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 AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS

Date filed: April 9, 2026

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Plaintiffs respectfully submit this memorandum of law in support of their Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards (the "Motion").

I. STATEMENT

Plaintiffs and the certified Classes on January 15, 2026 reached a settlement agreement (the "Settlement") with defendant American Express[1] to resolve this litigation. Prior to the Settlement, Plaintiffs fought for seven years in this complex class action to prove that Amex's anti-steering rules raised two-sided prices for credit card transactions above a competitive level, causing inflated retail prices and injuring consumers who paid those inflated retail prices.

On August 28, 2025, following a three-week trial on Plaintiffs' damages claims under various state antitrust laws and an Illinois consumer protection law, a jury partially vindicated those efforts. The jury found Amex's challenged conduct violated the Illinois Consumer Fraud and Deceptive Business Practices Act. It found Amex's rules restricting merchants are an unfair act or practice, causing actual damages to members of the Illinois Non-Rewards Credit Card Class. *See* ECF 383 (Final Verdict Sheet, Aug. 28, 2025). The jury awarded a total of just over $12.5 million of compensatory damages and punitive damages. *Id*. The jury, however, found for Amex on the Classes' state law antitrust claims, finding that while Plaintiffs proved Amex's rules constitute a restraint of trade in a relevant market, the rules did not unreasonably restrain trade in the relevant market. *Id*.

When they reached the Settlement, Plaintiffs and Amex were each poised to engage in post-trial motion practice and inevitable appeals to the Second Circuit. *See* Declaration of Todd A. Seaver on Behalf of Berman Tabacco in Support of Plaintiffs' Motions for Final Approval and for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards ("Seaver Decl." or "Seaver Declaration"), ¶¶48–49. Instead, the parties reached the Settlement prior to the entry of judgment and avoided the risk of post-trial motions and cross-appeals.

[1] Defendants are American Express Company and American Express Travel Related Services Company, Inc., referred to herein as "American Express" or "Amex."

Under the Settlement, Amex has agreed to pay $17.5 million to resolve the litigation. Plaintiffs proposed distributing the net settlement fund to the Illinois Non-Rewards Credit Card Class. The Court granted preliminary approval and approved the Plan of Distribution. ECF 398. Notice has been disseminated, and the claims process is underway for the Illinois class members.

The Settlement is a strong result reflecting the skill, expertise, and hard work of Class Counsel.[2] The benefit of the Settlement is substantial and concrete, in light of the significant risks of continued litigation through post-trial motions and cross-appeals. Consistent with fees and expenses awarded in this District and elsewhere, Class Counsel respectfully requests that the Court award attorneys' fees equal to one-third, or 33.33%, of the Settlement Fund ($5,832,750), reimbursement of litigation expenses of $7,099,744.41 from the Settlement Fund, plus interest on the awards at the same rate as earned by the Settlement Fund while in the Escrow Account. Seaver Decl. ¶61.

From inception of the Action through January 15, 2026, Class Counsel invested 63,778.70 hours in litigating the Action, valued at $45,649,391.15 in lodestar. Seaver Decl. ¶56.[3] Class Counsel prosecuted this litigation on a wholly contingent-fee basis, with no guarantee that Class Counsel would receive any payment at all. Class Counsel assumed daunting litigation risks. Most significantly, Class Counsel took on the challenge of attempting to prove antitrust overcharge damages to consumers flowing from Amex's anti-steering rules in its contracts with

[2] "Class Counsel" refers to Plaintiffs' law firms who are counsel of record responsible for prosecuting the case: (i) *Executive Committee Co-Chairs* Berman Tabacco and Gordon Ball PLLC; (ii) *Executive Committee* firms Miller Law LLC; Kahn Swick & Foti, LLC; Stamell & Schager, LLP; Stearns Weaver Miller Weissler Alhadeff & Sitterson; Saltz, Mongeluzzi & Bendesky, P.C.; Wagstaff & Cartmell, LLP; and Lovell Stewart Halebian Jacobsen LLP; and (iii) *additional counsel* Bienert Katzman Littrell Williams LLP; Methvin Terrell Yancey Stephens & Miller P.C.; Karon LLC; Cuneo Gilbert Flannery & LaDuca, LLP. Separately, where "Trial Counsel" is used herein it refers to the Plaintiff firms designated as trial counsel in the Joint Pre-Trial Order (ECF 258): Berman Tabacco, Bienert Katzman Littrell Williams LLP, Miller Law LLC, and Gordon Ball PLLC.

[3] The Seaver Declaration sets forth the overall lodestar figures and litigation expense amounts, and those for the Berman Tabacco firm. Exhibits A–L to the Seaver Declaration are the declarations of all other Class Counsel firms. The declarations reflect each firm's lodestar figures and litigation expense amounts, and detail each firm's respective hours, billing rates, and litigation expenses.

merchants, a type of vertical non-price restraint. Following the landmark decision *Ohio v. American Express Co*., 585 U.S. 529 (2018), the challenged conduct would be governed by the Rule of Reason burden-shifting standard where antitrust plaintiffs must prove anticompetitive effects in what was, then, a brand-new species of relevant product market, *i.e*. a two-sided transaction market. Added to the novelty and difficulty of proving a Rule of Reason antitrust case, Class Counsel bore the risk of winning class certification for classes of consumers, where proof of pass-through of an overcharge was a critical part of what had to be common proof. These challenges had to be overcome, furthermore, against a well-resourced defendant represented by able and experienced counsel, that had already shown a willingness and ability to defend, through trial and appeal, government litigation seeking to enjoin the very same conduct. Seaver Decl. ¶¶7–49, 77.

Based on Class Counsel's investment of time and resources, the complexity of the litigation, the risks Class Counsel assumed, and the quality of the representation, the requested 33.33% fee award is fair and reasonable. A lodestar cross-check serves to confirm the requested fee is reasonable. If the one-third fee is awarded, the lodestar cross-check results in a fractional multiplier of 0.13, which is far below the multiples of lodestar ordinarily found reasonable in cases of this complexity and magnitude.

Class Counsel also request payment of unreimbursed litigation expenses, as set forth in the declarations from each of the supporting Class Counsel declarations. *See* Seaver Decl. ¶¶62–64 & Exs. A–L. These litigation expenses are of the type that attorneys normally bill to paying clients, were reasonably incurred to advance the Action, and should be reimbursed.

Finally, Class Counsel seek service awards for the twelve class representatives in a total amount of $165,000 ($15,000 each to the nine who testified at trial and $10,000 each to the three others), representing 0.94% of the Settlement Fund, to compensate them for the significant time and effort they devoted to this case and in recognition of the result they were crucial to obtaining.

II. LEGAL STANDARD

In common fund cases, attorneys that secure a recovery for the class are "entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). This principle applies to class action settlements. *See In re Vitamin C Antitrust Litig.*, No. 06-MD-1738 (BMC)(JO), 2012 WL 5289514, at *9 (E.D.N.Y. Oct. 23, 2012) ("Where a class action settlement creates a common fund the plaintiffs' attorneys 'are entitled to a reasonable fee—set by the court—to be taken from the fund.'") (citations omitted).

While courts "may award attorneys' fees in common fund cases under either the 'lodestar' method or the 'percentage-of-the-fund' method …[t]he trend in the [Second] Circuit is toward the percentage method." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (internal citation omitted).

To determine reasonableness, courts consider the "*Goldberger* factors" set out in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000), principally: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation ...; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Id.* at 50 (alteration in original) (citation omitted); *see also Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704, 723 (2d Cir. 2023) (citing *Goldberger* factors).

To cross-check the reasonableness of a percentage-of-the-fund fee request, "courts often compare the proportionate fee amount to the lodestar multiplier" where "the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case." *Rosenfeld v. Lenich*, No. 18-cv-6720 (NGG)(PK), 2022 WL 2093028, at *3 (E.D.N.Y. Jan. 19, 2022) (Garaufis, J.).

III. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE

Application of the *Goldberger* factors shows that the requested attorneys' fee of one-third (33.33%) of the $17.5 million Settlement Fund, amounting to $5,832,750, is fair and reasonable.

A. Class Counsel invested substantial time, labor, and resources

Class Counsel collectively worked on this case for seven-plus years, investing 63,778.70 hours in attorney and other legal professional time to prosecute the Action from inception until settling on January 15, 2026. As set forth in the accompanying Seaver Declaration (¶¶7–49, 77) and Class Counsel declarations (Exs. A–L to Seaver Decl.), Class Counsel engaged in an enormous effort:

- Opposed motions to dismiss the entire action under Rules 12(b)(1) and 12(b)(6) and for partial judgment under Rule 12(c) (Seaver Decl. ¶¶10–13);
- Propounded written discovery on Amex including 77 document requests, two sets of interrogatories and over 700 requests for admission (*id.* ¶¶18–19);
- Subpoenaed over forty financial institutions and dozens of merchants, negotiating document and data productions (*id.* ¶21);
- Reviewed over two million documents (*id.* ¶22);
- Responded to and defended discovery propounded on the named plaintiffs, including document requests, interrogatories, and pretrial depositions (*id.* ¶20);
- Deposed Amex corporate designees in three Rule 30(b)(6) depositions (*id.* ¶24);
- Prepared two expert reports and three supplemental reports, faced three opposing expert economists, defended two expert depositions, and took two expert depositions (*id.* ¶26–28);
- Litigated a complex motion for class certification through an evidentiary hearing on class certification and *Daubert* (*id.* ¶¶25–29);
- Defeated Amex's *Daubert* motion and won a *Daubert* motion and motion for reconsideration concerning an Amex expert (*id.* ¶32);
- Defeated Amex's two Rule 23(f) petitions to the Second Circuit seeking immediate appeal of the class certification (*id.* ¶34);
- Briefed two motions for summary judgment through a summary judgment hearing (*id.* ¶¶35–36);

- Deposed three newly proffered defense witnesses in the days before start of trial (*id.* ¶¶41, 43–44), including Amex's CEO; and
- Prepared for trial and prosecuted trial through a first mistrial and a second, three-week jury trial to verdict, involving 18 live witnesses and one witness appearing via deposition testimony, scores of exhibits, Rule 1006 summary exhibits and illustrative exhibits, and extensive briefing and argument on countless legal and factual issues arising during trial, including two defense motions for mistrial (*id.* ¶¶42–47).

An analysis of Class Counsel's lodestar shows that the largest concentrations of time, labor and resources were dedicated to discovery (35.04%) and trial preparation and trial (22.94%), closely followed by pleadings and class certification (a combined 21.22%). *See* Seaver Decl. ¶¶58–59.

The substantial investment of time, labor and resources invested by Class Counsel demonstrates that the first *Goldberger* factor supports the reasonableness of the fee request.

B. The magnitude and complexity of the Action favors the fee request

"Federal antitrust cases are complicated, lengthy, and bitterly fought," *Wal-Mart Stores, Inc.*, 396 F.3d at 118. "[C]lass actions have a well-deserved reputation as being most complex," *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) (citation and internal quotation marks omitted), with antitrust class actions standing out as some of the most "complex, protracted, and bitterly fought," *Meridith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 669 (S.D.N.Y. 2015) (citation omitted).

Here, the case presented difficult legal issues and burdens of proof. Plaintiffs had to prove a new type of relevant product market, a two-sided transaction market. One case-long dispute, lasting through trial, was whether the relevant product market was confined to two-sided credit card transactions, as Plaintiffs sought to prove, or whether it also should include debit card transactions, as Amex sought to prove. This was resolved only by the jury verdict (in Plaintiffs' favor). Another complexity was that to prevail, Plaintiffs had to prove that, on balance, the anticompetitive effects of Amex's rules outweighed the procompetitive effects that Amex sought

to prove. In the Rule of Reason context, Amex had the opportunity to prove its rules had the benefit shielding consumers against merchants' growing proclivity to surcharge credit card transactions. Throughout the post-pleadings phases of the case Plaintiffs had to prove, through expert opinion testimony and other evidence, what the "but-for" world would have looked like in the absence of Amex's rules. This was a complex facet of the case that dominated class certification, *Daubert*, summary judgment, and trial. Finally, proving damages of passed-through overcharges to consumers was a complex undertaking requiring strong evidence and a creative and strategic class definition that bounded class membership by narrowing the relevant commerce to credit card and debit card transactions at "Qualified Merchants"—close to forty national and regional retailers.

In addition to being highly complex, the magnitude of the case from the start was significant. Single damages for the classes for which Plaintiffs sought certification approached $1 billion. At trial, even though pared down considerably, Amex's total exposure was over $600 million. *See* ECF 284 (Plaintiffs' Statement of Damages).

The factor of the case's magnitude and complexity weigh heavily in favor of the requested fee.

C. The requested fee is warranted by the risk undertaken by Class Counsel

The "foremost" factor is the risk of litigation, *Goldberger*. 209 F.3d at 54, which is "measured as of when the case is filed," *id.* at 55.

The risk of this litigation was enormous. Class Counsel took on the litigation on a fully contingent basis and invested significant time, money, and resources to advance Plaintiffs' and the Classes' claims. *See City of Providence v. Aeropostale, Inc*., No. 11 Civ. 7132 (CM)(GWG), 2014 WL 1883494, at *14 (S.D.N.Y. May 9, 2014) ("The Second Circuit has recognized that the risk associated with a case undertaken on a contingent basis is an important factor in determining an appropriate fee award."), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015).

This case arose following the United States Supreme Court's decision in *Ohio v. American Express Co*., 585 U.S. 529 (2018). Seaver Decl. ¶7. In *Ohio*, the Supreme Court announced a new rule under the Sherman Antitrust Act for relevant market definition in so-called two-sided transaction markets. *Ohio* was the result of a nearly decade-long litigation brought by the United States Department of Justice's Antitrust Division, along with several state attorneys general, against Visa, Mastercard, and American Express regarding those credit card networks' anti-steering rules in contracts with merchants. Visa and Mastercard settled early on and entered a consent decree with the government. American Express and the government litigated in this Court through a six-week bench trial in 2014 ("Gov't Trial"), which found for the government and resulted in this Court enjoining Amex's imposition of its anti-steering rules. Amex appealed. The Second Circuit reversed, and the Supreme Court affirmed reversal and remanded with direction that judgment be entered for American Express. *Id*.

Class Counsel carefully analyzed the Second Circuit and Supreme Court decisions, and investigated the feasibility of an action on behalf of consumers against American Express on the theory (for which evidence was introduced during the Gov't Trial) that Amex's anti-steering rules reduce competition on both sides of the two-sided market, and thereby cause retail prices paid by all consumers to be higher than they otherwise would be.

Class Counsel saw justiciable issues. Class Counsel saw a narrow but provable path toward civil liability for American Express, even under the new legal standard with its two-sided market definition and corresponding Rule of Reason burden-shifting framework. Seaver Decl. ¶8. Indeed, far from "piggybacking" off of a government prosecution in a manner that lessens risk, Class Counsel followed a government action that ended in the government's defeat, and it was in that milieu Class Counsel undertook what promised to be a hard-fought case trying to prove what the government, with all its resources, did not prove.

The *Ohio* decision was a landmark decision when it was decided. It garnered attention as one of the most consequential decisions by the Supreme Court in the field of antitrust in the last thirty years. Any number of lawyers and law firms no doubt were aware of the *Ohio* decision and

the long-running antitrust case against Amex (as well as those against Visa and Mastercard). Perhaps many examined the *Ohio* decision and saw a meritorious and provable case against Amex remained to be proven. But only Class Counsel here brought an action. Perhaps the risk of loss on a contingent fee case like this one was too great a deterrent for other contingent-fee lawyers. It would be understandable. Rule of Reason cases are known to be extraordinarily challenging for private antitrust plaintiffs. Moreover, class certification under Rule 23 is a great risk, especially where, as here, the proposed classes were consumers who would have to prove pass-through of an overcharge with common evidence in order to prove class-wide damages.

Another risk and deterrent from the outset was the fact that as the lone defendant, Amex, had already shown itself to be prepared to defend, through trial and appeals, the very same conduct that Class Counsel challenged in this case.

The risks of the case were significant at every stage. This case is notable for and characterized by the complex issues it has presented and the tenacity and creativity with which Amex—possessing enormous resources and represented a large and experienced law firm—litigated those issues. Amex steadfastly opposed Plaintiffs on many grounds. From the outset of the case, Amex contended that Plaintiffs are entitled to little or no recovery because, inter alia, (i) Plaintiffs lacked standing under Article III and under federal and state laws because, *inter alia*, the alleged harm (inflated retail prices) was too remote to be cognizable; (ii) Plaintiffs could not prove, as a matter of law or fact, that Amex's vertical non-price restraint caused anticompetitive effects in a relevant market; (iii) Plaintiffs could not prove, as a matter of law or fact, that the restraint of trade caused any injury; (iv) that Plaintiffs could not prove impact or damages with common evidence; and (iv) the anti-steering rules caused little or no injury or damage to the classes in light of offsets in the but-for world that would have occurred in the form of merchant surcharges on transactions. At every stage of this case, Defendants asserted these arguments in the District Court (and as to class certification in the Second Circuit) as a basis to dismiss all or part of the case, or to limit damages. Plaintiffs battled Amex at every step, with the battles difficult, complex, and drawn out. Seaver Decl. ¶77.

The high level of risk undertaken by Class Counsel to take on and litigate this case strongly favors the requested fee.

D. Class Counsel provided high-quality representation

"[T]he quality of representation is best measured by results." *Goldberger*, 209 F.3d at 55. Here, the settlement amount of $17.5 million is higher than the jury verdict's award of $12.5 million. The settlement result is therefore strong. It was made possible by the result obtained by Class Counsel by prosecuting the case through to a jury verdict. The verdict, albeit a mixed verdict where Amex prevailed on most claims, is the result of capable, skilled, and dedicated representation.

A word can also be said about Class Counsel's efficiency in their representation of Plaintiffs and the Classes. Class Counsel's total lodestar of $45,649,391.15 and unreimbursed litigation expenses of $7,099,744.41 are significant amounts, reflecting the commitment of Class Counsel, and reflecting the risk of taking this case on a contingent fee basis with no guarantee of any payment. Seaver Decl. ¶65. But these amounts also reflect litigation efficiency.

Take by comparison the matter *U.S. Airways v. Sabre Holdings Corp.*, No. 11-cv-02725-LGS (S.D.N.Y.). It is known as the first post-*Ohio v. American Express Co*. antitrust case focused on proving anticompetitive effects in a two-sided transaction market to go to trial (*Moskowitz* being the second such case to go to a jury trial). Seaver Decl. ¶66. There, the plaintiff prevailed on liability as to one of its claims, but the jury awarded only nominal damages of $1.00. Counsel for the plaintiff sought attorneys' fees and expenses under the fee-shifting provision of the Clayton Act as a prevailing party. Counsel had billed a paying client over ***$108 million*** in attorneys' fees and incurred over ***$49 million*** in litigation expenses. Here, by comparison, Class Counsel's lodestar and expenses were considerably less. *Id.* ¶¶66–69 & Ex. M.

The strong results at trial and in settlement, as well as the relative efficiency of Class Counsel in achieving the results, show the *Goldberger* factor of quality of representation supports the requested fee.

E. The fee request is reasonable in relation to the settlement

Fee awards of one-third of the settlement where the settlement amount is $50 million or less are routinely found reasonable. *See In re DDAPV Direct Purchaser Antitrust Litig.*, No. 05 Civ. 2237 (CS), 2011 WL 12627961, at *5 (S.D.N.Y. Nov. 28, 2011) (approving 33 1/3% fee from class settlement of $20.25 million); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146 (S.D.N.Y. 2010) (awarding one-third of $35 million settlement); *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 695 (S.D.N.Y. 2019) (explaining that with settlements totaling $29.5 million "Courts in this District have approved fees as high as 33.5% from comparable class settlement funds, finding that they are well within the applicable range of reasonable percentage fund awards" (citation and internal quotation marks omitted)).

Moreover, the reasonableness of the fee request here is confirmed by a lodestar cross-check. Class Counsel invested 63,778.70 hours in litigating the case, valued at $45,649,391.15 in lodestar. Seaver Decl. ¶56. One-third, or 33.33%, of the Settlement Fund amounts to a fee of $5,832,750, which results in a fractional multiplier of 0.13. This fractional multiplier is far below the multiples of lodestar ordinarily found reasonable in cases of this complexity and magnitude.

F. Public policy supports approval of the fee request

Public policy encourages enforcement of the antitrust laws and consumer protection laws through private civil suits to deter infringing conduct in the future. *See Pillsbury Co. v. Conboy*, 459 U.S. 248, 262–63 (1983) ("This Court has emphasized the importance of the private action as a means of furthering the policy goals of certain federal regulatory statutes, including the federal antitrust laws."). As state antitrust laws and consumer protection laws share policy goals with their federal counterparts, awarding a reasonable percentage of a common fund "provid[es] lawyers with sufficient incentive to bring common fund cases that serve the public interest." *Goldberger*, 209 F.3d at 51 (citation omitted).

Here, Class Counsel's work advanced the interest of antitrust and consumer protection laws and protected the marketplace, and consumers, who count on the fairness and competitiveness of our country's markets. If awarded, the requested one-third fee here "may

incentivize well-qualified lawyers to bring similar common fund cases in the public interest." *Rosenfeld,* 2022 WL 2093028 at *3.

* * *

All of the *Goldberger* factors strongly favor the requested fee award.

IV. REIMBURSEMENT OF CLASS COUNSELS' EXPENSES IS REASONABLE

Under the common fund doctrine, attorneys who create a common fund for the benefit of a class are entitled to reimbursement of reasonable litigation expenses from the fund. Fed. R. Civ. P. 23(h); *Mills v. Electric Auto-Lite Co*., 396 U.S. 375, 392 (1970) (recognizing the right to reimbursement of expenses where a common fund has been produced for the benefit of a class); *In re Arakis Energy Corp. Sec. Litig*., No. 95 CV 3431 (ARR), 2001 WL 1590512, at *17 n.12 (E.D.N.Y. Oct. 31, 2001) ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course.").

As detailed in the accompanying Seaver Declaration and Class Counsel declarations, Class Counsel advanced litigation expenses over seven years totaling $7,099,744.41. Seaver Decl. ¶62 (breaking down every category of expense in total dollars and percentage of total expenses). "Counsel in common fund cases may recover those expenses that would normally be charged to a fee-paying client and courts may approve such recovery based on a review of Class Counsel's description of these costs and expenses, broken down by category." *Rosenfeld*, 2022 WL 2093028, at *5 (citation and internal quotation marks omitted).

The largest expense, $4,673,823.50 (or 65.8% of the total expenses) was necessary to engage the economic experts, Dr. Russell Lamb and Monument Economics Group. Seaver Decl. ¶¶62, 64. Plaintiffs' expert economics team developed evidence of the "but-for" world critical to proving anticompetitive effects and a damages model that was admissible through class certification and trial.

The next largest expense was the trial costs, not including expert witness fees. Trial costs totaled $904,981.74 (or 12.74% of total expenses). Seaver Decl. ¶62. They included trial consultants ($223,794), trial graphics ($193,944), and the jury focus groups and mock trial Class

Counsel carried out in preparation for trial ($77,700). *Id.* The trial hotel where the entire trial team stayed was the Brooklyn Hampton Inn, blocks from the courthouse on Flatbush Avenue in Brooklyn. The sleeping rooms, war rooms, and conference rooms cost $235,553. *Id*. This total was enlarged by the unfortunate mistrial that occurred July 30, 2025, as the hotel rooms and workspaces had to be kept and extended through the end of August to cover the re-start of the new trial on August 11, 2025.

After economic experts and trial expenses, the next largest expense was $842,279 for the document database and hosting charges (11.86% of total expenses). Seaver Decl. ¶62.

Travel, hotels, and meals (outside of those for trial) represent just over 2.7% of the total expenses. Seaver Decl. ¶62.

The remaining expenses advanced, approximately 9% of Class Counsel's reimbursement request, consist of the notice of pendency published to the Classes ($125,000), and court fees, court reporter fees for depositions and hearings, mediation fees, photocopying, online research, and cost sharing for third party data productions pursuant to subpoenas (from Visa, Mastercard). These are all the types of out-of-pocket expenses that are normally billed to paying clients and routinely reimbursed from common funds. "When the lion's share of expenses reflects the typical costs of complex litigation such as experts and consultants, trial consultants, litigation and trial support services, document imaging and copying, deposition costs, online legal research, and travel expenses, courts should not depart from the common practice in this Circuit of granting expense requests." *Pa. Pub. Sch. Emps.' Ret. Sys. v. Bank of Am. Corp.*, 318 F.R.D. 19, 27 (S.D.N.Y. 2016) (citation and internal quotation marks omitted).

The $7,099,744.41 of litigation expenses advanced by Class Counsel should be reimbursed from the Settlement Fund. They are reasonable in amount and were incurred to advance the claims of the Plaintiffs and the Classes.

V. SERVICE AWARDS FOR THE CLASS REPRESENTATIVES ARE WARRANTED

Class Counsel seek service awards for the twelve class representatives in a total amount of $165,000 ($15,000 each to the nine who testified at trial and $10,000 each to the three others) to compensate them for the significant time and effort they devoted to this case and in recognition of the result they were crucial to obtaining.

To assess a proposed service award to named plaintiffs, courts should consider "the personal risk (if any) incurred by the plaintiff-applicant in becoming and continuing as a litigant, the time and effort expended by that plaintiff in assisting in the prosecution of the litigation or in bringing to bear added value." *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 200 (S.D.N.Y. 1997).

In the Second Circuit, service awards for class representatives are common in class actions. *See, e.g., Hernandez v. Immortal Rise, Inc.*, 306 F.R.D. 91, 101 (E.D.N.Y. 2015) (holding that service awards for named plaintiffs who had participated in discovery were appropriate). Courts in this Circuit have approved service awards of up to $100,000 each and courts routinely approve settlements containing service awards of $15,000 or more per class representative. *See, e.g., Alaska Elec. Pension Fund v. Bank of Am. Corp.*, No. 14-CV-7126 (JMF), 2018 WL 6250657, at *4 (S.D.N.Y. Nov. 29, 2018) (approving a service benefit award that included $50,000 and $100,000 awards to named plaintiffs); *see also Massiah v. MetroPlus Health Plan, Inc.*, No. 11-cv-5669 (BMC), 2012 WL 5874655, at *8 (E.D.N.Y. Nov. 20, 2012) (collecting cases in the Second Circuit approving service awards ranging from $5,000 to $30,000).

The class representatives here are Ricky Amaro (IL), Andrew Amend (KS), Abigail Baker (ME), Angela Clark (AL), Wyatt Cooper (UT), Emily Counts (MS), Sarah Grant (D.C.), David Moskowitz (OR), Shawn O'Keefe (NC), James Robbins (MS), Debbie Tingle (MS), and Allie Stewart Willingham (AL). Each class representative expended significant time assisting the prosecution of the case. They collected documents (mostly personal financial records), answered interrogatories, prepared and sat for depositions, and most of them made two separate trips to Brooklyn to testify at trial after intensive preparation. *See* Seaver Decl. ¶¶83–88; *id.* Ex. A ¶¶13–

19; *id.* Ex. B ¶¶14–20; *id.* Ex. E ¶¶14–20; *id.* Ex. F ¶¶13–19; *id.* Ex. G ¶¶13–19; *id.* Ex. K ¶¶10–16. The class representatives diligently prepared for their testimony, and—in the words of defense counsel at trial—"testified passionately and eloquently." Trial Tr. at 446:02 (Aug. 13, 2025).

Each class representative took on this role without expectation of a special award. Seaver Decl. ¶90; *id.* Ex. A ¶19; *id.* Ex. B ¶20; *id.* Ex. E ¶20; *id.* Ex. F ¶19; *id.* Ex. G ¶19; *id.* Ex. K ¶16. Their duties were not simple, and each class representative made significant sacrifices. Mr. Amend produced over 5,700 pages of account statements. *Id.* Ex. B ¶16. He also could not see patients during his six-hour deposition, *id.* at 18, or the three days he attended trial and waited to testify, *id.* at 19. Ms. Baker drove over 40 miles each way to obtain her records from her bank's central office to produce in discovery. *Id.* Ex. F. ¶15. She also committed herself to traveling to Brooklyn to testify at trial just five months after giving birth to her first child. Trial Tr. 1069:23–24 (Aug. 18, 2026). Mr. Amaro, a schoolteacher devoted to students with special needs, missed the entire first week of the school year in order to testify at trial. Seaver Decl. Ex. A ¶18. Wyatt Cooper twice traveled to Brooklyn from Utah to testify at trial while his wife was alone with their firstborn, three-month-old child. Trial Tr. 390:10–12 (Aug. 13, 2025).

Class Counsel requests that each Class Representative who testified at trial be granted a service award of $15,000, and the three who were prepared to testify at trial (and were on the defense trial witness list) but ultimately did not, receive $10,000 each. If granted, the total awards will amount to $165,000, representing 0.94% of the $17.5 million Settlement.

It is Class Counsel's belief that the trial testimony of all the Class Representatives contributed to the jury's finding for Plaintiffs on the Illinois unfair trade practice claim. The class representatives' trial testimony, in the aggregate, no doubt made an impression on the jury of a fundamental unfairness marking Amex's challenged conduct. Seaver Decl. ¶89. The Settlement for $17.5 million would not have been obtained without the partial jury verdict, and so all the Class Representatives are deserving of the requested service awards.

VI. CONCLUSION

Class Counsel respectfully requests that the Court award attorneys' fees equal to one-third, or 33.33%, of the Settlement Fund ($5,832,750), reimbursement of litigation expenses of $7,099,744.41 from the Settlement Fund, plus interest on the awards at the same rate as earned by the Settlement Fund while in the Escrow Account, and service awards to the Class Representatives totaling $165,000.

Dated: April 9, 2026

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CERTIFICATE OF WORD COUNT COMPLIANCE

I, Todd A. Seaver, an attorney duly admitted to practice before this Court, hereby certify pursuant to Local Civil Rule 7.1(c) that Memorandum of Law in Support of Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards was prepared using Microsoft Word and the document contains 5,307 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 9th day of April 2026 in San Francisco, California.

/s/ Todd A. Seaver
Todd A. Seaver