

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

**REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF PROPOSED SETTLEMENT AND DISTRIBUTION PLAN AND
PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT
OF EXPENSES, AND SERVICE AWARDS**

Date filed: May 19, 2026

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I. INTRODUCTION

The proposed Settlement¹ and Class Counsel's request for attorneys' fees, litigation expenses, and service awards have been overwhelmingly supported by the Classes and should be approved. Class members' support for and participation in the Settlement has been robust. Such backing from class members is "perhaps the most significant factor in [the] *Grinnell* inquiry." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 119 (2d Cir. 2005).

In response to the notice campaign, there are no valid objections. Two individuals have submitted papers that they identify as objections, but both are invalid because the individuals are not class members, have not provided proof of class membership as required in the Preliminary Approval Order, or both. In any event, their criticisms, which are addressed below, do not raise any issues that warrant denying Plaintiffs' motions.

Accordingly, the Court should finally approve the Settlement and Plan of Distribution and grant Class Counsels' request for an award of attorneys' fees, litigation expenses, and service awards for Plaintiffs.

II. THE SETTLEMENT SHOULD BE FINALLY APPROVED

The Court-approved Notice program was extensive and "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B). The Claims Administrator has fully implemented the Notice plan and disseminated notice to potential Class Members. Decl. of Mark Cowen Regarding Settlement Administration ¶¶ 3–9, ECF 401-2. Class Members, therefore, have been afforded a full and fair opportunity to consider the proposed Settlement, consider the Settlement's binding effect, and respond. In response to the notice program, approximately 2,195,357 claims have been filed as of May 18, 2026; the Claims deadline is the date of this filing, May 19, 2026. Suppl. Decl. of Mark Cowen Regarding Settlement Administration

¹ Unless otherwise defined herein, all capitalized terms have the same meaning as those in Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Proposed Settlement and Distribution Plan, ECF 401-1 ("Final Approval Br."), and Memorandum of Law in Support of Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards, ECF 402-1 ("Fee Br.").

(“Suppl. Cowen Decl.”), filed concurrently herewith, ¶¶ 3, 5. (The 2,195,357-claim number is a preliminary number. The claims will be subject to the rigorous tests the Claims Administrator will apply to eliminate duplicate claims and determine if claims are ineligible, fraudulent, or otherwise invalid. *Id.* at ¶¶ 6–9.)

The Class’s overwhelming support of the Settlement strongly favors approval. There are only two purported objections filed by individuals (Suppl. Cowen Decl. ¶ 10), and neither of them are valid, for reasons explained immediately below. This reaction is a clear indicator of the Class’s satisfaction with the Settlement. “If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.” *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 485 (S.D.N.Y. 2009) (quoting *Wal-Mart Stores*, 396 F.3d at 118).

The first self-identified objector, Mr. Smithart of Iowa, admits to being an Amex Cardmember during the class period and is therefore excluded from the Class. Letter to Ct. from Ryan Smithart Objecting to the Req. for Att’ys’ Fees & Awards, ECF 400 (“Smithart Submission”).² The second, Mr. Sims of Texas, does not meet the criteria to object, as his filing (Obj. of Class Member, Thomas E. Sims, to Prop. Class Action Settlement, ECF 404 (“Sims Submission”)) did not include proof of membership in the Class as required by this Court’s Preliminary Approval Order. ECF 398 at ¶ 11(f) (requiring “documents sufficient to prove membership in the Class”); ¶ 12 (failing to comply with ¶ 11 means objection will not be considered). Mr. Sims is aware of the Preliminary Approval Order because he refers to it in his submission and aware of the requirement to substantiate his membership in the Class, as evidenced by his inclusion of a “Standing” section in his submission. Sims Submission at 1. But Mr. Sims does not allege or document facts necessary to establish class membership and standing to object. To the contrary, he admits he resides in Texas (not a class state) and identifies no card account address or residential address in any state other than Texas. *Id.* at 1, 3.

² The facial invalidity and merits of the Smithart Submission are discussed in the opening memorandum. Final Approval Br. at 13.

The Sims Submission criticizes the monetary value of the Settlement as inadequate because it does not reflect the severity of the alleged wrongdoing at issue. Sims Submission at 1–3. While Plaintiffs are not unsympathetic to this critique (having sought \$250 million in single damages at trial), ultimately, the jury awarded just over \$12.5 million. The settlement amount of \$17.5 million exceeds the amount awarded by the jury. Should the Court consider the invalid Sims Submission, it can be overruled as unmeritorious on this point for failing to acknowledge that the jury’s verdict determined the monetary value of the claims advanced at trial.

III. THE DISTRIBUTION PLAN SHOULD BE FINALLY APPROVED

The Plan of Distribution is effective and treats class members fairly and equitably, as discussed in the opening memorandum. Final Approval Br. at 15–18.

The terms of the Plan of Distribution—including the equal, *per-capita* distribution to only the Illinois non-reward credit-card class—drew no objection from any class members or protest from either of the two self-identified objectors. *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1775 (JG) (VVP), 2015 WL 5918273, at *4 (E.D.N.Y. Oct. 9, 2015) (“no class member has objected to the plan [of allocation], strongly suggesting it is fair, reasonable and adequate to the class.”).

IV. THE REQUEST FOR ATTORNEYS’ FEES, LITIGATION EXPENSES, AND SERVICE AWARDS SHOULD BE GRANTED

Class Counsel’s request for attorneys’ fees, litigation expenses, and service awards is fair and reasonable under the relevant factors, as discussed in the opening memorandum. Fee Br. at 4–16.

The lack of valid objections to Class Counsel’s request further supports a finding that the request is fair and reasonable. *In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-cv-06728-CM-SDA, 2020 WL 4196468, at *21 (S.D.N.Y. July 21, 2020) (“The absence of any objections to the requested attorneys’ fees and Litigation Expenses supports a finding that the request is fair and reasonable.”).

The two self-identified objectors criticize the fee request. Smithart Submission, Sims

Submission. Even if these invalid objections are considered, they should be overruled. As noted, the Smithart Submission is fully addressed in the opening memorandum. Final Approval Br. at 13. As for the Sims Submission, its premise is that payment of attorney fees and reimbursement of litigation expenses should be counted together as part of the “counsel’s total take” (Sims Submission at 2), but that is incorrect. The reimbursement of reasonable and necessary litigation expenses is not compensation to the attorneys; it is part of the recovery obtained for the class members in that it is repayment of the interest-free loan of millions of dollars advanced on behalf of the class members. “The reimbursement of costs and expenses seeks not to reward attorneys for their work but restore the status quo.” *C.C. & L.C. v. Baylor Scott & White Health*, No. 4:18-CV-828-SDJ, 2022 WL 4477316, at *8 (E.D. Tex. Sep. 26, 2022) (citation omitted). For the proportionality analysis of the “allocation of recovery between class and class counsel under Rule 23(e),” *Kurtz v. Kimberly-Clark Corp.*, No. 14-CV-1142 (PKC) (RML), 2026 WL 717909, at *8 n.12 (E.D.N.Y. Mar. 12, 2026) (citation omitted), fees and expenses are not to be lumped together and weighed against the funds being distributed to the class in the claims process. Rather, it is appropriate for the Court to “consider the costs, expenses, and incentive awards as part of the class recovery to be compared to the attorneys’ fees.” *Id.* at *8 n.11.

If expenses are treated appropriately as part of the class recovery, the ratio of attorneys’ fees to the class recovery is 1 to 2. *See* Final Approval Br. at 21. But even if the Court were to accept the premise of the Sims Submission, the proportionality analysis would be satisfied. As a preliminary matter, the figures Mr. Sims uses for his calculations are incorrect. Plaintiffs are asking for reimbursement of just under \$7.1 million in expenses, not \$8 million, and the amount to be distributed to the Class is \$4.4 million, not \$3.67 million. Applying the correct figures, if expenses are omitted from the balancing, the ratio of fees to class recovery is approximately 1.33 to 1. And if the expenses are counted with fees, the ratio of fees + expenses to class distribution is approximately 2.94 to 1. Courts have approved settlements in which the ratio of attorney’s fees to class recovery was as high as 12 to 1. *Hasemann v. Gerber Prods. Co.*, No. 15-CV-2995(EK)(JAM), 2025 WL 2773748, at *9–10 (E.D.N.Y. Sep. 29, 2025); *see also Everetts v.*

Pers. Touch Holding Corp., No. 21-cv-2061 (JMA) (ARL), 2025 WL 942800, at *3–4 (E.D.N.Y. Mar. 28, 2025) (approving roughly 3 to 1).

The Sims Submission also contends, without any justification or specificity, that the expenses are excessive and unsupported. Sims Submission at 2. Apart from Mr. Sims’ lack of standing, should the Court consider the Sims Submission it should be overruled on this point, too. The expenses are supported. Seaver Decl. in Supp. of Pls.’ Mot. for Final Approval ¶¶ 57–59, 62–64, 81–82, ECF 403, and Seaver Decl. Exhibits A–G, I–L (declarations of Class Counsel firms in this case): Ex. A (Decl. of Andrew Szot (Miller Law LLC)) ¶¶ 10–12, ECF 403-1; Ex. B (Decl. of Melinda A. Nicholson (Kahn Swick & Foti, LLC)) ¶¶ 10–13, ECF 403-2; Ex. C (Decl. of Whitney Z. Bernstein (Bienert Katzman Littrell Williams LLP)) ¶¶ 10–12, ECF 403-3; Ex. D (Decl. of Simon Bahne Paris (Saltz Mongeluzzi & Bendesky)) ¶¶ 10–12, ECF 403-4; Ex. E (Decl. of Samuel O. Patmore (Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.)) ¶¶ 10–13, ECF 403-5; Ex. F (Decl. of Richard J. Schager, Jr. (Stamell & Schager, LLP)) ¶¶ 10–12, ECF 403-6; Ex. G (Decl. of Daniel Cohen (Cuneo Gilbert Flannery & Laduca, LLP)) ¶¶ 10–12, ECF 403-7; Ex. I (Decl. of Benjamin M. Jaccarino (Lovell Stewart Halebian Jacobson LLP)) ¶¶ 10–12, ECF 403-9; Ex. J (Decl. of Eric D. Barton (Wagstaff & Cartmell LLP)) ¶¶ 10–13, ECF 403-10; Ex. K (Decl. of James M. Terrell (Methvin Terrell Yancey Stephens & Miller, P.C.)) ¶¶ 7–9, ECF 403-11; and Ex. L (Decl. of Gordon Ball (Gordon Ball LLC)) ¶¶ 8–9, ECF 403-12.

The “expenses are summarized in Plaintiff’s filings with the Court and in the attorney affidavits attached to these submissions,” *Everetts*, 2025 WL 942800, at *6, and, as such, are suitable for approval. The expenses, it should be noted, were incurred in pursuit of a \$250 million verdict that the jury did not ultimately award. Class Counsel did not value this as a \$12.5 million or \$17.5 million case when committing resources to it.

No class member and neither of the self-identified objectors objected to the proposed service awards to the Named Plaintiffs, which weighs in favor of granting the requests. *In re Air Cargo Shipping Servs. Antitrust Litig.*, 2015 WL 5918273, at *6 (holding a lack of objections supported approving an award for class representatives).

V. CONCLUSION

For the foregoing reasons, and the reasons stated in Plaintiffs' opening memoranda, Plaintiffs' Motions should be granted.

Dated: May 19, 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 Reply Memorandum of Law in Support of Plaintiffs’ Motion for Final Approval of Proposed Settlement and Distribution Plan and Plaintiffs’ Motion for Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards was prepared using Microsoft Word and the document contains 1909 words as calculated by the application’s word counting function, excluding the parts exempted by Local Civil Rule 7.1(c).

I certify under penalty of perjury the forgoing statements are true and correct. Executed on this 19th day of May, 2026 in San Francisco, California.

/s/ Carl N. Hammarskjold
Carl N. Hammarskjold

CERTIFICATE OF SERVICE

I, Maria Wenzell, hereby declare as follows:

I am employed by Berman Tabacco, 425 California Street, Suite 2300, San Francisco, California, 94104. I am over the age of 18 years and am not a party to this action. On May 19, 2026, I caused true and correct copies of the following to be served:

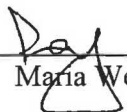
1. **REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED SETTLEMENT AND DISTRIBUTION PLAN AND PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS**
2. **SUPPLEMENTAL DECLARATION OF MARK COWEN REGARDING SETTLEMENT ADMINISTRATION**

by CM/ECF to the counsel of record registered to the Court's CM/ECF system and true and correct copies of same were served on the following parties via FedEx, properly addressed as follows:

Ryan Smithart 902 5th Avenue East Oskaloosa, IA 52577
Thomas E. Sims 20126 Chad Arbor Trail Cypress, TX 77433

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

Executed at San Francisco, California, on May 19, 2025.



Maria Wenzell