

**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

**DECLARATION OF TODD A. SEAYER 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**

Date filed: April 9, 2026

I, Todd A. Seaver, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner in the law firm of Berman Tabacco. I am admitted to practice *pro hac vice* before this Court. Except as otherwise noted, I make this declaration of my own personal knowledge, and if called upon to do so, could and would testify competently to the facts contained herein.

2. I respectfully submit this Declaration in support of Class Counsel’s Motions for Final Approval of Proposed Settlement and Distribution Plan (“Final Approval”) and for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards (the “Fee and Expense Application”) in connection with the services rendered in the Action and the proposed class action settlement with Defendants.¹

3. Berman Tabacco is Class Counsel for Plaintiffs and Co-Chair of Plaintiffs’ Executive Committee. Berman Tabacco also served as one of the lead trial counsel for Plaintiffs. I, or members of my firm, have been involved in almost every aspect of this case since its inception.

4. On June 18, 2020, the Court appointed 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 as Interim Lead Counsel, with Berman Tabacco and Gordon Ball, PLLC appointed as Co-Chairs of Plaintiffs’ Executive Committee. ECF No. 55. The firms representing the plaintiffs and the classes, which include the Executive Committee firms and additional plaintiffs’ firms, are referred to herein as “Class Counsel.”

5. The Court appointed the Executive Committee to contribute those skills and abilities necessary to ensure the just and efficient conduct of this case. Throughout the litigation, Berman Tabacco and Gordon Ball PLLC supervised the Executive Committee and assigned and

¹ “Defendants” means American Express Company and American Express Travel Related Services Company, Inc.

supervised all work to Executive Committee members and other Class Counsel as required by the demands of the case.

6. The Court formally appointed Class Counsel pursuant to Rule 23(g) to represent the certified classes on January 24, 2025 (Mem. & Order, ECF 257).

HISTORY OF THE LITIGATION

7. This action, originally captioned *Oliver v. Am. Express Co.*, 1:19-cv-00566 (NGG) (the “Action”), arose following the United States Supreme Court’s decision in *Ohio v. American Express Co.*, 585 U.S. 529 (2018). 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 end 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.

8. Berman Tabacco 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 cause retail prices paid by all consumers to be higher than they otherwise would be. Berman Tabacco, along with other Class Counsel, saw justiciable issues, and a narrow but provable path toward civil liability for American Express, under the new legal standard with its two-sided market definition and corresponding Rule of Reason burden-shifting framework.

9. **Original complaint, Rule 12 motions, amended complaint.** Berman Tabacco took the lead in drafting an original class action complaint on behalf of various individual plaintiffs, filed on January 29, 2019. ECF No. 1. The complaint alleged, on behalf of non-Amex credit- and debit-card holders, that Amex's anti-steering rules imposed in merchant acceptance agreements across the United States caused inflation of retail prices paid by consumers. (*Oliver v. Am. Express Co.*, 1:19-cv-00566 (NGG), Complaint (Dkt. No. 1).) The plaintiffs alleged that Amex's rules constitute unreasonable restraints of trade under federal antitrust laws and various state antitrust laws, and constitute an unfair trade practice under various state consumer protection statutes. The plaintiffs sought an injunction under the federal antitrust law and damages under state antitrust and consumer protection laws, and restitution for unjust enrichment. (*Id.*)

10. Amex moved to dismiss the entire Action under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), arguing that plaintiffs lacked Article III standing, failed to allege antitrust injury, and lacked antitrust standing to sue. Berman Tabacco took the lead in drafting opposition arguments.

11. Amex subsequently answered the complaint and sought partial judgment on the pleadings under Rule 12(c) as to various state law claims. Berman Tabacco took the lead in drafting opposition to the Rule 12(c) arguments, enlisting the capable talents of Executive Committee firms to aid in the research and drafting the dozens of state law legal issues implicated by the motion.

12. The briefing on Amex's Rule 12 motions was comprehensive. Berman Tabacco assigned teams of Class Counsel to work on various issues and discrete topics presented in the motions to dismiss. Berman Tabacco took the lead in preparing Plaintiffs' briefing in regard to these Rule 12 motions and assigned parts of the briefing to other Executive Committee firms. Berman Tabacco spent substantial time editing and incorporating the drafts of Plaintiffs' Counsel into the final briefing.

13. The Court's rulings on Amex's Rule 12 motions in April 2020 and February 2021 granted Amex's motions in part and denied them in part. (*See* Mem. & Order (Apr. 30, 2020), ECF 43 (deciding 12(b)(1) and 12(b)(6) motions) & Am. Mem. & Order (Feb. 1, 2021), ECF 66 (deciding 12(c) motion).) Together, these rulings resulted in the Court's dismissal of 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, District of Columbia, Florida, Massachusetts, and New Mexico. The Court dismissed various individual named plaintiffs in accordance with the granting in part of the Rule 12 motions.

14. Plaintiffs obtained leave of Court to file an amended complaint by docket order on September 15, 2021, with the unopposed motion for leave under Rules 15 and 16 filed August 19, 2021. ECF 71-73. The amended complaint added fifteen named plaintiffs with standing from the states with live damages causes of action were available to prosecute those claims. Berman Tabacco and several co-counsel firms from the Executive Committee and Class Counsel firms were retained by clients who stepped forward to ensure similarly situated citizens of their states could have a chance at recovery.

15. **Discovery.** Discovery in this Action was extensive and hard-fought. Ultimately, Plaintiffs obtained millions of documents from Amex through multiple sets of document requests, propounded multiple sets of interrogatories and requests for admission, and took 30(b)(6) depositions of Amex. Third party discovery of documents, data and testimony was also extensive, as Plaintiffs subpoenaed over three dozen banks and financial institutions, and obtained complex and extensive datasets from networks Visa, Mastercard and Discover.

16. ***Receipt in discovery of "legacy database."*** At the initial stage of discovery, Amex agreed to produce the trial record from the Government Action and the entire database of documents that Amex had previously produced in related Multi-District Litigation ("MDL")

(referred to hereafter as the “legacy database”). Given that commonalities between that litigation and allegations here, Plaintiffs sought production of the legacy database to discover relevant information and background that would focus further discovery sought by Plaintiffs in this case. Amex agreed to produce the legacy database, but only in a format that was only compatible with its vendor’s technology platform. After consulting with third party vendors, including Amex’s, Plaintiffs determined that it was more cost effective to not use Amex’s vendor, and, instead, convert the data into traditional production formats and use a different vendor. In late August 2020, Plaintiffs received the legacy database from Amex and had third party vendors ready to receive the drive, perform format conversion, and upload the production to Plaintiffs’ document platform. This had an immediate and substantial cost to carry out.

17. The legacy database was extraordinarily large. It contained **2,146,217 document files** of various sizes, from single page documents to voluminous documents and datasets, amounting to **five terabytes** of data. Complicating matters, the third-party vendors retained by Class Counsel had to confront technical challenges with the legacy database to upload them and convert them to a format suitable to use time-saving and efficient artificial intelligence tools and other technology-assisted review tools. Due to the volume of documents and unforeseen technical issues, Plaintiffs were able to access some of the documents starting in February 2021—several months later than originally anticipated. Even then, the database was missing numerous native files and metadata—information which limited Plaintiffs’ ability to make use of the documents from the legacy database.

18. **Further written discovery.** Plaintiffs’ subsequent sets of document requests yielded production of over 100,000 pages of Amex internal documents. Plaintiffs’ four sets of document requests consisted of 77 individual requests. Two sets of interrogatories generated targeted information as well as deep wells of internal Amex P&L statements and financial information centered on two-sided prices. The written discovery gave rise to countless meet-and-confers with defense counsel to resolve a myriad of issues. The parties successfully resolved,

through negotiation, almost all issues and disputes concerning discovery, without need to seek court involvement.

19. Plaintiffs served multiple sets of requests for admission on Amex, totaling over 700 individual requests, over 600 of which elicited admissions to establish documents' admissibility for trial.

20. ***Discovery from named Plaintiffs.*** The named plaintiffs responded to substantial discovery demands from Amex. Plaintiffs responded to document requests and answered interrogatories, and sat for full-day pretrial depositions. Plaintiffs searched for and collected personal financial records, among other types of documents, in some cases taking steps to obtain personal financial records from financial institutions with which the plaintiffs had no current account or relationship. Bank statements, credit card statements and other types of documents were produced in a rolling production. Plaintiffs provided verified answers to interrogatories. They took time with Class Counsel to prepare for depositions and give pretrial deposition testimony, in some cases for the full seven hours.

21. ***Discovery of documents, data and testimony from third parties.*** Berman Tabacco spearheaded teams of Class Counsel firms in subpoenaing over forty banks, debit and credit card issuers, and card networks, as well as dozens of national retailer merchants. The subpoenas sought documents, data and testimony to support damages and class certification. Substantive and time-consuming negotiations took place with the financial institutions regarding data productions. Class Counsel obtained affidavits and other testimony from merchants and obtained voluminous data from card networks and issuing banks.

22. ***Document review.*** For document review of the over 2 million documents produced, Berman Tabacco created teams of Class Counsel and assigned teams and individual document review attorneys to various issues and topics. To maximize the value of the review, Class Counsel created thousands of pages of work product, including memoranda, summaries, and spreadsheets organizing the evidence by elements of the claims, by issue, and by witnesses. Witness binders and issue binders were later created based on this work product. Utilizing the

document review platform from third-party vendor Everlaw retained for the litigation, Class Counsel augmented the “hands-on, eyes on” review by attorneys and paralegals with Everlaw’s proprietary artificial intelligence tools and technology-assisted review tools. The document review was completed between February 2021 and April/May 2022.

23. ***Motion to compel privileged documents and testimony.*** Berman Tabacco took the lead in an ultimately unsuccessful effort to overcome attorney-client and work product privilege claims asserted by Amex over documents and testimony concerning “Project RAMP.” Plaintiffs’ motion to compel was denied in report and recommendation by the Magistrate Judge. Plaintiffs objected to that decision pursuant to Fed. R. Civ. P. Rule 72. The Court overruled the objection and denied the motion.

24. ***Depositions.*** Berman Tabacco attorneys deposed three designated 30(b)(6) witnesses over three days, and a Bank of America executive. Class Counsel defended the depositions of over a dozen named plaintiffs.

25. **Class Certification, Daubert motions, and Evidentiary Hearing.** Plaintiffs prepared their motion for class certification through autumn 2022 and spring 2023, filing the fully briefed motion 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)).

26. The motion was supported by the report of Plaintiffs’ expert economist, Dr. Russell Lamb, and Monument Economics Group. The expert report and rebuttal report, and several supplemental reports, spanned hundreds of pages. Plaintiffs’ moving and reply papers were in excess of 60 pages of briefing. Defendant Amex vigorously opposed class certification, filed their opposition to class certification, as well as reports from three separate expert economists (Drs. Emch, Gaier, and Bernheim) totaling hundreds of pages critiquing Dr. Lamb’s expert opinions.

27. In conjunction with class certification, the parties filed motions to exclude expert opinion testimony under Fed. R. Evidence 702 and *Daubert*. ECF 170-1, 177-1. Amex sought to

exclude all of Dr. Lamb's expert opinion testimony on impact and damages. Plaintiffs moved under *Daubert* to exclude one opinion from one of Amex's experts, Dr. Gaier.

28. Class Counsel spent an enormous amount of time and effort drafting their motion for class certification, analyzing relevant evidence, working with Dr. Lamb and Monument Economics Group, preparing Dr. Lamb for deposition and defending both of Dr. Lamb's seven-hour depositions, and analyzing and responding to the Defendant's opposition papers and expert reports, and deposing defense experts Drs. Gaier and Emch. Amex opposed the motion for class certification by contesting nearly every part of Plaintiffs' Rule 23 showing and offering the opinion of three expert economists that it is impossible to prove impact and damages in this Action with common evidence.

29. **Evidentiary hearing.** On July 28, 2023, the Court held an evidentiary hearing on Plaintiffs' class certification motion and the parties' respective motions to exclude expert testimony under *Daubert*. Berman Tabacco attorneys handled the evidentiary hearing for Plaintiffs, preparing Dr. Lamb for direct and cross examination, directly examining Dr. Lamb, and cross-examining Amex expert Dr. Gaier. The parties extensively briefed the Court on class certification evidence and argument in both pre- and post- hearing briefing, totaling over one hundred pages, with Berman Tabacco preparing the briefing for Plaintiffs. ECF 188-89, 191-194.

30. **Class certification orders.** On January 9, 2024, the Court issued a memorandum and order granting in part and denying in part Plaintiffs' motion for class certification. (Mem. & Order, ECF 220.) Specifically, the Court granted Plaintiffs' motion to certify the debit-card classes for Alabama, D.C., Illinois, Kansas, Maine, Mississippi, North Carolina, Ohio,² 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.),

² The Ohio claim was later dismissed in the Court's decision on summary judgment. (Mem. & Order, ECF 236.)

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).

31. The Court found each Class Representative had provided and would provide adequate representation for his or her respective class(es) in satisfaction of Rule 23(a)(4). *Id.* at 32–37, 58 & n.17.

32. In the same order, the Court denied Amex’s motion to exclude Plaintiffs’ expert economist’s opinion testimony pursuant to *Daubert* and granted in part Plaintiffs’ motion to exclude a portion of the expert testimony of one of Amex’s three expert witnesses, Dr. Gaier. (*Id.* at 22, 26, 58.) Amex moved for reconsideration of the order excluding one of Dr. Gaier’s opinions, which Plaintiffs successfully opposed.

33. 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. (Mem. & Order, Dkt. No. 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 each of these Class Representatives had provided and would provide adequate representation for his or her respective class(es) in satisfaction of Rule 23(a)(4). *Id.* at 2.

34. **Rule 23(f) petitions.** Amex sought immediate appellate review of the Court’s class certification orders, filing two petitions with the United States Court of Appeals for the Second Circuit pursuant to Rule 23(f). (*See Am. Express Co. v. Oliver*, No. 24-238 (2d Cir. July 30, 2024).) Berman Tabacco took the lead in opposing the two 23(f) petitions and briefing several motions in the appellate court ancillary to the petitions. Amex challenged nearly every facet of the Court’s class certification determinations. On July 30, 2024, the Second Circuit denied Defendants’ petitions for leave to immediately appeal the district court’s orders granting class certification. (Mandate, ECF 235.)

35. **Summary judgment.** Amex moved for summary judgment, and Plaintiffs for partial summary judgment. The summary judgment motions together spanned over one hundred pages of briefing accompanied by statements of fact and corresponding evidentiary citations. Amex challenged whether Plaintiffs could establish that the anti-steering rules have anticompetitive effects with competent evidence, whether Plaintiffs could prove injury and causation, and whether Plaintiffs had evidence of damages. Berman Tabacco led the briefing efforts and the marshaling of evidence and facts to oppose Amex's request for judgment before trial. Plaintiffs' partial summary judgment motion sought to foreclose the question of the relevant market.

36. The Court heard oral argument on the summary judgment motions and on August 23, 2024. Berman Tabacco attorneys led the oral argument for Plaintiffs. The Court issued a memorandum and order granting in part and denying in part Plaintiffs' motion for partial summary judgment on the relevant market definition and granting in part and denying in part Defendants' motion for summary judgment. (Mem. & Order, ECF 236.)

37. **Notice of pendency, opportunity to opt out, class counsel appointment under 23(g).** On January 24, 2025 the Court ordered notice to the certified classes after a contested motion by Plaintiffs requesting the Court order dissemination of notice by publication. Amex opposed notice by publication, arguing that individual notice to the millions of class members was required. The Court decided in favor of Plaintiffs' position. 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 class(es). (Mem. & Order, Dkt. No. 257.)

38. In the same order 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.)

39. **Pre-Trial.** Berman Tabacco spearheaded all pre-trial efforts. Class Counsel dedicated enormous time and effort to pre-trial tasks. In the spring of 2025, the parties filed, and the Court decided, seven motions in limine, as well as motions for reconsideration regarding a subset of them. Plaintiffs diligently made pretrial exchanges of trial witness lists, exhibits, voluminous deposition designations with corresponding evidentiary objections, proposed jury instructions and verdict sheets in accordance with the Court's pre-trial practices and directives. Plaintiffs disclosed over one hundred exhibits. Amex disclosed over one thousand trial exhibits, for which Plaintiffs lodged timely evidentiary objections.

40. The parties negotiated a pretrial stipulations on three areas of admissible and inadmissible statements and evidence. ECF 259.

41. Plaintiffs took depositions of two newly disclosed Amex trial witnesses in the weeks before start of trial. Berman Tabacco attorneys took both depositions, one involving Amex internal strategic topics and accounting facts, and the other involving then-recent Australian regulatory actions affecting credit cards in Australia.

42. **Mistrial, Trial and jury verdict.** Trial was originally scheduled to start in October 2025, but was moved up to start in July 2025. A trial commenced on July 28, 2025, but ended in mistrial on July 30, 2025 on the third day of trial, during jury selection. Trial was re-scheduled to start August 11, 2025. The trial lasted three weeks, ending August 28, 2025.

43. After the mistrial, but before the start of the second trial, Plaintiffs won the right to take further pretrial testimony of new witnesses proffered by Amex. Berman Tabacco attorneys took trial deposition testimony of Amex CEO Stephen Squeri, key portions of which were published via video to the jury during Plaintiffs' case-in-chief in the August 2025 trial. The deposition of CEO Stephen Squeri took place July 25, 2025.

44. Plaintiffs also won the right to take further pretrial deposition testimony from an Amex witness regarding trial exhibits newly proffered by Amex concerning unfolding regulatory events in Australia. Berman Tabacco attorneys took that deposition testimony as well, five days before the re-start of trial on August 6, 2025.

45. Berman Tabacco attorneys were designated Trial Counsel alongside Bienert Katzmann Littrell Williams LLP, Gordon Ball PLLC and Miller Law LLC. and played a key role in the direct examination of class representatives and cross-examination of two of Amex's expert economists. Berman Tabacco attorneys also briefed and argued numerous in-trial "overnight" motions and disputes of law and evidence, including two motions for mistrial and motion for a directed verdict, as well as multiple juror issues arising during trial.

46. Trial counsel Berman Tabacco, Bienert Katzmann Littrell Williams LLP and Miller Law LLC examined or cross-examined all witnesses at trial, led jury selection, participated in chambers conferences, presented opening and closing arguments, argued in-trial motions, argued all evidentiary objections, and advocated for final jury instructions post-trial for charging the jury.

47. After two days of deliberations, the jury returned a verdict for Defendants on all state law antitrust claims brought by all certified classes. The jury found Plaintiffs proved the anti-steering rules constituted a restraint of trade, found the relevant product market to be the two-sided market for credit card transactions, but found that Plaintiffs had failed to prove that the restraint of trade was, on balance, unreasonable. The jury returned a verdict for the Illinois Non-Rewards Credit Card Class pursuant to the Illinois Consumer Fraud and Deceptive 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 (Question Nos. 10–11).)

48. **Post-trial motions, deferred judgment.** On September 12, 2025 the parties submitted a proposed briefing schedule for post-trial motions. (Joint Letter Mot., ECF 386.) For its part, Amex sought to file motions pursuant to Rule 50 for judgment as a matter of law and pursuant to Rule 59 for a new trial and/or amending the judgment. (*Id.* at 2.)

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

50. **Settlement negotiations.** Prior to trial, in April 2025 the parties engaged in a mediation session with mediator Gregory P. Lindstrom of Phillips ADR Enterprises. The mediation did not resolve the case.

51. Arms-length negotiations between the parties re-started after trial, with continued dialogue through the mediator Gregory P. Lindstrom in September 2025 and continuing through October 2025.

52. The parties ultimately received a mediator's proposal of \$17.5 million as the settlement amount, with instructions that each side could accept or reject the proposal, but it was not subject to further negotiation. The parties accepted the mediator's proposal.

53. On October 23, 2025, the parties reached an agreement in principle to resolve the Action and executed a term sheet setting forth the principal and material terms of agreement. The material terms included the settlement amount and the condition, proposed by American Express, that the jury verdict be set aside as part of a final judgment to be entered by the District Court.

54. On October 23, 2025, acting in my capacity as Co-Chair of Plaintiffs' Executive Committee, I communicated to all Plaintiffs' counsel that an agreement in principle had been reached with Amex to settle the litigation. I relayed the material terms of the settlement and that the Co-Chairs of Plaintiffs' Executive Committee intended to request that the Net Settlement Fund be allocated solely to the Illinois non-rewards credit card class. I requested that counsel inform their clients (the Class Representatives) of the settlement in principle and the contemplated Plan of Distribution. I am informed by co-counsel for Plaintiffs that the Class Representatives consent and agree to the Settlement's material terms and the contemplated Plan of Distribution.

55. I spoke by telephone with my firm's client, Wyatt Cooper, the Class Representative for the Utah class. I informed Mr. Cooper about the details of the settlement in principle and the contemplated Plan of Distribution. Mr. Cooper consented to and agreed with the settlement's material terms and the contemplated Plan of Distribution.

OVERALL TIME AND EXPENSES OF CLASS COUNSEL

56. **Attorneys’ Fees.** The table set forth below summarizes the total hours and lodestar of all Class Counsel that participated in the prosecution of the Action. The total number of hours spent by all Class Counsel from inception of this Action through the date of the Settlement Agreement (January 15, 2026) is 63,778.70, with a corresponding lodestar of \$45,649,391.15.

| Firm | Hours to 1/15/2026 | Lodestar to 1/15/2026 |
|---|-------------------------------|----------------------------------|
| Berman Tabacco | 41,322.40 | \$29,663,555.00 |
| Miller Law LLC | 6,704.20 | \$4,550,165.00 |
| Kahn Swick & Foti, LLC | 5,207.10 | \$2,820,317.50 |
| Bienert Katzman Littrell Williams | 2,219.00 | \$2,426,335.90 |
| Saltz Mongeluzzi & Bendesky, PC | 3,324.80 | \$1,528,036.00 |
| Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. | 1,352.30 | \$1,444,532.50 |
| Stamell & Schager, LLP | 1,803.30 | \$1,432,071.00 |
| Gordon Ball PLLC | 725.00 | \$706,875.00 |
| Cuneo Gilbert Flannery & LaDuca, LLP | 372.55 | \$449,593.75 |
| Karon LLC | 288.30 | \$272,849.00 |
| Lovell Stewart Halebian Jacobson LLP | 197.45 | \$197,435.50 |
| Wagstaff & Cartmell LLP | 262.30 | \$157,625.00 |
| Methvin, Terrell, Yancey, Stephens & Miller, P.C. (waived lodestar) | - | \$0.00 |
| Totals: | 63,778.70 | \$45,649,391.15 |

57. The declarations of all the Class Counsel firms seeking reimbursement are filed herewith as Exhibits A-L. The declaration of each Class Counsel firm provides a summary of time records and expenses spent by each firm in the case.

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58. At my direction, staff at Berman Tabacco carried out an analysis of the hours and lodestar. The results show the following breakdown of hours and lodestar by the principal litigation tasks:

| Totals By Category | Hours | Hours % | Lodestar | Lodestar % |
|---|------------------|----------------|------------------------|-------------------|
| (1) Legal Research | 2,892.05 | 4.53% | \$1,845,810.50 | 4.04% |
| (2) Pleadings | 8,085.10 | 12.68% | \$6,727,302.15 | 14.74% |
| (3) Pre-complaint investigation | 3,404.30 | 5.34% | \$1,825,191.50 | 4.00% |
| (4) Case Management / Litigation Strategy | 2,784.45 | 4.37% | \$2,468,389.40 | 5.41% |
| (5) Discovery | 27,808.80 | 43.60% | \$15,997,603.00 | 35.04% |
| (6) Depositions | 1,674.00 | 2.62% | \$1,272,901.30 | 2.79% |
| (7) Class Certification | 3,246.70 | 5.09% | \$2,955,925.00 | 6.48% |
| (8) Court appearances / hearings | 777.50 | 1.22% | \$839,077.00 | 1.84% |
| (9) Trial Prep & Trial | 11,865.80 | 18.60% | \$10,471,900.80 | 22.94% |
| (10) Settlement Negotiation | 492.80 | 0.77% | \$509,530.50 | 1.12% |
| (11) Settlement Procedures & Administration | 110.10 | 0.17% | \$132,528.50 | 0.29% |
| (12) Appeals | 637.10 | 1.00% | \$603,231.50 | 1.32% |
| Totals | 63,778.70 | 100% | \$45,649,391.15 | 100% |

59. The largest percentages of lodestar were dedicated to trial prep and trial (22.94%) and discovery (35.04%), closely followed by pleadings and class certification (a combined 21.22%).

60. Class Counsel’s lodestar reports do not include substantial time spent by Class Counsel relating to Plaintiffs’ motions for preliminary approval of the Settlement or approval of the Plan of Distribution, nor the concurrently filed motion for final approval or this application for a fee award and reimbursement of expenses. Nor does the lodestar include the hours that will be spent supervising the distribution of the net settlement fund to authorized claims by members of the Illinois Non-Rewards Credit Card Class, replying to any objections, and litigating any appeals that may arise from the settlement approvals.

61. Class Counsel request an award of one-third (33.33%) of the Settlement Fund, which amounts to \$5,832,750 in attorneys’ fees, before interest. (The “Settlement Fund” means the Settlement Amount of \$17.5 million together with all interest and income earned thereon after being transferred to the Escrow Account. *See* Settlement Agreement ¶¶kk.) The requested

award therefore represents a fractional lodestar multiplier of 0.13. Class Counsel believes that the requested fee award is reasonable, considering the uncompensated time and effort invested in the case, the work performed on behalf of the Classes, and the risks faced by Class Counsel.

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62. **Class Counsel’s Unreimbursed Litigation Costs and Expenses.** Class

Counsel’s unreimbursed litigation costs and expenses total \$7,099,744.41. These costs and expenses are supported by each Class Counsel firm’s separate declaration submitted in support of the application for attorneys’ fees and expenses, attached hereto as Exhibits A-L, and by Berman Tabacco’s expenses, reported *infra*. The separate categories and totals are as follows:

| Category | Total | Percentage |
|--|-----------------------|-------------------|
| Class Notice | \$125,000.00 | 1.761% |
| Courier / Express Delivery / Messenger Fees | \$10,871.61 | 0.153% |
| Court Fees (Filing Fees / Court Costs) | \$3,196.54 | 0.045% |
| Court Reporter / Deposition, Hearing and Court Transcript Fees | \$111,132.77 | 1.565% |
| Experts / Consultants | \$4,673,823.50 | 65.831% |
| Hosting and Document Collection | \$842,279.00 | 11.864% |
| Mediation Fees | \$33,912.50 | 0.478% |
| Photocopying (Outside) | \$2,684.54 | 0.038% |
| Photocopying (In-House) | \$12,084.07 | 0.170% |
| Postage | \$26.02 | 0.000% |
| Research/Investigation | \$6,555.28 | 0.092% |
| Research (Westlaw, Bloomberg, PACER) | \$107,992.66 | 1.521% |
| Service of Process / Witness Fees / Cost | \$69,997.01 | 0.986% |
| Sharing for 3d Party Data | \$528.37 | 0.007% |
| Telephone (long distance) | \$528.37 | 0.007% |
| Travel, Lodging and Meals | | |
| Travel | \$135,423.09 | 1.907% |
| Hotels | \$36,743.27 | 0.518% |
| Meals | \$21,628.44 | 0.305% |
| Trial Expenses | | |
| Trial Consulting | \$223,794.16 | 3.152% |
| Trial Graphics | \$193,944.17 | 2.732% |
| Trial Hotel | \$235,553.34 | 3.318% |
| Trial Meals | \$26,862.31 | 0.378% |
| Trial Mock Jury and Focus Groups | \$77,700.00 | 1.094% |
| Trial Transcript | \$36,195.01 | 0.510% |
| Trial Travel | \$40,196.84 | 0.566% |
| Trial War Room | \$70,735.91 | 0.996% |
| Wire and other bank fees | \$884.00 | 0.012% |
| TOTAL: | \$7,099,744.41 | 100.000% |
| Trial Category Total: | \$904,981.74 | 12.747% |

63. These expenditures were audited and receipts recorded and kept.

64. The principal expenses were for economic expert testimony (65.831% of all expenses) for Dr. Lamb and Monument Economic Group's work through class certification and through trial. The next largest expense was for trial costs (12.747%), followed by the document database and hosting fees (11.864%).

65. 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 the risk of taking on this Action on a contingent fee basis. These amounts also reflect litigation efficiency.

66. Take by comparison the matter *U.S. Airways v. Sabre Holdings Corp.*, 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 (this Action being the second such case to go to a jury trial). There, the plaintiff prevailed on liability as to one claim, but the jury awarded only nominal damages of \$1.00. Counsel for the plaintiff 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.

67. Attached as Exhibit M hereto is *US Airways' Memorandum of Law In Support of Its Renewed and Amended Motion for Costs, Including Attorneys' Fees and Expenses, Under 15 U.S.C. § 15, U.S. Airways v. Sabre Holdings Corp.*, 11-cv-02725-LGS (S.D.N.Y.) at ECF 1332 (filed Oct. 7, 2024) ("US Airways Fees & Expenses Mem."). In that case, plaintiff brought a federal antitrust claim regarding a transaction platform. A first jury trial found for plaintiff, awarding \$5 million in single damages. The judgment was reversed on appeal and remanded for a new trial in light of the Supreme Court decision in *Ohio v. American Express Co.* changing the law on relevant market definition and proof of anticompetitive effects. The case was re-tried, and under the new legal standard the jury found no anticompetitive effects under the Sherman Act § 1 vertical non-price restraint, but did find liability for monopolization under Sherman Act § 2 for

monopolization. However, the jury found no damages. The jury awarded nominal damages of \$1.00.

68. According to US Airways Fee & Expense Mem., the case “centered on novel questions of law that are at the forefront of some of the most important antitrust cases being litigated today.” Ex. M (US Airways Fee & Expense Mem.) at 2. “As the first jury verdict in a two-sided market case following *Ohio v. American Express Co.*, 585 U.S. 529 (2018) (*Amex*), the outcome was historic. Among many other difficult issues, the parties and their experts litigated the legal framework for contesting conduct by two-sided transaction platforms and standards of proof for competitive harm.” *Id.*

69. The table below is plaintiff US Airways’ summary of fees and expenses:

| Exhibit A: Summary of US Airways’ Recoverable Costs | | | |
|--|-----------------------------------|------------------------------------|----------------------------|
| Category | Amount Paid by US Airways* | Amount Sought by US Airways | Supporting Exhibits |
| Attorney’s Fees | \$108,475,434.13 | \$92,204,119.01 | Exhibits B–E |
| Attorney’s Expenses | \$49,496,060.21 | \$45,720,825.14 | Exhibits F–K |
| Statutory Costs | \$1,076,500.61 | \$1,076,500.61 | Exhibits L–M |
| Total | \$159,047,994.95 | \$139,001,444.76 | |
| | <i>Reduction</i> | \$20,046,550.19 | |

See Ex. M (US Airways Fee & Expense Mem.) at 2. Even granting that counsel for US Airways had to re-try the case, the \$108 million of attorneys’ fees billed and paid by the client and the \$49 million in litigation costs point here to Class Counsel’s efficiency in this Action in achieving a mixed jury verdict in the same type of complex antitrust case, requiring the same type of proof of anticompetitive effects in a two-sided transaction market.

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BERMAN TABACCO'S ATTORNEYS' FEES AND EXPENSES

70. The statements concerning Berman Tabacco's fees and expenses are based on Berman Tabacco's books and records and information received from its attorneys and staff. Berman Tabacco's time and expense records are prepared and maintained in the ordinary course of business.

71. I oversaw my firm's involvement in the Action. Berman Tabacco's time and expense records (including, where necessary, backup documentation) were contemporaneously recorded and kept in my firm's records. They have been reviewed to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses expended in this litigation. The time reflected in Berman Tabacco's lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary to prosecute the Action and resolve the settlement before the Court.

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72. Set forth below is a summary reflecting the amount of time (after any applicable reductions) Berman Tabacco attorneys and professional staff worked on the Action from the inception of the case through January 15, 2026, the current billing rates applicable to such work, and the corresponding lodestar value of that work. The schedule was prepared based upon daily time records maintained by Berman Tabacco attorneys and professional support staff in the ordinary course of business, and the lodestar calculations are based on the firm’s current hourly billing rates.

| Timekeeper | Category | Hours (inception through 1/15/26) | Hourly Rate | Lodestar |
|----------------------------|-------------------|--|--------------------|------------------------|
| Carl Hammarskjold | Partner | 5,783.00 | \$940.00 | \$5,436,020.00 |
| Joseph J. Tabacco, Jr. | Partner | 778.20 | \$1,345.00 | \$1,046,679.00 |
| Norman Berman | Partner | 262.80 | \$1,230.00 | \$323,244.00 |
| Todd Seaver | Partner | 6,646.40 | \$1,210.00 | \$8,042,144.00 |
| Justin Saif | Of Counsel | 1,913.50 | \$965.00 | \$1,846,527.50 |
| Sarah McGrath | Of Counsel | 279.70 | \$655.00 | \$183,203.50 |
| Rick Wiebe | Of Counsel | 579.30 | \$1,200.00 | \$695,160.00 |
| Alex Vahdat | Associate | 44.10 | \$695.00 | \$30,649.50 |
| Caitlin Barresi | Associate | 24.50 | \$395.00 | \$9,677.50 |
| Colleen Cleary | Associate | 4,293.90 | \$510.00 | \$2,189,889.00 |
| Danielle Smith | Associate | 22.20 | \$585.00 | \$12,987.00 |
| Jeffrey Miles | Associate | 47.50 | \$580.00 | \$27,550.00 |
| Sean Akchin | Associate | 697.00 | \$580.00 | \$404,260.00 |
| Laura Falardeau | Project Attorney | 3,753.00 | \$485.00 | \$1,820,205.00 |
| Berna Lee | Staff Attorney | 72.50 | \$450.00 | \$32,625.00 |
| Brian Drake | Staff Attorney | 6,444.00 | \$450.00 | \$2,899,800.00 |
| Ellee McKim | Staff Attorney | 4,843.80 | \$475.00 | \$2,300,805.00 |
| Karen Didrickson | Staff Attorney | 3,155.50 | \$500.00 | \$1,577,750.00 |
| Attorney Totals | | 39,640.90 | | \$28,879,176.00 |
| Jessica Misra | Financial Analyst | 11.30 | \$695.00 | \$7,853.50 |
| Katherine Nolan | Investigators | 34.50 | \$400.00 | \$13,800.00 |
| Sean Donegan | IT | 11.30 | \$440.00 | \$4,972.00 |
| Beto Segura | Paralegal | 525.20 | \$410.00 | \$215,332.00 |
| Kathy Becker | Paralegal | 825.90 | \$535.00 | \$441,856.50 |
| Maria “Ray” Wenzell | Paralegal | 115.30 | \$380.00 | \$43,814.00 |
| Michelle Masen | Paralegal | 15.30 | \$500.00 | \$7,650.00 |
| Stephanie Raney | Paralegal | 67.00 | \$360.00 | \$24,120.00 |
| Yelena Soboleva | Legal Assistant | 75.70 | \$330.00 | \$24,981.00 |
| Non-Attorney Totals | | 1,681.50 | | \$784,379.00 |
| TOTAL: | | 41,322.40 | | 29,663,555.00 |

73. From the inception of the Action to the date of this declaration, Berman Tabacco led all litigation efforts on behalf of Plaintiffs and the Classes, as described and detailed in this declaration. Berman Tabacco has prosecuted this litigation solely on a contingent-fee basis and has been at risk that it would not receive any compensation for prosecuting claims against Amex. While Berman Tabacco devoted its time and resources to this Action, it has foregone other legal work for which it would have been compensated.

74. Berman Tabacco attorneys and staff drafted the complaints, conceived of and executed on the legal theories, led briefing of all contested motions and other pleadings, led and staffed document review, prepared all discovery requests, strategized with regard to the class definition(s), worked with the experts, and deposed all witnesses. Berman Tabacco attorneys presented nearly all oral argument before the Court on motion hearings, case management conferences, and final pretrial conferences. Berman Tabacco attorneys handled opposition of the 23(f) petitions in the Second Circuit.

75. For trial preparation, Berman Tabacco attorneys prepared trial witness and exhibit lists, drafted jury instructions, retained trial and jury consultants, organized mock trial and jury focus groups, and oversaw all trial logistics. For trial itself, Berman Tabacco attorneys were part of the trial team examining witnesses and drafting intra-trial briefing and presenting argument.

76. Berman Tabacco attorneys led the mediation and post-trial settlement negotiation, drafted the settlement agreement and drafted motions for preliminary approval and the plan of distribution, and have drafted the concurrently filed final approval papers and fee and expense application.

77. This case is notable for and characterized by the complex issues it has presented and the tenacity and creativity with which American Express—possessing enormous resources and represented a large and respected law firm considered among the best in the world—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, but the battles were difficult, complex, and drawn out.

78. The total time for which my firm is requesting an award of legal fees is 41,322.40 hours. The total lodestar value of these professional services is \$29,663,555.00.

79. The above hourly rates for Berman Tabacco's attorneys and professional support staff are the firm's current hourly rates. The hourly rates for attorneys and professional support staff in my firm are the same as the regular rates charged for their services in contingent fee matters. The time and lodestar spent preparing the preliminary approval papers and this Fee and Expense Application are excluded from the above values.

80. The firm's lodestar figures do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in the firm's current billing rates. Further, expense items do not contain any general overhead costs and do not contain a surcharge over the amount paid to the corresponding vendor(s).

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81. As detailed and categorized in the below schedule, Berman Tabacco has incurred a total of \$6,935,574.32 in expenses from inception through January 15, 2026 for which Class Counsel seeks reimbursement from the Settlement Fund.

| Category | Expenses |
|--|-----------------------|
| Class Notice | \$125,000.00 |
| Courier / Express Delivery / Messenger Fees | \$10,133.98 |
| Court Fees (Filing Fees / Court Costs) | \$1,545.05 |
| Court Reporter / Deposition, Hearing and Court Transcript Fees | \$109,489.37 |
| Experts / Consultants | \$4,673,823.50 |
| Hosting and Document Collection | \$842,279.00 |
| Mediation Fees | \$33,912.50 |
| Photocopying (Outside) | \$1,928.01 |
| Photocopying (In-House) | \$11,068.92 |
| Postage | \$19.44 |
| Research (Westlaw, Bloomberg, PACER) | \$49,407.56 |
| Service of Process / Witness Fees / Cost Sharing for 3d Party Data | \$69,997.01 |
| Telephone (long distance) | \$452.63 |
| Travel, Lodging and Meals | |
| Travel | \$58,532.52 |
| Hotels | \$31,805.12 |
| Meals | \$10,313.97 |
| Trial Expenses | |
| Trial Consulting | \$223,794.16 |
| Trial Graphics | \$193,944.17 |
| Trial Hotel | \$235,553.34 |
| Trial Meals | \$26,862.31 |
| Trial Mock Jury and Focus Groups | \$77,700.00 |
| Trial Transcript | \$36,195.01 |
| Trial Travel | \$40,196.84 |
| Trial War Room | \$70,735.91 |
| Wire and other bank fees | \$884.00 |
| TOTAL: | \$6,935,574.32 |

82. The above schedule was prepared based upon expense records reflected in the books and records of Berman Tabacco. These books and records are prepared from expense vouchers, check records, receipts, and other source materials.

CLASS REPRESENTATIVE SERVICE AWARD

83. Wyatt Cooper retained Berman Tabacco to represent him as a named plaintiff and class representative for the Utah credit card and debit card classes. Mr. Cooper ably served as a class representative.

84. Mr. Cooper served as a named plaintiff and class representative knowing he would be required to produce financial records and information, provide pretrial testimony and otherwise participate in pretrial discovery, and appear at trial if necessary.

85. Mr. Cooper collected and produced documents to respond to document requests propounded by Defendants in this Action, collecting and producing personal financial records from his bank and credit card issuer. He also gathered necessary information to provide verified answers to interrogatories propounded by Amex in this Action.

86. Mr. Cooper sat for a full-day pretrial deposition taken on June 10, 2022.

87. Before the start of trial, Mr. Cooper prepared to testify. He met in-person with trial counsel in Utah and again in Nevada for two days of trial preparation. He traveled to Brooklyn, NY for trial at the end of July 2025 in advance to sit with trial counsel for further preparation for his own testimony and to observe overall trial preparation by the trial team.

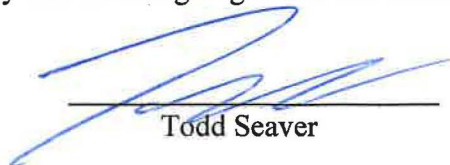
88. Following the July mistrial, Mr. Cooper returned again to Brooklyn in August 2025 and again prepared for his testimony. At trial, Mr. Cooper was the first class representative witness called by Plaintiffs for their case-in-chief, and he testified truthfully, accurately and compellingly.

89. Class Counsel requests that the Court authorize Mr. Cooper and the other class representatives to receive a \$15,000 service award each as compensation for efforts on behalf of class members. It is my belief that Mr. Cooper's testimony – and that of the other class representatives – all 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.

90. A service award, or even a request for one, was not at any time a condition for Mr. Cooper's involvement in this action as a named plaintiff and class representative.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 9, 2026
San Francisco, California



Todd Seaver