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 FINAL APPROVAL OF PROPOSED SETTLEMENT AND DISTRIBUTION PLAN

Date filed: April 9, 2026

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I. INTRODUCTION

Plaintiffs[1] move under Rule 23 of the Federal Rules of Civil Procedure for final approval of the Settlement with Defendants American Express Company and American Express Travel Related Services Company, Inc. (hereinafter "Defendants" or "Amex"). The Settlement with Amex is entered by the certified classes,[2] inclusive of the class representatives, and individual plaintiffs[3] who at various times had been parties to the Action.

The Court granted preliminary approval of the proposed settlement on February 4, 2026. ECF[4] 398 ("Preliminary Approval Order"). The proposed settlement provides for $17,500,000.00 for the benefit of the Class that prevailed at trial,[5] provides a release of the certified classes' and individual plaintiffs' claims, and is conditioned on a judgment to be entered dismissing with prejudice the Plaintiffs' claims asserted against Amex and setting aside the jury verdict.

The settlement resolves this Action, which was brought in January 2019 and litigated through a three-week trial in August 2025 to a split jury verdict, in it its entirety.

In granting preliminary approval to the Settlement, the Court found that it would likely be able to approve the Settlement with Defendants under Rule 23(e)(2). Preliminary Approval

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[1] "Plaintiffs" means the Debit-Card Classes for Alabama, District of Columbia, Kansas, Maine, Mississippi, North Carolina, Ohio, Oregon, Utah and Illinois and the Non-Rewards Credit-Card Classes for District of Columbia, Kansas and Illinois, inclusive of the Class Representatives, and all other individual plaintiffs who at any time have been parties to the Action: Anthony Oliver, Terry Gayle Quinton, Susan Burdette, Gianna Valdes, Zachary Draper, Nate Thayer, Michael Thomas Reid, Gary Accord, Nanci-Taylor Maddux, Joseph Realdine, Marilyn Baker, Sherie McCaffrey, and Ellen Maher.

[2] The certified classes are the Debit-Card Classes for Alabama, District of Columbia, Kansas, Maine, Mississippi, North Carolina, Ohio, Oregon, Utah and Illinois, and the Non-Rewards Credit-Card Classes for District of Columbia, Kansas, and Illinois.

[3] Anthony Oliver, Terry Gayle Quinton, Susan Burdette, Gianna Valdes, Zachary Draper, Nate Thayer, Michael Thomas Reid, Gary Accord, Nanci-Taylor Maddux, Joseph Realdine, Marilyn Baker, Sherie McCaffrey, and Ellen Maher.

[4] Cites to "ECF" refer to docket entries in this case, 1:19-cv-00566 (NGG), known at different times as *Oliver v. Am. Express Co.* and *Moskowitz v. Am. Express Co.*

[5] The jury awarded the Illinois non-rewards credit-card class a total of just over $12.5 million in compensatory and punitive damages on its Illinois Consumer Fraud and Deceptive Business Practices Act claim. The jury returned a verdict for Amex on all of the other classes' antitrust claims and found no damages to the Illinois debit-card class for its claim under the Illinois Consumer Fraud and Deceptive Business Practices Act.

Order at 3. The Class's reaction since Class Notice was issued further supports finally approving the Settlement. The notice period began on February 18, 2026 and the Notice Administrator disseminated notice using various methods including digital media, earned media, and print media. Only one objection has been received. This is a positive indication from the Class that the Settlement reflects a satisfactory resolution.

Plaintiffs also move for final approval of the Distribution Plan. ECF 395-1. The Court found that "the proposed Distribution Plan is reasonable." Preliminary Approval Order at 3. The proposed plan distributes monies to the Illinois non-reward credit-card class, which was the only class to be awarded damages at trial, on an equal, *per-capita* basis.

For the reasons detailed below and previously in Plaintiffs' memorandum in support of their motion for preliminary approval (ECF 391) and motion for approval of the plan of distribution (ECF 395), Plaintiffs respectfully request that the Court finally approve the Settlement and the Distribution Plan and enter the proposed Final Judgment.

II. STATEMENT

A. Pre-Trial Proceedings

Plaintiffs brought a class-action complaint in January 2019, alleging on behalf of non-Amex credit- and debit-card holders that Amex's anti-steering rules caused inflation of retail prices paid by consumers. ECF 1. The plaintiffs alleged that Amex's rules were unreasonable restraints of trade under federal antitrust laws and various state antitrust laws and constituted an unfair trade practice under various state consumer-protection statutes. The plaintiffs sought an injunction under federal law and damages under state laws, and restitution for unjust enrichment.

Amex moved to dismiss the entire Action under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) and subsequently sought judgment on the pleadings as to various state law claims under Rule 12(c). The Court's rulings in April 2020 and February 2021 resolved these motions. ECF 43, 66. Together, the Court dismissed Plaintiffs' claims for injunctive relief under the Sherman Act and Clayton Act, claims for unjust enrichment, claims asserted under the antitrust laws of Arizona, California, Illinois, Iowa, Maryland, Michigan, Minnesota, Nebraska,

Nevada, New Hampshire, New Mexico, New York, North Dakota, Rhode Island, South Dakota, Tennessee, and Wisconsin, and claims asserted under the consumer-protection laws of California, D.C., Florida, Massachusetts, and New Mexico. The Court dismissed various individual named plaintiffs.

The parties engaged in fact discovery from late 2020 through 2022, including voluminous party document discovery, interrogatories, requests for admission, and depositions, as well as third-party discovery of over forty financial institutions and merchants.

In March 2023, Plaintiffs sought certification of a credit-card class and a debit-card class for each of thirteen states and the District of Columbia. ECF 138–40 (under seal versions); 144–46 (public versions). In July 2023, the Court held an evidentiary hearing on class certification and the parties' motions to exclude expert testimony under *Daubert*.

On January 9, 2024, the Court decided Plaintiffs' motion for class certification. ECF 220. The Court granted Plaintiffs' motion to certify the debit-card classes for Alabama, D.C., Illinois, Kansas, Maine, Mississippi, North Carolina, Ohio,[6] Oregon, and Utah, denied Plaintiffs' motion to certify the debit-card classes for Hawaii, Montana, Vermont, and West Virginia, and denied Plaintiffs' motion to certify each of the credit-card classes for those states. *Id.* at 58–59. The certified debit-card classes were represented by named plaintiffs Angela Clark and Allie Stewart/Willingham (Alabama), Sarah Grant (D.C.), Ricky Amaro (Illinois), Drew Amend (Kansas), Abigail Baker (Maine), Steele Robbins, Debbie Tingle, and Emily Counts (Mississippi), Shawn O'Keefe (North Carolina), David Moskowitz (Oregon), and Wyatt Cooper (Utah).

The Court found that the Class Representatives had provided and would provide adequate representation for their classes under Rule 23(a)(4). *Id.* at 32–37, 34 n.17, 58. The Court denied Amex's motion to exclude Plaintiffs' expert economist's opinion testimony and granted in part

[6] The Ohio claim was later dismissed in the Court's decision on summary judgment. ECF 236.

Plaintiffs' motion to exclude the expert testimony of one of Amex's three expert witnesses. *Id.* at 22, 26, 58.

On January 19, 2024, the Court granted Plaintiffs' request to certify non-rewards credit-card classes for D.C., Kansas, and Illinois, and denied certification of a non-rewards credit-card class for North Carolina. ECF 224. The order certified non-rewards credit-card classes represented by named plaintiffs Sarah Grant (D.C.), Drew Amend (Kansas), and Ricky Amaro (Illinois). The Court found these Class Representatives had provided and would provide adequate representation for their classes. *Id*. at 2.

Amex sought appellate review of the class-certification orders, filing two petitions with the U.S. Court of Appeals for the Second Circuit. *Am. Express Co. v. Oliver*, No. 24-238 (2d Cir. Jan. 26, 2024). On July 30, 2024, the Second Circuit denied Defendants' Rule 23(f) petitions. Mandate, ECF 235.

Amex moved for summary judgment, and Plaintiffs for partial summary judgment. The Court heard oral argument on the summary-judgment motions and on August 23, 2024, the Court issued a memorandum and order granting in part and denying in part Plaintiffs' motion and granting in part and denying in part Defendants' motion. ECF 236.

On January 24, 2025, the Court ordered notice to the certified classes. The Court appointed A.B. Data, Ltd., as notice administrator and authorized dissemination by publication of notice of the pendency of the certified class action, and the opportunity for class members to exclude themselves from the classes. ECF 257.

The Court appointed as class counsel under Rule 23(g) 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. *Id.* at 6.

B. Trial

In the spring of 2025, the parties filed, and the Court decided, more than a half dozen motions in limine. The parties' pretrial exchanges of trial witness lists, exhibits, proposed jury

instructions and verdict sheets occurred in accordance with the Court's pre-trial practices and directives. A trial commenced in July 2025 but ended in mistrial. Trial was re-scheduled and Plaintiffs' claims were tried to a jury from August 11 to 28, 2025.

The jury returned a verdict for Defendants on all claims brought by all certified classes, except for the claim brought by the Illinois Non-Rewards Credit-Card Class under the Illinois Consumer Fraud and Deceptive Business Practices Act. Final Verdict Sheet, ECF 383. For that claim, the jury awarded compensatory damages of $6,006,339.55 and punitive damages of $6,500,000. *Id*. at 11–12 (Questions 10–11).

On September 12, 2025, the parties submitted a proposed briefing schedule for post-trial motions. ECF 386. Amex sought to file motions under Rule 50 for judgment as a matter of law and Rule 59 for a new trial and/or amending the judgment. *Id*. at 2.

By docket order on September 18, 2025, the Court deferred entry of judgment under Rule 58(b)(2) pending resolution of the parties' post-trial motions.

C. Post-Trial Developments

Prior to trial, in April 2025 the parties engaged in a mediation session with mediator Gregory P. Lindstrom of Phillips ADR Enterprises. *See* Declaration of Todd A. Seaver ("Seaver Decl.") ¶50. The mediation did not resolve the case. Arms-length negotiations re-started after trial, with continued dialogue through the mediator in September 2025 and continuing through October 2025. *Id*. ¶51. On October 23, 2025, the parties reached an agreement in principle to resolve the Action and executed a term sheet setting forth the principal terms of agreement. *Id*. ¶53. The Class Representatives are informed of, and agree to, the Settlement's principal terms, and agree to the proposed distribution of net settlement funds solely to the Illinois non-rewards credit-card class members. *Id.* ¶¶54–55.

On January 23, 2026, Plaintiffs moved for preliminary approval of the Settlement, approval of the Plan of Distribution, and approval of the Notice Plan (ECF 390–395), which the Court granted on February 4, 2026. Preliminary Approval Order. The Claims Administrator, A.B. Data, timely updated the case website, www.AmexAntitrust.com, implemented the Notice

Plan, and is receiving completed claims forms. Declaration of Mark Cowen Regarding Settlement Administration ("Cowen Declaration"), filed concurrently herewith.

The deadline for Class Members to object to the Settlement is April 29, 2026, and for claims submissions, May 19, 2026. The Final Fairness Hearing is scheduled for June 17, 2026.

D. The Settlement Agreement

The Settlement with Amex is entered on behalf of Plaintiffs, meaning the certified classes, inclusive of the Class Representatives, and individual plaintiffs who had previously been parties to the Action. ECF 391-1 ("Settlement Agreement"), ¶¶1.aa & 9.

The Settlement provides for Amex to pay $17.5 million in cash shortly after an order preliminarily approving the settlement. *Id*. ¶¶1.jj & 11. Amex made this payment.

Amex agrees to release any claims against Plaintiffs arising from institution of the Action. In exchange, Plaintiffs agree to release their claims (*id*. ¶6) and agree that the Settlement is conditioned on a Judgment to be entered that dismisses with prejudice the Plaintiffs' claims asserted against Amex and sets aside the jury verdict. (*Id*. ¶¶1.b, 1.u, 34).

The Settlement Fund is a common fund. It will be used to pay for (i) Notice (up to $250,000), (ii) Administrative Costs, (iii) any Litigation Expenses awarded by the Court, (iv) any attorneys' fees awarded by the Court, (v) any service awards approved by the Court, and (vi) and other costs, fees or expenses, including Taxes, permitted by the Court. Settlement Agreement ¶¶13, 18. The Settlement provides that the timing of the payment of attorney fees and expenses is no sooner than seven days after the Court grants final approval of the material terms of the Settlement. *Id*. ¶21. The balance remaining in the Settlement Fund is the Net Settlement Fund that will be distributed to Authorized Claimants, *id*. ¶13, after the conclusion of the claims-vetting process.

The Settlement does not contemplate or require certification of any class for settlement purposes that is new or different from the Classes already certified pursuant to Rules 23(a) and 23(b)(3) by the Court orders dated January 9, 2024 (ECF 220) and January 19, 2024 (ECF 224).

The Settlement provides that the Parties agree it is unnecessary to provide a second opportunity for Class Members to opt out. Settlement Agreement ¶19. The Classes were already provided an opportunity to opt-out in connection with the notice of pendency provided to the Classes in accordance with the Court's prior order authorizing dissemination of notice of the pendency of the Action. ECF 257.

The Settlement is not a claims-made settlement, and there is no reversion to Amex providing the Settlement becomes final. Settlement Agreement ¶17.

E. The Distribution Plan

Plaintiffs propose to distribute settlement monies to the one class that prevailed on its claim at trial, the Illinois non-rewards credit card class. ECF 395-1 ("Distribution Plan") ¶4. The Net Settlement Fund shall be distributed to Eligible Claimants on an equal, *per capita* basis. *Id*. ¶11. To determine each Eligible Claimant's share of the Net Settlement Fund, the Claims Administrator shall divide the total value of the Net Settlement Fund by the number of Eligible Claimants. *Id*.

Settlement payments will be sent digitally to each Eligible Claimant using the digital options of their choice (*e.g.*, PayPal, Venmo) to instantaneously receive their payment. *Id*. ¶13. They can also request a traditional paper check payment by mail. *Id*.

F. Attorney's Fees, Litigation Expenses, and Service Awards

Notice was disseminated to the Class that Class Counsel would ask the Court for attorneys' fees up to one-third of the Settlement Fund, litigation expenses up to $8 million, and service awards for the class representatives, to be paid out of the Settlement Fund. ECF 393-1 ("Long-Form Notice") § 20; ECF 393-2 ("Short-Form Notice") at 2.

Class Counsel makes these requests in the concurrently filed Motion for an Award of Attorneys' Fees, Litigation Expenses, and Service Awards ("Fee Brief").

III. ARGUMENT

A. Legal Standard

"The compromise of complex litigation is encouraged by the courts and favored by public policy." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir. 2005) (citation omitted). In service of "the strong judicial policy in favor of settlements, particularly in the class action context," *id*. at 116 (citation modified), a court may approve a class-action settlement upon a showing that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

A settlement is fair, reasonable, and adequate and should be approved if the settlement is shown to be both procedurally and substantively fair. *Flores v. CGI Inc.*, No. 22-cv-350 (KHP), 2022 WL 13804077, at *3 (S.D.N.Y. Oct. 21, 2022); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019) ("Payment Card").

The Federal Rules, as amended in 2018, provide that the Court can grant final approval if the Court finds that the proposed settlement is "fair, reasonable, and adequate," after considering whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). The first two factors are "procedural" factors that address "the conduct of the litigation and of the negotiations leading up to the proposed settlement" and the latter two factors address "substantive" matters concerning the "relief that the settlement is expected to

provide to class members." Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment; *Moses v. New York Times Co.*, 79 F.4th 235, 242 (2d Cir. 2023).

These factors clarify and supplement, rather than displace, the Second Circuit's traditional factors set out in *City of Detroit v. Grinnell Corp*., 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000); *Moses*, 79 F.4th at 242. The *Grinnell* factors evaluate the fairness, adequacy, and reasonableness of a class action settlement with consideration of:

> (1) the complexity, expense and likely duration of the litigation;
> (2) the reaction of the class to the settlement;
> (3) the stage of the proceedings and the amount of discovery completed;
> (4) the risks of establishing liability;
> (5) the risks of establishing damages;
> (6) the risks of maintaining the class action through the trial;
> (7) the ability of the defendants to withstand a greater judgment;
> (8) the range of reasonableness of the settlement fund in light of the best possible recovery;
> (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Hyland v. Navient Corp., 48 F.4th 110, 121 (2d Cir. 2022) (quoting *Grinnell*, 495 F.2d at 463).

After the 2018 amendments to Rule 23(e), courts may no longer presume a settlement to be substantively fair where it arose from an arm's-length bargaining process. *Moses*, 79 F.4th at 243. In addition, Rule 23(e) now requires a "proportionality analysis comparing fees and class recovery." *Kurtz v. Kimberly-Clark Corp.*, 142 F.4th 112, 119 (2d Cir. 2025).

B. The Settlement is procedurally fair

1. Plaintiffs and Co-Lead Counsel have adequately represented the Class (Rule 23(e)(2)(A))

"To determine whether the class representatives and class counsel have adequately represented the class under Rule 23(e)(2)(A), courts consider whether (1) plaintiff's interests are antagonistic to the interests of other members of the class and (2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." *Caccavale v. Hewlett-Packard Co.*,

No. 2:20-cv-974 (NJC) (ST), 2025 WL 2960237, at *9 (E.D.N.Y. Oct. 20, 2025) (citation modified).

Plaintiffs' interests are aligned with the interests of absent class members. The Court concluded in its class certification orders that the Class Representatives would adequately represent their respective classes. ECF 220, 224. Since certification, nothing has eroded the Class Representatives' adequacy.

A principal purpose of assessing adequate representation is to "uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997) (citation omitted). "A class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348–49 (2011) (citation modified). The analysis of whether a class representative is adequate "is twofold: the proposed class representative must have an interest in vigorously pursuing the claims of the class, and must have no interests antagonistic to the interests of other class members." *Denney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006) (citations omitted).

Here, each statewide Class has enjoyed separate representation by one or more class representatives through the end of trial and through reaching the Settlement. There are not, and there have not been, any conflicts of interest between the Class Representatives and the respective statewide Classes they each represent.

Plaintiff's attorneys are qualified, experienced and able to conduct the litigation. Since appointment as Class Counsel under Rule 23(g) on January 24, 2025 (ECF 257), Class Counsel have continued to adequately represent the Classes. Class Counsel marshalled resources and assembled a trial team to try this complex antitrust matter to a partial jury verdict for Plaintiffs, demonstrating that they are qualified, experienced, and able to conduct the litigation. Following trial, Class Counsel renewed settlement negotiations through an experienced mediator to reach the proposed Settlement, successfully moved for the Preliminary Approval Order, and have overseen implementation of the Notice Plan.

2. The Settlement was negotiated at arm's length (Rule 23(e)(2)(B))

A class-action settlement reached through arm's-length negotiations between experienced, capable counsel knowledgeable in complex class litigation is a strong indication of procedural fairness. *Moses*, 79 F.4th at 243. Here, settlement negotiations were carried out with the assistance of a nationally recognized mediator, a fact which "weighs in favor of a finding of [procedural] fairness because it 'helps to ensure that the proceedings were free of collusion and undue pressure.'" *Hunter v. Blue Ridge Bankshares, Inc.*, No. 23-cv-8944, 2025 WL 1649323, at *15 (E.D.N.Y. June 11, 2025).

C. The Settlement is substantively fair, reasonable, and adequate

1. The costs, risks, and delay of post-trial proceedings and appeal favor the Settlement (Rule 23(e)(2)(C)(i) and *Grinnell* factors 1, 4, 5, and 6)

The first factor of Rule 23(e)(2)(C)—costs, risks, and delay of trial and appeal—subsumes several *Grinnell* factors. *See Caccavale*, 2025 WL 2960237, at *9.[7]

As the case is through trial, there is no need to forecast the likely range of possible class-wide recoveries and forecast the likelihood of success in obtaining them. The jury's verdict bears out that the risk to Plaintiffs was high when it came to proving that Amex's anti-steering rules constitute an unreasonable restraint of trade under antitrust law. *See* Final Verdict Sheet at 4 (Question 3), ECF 383. Likewise, there was real risk to Amex that a jury could find its anti-steering rules to constitute an unfair act affecting consumers, meriting compensatory and punitive damages. *Id.* at 7–12 (Questions 6–11).

Here, unlike a pre-trial settlement, the risks of trial, Amex's scope of liability, and recoverable damages are known. The costs and duration of the litigation have already been substantial.

[7] This factor "subsumes four *Grinnell* factors," *id.*, including: "(i) the complexity, expense and likely duration of the litigation; (ii) the risks of establishing liability; (iii) the risks of establishing damages; and (iv) the risks of maintaining the class through the trial," *Payment Card*, 330 F.R.D. at 36, as well as the eighth and ninth *Grinnell* factors (comparison with the best possible recovery and recovery in light of all litigation risks).

After a completed class-action trial, the reasonableness of a settlement should consider "the jury verdict as well as the complexity, expense and likely duration of future appellate litigation on the jury verdict" and "the risk of the jury verdict being overturned either on defendants' motion for judgment as a matter of law or on appeal." *Vladimir v. U.S. Banknote Corp.*, 976 F. Supp. 266, 266 (S.D.N.Y. 1997). Rule 23(e) and the *Grinnell* factors do not "require the Court to adjudicate the disputed issues or decide unsettled questions; rather, the Court need only assess the risks of litigation against the certainty of recovery under the proposed settlement." *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004) (citation omitted). "Courts favor settlement when it 'results in substantial and tangible present recovery, without the attendant risk and delay of trial [and appeal].'" *Rosenfeld v. Lenich*, No. 18-cv-6720 (NGG) (PK), 2021 WL 508339, at *5 (E.D.N.Y. Feb. 11, 2021) (citation omitted).

Absent the post-trial settlement, the parties would litigate substantial post-trial motions. Amex has signaled it would file motions under Rule 50 for judgment as a matter of law and Rule 59 for a new trial and/or amendment of the judgment. ECF 386. During the trial itself, Amex twice moved for a mistrial. And should the verdict withstand post-trial motions, there is a near certainty of appeals to the Second Circuit.

For Plaintiffs, to recover further damages would require reversal of the jury's verdict on the rule-of-reason antitrust claims for the debit-card classes and two of the non-rewards credit-card classes. This appellate strategy would be high-risk, as it would likely necessitate an appeals court overturning the jury verdict on liability (for all antitrust claims) and damages (for the Illinois debit-card class claim). For recovery on dismissed consumer-protection claims, Plaintiffs would have to obtain appellate reversal of the Court's considered rulings on the Rule 12(b) and 12(c) motions, obtain remand for a new trial on those consumer-protection claims, and prevail at trial. In addition, in any appellate litigation, Plaintiffs would also have to defend the jury verdict in favor of the Illinois non-rewards credit-card class on the Illinois consumer-protection claim to preserve the recovery already obtained. All told, post-trial motions and appeals could reasonably

be expected to consume two to three years, on top of the seven years the case has already been litigated. Moreover, a new trial would add untold cost, delay, and risk.

Absent the settlement, the case would continue to be fiercely contested. "Victory—even at the trial stage—is not a guarantee of ultimate success." *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 332 (E.D.N.Y. 2010) (Weinstein, J.) (noting that likelihood of appeals and resultant delay favored settlement) (citation modified).

The proposed Settlement is adequate in that it provides a substantial and tangible present recovery now.

2. The reaction of the Settlement Class to the Settlement supports approval (*Grinnell* factor 2)

"A favorable reception by the class constitutes strong evidence that a proposed settlement is fair. For example, if only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement." *Caccavale*, 2025 WL 2960237, at *8 (citation modified).

While Class members continue to have an opportunity to file a claim or object, the Class's reaction so far indicates that they favor approval of the Settlement.

To date there has been only one objection to the Settlement. Cowen Decl. ¶16.

The lone objection is to attorney fees. ECF 400. It can be overruled on its face for lack of standing. The objector does not provide an address in any Class state and is an Amex cardmember. *Id*. at 1 (acknowledging use of Amex card over ten-year period), 2 (excerpt of Amex bill showing account open in 2019), 2–4 (mailing and billing address in Iowa). Amex cardmembers are excluded from the Class (*see, e.g.*, Long Form Notice §6), and "[o]nly Class members have standing to object to the Settlement of a class action," *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 327 F.R.D. 483, 499 (S.D.N.Y. 2018) (citation omitted). Moreover, the objection is non-substantive and meritless. The seven-year plus history of the Action through trial makes it apparent that this was a meritorious case handled effectively by civil litigation, not a "money grab."

Plaintiffs will address any other objections that may be filed by the May 19, 2026, deadline in their reply to this motion.

3. The stage of the proceedings and the amount of discovery completed favors approving the Settlement (*Grinnell* factor 3)

"The relevant inquiry for this [third *Grinnell*] factor is whether the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement." *In re AOL Time Warner, Inc.*, No. 02 Civ. 5575 (SWK), 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006).

This factor is readily satisfied here because the parties completed full merits discovery and litigated the claims through trial before a jury, providing Plaintiffs with a comprehensive and stress-tested understanding of the factual record and legal theories. The jury verdict, reached after that process, definitively showed Plaintiffs the strengths and weaknesses of their claims and confirms the adequacy of the settlement.

4. Settling Defendants' ability to withstand a greater judgment does not affect the fairness of this Settlement (*Grinnell* factor 7)

While Amex may be able to withstand a higher judgment, "substantive fairness does not require that the defendant empty its coffers before this Court will approve a settlement. The ability of Defendants to pay more, standing on its own, does not render the Settlement unfair . . . ." *Berrios v. Nicholas Zito Racing Stable, Inc.*, No. CV 04-22 (AKT), 2014 WL 12838562, at *5 (E.D.N.Y. Jan. 28, 2014) (citation modified).

Here, this factor is irrelevant because there was no scenario in which the Classes' claims, even if successful in obtaining the maximum damages, would have tested Amex's ability to pay. *Cf. Rosenfeld*, 2021 WL 508339, at *7 (finding even maximum damages would not implicate defendant's ability to pay).

5. The Settlement is reasonable given the risks and potential range of recovery (*Grinnell* factors 8 and 9)

These *Grinnell* factors include the court considering "the range of reasonableness of the settlement fund in light of the best possible recovery" and "the range of reasonableness of the

settlement fund to a possible recovery in light of all the attendant risks of litigation." *Charron v. Wiener*, 731 F.3d 241, 247 (2d Cir. 2013) (citation omitted). This entails the court "compar[ing] the terms of the compromise with the likely rewards of litigation." *Payment Card*, 330 F.R.D. at 48 (citation modified).

The trial to a jury verdict moots any predictions about "best possible recovery" and the "attendant risks of litigation" which are far more germane to pre-trial settlements. Here, the actual recovery at trial was $12.5 million and the settlement fund of $17.5 million exceeds the actual trial recovery. The risks of litigating the case to a verdict are known, as are the rewards of litigating the case through verdict. This factor weighs heavily in favor of final approval.

6. The Distribution Plan provides an effective method for distributing relief (Rule 23(e)(2)(C)(ii))

In granting preliminary approval of the settlement, the Court found that the "proposed Distribution Plan is reasonable." Preliminary Approval Order at 3. Plaintiffs' proposed method for distributing relief is explained in detail in the previously filed Memorandum of Law in Support of Plaintiffs' Motion for Approval of Plan of Distribution. ECF 395. To summarize, the Distribution Plan allocates the settlement monies exclusively to the Illinois non-rewards credit-card class, which is the only Class whose claims prevailed at trial. The proposed method of claims administration does not require claimants to provide documents (*e.g.*, credit card statements) to substantiate their eligibility.

The Distribution Plan provides an effective method for distributing relief. "[T]he 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). The Claims Administrator intends to use cost-effective electronic payments to claimants, avoiding the expense typically borne by the settlement fund to prepare, mail, and re-issue paper checks.

The proposed method of claims administration does not include the provision of documentation by the claimants to substantiate their eligibility, which is also effective. "An

adequate method is one that can 'deter or defeat unjustified claims' without imposing an undue demand on class members." *Rosenfeld*, 2021 WL 508339, at *6 (quoting Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment). A plan of allocation "need not be perfect" but "need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *Id*. (citations omitted). This method recognizes that requiring documentation will constitute the very type of "undue demand" discouraged by the Federal Rules advisory committee which can be expected to discourage claims response and heavily depress class members' overall participation in the settlement relief.

Requiring documentation of credit-card purchases from 2016 to 2022 would require Class Members to collect, analyze, and share years of old credit-card statements. This requirement 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 decide not to participate, 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. *See* ECF 395 at 12–16, 19–21; *In re "Agent Orange" Prod. Liab. Litig. MDL No. 381*, 818 F.2d 179, 183 (2d Cir. 1987) (approving a plan of distribution that did not require proof of causation, acknowledging practical difficulties in documenting differing injury levels); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 489 (S.D.N.Y. 2009) (in view of the burden, ordering that claimants should be permitted to submit claims "no matter the lack of appropriate documentation.").

This is a case where there is no "perfect" method for distributing the relief. But perfection is not the standard. Funds will be distributed to valid claimants based on a straightforward, online claim form requiring sufficient information provided by the claimant to enable sophisticated and effective detection of fraudulent or otherwise ineligible claims. The proposed

method is rational, fair, and adequate to get the settlement money into the hands of the members of the Illinois non-reward credit-card class.

7. The Distribution Plan provides an equitable method for distributing relief (Rule 23(e)(2)(D))

"Before approving a proposed class settlement, the court must take into account whether the 'proposal treats class members equitably relative to each other.'" *Caccavale*, 2025 WL 2960237, at *16 (citation modified). "When analyzing this Rule 23(e)(2) factor, courts may consider 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." *Id*. (citation modified).

The Distribution Plan provides an equitable method for distributing relief. The Distribution Plan allocates as between all members of the Classes by distributing the Net Settlement Fund exclusively to the Illinois non-rewards credit-card class. This aspect of the proposed Distribution Plan follows the jury's verdict by providing relief in settlement to the only class that won damages at trial.

As fully described in the Memorandum of Law in Support of Plaintiffs' Motion for Approval of Plan of Distribution, limiting recovery to the Illinois non-reward credit-card class is the fairest way to allocate settlement funds. ECF 395 at 7–9. Providing the Class Members whose claims lost at trial with recovery from the Settlement Fund would unfairly dilute the recovery of those Illinois non-reward credit card class members with the prevailing claim. *See Moses*, 79 F.4th at 245 ("[I]nequity arises from treating different class members the same."). Only the Illinois non-reward credit-card class survived the "crucible" of trial. *See In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, MDL No. 1532, 2011 WL 1398485, at *9 (D. Me. Apr. 13, 2011).

The remaining class claims should be released without consideration. ECF 395 at 10–11. Releasing claims with no practical or legal value for zero compensation is consistent with Rule 23(e)'s fairness standard. *Parker v. Time Warner Ent. Co. L.P.*, 239 F.R.D. 318, 339 (E.D.N.Y.

2007) ("A claim which cannot be proven is worth essentially nothing. Consideration of nothing for releasing a worthless claim is therefore fair, reasonable, and adequate.").

Within the Illinois credit-card class, the proposal is for an equal, *per capita* share of the Net Settlement Fund to be distributed to valid claimants. Distribution Plan ¶11. The chief virtue of this aspect of the Distribution Plan is to eliminate the need for claimants to submit the extensive documentation that would be necessary to effectuate a *pro rata* distribution to compensate class members with awards that are proportional to the dollar amount of their affected transactions. As noted above in Section III.C.6, requiring such documentation would impose unworkable burdens.

While recognizing that an equal, *per capita* distribution will smooth over differences in the extent to which individual Class Members were injured, and is therefore not "perfect," the plan reasonably accommodates practical constraints. Stricter demands would defeat the purpose of the Distribution Plan, to the detriment of all claimants.

8. The proposed service awards to named plaintiffs treat class members equitably relative to each other (Rule 23(e)(2)(D))

"[C]ourts evaluating the substantive fairness of a settlement must ensure that proposed incentive awards are reasonable and promote equity between class representatives and absent class members." *Moses*, 79 F.4th at 245. Regarding service awards, "the equitable-treatment requirement protects the interests of class representatives who play an active role in the litigation—often providing the background information that forms the basis of the lawsuit, engaging in fact discovery, and devoting considerable time and effort into the settlement process—from having absent class members free ride on their efforts." *Id*. (citation modified). "At the same time, the rule requires that courts reject incentive awards that are excessive compared to the service provided by the class representative or that are unfair to the absent class members." *Id*.

As detailed in the Fee Brief, the service awards sought here total $165,000: $15,000 for each of the nine class representatives who testified and $10,000 for the other class

representatives. The $10,000 and $15,000 service awards sought here are not so disproportionate to the recovery of an average class member, such that the service award recipients are being compensated inequitably. Each of the named plaintiffs served the classes through trial and beyond.

The class representatives are Ricky Amaro, Andrew Amend, Abigail Baker, Angela Clark, Wyatt Cooper, Emily Counts, Sarah Grant, David Moskowitz, Shawn O'Keefe, James Robbins, Debbie Tingle, and Allie Stewart Willingham. As detailed in their attorneys' declarations, each class representative spent substantial time collecting documents, responding to interrogatories, and preparing and sitting for lengthy depositions, and most made two separate trips to Brooklyn to testify at trial. Seaver Decl. 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; *see also* Fee Brief at 14–15.

The proportionality analysis in this case should consider that consumer class actions like this one are meant to, among other things, provide a means for relief for plaintiffs whose injury is too small for a conventional lawsuit to be feasible. *See Hancock v. I.C. Sys., Inc.*, 592 F. Supp. 3d 250, 255 (S.D.N.Y. 2022) (noting interplay between consumer class action and fee proportionality). Moreover, the difference between the service awards and the average class recovery depends on the claims response rate. While the ratio will appear more proportional if the claims response is poor, a poor response rate is not the desired outcome. The proportionality analysis should not punish or disadvantage the named plaintiffs if the average recovery per claimant turns out to be small because the notice plan and the claims process work as designed and result in robust participation rates. *Caccavale*, 2025 WL 2960237, at *16–17 (finding incentive award to be proportionate to the awards for individual claimants "especially because the difference between the $10,000 incentive award and the average recovery per Participating Settlement Member would have been even smaller had the response rate been lower than 31%.").

Applying *Moses*, Courts in this District have approved service awards of several thousands of dollars more than the average class member recovery, in cases that settled before trial and therefore did not expose the class representatives to the rigors of trial. In *Caccavale*, a

FLSA case, the court approved a $10,000 incentive award that was $6,500 more than the average recovery, 2025 WL 2960237, at *17, and in *Schutter v. Tarena International, Inc.*, No. 21-CV-3502 (PKC) (RML), 2024 WL 4118465, at *10 (E.D.N.Y. Sep. 9, 2024), a securities fraud class action that settled before any discovery was taken, the court approved an incentive award for the lead plaintiff that was $5,000 greater than the estimated average class recovery.

9. The proposed attorneys' fee award, reimbursement of expenses, and service awards confirm that the Class will receive adequate relief from the Settlement (Rule 23(e)(2)(C)(iii))

The attorneys' fees, litigation expenses, and service awards sought in connection with the Settlement are reasonable and ensure the Class is provided with adequate relief from the Settlement. As disclosed in the Class Notice and the detailed in the Fee Brief, Class Counsel seek one-third of the Settlement Funds ($5,832,750) for attorney fees, $7,099,744.41 in unreimbursed litigation expenses, and service awards for the named plaintiffs, in the total amount of $165,000, to compensate them for the significant time they devoted to this case.

"When reviewing the substantive fairness of a proposed settlement, the district court is required to review both the terms of the settlement and any fee award encompassed in a settlement agreement in tandem." *Caccavale*, 2025 WL 2960237, at *10 (citation modified) (citing *Moses*, 79 F.4th at 244 and Fed. R. Civ. P. 23(e)(2)(c)(iii)).

In 2025, the Second Circuit in *Kurtz* held that the analyses required by Rule 23(e) and the determination of whether attorney's fees are reasonable under Rule 23(h) are distinct, though they may overlap.[8] Notably, however, *Kurtz* involved a claims-made settlement, and "*Kurtz* did not change the approach taken to assess the fairness of a class settlement in common fund cases, including this action." *Caccavale*, 2025 WL 2960237, at *11. "[I]n cases where attorney's fees come out of the same common fund as the class recovery—so called 'common fund' cases—

[8] "Whereas Rule 23(h) asks whether fees are reasonably calculated and genuinely earned ... Rule 23(e) safeguards the fairness of a settlement for the class by posing a comparative inquiry: does the proportion of the total recovery allocated to attorney's fees compared to the proportion of the total recovery allocated to the class raise any questions about the *adequacy of class relief*?" *Caccavale*, 2025 WL 2960237, at *11 (citing *Kurtz*, 142 F.4th at 121).

district courts in this Circuit routinely employ the same standards used to evaluate the reasonableness of attorney's fees under Rule 23(h) when evaluating the adequacy of a settlement under Rule 23(e) in light of the amount of proposed attorney's fees." *Id*. at *10 (citation modified).

For the proportionality analysis, the total value of the Settlement is $17,500,000 and the requested fee award is $5,832,750. The ratio of attorney's fees to class recovery is 1:2 and the amount sought, one-third of the Settlement Fund, is proportional and in line with awards made in other cases. "Courts in this Circuit routinely find that requests for attorney's fees totaling one-third of the settlement fund are well within the range of reasonableness." *Rosenfeld*, 2021 WL 508339, at *6 (citation modified).

Another measure of the reasonableness of the request for fees, expenses, and service awards is to compare the Net Settlement Fund that will be available for Class claimants to the out-of-pocket damages calculated by Plaintiffs' expert and presented at trial. The Net Settlement Fund amount is approximately $4,402,506, meaning that eligible Class members will receive approximately 73% of the jury award of compensatory damages to the Illinois non-reward credit-card class. This compares favorably to most complex antitrust cases that fairly and reasonably settle for a fraction of the best possible recovery. *In re Currency Conversion Fee Antitrust Litig.*, No. 01 MDL 1409, 2006 WL 3247396, at *6 (S.D.N.Y. Nov. 8, 2006) (preliminarily approving settlements "representing roughly 10–15% of the credit transaction fees collected by Defendants").

Rule 23(e)(2)(C)(iii) also requires courts to consider the "timing of payment" for "any proposed award of attorney's fees." The Settlement Agreement calls for attorneys' fees and expenses awarded by the Court to be paid from the escrow account to Plaintiffs' counsel no sooner than seven days after final approval of the Settlement (Settlement Agreement ¶21), while distribution of the entire Net Settlement Fund will occur after the claims administrator's vetting of claims is complete. The timing of the award of attorneys' fees creates no conditions that could compromise class interests or result in inequitable treatment among class members. The

Settlement Agreement provides for, among other protections, refunds in an appropriate case and the Court will retain jurisdiction over any disputes arising out of the administration of the settlement fund. *Id*. ¶21; *See In re N. Dynasty Mins. Ltd. Sec. Litig.*, No. 20-CV-5917 (TAM), 2024 WL 308242, at *14 n.12 (E.D.N.Y. Jan. 26, 2024) (timing of payment of attorney fees not problematic with safeguards in place).

As noted, Class Counsel seeks $165,000 in service awards for twelve class representatives. That total represents 0.94% of the $17.5 million settlement fund.

In addition, and as more fully discussed in the Fee Brief, Class Counsel seek payment for $7,099,744.41 in unreimbursed litigation expenses incurred from the inception of this case through January 15, 2026. "It is well established that counsel who obtain a common settlement fund for a class are entitled to the reimbursement of expenses that they advance to a class. Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-MD-1720 (MKB) (JO), 2019 WL 6888488, at *10 (E.D.N.Y. Dec. 16, 2019) (citation modified), *aff'd sub nom. Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704 (2d Cir. 2023).

The "purpose of assessing the substantive fairness of any requested attorney's fees is to provide a backstop that prevents unscrupulous counsel from quickly settling a class's claims to cut a check." *Caccavale*, 2025 WL 2960237, at *10 (citation modified). Plaintiffs filed this case in 2019 and litigated it through a jury verdict in 2025. There is no danger here of the sort contemplated by the rule.

10. The Settlement identifies all relevant agreements, and such agreements do not impact the adequacy of the relief (Rule 23(e)(2)(C)(iv))

With regard to the Rule 23(e)(2)(C)(iv) requirement that the court consider any other agreements between the parties "required to be identified under Rule 23(e)(3)," there are no such other agreements. Fed. R. Civ. P. 23(e)(2)(C)(iv).

11. The jury verdict should be vacated as part of the Settlement (Rule 23(e))

In exchange for payment by Amex of $17.5 million, the proposed Settlement is conditioned on entry of a final judgment that sets aside the jury verdict. (Settlement Agreement ¶¶1.jj, 34; Proposed Final Judgment, ECF 391-3, ¶7) ("The jury verdict rendered on August 28, 2025 (ECF No. 383) is hereby set aside and vacated, and shall be without any force or effect for any purpose, including for res judicata, collateral estoppel or any other preclusive purposes.").) The Settlement Agreement states that Amex has "the unilateral right to terminate the Settlement … within thirty (30) days of …(ii) the Court's final refusal to approve the Settlement or any material part thereof; (iii) the Court's final refusal to enter the Judgment in any material respect as to the Settlement …." *Id*. at ¶35. The set-aside of the jury verdict is a material term of the Settlement Agreement.

The reasons why set-aside of the jury verdict is a reasonable settlement term are fully explained in the Memorandum in Support of Plaintiffs' Motion for Preliminary Approval of Settlement, ECF 391, at 21–24. In summary, no final judgment has yet been entered. The proposed Settlement's condition that the jury verdict be set aside as part of a final judgment does not prevent a finding that the settlement is fair, reasonable, and adequate under Rule 23(e). The Settlement is in the best interests of the Classes, and the jury verdict is undoubtedly the most significant reason the parties reached a settlement. Conditioned on set-aside of the jury verdict, the proposed Settlement is fair, reasonable, and adequate. *See In re: TFT-LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827, 2012 WL 12369590, at *4 (N.D. Cal. Oct. 15, 2012) ("judicial economy supported preliminary approval of a settlement agreement calling for vacatur of a jury verdict" because "the Settlement obviates the need for ruling on any outstanding motion seeking to set aside the verdict, any appeal and potential remand, and any new trial that this Court or an appellate court potentially could require").

D. The Notice Plan informed the Class of the Settlement and satisfied due process.

Under Rule 23(e)(1)(B), "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). Rule 23(c)(2)(B) requires that "the court must direct [that] class members [be provided with] 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 standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules [of Civil Procedure] is measured by reasonableness." *Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704, 719–20 (2d Cir. 2023) (citation omitted). "There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Id*. at 720 (citation omitted).

In granting preliminary approval of the Settlement, the Court found that "the proposed forms of Class notice and the proposed Class notice plan are adequate and reasonable." Preliminary Approval Order at 3.

The Notice Plan has been implemented. *See generally* Cowen Decl. Class Members have received adequate notice and have been given sufficient opportunity to object to or participate in the Settlement, or both. The Notice Administrator commenced notice on February 18, 2026. *Id*. ¶¶4, 6, 9. The digital advertising campaign on numerous digital and social media platforms delivered 44.4 million impressions to debit/credit-card users nationwide, and over 15.1 million to debit/credit-card users in Illinois. *Id*. ¶4. Press releases went to the news desks of approximately 10,000 newsrooms across the United States. *Id*. ¶6. On February 21, 2026, the Chicago Tribune ran the Short-Form Notice, in the form of a publication notice. *Id*. ¶7. As of April 9, 2026, the website AmexAntitrust.com has had 760,646 visits. *Id*. ¶8.

The Notice Plan, including the content of publication notice, satisfies due process and Rule 23(c)(2)(B)(i)–(vii). The Long-Form Notice and Short-Form Notice are written in clear and

concise language, and reasonably convey the necessary information to the average class member. *See Wal-Mart*, 396 F.3d at 114. Class Members have been advised of the nature of the Action, including the definition of the class and the nature of the action, claims, issues, and defenses. *See generally* Long-Form Notice; www.AmexAntitrust.com. Class Members have been afforded a full and fair opportunity to consider the proposed Settlement, object, and appear in Court. Further, the Notice fully advised Class Members of the binding effect of the Judgment on them.

The Court should find that the Notice Plan as implemented was reasonable and satisfied due process.

Separately, Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, notice has also been sent to federal and state officials. CAFA requires defendants participating in a proposed settlement to serve appropriate state and federal officials with a notice that consists of the complaint, the proposed settlement, and certain other materials. *Caccavale*, 2025 WL 2960237, at *6. "CAFA further provides that the Court may not issue an order awarding final approval of a proposed settlement earlier than 90 days after the latest date on which the appropriate federal and state officials were served." *Id*. (citation omitted).

Amex caused notices with all documents required by Section 1715 to be sent to all appropriate federal and state officials by April 6, 2026. Declaration of David H. Korn, filed concurrently herewith. The 90-day period from that date expires on July 5, 2026, approximately two weeks after the scheduled hearing on final approval of the settlement. Therefore, consistent with CAFA, the Court may enter a final approval order on any date after July 5, 2026. *Precision Assocs., Inc. v. Panalpina World Transp. (Holding) Ltd.*, No. 08-CV-42 JG VVP, 2013 WL 4525323, at *17 n.31 (E.D.N.Y. Aug. 27, 2013) (entering final approval of settlement 90 days after CAFA notices were served). Alternatively, the Court may enter an order sooner, provisionally approving the proposed settlement and providing that the order will become final upon expiration of the period absent a request for a hearing from a government official. *D.S. ex rel. S.S. v. New York City Dep't of Educ.*, 255 F.R.D. 59, 80 (E.D.N.Y. 2008).

IV. CONCLUSION

For the foregoing reasons, the Court should grant final approval of the Settlement and Distribution Plan.

Dated: April 9, 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 Plaintiffs' Memorandum of Law in Support of their Motion for Final Approval of Proposed Settlement was prepared using Microsoft Word and the document contains 8,733 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/ Carl N. Hammarskjold
Carl N. Hammarskjold