim Form at 1; Plan of Distribution ¶ 13; Pang Decl. ¶ 61.)

Plaintiffs expect that all or virtually all funds will be distributed to Class Members under the Plan of Distribution. There is no right of reversion under the Settlement and in no case will any portion of the Settlement Amount be returned to Amex once the Settlement becomes final. If necessary, a *cy pres* award will be requested to distribute any residual.

III. ARGUMENT

A. Legal Standard

“To warrant approval, the plan of allocation must . . . meet the standards by which the . . . settlement was scrutinized—namely, it must be fair and adequate.” *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002).

Determining whether relief is adequate to the class must take into account the proposed methods of distributing relief and processing claims. “Rule 23(e)(2)(C)(ii) requires that the court consider the effectiveness of the parties’ proposed method of distributing relief to the class, including the method of processing class-member claims.” *Rosenfeld v. Lenich*, No. 18-cv-6720 (NGG) (PK), 2021 WL 508339, at *6 (E.D.N.Y. Feb. 11, 2021) (Garaufis, J.) (citation modified).

“An adequate method is one that can deter or defeat unjustified claims without imposing an undue demand on class members. A plan for allocating settlement funds need not be perfect. Rather, it need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.” *Id.* (citation modified). “Numerous courts have held that a plan of

allocation need not be perfect.” *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 40 (E.D.N.Y. 2019) (citation modified).

Under Rule 23(e)(2)(D) of the Federal Rules of Civil Procedure, a court in reviewing a proposed class-action settlement must determine whether “the proposal treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). “District courts enjoy broad supervisory powers over the administration of class-action settlements to allocate the proceeds among the claiming class members . . . equitably.” *In re “Agent Orange” Prod. Liab. Litig.*, 818 F.2d 179, 181 (2d Cir. 1987) (citation modified). “A principal goal of a plan of distribution must be the equitable and timely distribution of a settlement fund *without burdening the process in a way that will unduly waste the fund.*” *In re Credit Default Swaps Antitrust Litig.*, No. 13-md-2476 (DLC), 2016 WL 2731524, at *9 (S.D.N.Y. Apr. 26, 2016) (emphasis added).

“Matters of concern in the equitable evaluation [include] whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief.” *Moses v. New York Times Co.*, 79 F.4th 235, 245 (2d Cir. 2023) (citation modified) (quoting Fed. R. Civ. P. 23(e)(2) advisory committee’s note to 2018 amendment).

B. The proposed Plan of Distribution reflects the trial outcome and treats class members equitably relative to each other.

1. Limiting recovery to the Illinois non-reward credit cardholder class is the fairest way to allocate settlement funds.

Only the Illinois non-reward credit-card class proved liability under the Illinois consumer protection statute and entitlement to compensatory and punitive damages. Amex prevailed at trial on all of the other classes’ claims. Accordingly, limiting recovery to the one class that prevailed at trial is consistent with equitable treatment under Rule 23(e)(2)(D).

Ordinarily, class action settlements are reached prior to a trial verdict, when varied types of class claims' relative strengths and weaknesses are still a matter of prediction and forecast, even if informed by some amount of pretrial development of the facts, evidence, and law. Here, by contrast, the completed trial and jury verdict of certified classes' claims—the crucible of trial—determined which claims ultimately had value, and which did not.

Providing the Class Members whose claims lost at trial with recovery from the Settlement Fund, even if weighted downward to reflect the indisputable weakness of those claims, would unfairly dilute the recovery of those Illinois non-reward credit card class members with the strong claim. The Second Circuit warns against this type of inequitable treatment. “[I]nequity arises from treating different class members the same.” *Moses*, 79 F.4th at 245.

Allocating settlement funds exclusively to the class that prevailed at trial, on the other hand, is far more equitable. “A reasonable [allocation] plan may consider the relative strength and values of different categories of claims.” *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 462 (S.D.N.Y. 2004). The allocation formula can properly “allow[] for distribution to members of the respective Classes based upon the relative strengths of the claims asserted by said Classes.” *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 429 n.5 (S.D.N.Y. 2001). The Illinois non-reward credit-card class members proved liability and damages at trial, distinguishing their claim from those of all other class members.

Allocation should reflect the strength and viability of claims as established through litigation. In *In re New Motor Vehicles Canadian Export Antitrust Litigation*, MDL No. 1532 (D. Me.), the court approved a settlement allocation plan that limited monetary recovery to class members in jurisdictions whose claims had demonstrated legal viability through adversarial litigation. Initially, the plan allocated funds only to members of twenty statewide damages classes

that had been certified under state laws permitting indirect purchaser recovery. *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, MDL No. 1532, 2011 WL 1398485, at *6–7 (D. Me. Apr. 13, 2011). Judge Hornby explained that the allocation was “drawn largely from rulings that [he] made as a result of hotly contested adversarial proceedings,” reflecting the principle that compensation should correspond to claims that could realistically have succeeded at trial. *Id.* at 6. Generally, the court agreed in substance with plaintiffs’ proposed “crucible of litigation” standard in which states whose claims were dismissed or never certified received no share of the settlement fund. *Id.* at 9.⁴ Ultimately, the final order approved this approach, ensuring that settlement proceeds were distributed only to claimants with legally supportable claims, consistent with the proposition that recovery should track the merits. *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, No. 2:03–MD–1532–DBH, 2012 WL 313948, at *2 (D. Me. Jan. 31, 2012).

Equitable treatment of all nine states’ class members relative to each other requires that members of the one class that prevailed at trial receive the settlement funds. “It bears emphasis that Rule 23(e)(2)(D) requires that class members be treated *equitably*, not identically.” *Moses*, 79 F.4th at 245.

Plaintiffs pressed claims against Amex under the state law of nine jurisdictions, but only the Illinois claim succeeded. Likewise, Plaintiffs sought damages to compensate the users of debit cards and non-rewards credit cards in Illinois, but the jury awarded damages only to the class of non-rewards credit-card users. Consistent with this verdict, it is appropriate and proper to compensate only the members of that class.

⁴ The court did note that some claims had not actually been “subjected to that crucible,” *id.*, and later, the court expanded eligibility slightly to include jurisdictions whose laws permitted recovery but had not been litigated to certification. *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 800 F. Supp. 2d 328, 331–33 (D. Me. 2011).

2. The remaining class claims should be released without consideration.

The Settlement provides for the release of all classes' claims against Amex arising from the same factual predicate. The issue presented is whether the release provided by Class Members other than the Illinois non-reward credit card class must be compensated.

The release of the other Class Members' claims without payment is supported by decisions from this District and others. In *Parker v. Time Warner Entertainment Co., L.P.*, (E.D.N.Y.) ("*Parker*"), a case before Judge Glasser in this District, the court analyzed claims under the Cable Communications Policy Act alleging that Time Warner improperly disclosed subscriber information without adequate notice. The alleged conduct had ended years earlier, and the litigation revealed that many class members could not show any injury. In a 2007 decision, the court addressed class members whose names never appeared in Time Warner's list sales database and held that because these individuals had no evidence their information was sold, their claims were "worth essentially nothing," making it fair to release them for no consideration. *Parker v. Time Warner Ent. Co. L.P.*, 239 F.R.D. 318, 339 (E.D.N.Y. 2007) ("*Parker (2007 Order)*"). In a 2009 decision approving a revised settlement, Judge Glasser reaffirmed this principle. *Parker v. Time Warner Ent. Co., L.P.*, 631 F. Supp. 2d 242 (E.D.N.Y. 2009) ("*Parker (2009 Order)*"), *aff'd sub nom. Lobur v. Parker*, 378 F. App'x 63 (2d Cir. 2010). In both decisions, the court concluded that releasing claims with no practical or legal value for zero compensation is consistent with Rule 23(e)'s fairness standard. Recognizing that these claims were essentially worthless, the court held that releasing them for no consideration was fair, reasonable

le, and adequate under Rule 23(e). As Judge Glasser explained, “A claim which cannot be proven is worth essentially nothing. Consideration of nothing for releasing a worthless claim is therefore fair, reasonable, and adequate.” *Parker (2007 Order)*, 239 F.R.D. at 339; *Parker (2009 Order)*, 631 F. Supp. 2d at 262.

The release of non-prevailing class members’ claims “without payment is fair, reasonable and adequate since those claims are not viable.” *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 3:07-CV-5944 JST, 2016 WL 721680, at *23 (N.D. Cal. Jan. 28, 2016) (“CRT”).⁵ In *CRT*, the court analyzed two categories of claims asserted by certain class members: injunctive relief claims and claims for equitable monetary relief (such as restitution or disgorgement). The court concluded these claims were essentially meritless or legally barred.⁶ Because these claims had no realistic chance of success, the court held that releasing them for no monetary consideration in the settlement was fair, reasonable, and adequate under Rule 23(e). *Id.* at *23–25. If “claims were worth little or nothing, releasing them without compensation does not render the Proposed Settlements unfair, unreasonable or inadequate.” *Id.* at *25 (citing *Parker (2009 Order)*, 631 F. Supp. 2d at 262).

⁵ *Supplemented sub nom. In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944-SC, 2016 WL 3763382 (N.D. Cal. Feb. 29, 2016), *report and recommendation adopted in part*, No. C-07-5944 JST, 2016 WL 3648478 (N.D. Cal. July 7, 2016), *dismissed sub nom. In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 16-16368, 2017 WL 3468376 (9th Cir. Mar. 2, 2017), and *report and recommendation adopted in part*, No. C-07-5944 JST, 2016 WL 3648478 (N.D. Cal. July 7, 2016), and *dismissed sub nom. In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 16-16368, 2017 WL 3468376 (9th Cir. Mar. 2, 2017).

⁶ Injunctive relief was deemed valueless because the CRT market had collapsed and defendants no longer sold CRT products, making future violations unlikely and an injunction practically impossible to obtain. Similarly, equitable monetary claims were foreclosed by *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), and related precedent, which prohibit indirect purchasers from recovering under state antitrust or unjust enrichment theories in non-repealer states. *CRT*, 2016 WL 721680, at *22.

C. The proposed *per-capita* distribution is fair, reasonable, and adequate under the circumstances.

As to treatment of Class Members within the Illinois non-reward credit-card class, equal payments to each member of the prevailing class will encourage claims, maximize net recovery, and avoid disproportionate administrative costs, satisfying the fairness and adequacy requirements of Rule 23(e)(2). When it comes to allocating within this class, equal treatment is the most equitable way to proceed.

When individualized damages can be calculated without undue burden, courts often favor *pro rata* distributions that apportion relief based on the extent of injury.⁷ But district courts within the Second Circuit also recognize that “in the case of a large class action the apportionment of a settlement can never be tailored to the rights of each plaintiff with mathematical precision.” *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 327 F.R.D. 483, 496 (S.D.N.Y. 2018) (citation modified). The governing standard is whether the allocation method rests on a “reasonable, rational basis.” *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 497 (S.D.N.Y. 2009).

Here, any attempt to calculate individualized harm would require extensive documentation that class members do not readily have and would impose administrative costs so great that they could overwhelm the settlement fund. A *per-capita* payment structure avoids these inefficiencies and ensures that the maximum possible recovery flows to the class rather than to overhead. Under these circumstances, equal payments are reasonable and the most equitable and effective way to distribute relief.

⁷ As in, e.g., *In re Namenda Direct Purchaser Antitrust Litigation*, 462 F. Supp. 3d 307, 316–17 (S.D.N.Y. 2020).

1. Foregoing documentation requirements enhances efficiency and preserves settlement value for the class.

Streamlining the claims process by waiving documentary proof requirements ensures that the method of distributing relief is effective and does not deplete the net settlement fund through unnecessary administrative expense, consistent with Rule 23(e)(2)(C)(ii).

The proposed Plan of Distribution is consistent with the Second Circuit’s opinion in *In re “Agent Orange” Product Liability Litigation*, 818 F.2d 179. There, the Court of Appeals approved a plan of distribution that did not require proof of causation that any veteran’s death or disability resulted from exposure to Agent Orange, acknowledging the practical difficulties in documenting differing injury levels. *Id.* at 183. The court also noted that Chief Judge Weinstein “was correct in seeking a distribution scheme governed by criteria that are relatively easy and inexpensive to apply.” *Id.*

Requiring extensive documentation to substantiate claims can impose an unreasonable burden on class members, particularly where recoveries are modest and the transactions occurred years earlier. In *In re Initial Public Offering Securities Litigation*, 671 F. Supp. 2d 467, a case that involved 309 consolidated securities class actions alleging that underwriters and issuers of late-1990s technology IPOs engaged in a scheme to inflate share prices through tie-in agreements and undisclosed compensation, the court acknowledged objectors’ concerns that “the documentation required to substantiate their claims is unreasonably burdensome considering the small recovery they will receive and the lapse of time since their investments.” *Id.* at 488–89. While documentation requirements are common in securities cases to prevent fraud, the court emphasized that they “must be reasonable in light of the time that has passed” and ultimately ordered that claimants should be permitted to submit claims “no matter the lack of appropriate documentation,” with the administrator directed to make good-faith eligibility determinations. *Id.* at 489.

An allocation formula that is simple, equitable, and imposes minimal burdens on claimants satisfies the requirements of Rule 23. “An allocation formula need only have a reasonable, rational basis” and “need not be perfect,” and the claims process should “deter or defeat unjustified claims without imposing an undue demand on class members.” *Rankins v. Arca Cont’l S.A.B. de C.V.*, No. 20-CV-1756 (ENV) (TAM), 2024 WL 4986411, at *7 (E.D.N.Y. Oct. 30, 2024) (citation modified), *report and recommendation adopted*, No. 1:20-CV-1756-ENV-TAM, 2024 WL 5007394 (E.D.N.Y. Dec. 6, 2024) (approving a plan in a consumer class action that included an option of a cap of \$10 total for claims without proof). A plan that allows claims without proof of purchase, subject to reasonable limits, and treats all class members equally satisfies these standards. It ensures fairness while promoting participation, particularly where requiring documentation would exclude or discourage legitimate claimants and undermine the compensatory purpose of the settlement.

Here, the Illinois class period is January 29, 2016 to June 1, 2022. For Class Members to document claims they would have to obtain their credit-card statements, which by now are between four and ten years old. Such a requirement would set up the claims process for near-certain failure. “[S]ince class actions tend to involve small amounts of money, the more class members have to do to claim an award, the less likely it is that they will do so.” 4 Newberg and Rubenstein on Class Actions § 12:15 (6th ed. updated 2025); *see also* Barbara J. Rothstein and Thomas E. Willging, Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges*, 30 (3d ed. 2010) (“Be careful to avoid claim forms that scare class members away with confusing questions and onerous proof requirements.”).

Litigating this case has provided tangible examples of the obstacles to obtaining documentation. Named plaintiffs responding to Amex’s discovery requests in this case

experienced difficulties, delays, and lack of success in collecting payment-card records and statements; Plaintiffs submitted some examples to the Court in connection with Plaintiffs' motion to amend the complaint. Named plaintiffs expended time and encountered delays in collecting bank statements from their card-issuing banks and were forced to contact those banks "often repeatedly" to obtain statements, had to make formal requests to banks, and some even had to go to their banks in person to collect records. (Decl. of Colleen Cleary in Supp. of Pls.' Mot. for Leave to Amend ¶¶ 8, 11, Dkt. No. 124.) Named plaintiffs experienced "difficulties and delays . . . trying to collect statements from numerous financial institutions and card issuers for multiple accounts, some of which are closed, over many years, in some cases stretching back to 2015." (*Id.* Ex. I (Dkt. No. 124-9) at 3 of 22.) Multiple named plaintiffs learned they could not access card information and statements from closed accounts. (*Id.* at 7, 13, 21 of 22.) Even for open accounts, some banks were unable to provide records more than a few years old: responding to requests made in 2022 or earlier, Wells Fargo was unable to satisfy requests for credit card statements before 2021 and Camden National Bank could not provide records before April 2017. (*Id.* at 6, 11 of 22.) Some named plaintiffs were unable to access account statements even after contacting their financial institutions; one named plaintiff contacted her financial institution for assistance but the bank did not respond to her requests. (*Id.* at 21 of 22.) This was the experience of named Plaintiffs and Class Representatives when they undertook collection of records five years ago; five years hence, it stands to reason the prospects for success in obtaining documentation will have worsened considerably.

Inevitably, members of the Illinois non-reward credit-card class will have different levels of access to the documents that would be necessary to implement a *pro-rata* distribution based on the extent of injury. For some, their qualifying credit-card accounts will still be open and active.

For others, those accounts are closed. Some class members will have filing cabinets full of hard-copy credit-card statements and others will be paperless and have to rely on electronic records that may no longer be maintained by their financial institution.

There are additional reasons not to insist on documenting qualifying transactions. Privacy concerns would deter class members from submitting documents containing personal-identification information, financial account numbers, and detailed transaction records that could include sensitive or embarrassing details.⁸ (Pang Decl. ¶ 50.) And even if documentation was collected and submitted, on the back end, the administrative costs of processing and verifying those records would consume hundreds of hours and hundreds of thousands of dollars, without any meaningful impact on fraud detection. (*Id.* ¶ 53.)⁹

2. Equal *per-capita* distribution of settlement funds comports with Rule 23(e)'s fairness requirements.

An equal-payment allocation is fair where, as here, the drawbacks of *pro-rata* distribution would be unfair to class members.

Courts have approved equal distribution plans in several contexts. The Eleventh Circuit reviewed a breast implant class-action settlement's plan of distribution where the district court approved "a proposed plan of fund distribution, which called for a pro rata division of the \$31.5 million among all claimants, without reference to extent of injury." *Juris*, 685 F.3d at 1309. There, the district court overruled objections that the plan did not differentiate between claimants with

⁸ Indeed, the named Plaintiffs and Class Representatives produced many of their card statements in discovery in redacted form.

⁹ The Claims Administrator does have the means to detect fraud and cull fraudulent claims, without insisting on initial documentation. The proposed plan requires "[v]erification of claims forms by oath or affirmation under 28 U.S.C. § 1746." Manual for Complex Litigation § 21.66 (4th ed. 2004). A.B. Data, Ltd. ("A.B. Data"), is experienced in combatting fraudsters and "bots" that attempt to exploit class-action settlements. (Pang Decl. ¶ 54.)

and without current injures, explaining “that the fund was so severely limited in relation to the number of claimants, that a distribution plan differentiating between claimants with varying degrees of injuries would have ‘substantially increased administrative costs,’ ‘not greatly increase[d] the amount of distribution to those determined to be eligible for enhanced benefits,’ and ‘decrease[d] even more the meager distribution to other claimants.’” *Id.* “[E]qual pro rata division, without reference to the extent of injuries or expenses, to eligible class members who returned satisfactory claim forms” was “the only workable solution under the facts of this case.” *Id.*

In *In re Online DVD-Rental Antitrust Litigation*, 779 F.3d 934 (9th Cir. 2015), settlement class members were subscribers to Netflix. Under the antitrust theory of harm, the longer a class member’s duration of subscription, the more overcharge damages they suffered. Nevertheless, the Ninth Circuit upheld a “claimant-fund-sharing” mechanism where “each class member who submits a claim receives an equal share of the settlement fund, regardless of the harm he or she suffered.” *Id.* at 944–45. The court rejected an objector’s challenge to this approach, finding the district court did not abuse its discretion in approving this equal distribution method. *Id.*

In *Demmick v. Cellco Partnership*, No. CV 06-2163 (JLL), 2015 WL 13643682, at *1, 13 (D.N.J. May 1, 2015), plaintiffs alleged that Verizon Wireless improperly billed Family SharePlan customers for overage minutes and charged for “In-Network” calls that were promised to be free. After nearly nine years of litigation, the parties reached a \$64.2 million settlement, including a \$36.7 million cash fund and calling-unit credits. *Id.* at *11. The court approved a plan under which “every eligible Settlement Class Member will receive the same amount of cash,” finding this flat-payment approach “fair, reasonable, and adequate.” *Id.* at *13–14.

A distribution plan offering equal payments can satisfy fairness requirements even when injuries differ, provided it delivers meaningful benefits in light of litigation risks and administrative constraints. *See Cobell v. Salazar*, 679 F.3d 909, 918–19 (D.C. Cir. 2012). In *Cobell*, Native American plaintiffs challenged the federal government’s failure to provide an historical accounting of trust funds. After 15 years of litigation, the parties reached a settlement that included uniform payments of \$1,000 to each member of a “Historical Accounting Class” and a formula-based distribution for a “Trust Administration Class.” *Id.* at 916. Objectors argued that these payments were unfair because they did not reflect individual variations in harm, thereby undercompensating some and overcompensating others. *Id.* at 918. The D.C. Circuit rejected this challenge, holding that the settlement was fair, reasonable, and adequate under Rule 23(e). *Id.* at 913. Perfect proportionality was not required; uniform payments can be appropriate where individualized calculations would be impractical and prohibitively expensive.

Courts in this Circuit have articulated principles that support equal payment allocation plans where administrative costs would overwhelm the fund. While these decisions address *cypres* distributions and *de minimis* thresholds rather than equal, *per-capita* payments specifically, the inquiry is whether the proposed method preserves more of the settlement fund for class members than a transaction-by-transaction analysis would. These decisions demonstrate that courts balance the goal of proportional compensation against the practical reality that administrative expenses can consume settlement funds. *See In re Glob. Crossing*, 225 F.R.D. at 463 (court approved plan that included a \$10 *de minimis* threshold, finding that class counsel “acted reasonably in including a \$10 *de minimis* threshold in the allocation plan, in order to preserve the settlement fund from excessive and unnecessary expenses in the overall interests of the class as a whole”); *see also In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 342 (E.D.N.Y. 2010) (court approved a

cy pres allocation where “the cost of calculating, printing and mailing individual checks to class members would run into millions of dollars, and would eat up a substantial amount of the settlement fund”).

3. The case study of *Currency Conversion Fee* provides a close analogy supporting a no-document, *per-capita* distribution plan.

The settlement-administration experience in *Currency Conversion Fee* in the Southern District of New York is a real-world example that supports adopting the proposed *per-capita*, no-documentation Plan of Distribution here.

Plaintiffs there alleged that defendants (including Mastercard, Visa, and their related issuing banks) had overcharged their customers in foreign currency conversion fees in the use of their payment cards for foreign transactions between 1996 and 2006. Francis E. McGovern, *Second-Generation Dispute System Design Issues in Managing Settlements*, 24 Ohio State J. on Disp. Resol. 53, 54 (2008) (“McGovern”).¹⁰ The case settled in 2006 for \$336 million. *Id.* The court originally approved a claim form that required that an eligible cardholder list the annual amount of their foreign transactions for each of their cards over a ten-year period. *Id.* The response was dismal: “an extremely low response rate of 0.45%” and “complaints filed with the court criticizing the reporting requirements in the claiming process.” *Id.* at 54–55. The court took the extraordinary step of halting the notice and claims process after it was well underway to appoint

¹⁰ The author, Francis E. McGovern, was the special master appointed in *Currency Conversion Fee* to help revise the claim form. His article, which is intended to help judges, lawyers, and claims administrators learn from this experience and improve future distributions, contains an extensive discussion of the case, with numerous citations to judicial opinions, pleadings, and other documents in the case. Judge Pauley, the judge who oversaw the *Currency Conversion Fee* litigation, has cited this article with approval. *See In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 125 (S.D.N.Y. 2009), *aff’d sub nom. Priceline.com, Inc. v. Silberman*, 405 F. App’x 532 (2d Cir. 2010); *see also In re Currency Conversion Fee Antitrust Litig.*, No. M 21-95, 2009 WL 10695357, at *12 (S.D.N.Y. Oct. 22, 2009).

“a special master to assist the court and the parties in devising and implementing a revised notice and claim procedure.” *Id.* at 55.

On the special master’s recommendation, the court adopted “a new notice and claim form” with “three options for claimants to choose from depending on their estimated losses and ability to thoroughly document their claim: (1) a flat payment of \$25; (2) an estimate of the number of days spent in foreign countries during the covered time period so an algorithm of typical expenses would be applied to estimate a payment; and (3) the original form of annual estimates of foreign expenditures by credit card.” *Id.*

At the end of the process the response rate improved to approximately 27%, “an exceptionally high response rate.” *Id.* at 57. The option 1 (flat payment) claims “represent[ed] 71.2% of the total claims filed, option 2 claims represent[ed] 25.7%,” and option 3, which was virtually identical to the one offered on the original claim form and required documentation, claims represented only 3.1%. *Id.*

The similarities between *Currency Conversion Fee* and this case make the lessons especially important. Both involve cardholder injury tied to specific payment-card transactions that are a subset of all transactions (there, foreign transactions; here, transactions with Qualifying Merchants). And in both, evaluating the extent of injury suffered by varied class members would require collecting and analyzing payment-card statements going back ten years.

By the same token, the differences between the two cases also emphasize why a *per-capita* distribution as the exclusive method of distributing relief makes the most sense here. In *Currency Conversion Fee*, the settlement fund was much larger and could accommodate non-equal-payment options. Indeed, in *Currency Conversion Fee*, the total cost of administering claims was “almost \$25,000,000,” which would far exceed the Settlement Fund here. McGovern at 57. And there, the

option 2 estimate to be carried out by claimants themselves was feasible in a way that it is not here. “Most foreign travelers can remember how many days they spend overseas annually more easily than they can remember how much money they charged on their credit cards.” *Id.* at 56. Here, it would be misguided to expect the typical class member to estimate, with anything remotely approaching accuracy, how much money they charged on specific types of credit cards for in-person purchases with certain Qualifying Merchants between five and ten years ago. It would result in guesswork at best, susceptible to wishful thinking, if not fraud, and the certain result would be unfairness in the ultimate allocation.

D. Additional considerations confirm that the Plan of Distribution is fair, reasonable, and adequate under Rule 23(e)(2).

The proposed Plan of Distribution incorporates multiple features consistent with those approved by courts after the 2018 amendment to Rule 23.

First, “the claim form is easy to understand and fill out, and therefore does not impose an undue burden on class members.” *Hesse v. Godiva Chocolatier, Inc.*, No. 1:19-cv-0972-AJN, 2021 WL 11706821, at *3 (S.D.N.Y. Oct. 26, 2021) (citation modified).

Second, the use of A.B. Data, an experienced claims administrator, will make the proposed method of distributing relief to the class effective. Given that Amex does not have records containing the identities and addresses of Class Members, Class Counsel intends to retain A.B. Data to give notice to class members, process claims, distribute the settlement proceeds to the class, pay each Class Member’s individual settlement award, and pay out the Settlement Fund. This method weighs in favor of preliminary approval of the allocation plan. *See D’Angelo v. Hunter Bus. Sch., Inc.*, No. 21-CV-03334 (GRB) (JMW), 2023 WL 11845607, at *11 (E.D.N.Y. Jan. 24, 2023).

Third, A.B. Data intends to use electronic payments to claimants, avoiding the expense typically borne by the settlement fund to prepare, mail, and re-issue paper checks. It is cost-effective to issue electronic payments even in small amounts (if necessary, if the claims rate is high), so the proposed plan avoids the typical problem of no distribution made to claimants “who would otherwise receive a distribution of less than \$10.00.” *In re N. Dynasty Mins. Ltd. Sec. Litig.*, No. 20-CV-5917 (TAM), 2023 WL 5511513, at *8 (E.D.N.Y. Aug. 24, 2023).

Fourth, the notice plan supports approval of the proposed plan of allocation. Specifically, The Notice provides proper measures of correcting any issues that may occur, advises Class Members of their rights, and answers any questions Class Members may have. (*See generally* Long Form Notice, Exhibit A to Plaintiffs’ Memorandum of Law in Support of Plaintiffs’ Motion to Appoint Notice and Claims Administrator and Authorize Dissemination of Notice, filed concurrently herewith.) Such features of a notice plan are components of an adequate method of distributing relief to the Class. *Carbone v. Ltd. Run Games, Inc.*, No. 24-cv-08861 (NJ) (JMW), 2025 WL 3481450, at *10 (E.D.N.Y. Aug. 21, 2025).

IV. CONCLUSION

For the foregoing reasons, the Court should approve the proposed Plan of Distribution.

Dated: January 23, 2026

BERMAN TABACCO

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CERTIFICATE OF WORD COUNT COMPLIANCE

I, Carl N. Hammarskjold, an attorney duly admitted to practice before this Court, hereby certify pursuant to Local Civil Rule 7.1(c) that this Memorandum of Law in Support of Plaintiffs' Motion for Approval of Plan of Distribution was prepared using Microsoft Word and the document contains 6,818 words as calculated by the application's word counting function, excluding the parts exempted by Local Civil Rule 7.1(c).

I certify under the penalty of perjury the forgoing statements are true and correct. Executed on this 23rd day of January, 2026 in Terra Linda, California.

/s/ Carl N. Hammarskjold
Carl N. Hammarskjold