UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TERRY GAYLE QUINTON, SHAWN O'KEEFE, ANDREW AMEND, DAVID MOSKOWITZ, NATE THAYER, RICKY AMARO, NANCI-TAYLOR MADDUX, ABIGAIL BAKER, WYATT COOPER, JAMES ROBBINS IV, MARILYN BAKER, SHERIE MCCAFFREY, ALLIE STEWART, ELLEN MAHER, DEBBIE TINGLE, ANGELA CLARK, EMILY COUNTS, and SARAH GRANT, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

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

Defendants.

MEMORANDUM & ORDER
19-CV-566 (NGG) (JRC)

NICHOLAS G. GARAUFIS, United States District Judge.

Plaintiffs in this antitrust class action bring a motion to appoint a notice administrator, authorize dissemination of notice, and appoint class counsel. (Pl. Mot. (Dkt. 246-1).) Defendants American Express Company and American Express Travel Related Services Company, Inc. (collectively, "Amex") oppose only Plaintiffs' request to authorize dissemination of notice. (Defs.' Opp. ("Amex Opp.") (Dkt. 247) at 2 n.1.) For the reasons that follow, Plaintiffs' motion is GRANTED in full.

I. BACKGROUND

The court assumes familiarity with the factual background and procedural history of this long-running antitrust dispute and refers to facts in the discussion section as necessary to evaluate the

parties' arguments. More detailed accounts of the facts underlying this Memorandum and Order are available in the court's past orders and in the opinions stemming from the merchants' and federal and state governments' previous cases on this issue. *See Oliver v. Am. Express Co.*, No. 19-CV-566 (NGG), 2024 WL 100848, at *1-2 (E.D.N.Y. Jan. 9, 2024), *amended in part*, 2024 WL 217711 (E.D.N.Y. Jan. 19, 2024), *reconsideration denied*, 2024 WL 3086266 (E.D.N.Y. June 21, 2024); *United States v. Am. Express Co.*, 88 F. Supp. 3d 143, 149-167 (E.D.N.Y. 2015); *Ohio v. Am. Express Co.*, 585 U.S. 529-40 (2018); *In re Am. Express Anti-Steering Rules Antitrust Litig.*, 361 F. Supp. 3d 324, 331-33 (E.D.N.Y. 2019).

As relevant here, in January of 2024, the court certified two groups of classes pursuant to Federal Rule of Civil Procedure 23(b)(3). First, the court certified debit cardholder classes in Alabama, the District of Columbia, Illinois, Kansas, Maine, Mississippi, North Carolina, Ohio, Oregon, and Utah as follows:

> All card account holders, who are natural persons, and whose account billing address was in [Qualified State] during the applicable Class Period, and whose [Visa or Mastercard Debit Card] account was used by an account holder or an authorized user for a purchase of a good or service from a Qualifying Merchant during the Class Period that occurred in [same Qualified State].

Oliver, 2024 WL 100848, at *13, *28 (footnotes omitted). Second, the court certified non-rewards credit cardholder classes in the District of Columbia, Illinois, and Kansas as follows:

> All card account holders, who are natural persons, and whose account billing address was in [Qualified State] during the applicable Class Period, and whose Visa, Mastercard, or Discover General Purpose Credit or Charge Card account *does not offer credit card rewards or charge an annual fee* and was used by an account holder or an authorized user for a

> purchase of a good or service from a Qualifying Merchant during the Class Period that occurred in [same Qualified State].

Oliver, 2024 WL 217711, at *1 (emphasis in original). The court defined the relevant Class Periods and Qualifying Merchants in its January 9, 2024 decision. *See Oliver*, 2024 WL 100848, at *13 n.11 & n.12.

On December 18, 2024, Plaintiffs filed the instant motion to appoint a notice administrator, authorize dissemination of notice, and appoint class counsel. (*See* Pl. Mot.) Amex opposes only Plaintiffs' proposed notice plan. (Amex Opp. at 2 n.1.)

II. PLAINTIFFS' PROPOSED MANNER OF NOTICE

Plaintiffs' proposed manner of notice (the "Notice Plan") is set forth in detail in their motion and in the declaration of Elaine Pang, Vice President of Media at A.B. Data, Ltd. ("A.B. Data"), Plaintiffs' proposed notice administrator. (*See generally* Pl. Mot.; Pang Decl. (Dkt. 246-7).)

Plaintiffs propose to notify class members using internet advertising and social media websites. (*See* Pl. Mot. at 1.) Specifically, A.B. Data will administer a 30-day campaign to distribute at least 39.6 million gross impressions across desktop, tablet, and mobile devices, and will post advertisements on Google Display Network, YouTube, Facebook, Instagram, and X. (*See* Pang Decl. ¶ 13; *see also* Banner Advertisement (Dkt. 246-10).) The advertisements will be geographically targeted to appear in the states identified in the class definition, and they will include an embedded link to the case-specific website. (Pang Decl. ¶ 14.) The case-specific website will, in turn, contain Short and Long Form Notices informing class members of their rights with respect to this action. (*Id.* ¶¶ 20-23; Long Form Notice (Dkt. 246-11); Short Form Notice (Dkt. 246-12).) A.B. Data also plans to create a case-specific Facebook page as a "landing page" for links in Facebook

and Instagram advertisements. (Pang Decl. ¶ 14.) Additionally, A.B. Data will purchase sponsored search listings to appear on Google and its search partners, so that "[w]hen a person uses a specific target phrase and/or keyword in a Google search engine"—like "Amex class action," "Debit card class," or "Credit card litigation"—the link to Plaintiffs' case-specific website "may appear near the top of the search result page." (*Id.* ¶ 15.)

A.B. Data also plans to disseminate a news release via *PR Newswire*'s US1 and Multicultural Newslines, which "will reach traditional and multicultural (Hispanic, African American, Asian American and Native American) media outlets (television, radio, newspapers, magazines), news websites, and journalists across the United States." (*Id.* ¶ 16.) These press releases "will be available in English, Spanish, and Chinese." (*Id.*) A.B. Data also plans to broadcast news about this case through *PR Newswire*'s and A.B. Data's X accounts. (*Id.* ¶ 17.) Finally, A.B. Data will establish and maintain a case-specific toll-free telephone number to address class members' inquiries. (*Id.* ¶ 19.)

All told, A.B. Data estimates that, in the class states, the Notice Plan will reach approximately 75.2% of debit/credit card users an average of 1.7 times each. (*Id.* ¶ 18.)

III. DISCUSSION

A. Notice Administrator and Class Counsel

Plaintiffs request that the court (1) appoint as notice administrator A.B. Data, and (2) appoint as class counsel the law firms of Berman Tabacco, Gordon Ball PLLC, Lovell Stewart Halebian Jacobsen LLP, Miller Law LLC, Stamell & Schager, LLP, Stearns Weaver Miller Weissler Alhadeff & Sitterson, Saltz, Mongeluzzi & Bendesky, P.C., Wagstaff & Cartmell, LLP, and Kahn Swick & Foti, LLC. (Pl. Mot. at 6-9.) Amex does not oppose either of these requests. (Amex Opp. at 2 n.1.)

The court concludes that A.B. Data is capable and qualified to oversee class notice administration in this case. As noted by Plaintiffs, A.B. Data has served as notice administrator in "hundreds of class actions" and has "designed, implemented, and coordinated some of the largest and most complex class action notice and administration plans in the country." (Pl. Mot. at 6; Pang Decl. ¶ 3.) Amex does not object to A.B. Data's appointment. (Amex Opp. at 2 n.1.) As such, the court appoints A.B. Data as notice administrator. *See In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, 527 F. Supp. 3d 269, 272-73 (E.D.N.Y. 2021) (appointing A.B. Data as notice administrator).

As to the appointment of class counsel, Federal Rule of Civil Procedure 23(g) provides:

> (1) Appointing Class Counsel. . . . In appointing class counsel, the court:
>
> (A) must consider:
>
> (i) the work counsel has done in identifying or investigating potential claims in the action;
>
> (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
>
> (iii) counsel's knowledge of the applicable law; and
>
> (iv) the resources that counsel will commit to representing the class;
>
> (B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;
>
> (C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

> (D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and
>
> (E) may make further orders in connection with the appointment.
>
> (2) Standard for Appointing Class Counsel. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.
>
> (3) Interim Counsel. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.
>
> (4) Duty of Class Counsel. Class counsel must fairly and adequately represent the interests of the class.

Fed. R. Civ. P. 23(g).

For the reasons set forth in Magistrate Judge Steven M. Gold's June 18, 2020 order appointing interim class counsel, the court appoints as class counsel the law firms of Berman Tabacco, Gordon Ball PLLC, Lovell Stewart Halebian Jacobsen LLP, Miller Law LLC, Stamell & Schager, LLP, Stearns Weaver Miller Weissler Alhadeff & Sitterson, Saltz, Mongeluzzi & Bendesky, P.C., Wagstaff & Cartmell, LLP, and Kahn Swick & Foti, LLC. (Order Dated 6/18/2020 (Dkt. 55).) Amex does not object to the appointment of these firms as class counsel, and the court concludes, for the reasons set forth in Judge Gold's order, that these firms are qualified to serve as class counsel pursuant to Rule 23(g). (Amex Opp. at 2 n.1; Pl. Mot. at 7-9.) As such, the court appoints these firms as class counsel.

B. The Notice Plan

Plaintiffs seek the court's approval, pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), of their proposed manner of notice to the debit and non-rewards credit cardholder classes. (*See* Pl. Mot. at 1.) Rule 23(c)(2)(B) provides, in pertinent part:

> For any class certified under Rule 23(b)(3) . . . the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language:
>
> (i) the nature of the action;
>
> (ii) the definition of the class certified;
>
> (iii) the class claims, issues, or defenses;
>
> (iv) that a class member may enter an appearance through an attorney if the member so desires;
>
> (v) that the court will exclude from the class any member who requests exclusion;
>
> (vi) the time and manner for requesting exclusion; and
>
> (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B). At issue here is Rule 23(c)(2)(B)'s requirement that the court "direct . . . *individual notice* to all [class] members who can be identified through reasonable effort." *Id.* (emphasis added).

Plaintiffs assert that individual notice is not required here because they cannot through "reasonable effort" identify class members on an individual basis. (Pl. Mot. at 3-6; Pl. Reply (Dkt.

252) at 2-10.) Specifically, neither Plaintiffs nor Amex possess a list—or even a database from which such a list could be compiled—of all class members in this case. (Pl. Mot. at 4-5; Amex Opp. at 6-10.) Rather, it is third-party financial institutions that possess the data from which individual class members might be identified. (Pl. Mot. at 4-5; Amex Opp. at 6-10.) In particular, Visa, Mastercard, and Discover-branded cards are issued to cardholders by banks, and it is *those banks*, not the card issuers, Amex, or Plaintiffs, who possess the class member-identifying data, including cardholders' names, addresses, and transaction histories. (Pl. Mot. at 4-5; Amex Opp. at 6-10.)

Plaintiffs represent that it would be extremely burdensome for them to obtain the data necessary to identify class members on an individual basis. (Pl. Mot. at 3-6; Pl. Reply at 6-8.) First, Plaintiffs point out that "literally thousands and thousands" of banks issue Visa, Mastercard, and Discover-branded cards. (Pl. Reply at 3.) Second, "cardholders" are not necessarily "class members": class eligibility is not based solely on cardholder names and addresses, but on one or more qualifying transactions, which in this case are "non-reward credit-card or debit-card transactions at one or more of 38 [qualified merchants] during specified time periods, where the merchant's location in which the transaction occurred is a state that matches the state of the cardholder's account address." (*Id.* at 1.) Thus, Plaintiffs assert, creating a class list is not as simple as asking banks for the names and addresses of their cardholders. (*Id.*) Rather, banks would have to collect and disaggregate their data to determine whether cardholders fit into each of the class parameters. (*Id.*) One bank summarized the costliness of such an endeavor as follows:

> [I]t appears that [collecting this data] would, among other things, involve writing bespoke coding/data queries and pulling billions of records, which would include adding power/capacity to the Bank's mainframe to process all this

> data, and thereafter conducting complicated sorting of those records and QC/data integrity reviews. The bank personnel time will exceed 1,000 hours at the low end and span several months at minimum—and this does not include legal review. The burdensomeness . . . cannot be understated [sic], and that is before we get to any of the privacy concerns and notification obligations related to releasing cardholder information.

(Bank Letter (Dkt. 248-5) at 3.) The same bank explained how additional complications arise when interpreting merchant-level data:

> Card payment networks include a description of merchants in the transaction data, but that description does not . . . necessarily match the Relevant Merchant names included in the Document Subpoena. When we receive transactional data from a card payment network for a purchase at, for example, Apple Widget Corp., it may appear in the merchant description as APL Widget Corp. or AWC, making disaggregation of the data we receive by Relevant Merchant name impossible because we have no control over the merchant description. If achievable at all in a manner that would make the data useful, it would take weeks (at a minimum, and much likely longer) to develop bespoke code, query for, process, disaggregate, and then perform quality control checks of the information received from the card payment networks by Plaintiffs' Relevant Merchants.

(*Id.* at 6.) Thus, because of "the extreme burden that would be placed on multiple third parties," Plaintiffs assert that individual class members "cannot be identified with reasonable effort." (Pl. Reply at 6.) *See* Fed. R. Civ. P. 23(c)(2)(B).

Moreover, while Plaintiffs concede that they "could conceivably" compile a list from a subset of banks based on cardholder names and addresses alone, they assert that such a list would be "both

underinclusive and overinclusive." (Pl. Mot. at 5.) The list would be underinclusive because it "would leave out a substantial number of class members who made qualifying purchases with cards issued by [other] banks and credit unions." (*Id.*) And the list would be overinclusive because it "would include all cardholders, not class members, making [the list] useless (or even counterproductive) as a means of giving individual notice." (Pl. Reply at 8.) Plaintiffs additionally state that, in their experience, "banks are extremely reluctant . . . to disclose personal identification information about their customers, on privacy and other grounds." (*Id.*; *see also* Hammarskjold Decl. (Dkt. 246-2) ¶¶ 24-27.) As such, Plaintiffs assert that obtaining higher-level data from card-issuing banks would be a fruitless effort. (Pl. Mot. at 5.)

Finally, Plaintiffs emphasize that the Notice Plan is estimated to reach a large percentage of the class. (*Id.* at 6.) A.B. Data estimates that, in the class states, the Notice Plan will reach approximately 75.2% of debit/credit card users an average of 1.7 times each. (Pang Decl. ¶ 18.) Plaintiffs point out that, according to the Federal Judicial Center, "a notice plan that reaches between 70 and 95 percent of the class is reasonable." (Pl. Mot. at 6 (citing Federal Judicial Center, *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, at 3 (2010), www.fjc.gov/sites/default/files/2012/NotCheck.pdf (hereinafter "FJC Report")).) Thus, Plaintiffs assert that their Notice Plan is "the best notice that is practicable under the circumstances." (Pl. Reply at 4 (quoting Fed. R. Civ. P. 23(c)(2)(B)).)

Amex argues that Plaintiffs' Notice Plan is inadequate because it does not provide for individual notice to class members.[1] (Amex Opp. at 4.) Amex emphasizes that Rule 23(c)(2)(B) *requires* "*individual notice* to all members who can be identified through

[1] Amex does not otherwise challenge the adequacy of Plaintiffs' Notice Plan, including Plaintiffs' proposed Short and Long Form Notices. (*See generally* Amex Opp.)

reasonable effort," and argues that Plaintiffs have not made "reasonable efforts" to identify class members on an individual level. (*Id.* at 1 (emphasis in original).) Specifically, Amex asserts that (1) Plaintiffs "never attempted to secure a list of potential class members" from credit/debit card companies or banks, (2) it is irrelevant that Amex does not possess a list of class members because Plaintiffs "were required to compile the list from other sources," and (3) individual notice is required even if the list of class members is over or underinclusive. (*Id.* at 6-12.) Thus, Amex requests that the court deny Plaintiffs' motion to approve their Notice Plan. (*Id.* at 13.)

As noted above, Rule 23(c)(2)(B) provides that, in a class action maintained under subdivision (b)(3) of Rule 23, the court must direct to class members "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The individual notice aspect is "designed to fulfill requirements of due process" by requiring notice that is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-74 (1974).[2] Individual notice is not a "discretionary consideration," but an "unambiguous requirement" of Rule 23. *Id.* at 176. As such, "each class member who can be identified through reasonable effort must be notified that he [or she] may request exclusion from the action and thereby preserve his [or her] opportunity to press his [or her] claim separately or that he [or she] may remain in the class." *Id.*; *see also id.* at 166 n.5, 175 (requiring individual notice to 2,250,000 class members where "the names and addresses of [those] class members [were] easily ascertainable" from the Respondents' own records).

[2] When quoting cases, unless otherwise noted, all citations and internal quotation marks are omitted, and all alterations are adopted.

At the same time, Rule 23 "accords considerable discretion to a district court in fashioning notice to a class." *In re Agent Orange Prod. Lia. Litig. MDL No. 381*, 818 F.2d 145, 168 (2d Cir. 1987). Just as a court may not write out the "individual notice" language of Rule 23(c)(2)(B), nor may it write out the qualification that such notice be practicable and reasonable under the circumstances. Thus, while Amex characterizes Rule 23(c)(2)(B) as creating an "individual-notice *requirement*," (*see* Amex Opp. at 11 (emphasis added)), "actual notice to each and every class member" is simply not required in every case, *see In re Agent Orange*, 818 F.2d at 168. *See also In re Vivendi Universal, S.A.*, 242 F.R.D. 76, 107 (S.D.N.Y. 2007) ("While individual notice, where reasonably possible, is required, when class members' names and addresses may not be ascertained by reasonable effort, publication notice has been deemed adequate to satisfy due process.") The question, therefore, is whether Plaintiffs' Notice Plan is "the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B).

Having scrutinized Plaintiffs' Notice Plan and Amex's critiques of their proposal, the court is satisfied that the Notice Plan is the best notice that is practicable under the circumstances.

First, the Notice Plan will reach a large percentage of the class. "The lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class." *In re Restasis*, 527 F. Supp. 3d at 273 (quoting FJC Report at 3). According to the Federal Judicial Center, a notice plan that reaches between 70 to 95% of the class is reasonable. FJC Report at 3. Plaintiffs' Notice Plan—which is estimated to reach approximately 75.2% of debit/credit card users in class states—meets that target. *See In re Restasis*, 527 F. Supp. 3d at 273 (approving notice plan estimated to reach 80% of class members). Amex does not dispute

the estimated reach of Plaintiff's Notice Plan. (*See* Amex Opp. at 12.)

Second, the court concludes that individual class members cannot be identified with reasonable effort. This is not a case where a class list is readily identifiable from the defendant's own records.[3] Rather, thousands of third-party banks possess the raw data from which a class list might be composed. And obtaining from each of these banks a list of individuals who meet each of the class requirements would be beyond burdensome: It would require thousands of hours of work "at the low end," including crafting "bespoke coding/data queries," pulling "billions of records," "adding power/capacity to [banks'] mainframe[s]," and conducting a "complicated sorting of those records." (Bank Letter at 3, 6.) The "burdensomeness of [such a request] cannot be [over]stated." (*Id.* at 3.)

Amex does not dispute the time and expense that would be involved in creating an accurate class list. And while Amex argues that Plaintiffs' Notice Plan is inadequate, it is not exactly clear

---

[3] *See, e.g.*, *Eisen*, 417 U.S. at 166 n.5, 175 (requiring individual notice to 2,250,000 class members where "the names and addresses of [those] class members [were] easily ascertainable" from the Respondents' own records); *Bourlas v. Davis L. Assocs.*, 237 F.R.D. 345, 354, 356 (E.D.N.Y. 2006) (finding "no indication that any of the class members cannot be identified through reasonable efforts" where class comprised of "[a]ll persons who, *according to the defendants' records*," had received a faulty collections letter (emphasis added)); *Karvaly v. eBay, Inc.*, 245 F.R.D. 71, 93 (E.D.N.Y. 2007) ("Because [defendant] has admitted that it has access to an 'easily accessible list' of the names and addresses of each of its individual account holders, Rule 23 requires that each class member be provided with individual notice of the pending settlement."); *Lizondro-Garcia v. Kefi LLC*, 300 F.R.D. 169, 176, 181 (S.D.N.Y. 2014) (approving individual notice where plaintiffs could "easily identify the [class members] by reviewing defendants' payroll records"); *Vasquez v. A+ Staffing LLC*, Nos. 22-CV-2306 (CLP), 22-CV-3468 (CLP), 2024 WL 3966246, at *26 (E.D.N.Y. Aug. 27, 2024) (approving individual notice where class members were "identified through defendants' employee records").

what Amex would have Plaintiffs do. Amex apparently would not require third-party banks to comb through mountains of data to compile a list of cardholders who meet each of the class requirements. Rather, Amex apparently contends that Plaintiffs must subpoena third-party banks for "cardholder-identifying information," mail notices to those individuals, and supplement with publication notice if necessary. (Amex Opp. at 10-12.) Assuming that "cardholder-identifying information" means cardholders' names and addresses, as Plaintiffs point out, "cardholders" are not necessarily class members. Even if Plaintiffs were to subpoena the top card-issuing banks for cardholder names and addresses, such a list would be vastly overinclusive because cardholders are only class members if they made a qualifying purchase in the same state as the cardholder's address during the defined class period. (Pl. Mot at 5.) Such a list would also be underinclusive because it would exclude class members whose cards were issued to them by the thousands of other smaller banks.[4] (Pl. Mot. at 5.) Amex would have Plaintiffs cast individual notices into the wind, without regard to the efficacy of such an approach, and at great cost to Plaintiffs and the third-party banks. Rule 23(c)(2)(B) does not require such an approach. *See Jermyn v. Best Buy Stores, L.P.*, No. 8-CV-214 (CM), 2010 WL 5187746, at *7 (S.D.N.Y. Dec. 6, 2010) ("[I]ndividual notice to an overinclusive group is not required by Rule 23. . . . Although individual notice to an overinclusive list may be permitted if the list also contains all known class members . . . that is not the case here."); *In re Agent Orange*, 818 F.2d at 169 (individual notice not necessary for each of 2.4 million Vietnam veterans potentially

[4] Because such information would be of little use in compiling an accurate class list, it is of no moment whether Plaintiffs "never attempted" to obtain cardholders' names and addresses from banks. (Amex Opp. at 6-7.)

exposed to Agent Orange where "no easily accessible list of veterans" existed, and "such a comprehensive list could [not] reasonably have been compiled").

"[F]or the due process standard to be met[,] it is not necessary that every class member receive actual notice, so long as class counsel acted reasonably in selecting means likely to inform persons affected." *In re Prudential Sec. Inc. P'ships Litig.*, 164 F.R.D. 362, 368 (S.D.N.Y. 1996); *see also Weigner v. City of New York*, 852 F.2d 646, 649 (2d Cir. 1988), *cert. denied*, 488 U.S. 1005 (1989) ("The proper inquiry is whether [class counsel] acted reasonably in selecting means likely to inform persons affected, not whether each [class member] actually received notice.") For the reasons stated above, the court concludes that Plaintiffs' Notice Plan complies with the requirements of Rule 23(c)(2)(B). With class member-identifying data disaggregated and spread out among thousands of third parties, individual class members cannot be identified through reasonable effort. And Amex's alternative would not necessarily reach more class members than Plaintiffs' Notice Plan. As such, the court approves the Notice Plan and GRANTS Plaintiffs' motion to authorize dissemination of notice.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' motion to appoint a notice administrator, authorize dissemination of notice, and appoint class counsel is GRANTED in full.

SO ORDERED.

Dated: Brooklyn, New York
January 24, 2025

s/Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge