

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CAPP, INC., YOUNG PEOPLES DAY  
CAMPS INC., KMJA DAY CAMPS,  
INC., AND PRAYUS GROUP LLC, on behalf  
of themselves and all others similarly situated,

Plaintiffs,

v.

DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, AND DISCOVER BANK,

Defendants.

Case No. 1:23-cv-04676

LEMMO'S PIZZERIA, LLC, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1-100,

Defendants.

Case No. 1:23-cv-14250

SUPPORT ANIMAL HOLDINGS, LLC, and  
LENNYS CASITA, LLC, individually, and on  
behalf of all other similarly situated,

Plaintiffs,

v.

DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1-100,

Defendants.

Case No. 1:23-cv-15297

**JOINT DECLARATION IN SUPPORT OF (I) PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF CLASS ACTION SETTLEMENT, AND (II) PLAINTIFFS' MOTION  
FOR AN AWARD OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

Catherine Pratsinakis, Roger Heller, and Taras Kick hereby declare and state as follows:

1. I, Catherine Pratsinakis, am an attorney licensed to practice law in the States of Delaware, Pennsylvania, and New Jersey, and a member in good standing with the Delaware, Pennsylvania, and New Jersey State Bars. I am also a member in good standing of the general bar of Illinois. *See CAPP Inc. v. Discover Fin. Servs.*, No. 1:23-cv-04676 (“*CAPP*”), ECF No. 25. I am a partner at the law firm Dilworth Paxson LLP (“Dilworth Paxson”), co-chair of the Plaintiffs’ Rights Practice Group, counsel for plaintiffs in the *CAPP* action, and one of the Court-appointed Settlement Class Counsel.<sup>1</sup>

2. I, Roger Heller, am an attorney licensed to practice law in the State of California, and a member in good standing of the California State Bar. I am admitted *pro hac vice* to practice before this Court. *See Lemmo’s Pizzeria, LLC v. Discover Fin. Servs.*, No. 1:23-cv-14250 (“*Lemmo’s*”), ECF No. 27. I am a partner at Lieff Cabraser Heimann & Bernstein, LLP (“LCHB”), one of the plaintiff’s counsel in the *Lemmo’s* action, and one of the Court-appointed Settlement Class Counsel.

3. I, Taras Kick, am an attorney licensed to practice law in the State of California, and a member in good standing of the California State Bar. I am admitted *pro hac vice* to practice before this Court. *See Lemmo’s*, ECF No. 43. I am a shareholder of The Kick Law Firm, APC (“Kick Law Firm”), one of the plaintiff’s counsel in the *Lemmo’s* action, and one of the Court-appointed Settlement Class Counsel.

4. We are each over the age of eighteen, competent to make this declaration, and have personal knowledge of the following based on our active supervision of and participation in the

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<sup>1</sup> Unless otherwise defined, capitalized terms appearing in this motion are defined as provided for in the Class Action Settlement Agreement and Release, *see CAPP*, ECF No. 65-1 (the “Settlement Agreement” or “Settlement”).

prosecution and settlement of this litigation as further described below, and could and would testify to them if called upon to do so.

5. We respectfully submit this declaration in support of (i) Plaintiffs' Motion for Final Approval of Class Action Settlement, and (ii) Plaintiffs' Motion for an Award of Attorneys' Fees, Costs, and Service Awards, both of which are filed contemporaneously herewith.

**Settlement Class Counsel's Pre-Filing Investigation and Initiation of this Litigation**

6. Beginning in or around April 2023, Settlement Class Counsel separately commenced investigating Discover's possible misclassification of credit card transactions and related overcharging of interchange fees. The investigation was extensive and, collectively, included the review of Discover's merchant operating regulations, interchange fee price lists, financial statements, federal securities filings, and other publicly available information; interviews with potentially impacted entities; the gathering and analysis of documents from several such entities, including agreements between those entities and Discover or other intermediaries; and legal research into potential claims and theories of liability.

7. In addition, Settlement Class Counsel located documents reflecting Discover's non-publicized card categories and pricing tiers to confirm, *inter alia*, the different interchange fee rates applicable to the various card types. Settlement Class Counsel also determined that, for a least a decade, Discover had been charging interchange fees for "consumer" credit card accounts at the higher "commercial" rates.

8. On July 19, 2023, following a multi-month investigation, Plaintiffs CAPP, Inc., Young Peoples Day Camps Inc., and KMJA Day Camps, Inc. initiated an action in this Court, asserting claims on behalf of a nationwide class and three state subclasses based on Discover's misclassification of card transactions. *CAPP*, ECF No. 1

9. That same day, after U.S. markets closed, Discover disclosed that it had in fact misclassified credit card transactions beginning in 2007:

Beginning around mid-2007, Discover incorrectly classified certain credit card accounts into our highest merchant and merchant acquirer pricing tier. Incremental revenue resulting from this card product misclassification amounted to less than 1% of our cumulative discount and interchange revenue, gross, since that time, or less than two basis points as a percentage of sales over this timeframe. The misclassification affected pricing for certain merchants and merchant acquirers, but not for cardholders.

Discover Form 8-K, Press Release entitled *Discover Financial Services Reports Second Quarter 2023 Net Income of \$901 Million or \$3.54 Per Diluted Share*, filed July 19, 2023, available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001393612/000139361223000037/dfs-20230719.htm> (“July 19 Press Release”).

10. Discover further stated in the July 19 Press Release that the impact of the misclassifications on its revenues “was not material” and reported “a liability of \$365 million within accrued expenses and other liabilities to provide refunds to merchants and merchant acquirers as a result of the card product misclassification.” *Id.*

11. On August 11, 2023, the *CAPP* plaintiffs amended their complaint to include information from the July 19 Press Release, add Prayus Group LLC as an additional plaintiff, and add claims on behalf of three additional state subclasses. *CAPP*, ECF No. 13.

12. On August 14, 2023, Plaintiff Lemmo’s Pizzeria, LLC, whose counsel (like *CAPP* counsel) had been investigating this issue for several months, filed a complaint in the Central District of California, asserting claims arising from substantially the same alleged conduct on behalf of a nationwide class and California subclass. *Lemmo’s*, ECF No. 1. On September 5, 2023, Lemmo’s filed an amended complaint. *Lemmo’s*, ECF No. 15.

13. On August 29, 2023, Plaintiffs Support Animal Holdings, LLC and Lenny's Casita, LLC filed a complaint in the Central District of California, asserting claims arising from substantially the same alleged conduct on behalf of a nationwide class and California subclass. *Support Animal Holdings, LLC v. Discover Fin. Servs.*, No. 1:23-cv-15297, ECF No. 1. The *Support Animal* plaintiffs filed an amended complaint, also on August 29, 2023. *Support Animal*, ECF No. 3.

**Initial Litigation in CAPP and Coordination of the Actions**

14. Commencing in early August 2023, the *CAPP* plaintiffs sought to initiate merits discovery, including to hold a Rule 26(f) conference. After Discover refused to hold a Rule 26(f) conference, the *CAPP* plaintiffs filed a motion to compel one. *CAPP*, ECF No. 19. Discover sought to continue its deadline to respond to the pleadings and its deadline to submit a joint status report. *CAPP*, ECF No. 24 at 2.

15. On September 11, 2023, counsel in the *CAPP* and *Lemmo's* actions entered into a Joint Prosecution Agreement whereby they agreed to partner and coordinate all efforts in the litigation.

16. On September 12, 2023, the *Lemmo's* action was transferred to this District pursuant to a joint stipulation of the parties. *See Lemmo's*, ECF No. 21.

17. In September 2023, the parties in the *CAPP* action briefed the *CAPP* plaintiffs' motion to compel a Rule 26(f) conference and Discover's motion to extend case deadlines. *See CAPP*, ECF Nos. 19, 22–24, 26–27.

18. On September 12, 2023, the *CAPP* parties held a Rule 26(f) conference during which, among other things, Discover discussed certain data limitations and the corresponding need for *CAPP* plaintiffs to obtain data from merchant acquirers in order to identify merchants not reflected in Discover's data. *See, e.g., CAPP*, ECF No. 29.

19. On September 12, 2023, Discover served the *CAPP* plaintiffs with an initial set of written discovery requests seeking their agreements with Discover and any merchant acquirers and/or credit card processors. On or around September 26, 2023, Discover served the *CAPP* plaintiffs with its initial disclosures.

20. On September 28, 2023, the Court entered a Minute Order in the *CAPP* action, directing the parties to cooperate on the exchange of any arbitration-related documents in a prompt manner, which the *CAPP* parties had already commenced doing. The Court also partially denied Discover's request for an extension directing the *CAPP* parties to submit a joint initial status report within five days of its Order. *CAPP*, ECF No. 28.

21. On October 3, 2023, the *CAPP* plaintiffs (in coordination with the *Lemmo's* plaintiff) and Discover filed a Joint Initial Status Report Under Rule 26(f), wherein, *inter alia*, Discover reiterated its contention that certain class members may be subject to arbitration based on their merchant acquirer agreements. *CAPP*, ECF No. 29. The parties also set forth their respective positions on factual and legal issues, damages, discovery, and proposed competing case schedules. *Id.*

22. On October 3, 2023, the *Support Animal* action was transferred to this District pursuant to a joint stipulation of the parties. *See Support Animal*, ECF No. 14.

23. On October 26, 2023, *CAPP* plaintiffs responded to Discover's initial set of written discovery requests, producing both written responses and responsive documents. The *Lemmo's* plaintiff and *Support Animal* plaintiffs thereafter produced similar responsive documents.

24. On the parties' motions, on January 8, 2024, this Court found the *CAPP*, *Lemmo's*, and *Support Animal* actions related for purposes of Local Rule 40.4, and ordered that

the *Lemmo's* and *Support Animal* actions be reassigned to this Court for all further proceedings. See *CAPP*, ECF No. 36; *Lemmo's*, ECF No. 4; *Support Animal*, ECF No. 21.

25. On January 23, 2024, the *CAPP* and *Lemmo's* Plaintiffs filed a motion to consolidate the Related Actions and appoint their counsel as interim class counsel pursuant to Rule 23(g) and appoint counsel for the *Support Animal* plaintiffs as liaison counsel. *CAPP*, ECF No. 40.

### **The Parties Engage in Extensive Mediation Efforts**

26. In late 2023, the parties began discussing, and ultimately agreed to engage in mediation and to exchange information and documents pertinent to same. On January 23, 2024, the parties informed the Court that they had scheduled a mediation with the Hon. Jay C. Gandhi (Ret.) of JAMS, and at the parties' request the Court stayed the litigation pending the anticipated mediation. *CAPP*, ECF Nos. 41, 42.<sup>2</sup> The Court extended the stay multiple times at the parties' request, in light of the parties' ongoing mediation efforts. See *CAPP*, ECF Nos. 44, 46, 48, 50, 52, 54.

27. The parties engaged in three full-day mediation sessions with the Honorable Jay Gandhi (Ret.) of JAMS, on February 13, 2024, March 21, 2024, and May 14, 2024, as well as numerous follow-up meetings and discussions through the mediator. In connection with the mediation efforts, Settlement Class Counsel received and reviewed pertinent data, documents, and other information regarding Plaintiffs and putative class members, pricing and fee structures, credit card processing agreements, the misclassified transactions, and damages, as well as certain

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<sup>2</sup> For the remainder of this Joint Declaration, corollary cites in *Lemmo's* and *Support Animal* are omitted.

data limitations at Discover. Settlement Class Counsel also conducted extensive legal research into the potential claims and other legal issues in this case.

28. In connection with the mediation sessions, the parties prepared and exchanged formal mediation statements setting forth their views on the claims, defenses, and damages, and exchanged and analyzed pertinent data and documents.

29. The negotiations were extremely hard-fought and adversarial, and lasted several months. Through these efforts, and with the assistance of Judge Gandhi, the parties were able to reach an agreement in principle to resolve this action on a class basis. In addition to other key deal terms like a payment “floor” amount (i.e., minimum total payout; \$500 million in the original settlement agreement and \$540 million in the modified Settlement) that substantially exceeded what Discover initially set aside to provide refunds to affected entities, Settlement Class Counsel were able to achieve numerous additional benefits for the Class through their efforts, as reflected in the Settlement and summarized in the approval papers filed herewith.

30. One hurdle in the negotiations involved Discover’s assertion that, as part of a refund program, applicable payment amounts should reflect the “net impact” of misclassifications—i.e., that the fee overcharges (at issue in this litigation) should be offset by any fee undercharges Discover claimed resulted from certain consumer cards being misclassified into a *lower* tier than they otherwise could have been (not at issue in this litigation). The “net impact” approach, if implemented, would have significantly decreased the potential damages for the class. Settlement Class Counsel challenged the “net impact” approach. To Discover’s credit, Discover agreed not to pursue the “net impact” approach, and to instead, in the Settlement, calculate the MID Amounts based on the estimated amount of overcharges only.

31. Thereafter, the parties continued to work diligently to negotiate and prepare the written settlement agreement, which included the methodology for calculating settlement payments, a detailed notice program and claim process, notice and claim forms, and other settlement exhibits.

32. All of this was very challenging. Given the complexity of the payment processing ecosystem, data limitations at Discover, and other unique qualities of this litigation, the negotiations required a uniquely substantial effort by the parties and Settlement Class Counsel, including in negotiating and crafting the notice, claims, and allocation processes. That included extensive negotiations regarding, *inter alia*, the methodology for calculating the MID Amounts for each MID, the details of Discover's payment of interest as part of such amounts, how to identify and reach impacted entities that are not identifiable from Discover's data, the minimum payment provision, settlement funding provisions that provide additional interest benefits to the settlement payment recipients, and various other provisions designed to boost participation and increase the payments to the Settlement Class.

33. This included extensive efforts over multiple months to negotiate and craft a notice and claims process that is thoughtfully designed to reach the affected entities, maximize participation, calculate settlement payment amounts using the best available data, and ensure that settlement payments go to the entities that incurred the alleged overcharges.

34. After the parties reached agreement in principle on the material terms of the original settlement, the parties separately negotiated regarding attorneys' fees, expenses, and service awards, through Judge Gandhi.

35. At all times, the settlement negotiations were adversarial, non-collusive, and conducted at arm's-length.

### **Confirmatory Discovery**

36. In addition to reviewing data, documents and other information in connection with the mediation sessions, as described above, Settlement Class Counsel also engaged in substantial confirmatory discovery.

37. In connection with these efforts, Settlement Class Counsel retained and worked closely with three subject matter experts: damages expert and finance Professor Nejat Seyhun at the University of Michigan, payment industry expert Professor Adam Levitin at Georgetown University, and database expert Arthur Olsen of Cassis Technology, LLC.

38. After reaching an agreement in principle, Settlement Class Counsel conducted confirmatory discovery regarding, among other areas, the fee overcharges, the methodology Discover employed to calculate the estimated overcharges, Discover's pertinent data, database and data limitations, the code underlying the methodology and calculation of MID Amounts, additional information about interchange fee pricing tiers/percentages, and Discover's current internal controls regarding the classification of Discover cards. Among other things:

- a. Discover produced, and Settlement Class Counsel and their experts reviewed, additional data regarding the estimated fee overcharges.
- b. Settlement Class Counsel conducted multi-hour formal interview sessions of pertinent Discover personnel regarding Discover's calculation of the approximate overcharges for each MID, and the proposed methodology for the same. Following that session, Discover provided additional information requested by Plaintiffs regarding the methodology and the underlying data and data limitations.
- c. Settlement Class Counsel conducted a site visit along with two of Plaintiffs' experts, to Discover's headquarters in Riverwoods, Illinois that

included interviews of top members of Discover's data analytics team, including a Senior Manager and Discover's then-Vice President of Global Pricing and Analytics, and where Settlement Class Counsel and the experts investigated Discover's pertinent databases, confirmed the scope and nature of Discover's data used for the calculations set forth in the Methodology, reviewed Discover's quality control and validation efforts to ensure the accuracy of the underlying the data used to calculate restitution, and reviewed and analyzed the computer code underlying the calculations set forth in the Methodology.

- d. Following the site visit, Discover produced a random, statistically significant sample of merchant data from its database for review and use by Mr. Olsen to confirm that the calculations and output conformed with the formula in the Methodology.
- e. Settlement Class Counsel also conducted a formal interview of Discover Bank's then-Vice President of Portfolio Management regarding the assumptions used in the Methodology and, prior to and after that session, Discover produced additional documents and information pertinent to the same.

39. Additionally, throughout the litigation and negotiations, Settlement Class Counsel continued interviewing potentially impacted entities and monitoring Discover's financial filings and other public releases of information.

**Preliminary Approval of the Original Settlement**

40. The extensive efforts summarized above culminated in a settlement agreement, which the parties executed on June 28, 2024. *See CAPP*, ECF Nos. 55, 59-1 (the “original” settlement agreement).

41. After finalizing the original settlement agreement, the parties continued to work hard on negotiating and finalizing the features of the extensive Notice Program, working with the proposed (and now appointed) settlement administrator, Epiq Class Action & Claims Solutions, Inc. (the “Settlement Administrator”). Settlement Class Counsel were able to negotiate multiple improvements that expanded the reach and effectiveness of the notice program. Settlement Class Counsel also continued to work diligently on finalizing the numerous forms of notice, claim forms, and other communications and instructions to be used in connection with the notice and claims process. Given the Notice Program here, the efforts required on this front were significantly more extensive than in a typical class action settlement.

42. On August 27, 2024, Settlement Class Counsel filed Plaintiffs’ unopposed motion for preliminary approval of the original settlement agreement. *CAPP*, ECF No. 59.

43. On October 22, 2024, the Court entered an order granting preliminary approval of the original settlement agreement. *CAPP*, ECF No. 63.

44. Following the Court’s preliminary approval order, Settlement Class Counsel, in conjunction with the Settlement Administrator and Discover, worked hard on the launch of the notice program and settlement administration.

**Discover Identifies New Transaction Data and Negotiations and Confirmatory Discovery Resume**

45. On November 21, 2024, while the parties and Settlement Administrator were working on launching the notice program and settlement administration, Discover notified

Settlement Class Counsel that Discover had identified new entity-level transactional data (in the possession of Discover Bank) that would support a more accurate calculation of MID Amounts for the years 2007 through 2015, despite its previously unsuccessful efforts to locate such data. Discover also claimed that the pre-2016 data was of the same quality and reliability as its later data.

46. The availability to such additional data meant the parties could now calculate Annual MID Amounts for years 2007 through 2015, using the MID-level transactional data rather than relying on assumptions and extrapolation for those years (as was done under the methodology in the original settlement). As a reminder, the extrapolation was previously necessary for those years because, as it explained, Discover “d[id] not have similar transaction-level data prior to 2016.” *See CAPP*, ECF No. 60.

47. Promptly after learning about the discovery of this new data, Settlement Class Counsel served document requests on Discover about the new data. In response, Discover produced additional information to Settlement Class Counsel, including a statistically random sample of the newly discovered data for review and analysis by Mr. Olsen.

48. Additionally, Settlement Class Counsel conducted a second interview of Discover’s former Vice President of Global Pricing, Controls, and Analytics regarding the source, reliability, and completeness of the new data.

49. Following an approximately four-week period of additional confirmatory discovery and expert analysis, and after the parties agreed that the newly discovered data was sufficient to support revisions to the original settlement, methodology, and notice program, Settlement Class Counsel spent several additional weeks negotiating with Discover to reach a modified settlement agreement (the “Settlement”).

50. The modified Settlement and Methodology provide for more precise calculations of the MID Amounts for the MIDs in the Settlement Class (i.e., because it utilizes the actual data and not extrapolations for years 2007 through 2015). In addition, Settlement Class Counsel successfully negotiated additional improvements for the Settlement Class.

51. For example, the modified (i.e., operative) Methodology assumes that each misclassified card transaction took place at the mid-point of the year (i.e., July 1), instead of the last day of the year (i.e., December 31) which had been used in the original Methodology. This modification results in higher interest amounts calculated, and thus higher MID Amounts. *See* Settlement, Ex. B § 2.3. Additionally, Settlement Class Counsel negotiated a significantly longer period during which interest will accrue for all MID Amounts—specifically, through the Escrow Final Funding Date, which occurs 235 days after the Effective Date. *See* Settlement § 5.11, Ex. B § 2.3. Discover had originally contemplated, as part of a refund program, that interest would only accrue through December 31, 2023. In the original settlement agreement, Discover agreed to extend that to the date of the Court’s original preliminary approval order of the original settlement agreement, which occurred on October 22, 2024. Under the terms of the modified Settlement, interest will continue to accrue until no earlier than February 2027. Plaintiffs’ expert, Mr. Olsen, calculates that, taken together, these interest-related improvements will increase the Settlement’s Total Settlement Payout figure (i.e., the ceiling) by approximately \$170 million, as compared to under the interest calculation method and timing Discover had originally contemplated.

52. Additionally, because a small portion of MIDs in the Settlement Class would have had higher Total MID Amounts under the methodology set forth in the original settlement agreement than they would have had under the modified Methodology, Settlement Class Counsel negotiated a provision in the modified Settlement whereby the Total MID Amounts for those

particular MIDs will still be calculated based on the original methodology. *See* Settlement, Ex. B § 2.4.

53. As part of the modified Settlement, Settlement Class Counsel also negotiated a \$40 million increase to the Minimum Total Class Payout (i.e., from \$500 million to \$540 million) and improvements to the Notice Plan and claims process that were made possible by the discovery of the additional data for 2007 through 2015. *See CAPP*, ECF No. 65 (discussing enhancements).

54. On January 21, 2025, the parties executed the modified Settlement Agreement. *See CAPP*, ECF No. 65-1 (the “Settlement”).

55. Despite the many additional hours that Settlement Class Counsel spent in connection with the modification of the settlement and related discovery, Settlement Class Counsel did not seek to renegotiate the Settlement’s terms regarding attorneys’ fees and expenses.

56. On January 22, 2025, Plaintiffs moved for preliminary approval of the Settlement, as modified. *CAPP*, ECF No. 65.

57. On July 30, 2025, the Court issued an order granting preliminary approval of the modified Settlement. *CAPP*, ECF No. 68 (the “Preliminary Approval Order”).

**Settlement Class Counsel’s Ongoing Work on Settlement Implementation**

58. In the months following the Court’s Preliminary Approval Order, Settlement Class Counsel have continued to work diligently on notice and other settlement implementation efforts, working closely with the Settlement Administrator. Given the requirements of the Notice Program here, the time and commitment required of Settlement Class Counsel for implementation work have been, and will continue to be, uniquely substantial in this case. To date, these efforts have included overseeing the dissemination of the initial wave of direct notices

and extensive media notice program, working closely with the Settlement Administrator on the Settlement Website and online claims and other functionalities, working on various supplemental materials needed to fully and successfully execute the administration process, following up communications to Settlement Class Members, and staying in daily communication with the Settlement Administrator regarding class member inquiries and important issues such as the first phase of the notice and claims process and related collection of data from the Merchant Acquirers and Payment Intermediaries. Settlement Class Counsel have also spoken with numerous Settlement Class Members and third-party aggregators since the Notice Program commenced, answering questions about the litigation, the Settlement, the claims process, and other issues.

59. Settlement Class Counsel also reached out to, and held video conferences, with officials at both the Federal Deposit Insurance Corporation (“FDIC”) and the Office of the Comptroller of the Currency (“OCC”) following the filing of the modified Settlement. The conference with the FDIC occurred on June 5, 2025, and the conference with the OCC occurred on September 12, 2025. During these conferences, Settlement Class Counsel provided information about the Settlement, the Methodology, and notice and claims program.

60. As contemplated by the Settlement, Settlement Class Counsel will continue to expend substantial resources on this matter through the Fairness Hearing, on notice and other implementation efforts and communicating with Settlement Class Members. Their work will continue well after the Fairness Hearing, should the Court grant final approval of the Settlement, including regarding payment allocation and distribution and other implementation matters, and ongoing communications with Settlement Class Members.

61. Attached hereto as **Exhibit 1** is a true and correct copy of the Declaration of Cameron R. Azari, Esq. on Implementation of Notice Program.

**Settlement Class Counsel's Motion for an Award of Attorneys' Fees and Expenses**

62. As described above, Settlement Class Counsel devoted substantial time and resources to litigating these actions and achieving an excellent outcome for the Settlement Class. Settlement Class Counsel did so despite the very real risk that they might receive no compensation at all.

63. Attached hereto as **Exhibit 2** is a true and correct copy of the Declaration of Catherine Pratsinakis in Support of Settlement Class Counsel's Motion for Attorneys' Fees, Costs, and Service Awards.

64. Attached hereto as **Exhibit 3** is a true and correct copy of the Declaration of Roger Heller in Support of Motion for an Award of Attorneys' Fees, Costs, and Service Awards.

65. Attached hereto as **Exhibit 4** is a true and correct copy of the Declaration of Taras Kick in Support of Motion for an Award of Attorneys' Fees, Costs, and Service Awards.

66. In addition to the Settlement Class Counsel firms, counsel for the *Support Animal* plaintiffs, Pomerantz LLP and Portnoy Law Firm LLP, worked on this litigation. Attached hereto as **Exhibit 5** is a true and correct copy of the Joint Declaration of Joshua Silverman and Lesley Portnoy in Support of Plaintiffs' Motion for Final Approval and for an Award of Attorneys' Fees and Expenses.

67. Attached hereto as **Exhibit 6** is a true and correct copy of the Declaration of Brian T. Fitzpatrick.

**Plaintiffs' Commitment to the Class**

68. Settlement Class Counsel seek service awards of \$7,500 each for the five Settlement Class Representatives, in recognition of their commitment on behalf of the Settlement

Class in this case. We believe that the requested Settlement Class Representative service awards are well justified under the circumstances here.

69. Attached hereto as **Exhibit 7** is a true and correct copy of the Declaration of D. Montgomery Caplan on Behalf of CAPP, Inc. in Support of Motion for Final Approval of Class Action Settlement and Motion for an Award of Attorneys' Fees, Costs and Service Awards.

70. Attached hereto as **Exhibit 8** is a true and correct copy of the Declaration of Keith Glauber on Behalf of Young People's Day Camps Inc. in Support of Motion for Final Approval of Class Action Settlement and Motion for an Award of Attorneys' Fees, Costs and Service Awards.

71. Attached hereto as **Exhibit 9** is a true and correct copy of the Declaration of Katan K. Patel on Behalf of Prayus Group LLC in Support of Motion for Final Approval of Class Action Settlement and Motion for an Award of Attorneys' Fees, Costs and Service Awards.

72. Attached hereto as **Exhibit 10** is a true and correct copy of the Declaration of Harrison Jacob Lemmo on Behalf of Lemmo's Pizzeria, LLC in Support of Motion for Final Approval of Class Action Settlement and Motion for an Award of Attorneys' Fees, Costs, and Service Awards.

73. Attached hereto as **Exhibit 11** is a true and correct copy of the Declaration of Lenny Nourafchan [Lenny's Casita, LLC] in Support of Plaintiffs' Motion for Final Approval of Class Action Settlements and Request for Service Awards.

#### **Risks of Continued Litigation**

74. In our view, the Settlement achieved here represents a very strong result for the Settlement Class, particularly given the risks of ongoing litigation. Among other risks, Discover sought discovery regarding a potential motion to compel arbitration, which if successful could, alone, have at least substantially impacted the cases and delayed the litigation (and any potential

recovery) by a year or more. Discover also made clear that it would vigorously defend this case on the merits and seek an offset for what it asserted were certain *undercharges* stemming from misclassifications. Among other merits issues, Discover made clear that it would vigorously defend against allegations that it violated federal and state statutes and common law, and disputed the premise that it had a legal obligation to Settlement Class Members in implementing its internal credit card classification system. Moreover, Discover has made clear that it would oppose certification of a litigation class. Discover's data limitations, along with the lack of ready access to the different contracts between Merchant Acquirers and End Merchants, might have created additional complications and challenges for measuring damages and obtaining relief for Settlement Class Members absent a settlement. Even if Plaintiffs were able to overcome these challenges, and prevail at trial on the merits, they would have faced an inevitable appeal.

75. While Settlement Class Counsel absolutely believe they could overcome these challenges, such challenges are indicative of the risks that Plaintiffs and the proposed Settlement Class would face if the litigation were to continue. The proposed Settlement provides substantial, well-tailored relief while allowing Settlement Class Members to avoid the risks of unfavorable, and in some cases dispositive, rulings on these and other issues.

76. Had this litigation continued, it is quite possible, if not likely, that Discover would have proceeded independently to implement a remediation program that lacked many of the benefits created as a result of the parties' negotiation, which include: more generous payment calculation terms, the default payment provisions negotiated as part of the Settlement, a minimum total payment amount (i.e., floor), minimum payments for valid claimants, the additional interest provisions that increase payments substantially, and the thoughtful, tailored notice program, user-friendly claims process, and allocation process. Despite this lingering risk

(which remained even as the parties engaged in their mediation efforts), Settlement Class Counsel committed themselves and their resources to this litigation and to negotiating a strong class Settlement for the Settlement Class.

77. Another major benefit of the Settlement is that it helps the Settlement Class avoid further delay in obtaining relief. Proceeding with the litigation could add years to the resolution, given the legal and factual issues raised and likelihood of appeals. Avoiding further delay is particularly beneficial in this case, given the alleged overcharges occurred as many as 17 years ago, meaning that as time passes, it is going to get harder to track down and pay Settlement Class Members.

**The Settlement Should Be Approved**

78. Based on our experience and knowledge about the facts and issues in this litigation, we believe that the proposed Settlement represents a fair, reasonable, and adequate result for, and is in the best interests of, the Settlement Class.

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

Executed on December 1, 2025, at Philadelphia, PA.

By: s/ Catherine Pratsinakis

Executed on December 1, 2025, at San Francisco, CA.

By: s/ Roger N. Heller

Executed on December 1, 2025, at Los Angeles, CA.

By: s/ Taras Kick

**CERTIFICATION PURSUANT TO GENERAL ORDER 16-0020**

I hereby certify that the content of the document is acceptable to all persons required to sign the document, and all such persons have consented to inclusion of their electronic signatures on the document.

Dated: December 1, 2025

/s/ Catherine Pratsinakis

# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
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Defendants.

Case No. 1:23-cv-15297

**DECLARATION OF CAMERON R. AZARI, ESQ. ON  
IMPLEMENTATION OF NOTICE PROGRAM**

I, Cameron R. Azari, Esq., declare as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally recognized expert in the field of legal notice, and I have served as an expert in hundreds of federal and state cases involving class action notice plans.

3. I am a Senior Vice President of Epiq Class Action & Claims Solutions, Inc. (“Epiq”) and the Managing Director of Epiq Legal Noticing (a.k.a., Hilsoft Notifications).

4. The facts in this Declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Epiq and Epiq Legal Noticing (collectively, “Epiq”). I can and will testify before the Court if called upon to do so.

**OVERVIEW**

5. This Declaration details the successful commencement and implementation to date of the Court-approved Notice Program (“Notice Program”) in the settlement of *CAPP, Inc. et al. v. Discover Financial Services et al.*, Case No. 1:23-cv-04676, *Lemmo’s Pizzeria, LLC v. Discover Financial Services et al.*, Case No. 1:23-cv-14250, and *Support Animal Holdings, LLC et al. v. Discover Financial Services et al.*, Case No. 1:23-cv-15297, all in the United States District Court for the Northern District of Illinois.

6. I previously submitted my *Declaration of Cameron R. Azari, Esq., on Proposed Notice Program* (“Notice Program Declaration”) dated August 27, 2024, (*Capp* Dkt. 59-4). Subsequently, after the parties entered in the modified settlement agreement, I submitted my *Declaration of Cameron R. Azari, Esq., on Proposed Updated Notice Program* (“Updated Notice Program Declaration”) dated January 22, 2025, (*Capp* Dkt. 65-3), which described the updated Settlement Notice Program designed by Epiq, in consultation with Settlement Class Counsel, Discover, and counsel for Discover. My previous declarations in this litigation detailed Epiq’s extensive class action notice experience, and attached Epiq’s curriculum vitae. I also described my educational and professional experience relating to class actions and my ability to render opinions on the overall adequacy of notice programs.

### **NOTICE PROGRAM SUMMARY**

7. Federal Rules of Civil Procedure Rule 23 directs that notice must be “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort” and “the notice may be by one or more of the following: United States mail, electronic means, or other appropriate means.”<sup>1</sup> The Notice Program satisfies these requirements. Epiq, in consultation with Settlement Class Counsel, Discover, and counsel for Discover, designed the Notice Program for the Settlement in this litigation, which is the best method of notice practicable under the circumstances to provide Notice to the Settlement Class.

8. **Notice Program Implementation.** Epiq is currently implementing and remains on track to complete all aspects of the Notice Program as planned, including sending individual direct notice and running all aspects of the comprehensive media notice campaign. Epiq commenced sending direct notice of the Settlement via mail and/or email to identified Settlement Class Members on September 11, 2025. As of November 24, 2025, Epiq has sent 9,311,778 Mailed Notices and 8,371,465 Email Notices. The comprehensive media notice campaign launched on September 11, 2025, consisting of digital and social media advertising (with approximately 860 million impressions when complete), streaming tv and radio, 177 print publications, a paid search campaign, informational release via PR Newswire, and upcoming outreach to business associations. This is separate and apart from the Settlement Website and toll-free telephone hotline. To date, no objections to the Settlement have been filed, and 49 requests to opt-out of the Settlement Class have been received (this includes complete and incomplete submissions).

9. **Reach & Frequency.** Epiq estimates that the media notice campaign alone will reach at least 85% of all Settlement Class Members with an average frequency of 4.0 times, once fully complete. Reflected in the calculated reach and average frequency are an extensive schedule of national business publications, digital and social media, including audio and video noticing. While not measured, Notices appearing in trade publications, local business journals, specialty language publications, U.S. territory newspapers, internet sponsored search listings, an

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<sup>1</sup> Fed. R. Civ. P. 23(c)(2)(B).

informational release, business association outreach, and a Settlement Website further enhance the notice efforts and provide the Settlement Class with additional exposure to notice. Epiq estimates that the entire Notice Program (including the mailed/emailed notice and the unmeasured portions of the media) will reach in excess of 90% of the Settlement Class, once fully complete.

10. In my experience, the Notice Program is robust and exceeds most other court-approved notice plans for class action settlements, is the best notice practicable under the circumstances of this case, and has been designed to satisfy the requirements of due process, including its “desire to actually inform” requirement.

11. The full Notice Program describing the elements of the notice effort and the rationale for the various components of the program was included as Exhibit 2 to the Updated Notice Program Declaration filed with the Court. *Capp* Dkt. No. 65-3, at 68-102.

12. The elements of the Notice Program are summarized as follows:

- **Initial Individual Direct Mailed Notice & Email Notice** – A summary Mailed Notice and a Claim Form or Payment Information Form, as applicable,<sup>2</sup> along with a courtesy reply envelope (“Notice Package”), was mailed via United States Postal Service (“USPS”) First-Class Mail to known Settlement Class Members for whom a mailable physical address was available. A summary Email Notice was sent to known Settlement Class Members for whom a valid email address was available.
- **Second Wave Mailed Notice & Email Notice** – Notice Packages will be sent on a rolling basis, via a second wave to any additional Settlement Class Members identified via Merchant Acquirer Information and Payment Intermediary Information submissions, as well as to prior recipients where updated contact information becomes available. An Email Notice will also be sent to these Settlement Class Members where a new available valid email address is obtained.
- **Reminder Notice** – In advance of the Settlement Claim Deadline, two rounds of email reminder notices will be sent to End Merchants (other than Unmanaged Active Direct End Merchants) with a valid email address that was not previously undeliverable, and who have not filed a Claim Form or a request for exclusion.

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<sup>2</sup> All Mailed Notices included a Claim Form, except those directed to Unmanaged Active Direct End Merchants who do not need to submit claims and Managed Active Direct End Merchants whose Mailed Notices instead included a Payment Information Form pursuant to the Settlement. Merchant Acquirers and Payment Intermediaries had dedicated Claim Forms. Indirect End Merchants and Inactive Direct End Merchants received the Standard Claim Form. The Notices direct the recipients to the Settlement Website where they can file a Claim Form and access additional information about the Settlement. The Notices include unique identification numbers to facilitate electronic claim submission via the Settlement Website.

- **Settlement Website** – A dedicated Settlement Website was established with pertinent information and relevant documents related to the Settlement, as well as the toll-free telephone number, email, and postal address to contact the Settlement Administrator for information regarding the Settlement.
- **Media Notice** – A robust media campaign was initiated targeting demographic groups of individuals most likely to operate businesses in the United States. The campaign includes the following elements:
  - **National Business Print Publications & Newspapers** – national business publications and newspapers such as *Barron's*, *Financial Times*, *Fortune*, *New York Times*;
  - **Mainstream Consumer Magazines** – *People* and *Sports Illustrated*;
  - **U.S. Territories Newspapers** – newspapers covering the U.S. territories;
  - **Trade and Specialty Publications** – publications covering major categories such as restaurants, hotels, travel, drug stores, supermarkets, retailers, franchises, among others;
  - **Local Business Journals** – business journals covering major metropolitan areas in the United States;
  - **Specialty Language Publications** – publications to target foreign language business owners and adults in business and finance occupations affected by the Settlement;
  - **Online Display Banners** – paid notice on the *Google* and *Yahoo!* display networks targeting Adults 18+ and business owners, business and finance, black owned business, women owned business, and/or minority owned business;
  - **Specialty Language Websites** – paid notice on a variety of websites focused on non-English speakers;
  - **Social Media** – paid notice across major social media platforms including *Facebook*, *Instagram*, *X (Twitter)*, *LinkedIn*, *Reddit*, and *YouTube*;
  - **Business/Financial Websites** – paid notice on selected business and financial websites such as *Bloomberg.com* and *WSJ.com*.
  - **Internet Sponsored Search** – paid notice on *Google*, *Yahoo!*, and *Bing*;
  - **Streaming TV** – 30-second paid video placements on streaming platforms such as *ESPN+* and *Hulu*;
  - **Sirius XM** – 30-second paid audio placements across *Sirius XM* radio;
  - **Podcasts** – 30-second paid audio placements across major podcast platforms such as *Spotify*, *Apple*, and *Google*;
  - **Radio** – 30-second paid audio placements and Digital Notices across *Pandora* streaming radio and 30-second paid audio placements across *Sirius XM*; and
  - **Informational Release** – national press release in English, Spanish, and Chinese, and distribution to a Small Business Influencer list.

13. On July 30, 2025, the Court approved the Notice Program and appointed Epiq as the Settlement Administrator in the *Order Granting Preliminary Approval of Modified Class Action Settlement* (“Preliminary Approval Order”). In the Preliminary Approval Order, the Court approved and certified, for settlement purposes, the following Settlement Class:

All End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the Relevant Period, except the entities and individuals listed on Exhibit A to the Agreement.

Relevant Period is defined as January 1, 2007 through December 31, 2023, in the *Class Action Settlement Agreement and Release* (“Settlement Agreement”).

14. After the Court’s Preliminary Approval Order was entered, Epiq commenced implementation of the Notice Program. This Declaration details the Notice Program implementation to date. The Notice Program was timely and effectively commenced as planned, consistent with the Settlement Agreement and the Court’s Preliminary Approval Order. Pursuant to the Settlement Agreement and Notice Program, certain elements of the Notice Program will continue through April 30, 2026, and are on schedule to be implemented as planned. After substantial completion of the Notice Program, and prior to the Final Approval Hearing, I will provide a subsequent declaration updating the Court regarding implementation of all elements of the Notice Program, and reporting updated statistics for the number of Claim Forms, opt-outs, and objections filed.

#### **INDIVIDUAL DIRECT NOTICE**

15. Pursuant to the Settlement Agreement and Notice Program, Epiq received Settlement Class Member name, address, and other merchant data directly from Discover (“Discover Registry”). This includes data for Merchant Acquirers, Payment Intermediaries, and End Merchants whose identities were known to Discover as of July 30, 2025, the date of the Preliminary Approval Order. Altogether, the data submissions provided by Discover to Epiq for purposes of providing individual

notice comprised 71,480,690 unique Merchant Identifier Codes (“MIDs”)<sup>3</sup> and associated data. Within this population, the Discover Registry reflected that 19,416,939 MIDs had one or more Misclassified Card Transactions during the Relevant Period. Pursuant to the certified Settlement Class definition, only entities involved in processing or accepting a Misclassified Card Transaction are in the Settlement Class. Epiq mined the MID data for non-Settlement Class Members to extract more current contact information and/or to fill in gaps in data for Settlement Class Members’ MIDs that dated back years.

16. **File Analysis.** For MIDs, all names, mailing addresses, email addresses, account open dates, last transaction dates, acquirer information, and Taxpayer Identification Numbers (“TINs”) were analyzed for data integrity and internal completeness.

17. **Data Analysis and Address Standardization.** Because an End Merchant may have changed Merchant Acquirers multiple times during the Relevant Period, often multiple records related to the same End Merchant were included in the Discover Registry. The End Merchant data provided by Discover also overlaps with Merchant Acquirers’ records requested and received by Epiq. With respect to mailing addresses, extensive data analysis was undertaken by Epiq to maximize the accuracy of the data roll-up efforts described below and to enhance the deliverability of mailed notices.

18. Each mailing address was first processed through an address standardization tool, which incorporates a database of all standardized USPS addresses. The results were then analyzed and it was determined for each record whether to use the original address or an updated address identified through this process. When the original address was identified as the address to send Notice to, additional steps were taken to remove extraneous non-address data elements from the address fields to enhance deliverability. Data analytics were also used to enhance city, state, zip code, and country data integrity.

19. **Roll-up of Records.** Prior to sending direct Notices, Epiq undertook considerable

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<sup>3</sup> A merchant identifier code is an identifier used by Discover in its merchant acquiring systems to identify an End Merchant. Where no such code exists, a “MID,” as used in this Declaration, may refer to the substitute code created by Epiq as the Settlement Administrator.

efforts to consolidate and de-duplicate the MID records for a single entity – i.e., where the data included various MIDs for the same End Merchant. Epiq used multiple data points for these efforts, including the following combinations for MIDs serviced by a Merchant Acquirer (in hierarchical order):

- Tax Identification Number (“TIN”) and legal name or TIN and DBA name;
- TIN and mailing address;
- Legal name and mailing address or DBA name and mailing address;
- Legal or DBA name and email address; and
- MID and Merchant Acquirer detail combinations without contradictory name or TIN.

In addition to these combinations, End Merchants with a direct services contract through Discover had data elements such as entity ID and headquarters integrated, which were reviewed as part of the record roll-up process.

20. Epiq ensured these efforts did not result in improperly combining records. For instance, had Epiq rolled-up records based on address alone, only a single End Merchant in a shopping mall would have been mailed a Notice. Similarly, there were situations in which hundreds of TINs matched to a single mailing address. These addresses are potentially billing or accounting offices, which perform processing services on behalf of their End Merchant clients. It was therefore reasonable in such instances, to mail a Notice to each individual End Merchant at the specified address.

21. Where possible, a single TIN with multiple mailing addresses was rolled-up to a single, best mailing address (such as the current corporate headquarters or location that was most recently transacting). However, for other records, additional necessary indicators to allow for roll-up were not present or adequately reliable. Therefore, Epiq manually reviewed instances where more than 100 Notices were slated to be mailed to the same address. Epiq was able to roll-up additional records based on these manual reviews.

22. **Final Notice Database Record Count.** After completing the efforts to roll-up and de-duplicate records from the Discover Registry data, as described above, the data was divided into three categories for sending Notice.

	<i>Category &amp; Details</i>	<i># of Records</i>
<b>1</b>	<b>Discover-Managed Relationship/MA/PI Records</b>	
	Merchant Acquirers	193
	Payment Intermediaries	352
	Managed Active Direct End Merchants	243
<b>2</b>	<b>Records for MIDs with a Transaction on January 1, 2016, or Later</b>	
	<b>Discover Direct Contract Only Records:</b>	7,779,842
	Unmanaged Active Direct End Merchants	
	Inactive Direct End Merchants	
	<b>Merchant Acquirer-Serviced Records:</b>	
	Indirect End Merchants	
<b>3</b>	<b>Records for MIDs with Transactions Only before January 1, 2016</b>	
	<b>Discover Direct Contract Only Records:</b>	
	Unmanaged Active Direct End Merchants	1,042,246 + To Be Mailed Records <sup>4</sup>
	Inactive Direct End Merchants	488,902 + To Be Mailed Records
	<b>Merchant Acquirer-Serviced Records:</b>	
	Indirect End Merchants	To Be Mailed Records

### **NOTICE PROGRAM COMMENCEMENT**

23. Epiq remains on track to complete sending the Notices by the Court-ordered mailing deadline of January 11, 2026. Pursuant to the Notice Program, the individual direct notice email and mail components are being sent in phases as planned:

- **Initial Individual Direct Mailed Notice & Email Notice** – For initial notice efforts, sending a Notice Package via USPS First-Class Mail to known Settlement Class Members for whom a mailable physical address is available. Also, sending an Email Notice to known Settlement Class Members for whom a valid email address is available.
- **Second Wave Mailed Notice & Email Notice** – On a rolling basis, sending a Notice Package to additional Settlement Class Members identified via Merchant Acquirer

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<sup>4</sup> For the “To Be Mailed Records,” address updating and record roll-up is underway for approximately 3 million records. Mailed Notices will be sent to these records prior to the January 11, 2026, deadline.

Information and Payment Intermediary Information submissions, as well as to prior recipients with updated contact information. Also, sending an Email Notice to these Settlement Class Members with an available valid email address.

- **Reminder Notice** – In advance of the Settlement Claim Deadline, sending two rounds of Email Reminder Notices to End Merchants (other than Unmanaged Active Direct End Merchants) with a valid email address that was not previously undeliverable, and who have not filed a Claim Form or a request for exclusion.

***Individual Notice – Direct Mail***

24. Following extensive address standardization, roll-up process to combine and de-duplicate records, and updating the mailing addresses via the USPS National Change of Address (“NCOA”) system, and other data processing detailed in previous paragraphs, Epiq commenced sending Notice via USPS First-Class Mail. The following table reports by category the Mailed Notice sent via USPS First-Class Mail as of November 24, 2025, as well as upcoming scheduled mailings.

	<i>Category &amp; Details</i>	<i># of Notice Records</i>	<i>Mailed Notices Sent</i>	<i>Mailed Notice Dates</i>
<b>1</b>	<b>Discover-Managed Relationship MA/PI Records</b>			
	Merchant Acquirers	193	193	9/11/25 – 9/15/25
	Payment Intermediaries	352	352	
	Managed Active Direct End Merchants	243	243	
<b>2</b>	<b>Records with a Transaction on January 1, 2016, or Later</b>			
	Unmanaged Active Direct End Merchants	7,779,842	97,860	9/12/25 – 10/28/25
	Inactive Direct End Merchants		3,753	
	Indirect End Merchants		7,678,229	
<b>3</b>	<b>Records with Transactions Only before January 1, 2016</b>			
	Unmanaged Active Direct End Merchants	1,042,246 + TBD	1,042,246 + TBD	11/12/25 – 11/19/25 Dec. 2025 – Jan. 11, 2026
	Inactive Direct End Merchants	488,902 + TBD	488,902 + TBD	11/12/25 – 11/19/25 Dec. 2025 – Jan. 11, 2026
	Indirect End Merchants	TBD	TBD	Dec. 2025 – Jan. 11, 2026
	<b>TOTAL MAILED</b>	<b>9,311,778</b>	<b>9,311,778</b>	

25. **Discover-Managed Relationship Records.** From September 11, 2025, through September 15, 2025, Epiq commenced sending Mailed Notice to 193 Merchant Acquirers, 352 Payment Intermediaries, and 243 Managed Active Direct End Merchants. Notice was sent to the preferred relationship contact name and address for each Settlement Class Member provided by Discover's internal relationship managers.

26. **Records with a Transaction on January 1, 2016, or Later.** From September 12, 2025, through October 28, 2025, Epiq commenced sending Mailed Notice to 7,779,842 Settlement Class Member records for whom the final Notice record included at least one MID with a last transaction date of January 1, 2016, or later, based solely on the data provided by Discover.

27. **Records with Transactions Only before January 1, 2016.** Within this data set there are two distinct subgroups.

- **Records unaffected by Merchant Acquirer-provided data.** The first group consists of Unmanaged Active Direct End Merchant and Inactive Direct End Merchant records with no association to an Indirect End Merchant based on the roll-up activities conducted ahead of the September - October 2025 mailings. Given these stand-alone records are not associated with any Merchant Acquirer-Serviced MIDs, the Merchant Acquirer data provided by the November 12, 2025, response deadline would not have provided any new address data. Thus, for these records mailing Notices could not commence prior to the receipt of additional data from Merchant Acquirers. From November 12, 2025, through November 19, 2025, Epiq commenced sending Mailed Notice to 1,042,246 Unmanaged Active Direct End Merchants and 488,902 Inactive Direct End Merchants.
- **Records potentially affected by Merchant-Acquirer-provided data.** The second group of Unmanaged Active Direct End Merchant and Inactive Direct End Merchant records could be associated to at least one Merchant Acquirer-serviced Indirect End Merchant record and thus, had the potential to be updated by Merchant Acquirer address data received by Epiq. These Notices with updated addresses will be sent prior to the Court ordered mailing deadline of January 11, 2026, along with the Indirect End Merchant records that had last transaction dates before January 1, 2016.

28. As described in the Notice Program, mailing address records with a last transaction date before January 1, 2016, are likely outdated. To effectuate the most effective notice campaign, pursuant to the Notice Program, mailing Notices for these records is occurring later, pending potential updates from receipt of Merchant Acquirer data provided to Epiq, which was due to Epiq by the November 12, 2025, Merchant Acquirer response deadline. Additional data received after this deadline that is timely will be used as well. Epiq received downstream data files from 18 Merchant Acquirers by the response deadline, consisting of 17.6 million Settlement Class Member MID records. This data is being loaded into the Notice Database and mailing files are being prepared to send Mailed Notices to the records for MIDs with transactions only before January 1, 2016. These Notices are scheduled to be mailed between December 2025 – January 11, 2026. Email Notices for many of these records have already been sent. To the extent there is a newly available valid email address available, an Email Notice will be sent to those records in conjunction with the December 2025 – January 11, 2026, Mailed Notice efforts for this group of records.

29. All Mailed Notices included a Claim Form, except those directed to Unmanaged Active Direct End Merchants who do not need to submit claims and Managed Active Direct End Merchants whose Mailed Notices instead included a Payment Information Form pursuant to the Settlement. Merchant Acquirers and Payment Intermediaries had dedicated Claim Forms. Indirect End Merchants and Inactive Direct End Merchants received the Standard Claim Form. The Notices direct the recipients to the Settlement Website where they can file a Claim Form and access additional information about the Settlement. The Notices include unique identification numbers to facilitate electronic claim submission via the Settlement Website.

30. In instances where a Settlement Class Member had both Direct End Merchant MID(s) (Discover Direct Contract-assigned MIDs) and Indirect End Merchant MID(s) (Merchant Acquirer-assigned MIDs), Epiq sent the relevant Notice Packets to the Settlement Class Member with a Cover Letter explaining to the entity that they may receive more than one Notice Packet and to follow all applicable instructions to receive full payment for which they are eligible.

31. The Merchant Acquirers Notice and Claim Form are included as **Attachment 1** hereto. The Payment Intermediaries Notice and Claim Form are included as **Attachment 2** hereto.

The Managed Active Direct End Merchants Notice and Payment Information Form are included as **Attachment 3** hereto. The Unmanaged Active Direct End Merchants Notice is included as **Attachment 4** hereto. The Inactive Direct End Merchants Notice and Claim Form are included as **Attachment 5** hereto. The Indirect End Merchants Notice and Claim Form are included as **Attachment 6** hereto. The Cover Letter detailed above is included as **Attachment 7** hereto.

32. Pursuant to the Settlement Agreement, Epiq has requested Settlement Class Member name and address information from Merchant Acquirers and known Payment Intermediaries. As of November 24, 2025, Epiq has received data from 18 Merchant Acquirers consisting of 17.6 million records. Communication is underway with additional Merchant Acquirers and known Payment Intermediaries in an attempt for Epiq to receive additional data. Pursuant to the Notice Program, as additional Settlement Class Members' name and address information is provided or alternate address information for known Settlement Class Members is received, Epiq will send additional Notices to those Settlement Class Members on a rolling basis through April 30, 2026 (274 days after the entry of the Preliminary Approval Order).

33. **Merchant Acquirers.** The Notices sent to Merchant Acquirers include:

- Background information about the litigation and the Settlement.
- Important deadlines and available options.
- Information on how the Merchant Acquirer can receive an electronic report from Epiq (via a mutually agreeable secure file transfer protocol) with a list of the Merchant Identifier Codes ("MIDs") from Discover's records. This is data associated with the Merchant Acquirer and, for each MID, any related legal entity name(s), DBA name(s), TIN(s), and contact information that can reasonably be retrieved from Discover's records (including Indirect End Merchants). The data, as provided by Discover via the Initial Data Transfer, for the purpose of enabling the Merchant Acquirer to provide the Merchant Acquirer Information as set forth in the Settlement Agreement.
- Directions for the Merchant Acquirer to submit a Claim Form.
- A request to provide Merchant Acquirer Information to Epiq as the Settlement Administrator.

- Instructions and a file layout guideline on what data is needed and how to provide Merchant Acquirer Information to Epiq.

34. **Known Payment Intermediaries.** The Notices sent to known Payment Intermediaries include:

- Information on how a known Payment Intermediary can receive an electronic report from Epiq (via a mutually agreeable secure file transfer protocol) with information relating to the Payment Intermediary for the purpose of enabling the Payment Intermediary to provide the Payment Intermediary Information, as set forth in the Settlement Agreement.
- Directions for the Payment Intermediary to submit a Claim Form.
- A request to provide Payment Intermediary Information to Epiq as the Settlement Administrator.

35. **Managed Active Direct End Merchants.** The Notices to Managed Active Direct End Merchants clearly state they need to provide Managed Active Direct End Merchant Payment Details to receive their Settlement Payments. Payment Details include whom the payment should be made to and instructions on how the payment should be made (i.e. mail a check or send an electronic payment directly to an account, including current banking information). As noted above, the Mailed Notices sent to Managed Active Direct End Merchants include a Payment Information Form to provide the Payment Details.

36. **Unmanaged Active Direct End Merchants.** Notices to Unmanaged Active Direct End Merchants clearly state they will be paid automatically (without the need to submit a Claim Form or any other information) pursuant to the Settlement Agreement (unless they opt-out of the Settlement).

37. Prior to sending the mailed notices, in addition to Epiq running all mailing addresses against the NCOA database to ensure Settlement Class Member address information is up-to-date and accurately formatted for mailing, addresses are certified via the Coding Accuracy Support System (CASS) to ensure the quality of the zip codes, and verified through Delivery Point Validation (DPV) to verify the accuracy of the addresses. This address updating process is standard

for the industry and for the majority of promotional mailings that occur today.

38. The return address on the mailed notices is a post office box that Epiq maintains for this Settlement. The USPS automatically forwards mailed notices with an available forwarding address order that has not expired. Mailed notices returned as undeliverable are promptly re-mailed to any new address available through USPS information (for example, to the address provided by the USPS on a returned mail piece for which the automatic forwarding order has expired, but is still within the time period in which the USPS returns the piece with an updated address indicated).

39. Epiq will commence re-mailing undeliverable Mailed Notices returned without an updated address, after all the planned initial mailings are complete in January 2026. Specifically, to the extent records are returned as undeliverable without an updated address, Epiq will attempt to identify the best alternative address from the data sources below (in the following order):

- Merchant Acquirer or Payment Intermediary address updates;
- Alternative addresses in the Discovery Registry data; and
- Third-party address lookup service results – using proprietary database tools to identify updated addresses.

Each time a Mailed Notice is returned as undeliverable it will be re-mailed to the next best address based on the process above.

#### ***Individual Notice – Direct Email***

40. From September 11, 2025, through September 29, 2025, Epiq commenced sending 8,371,465 Email Notices to identified Settlement Class Member records with an available valid email address, regardless of last transaction date. As Epiq receives additional data from Merchant Acquirers and Payment Intermediaries, if valid email addresses Epiq has not already utilized are included and a Claim Form has not already been filed by the entity to whom the email address is connected, an Email Notice will be sent to the associated Settlement Class Members.

41. Prior to sending the Email Notices, email validation and hygiene tools are used to standardize the email addresses, verify whether the email addresses are valid, and identify and remove email addresses that are a fraud threat – email addresses maintained by bots, spammers, and phishers. This is a necessary and critical process for the effectiveness of email campaigns

today. Without being proactive and using these tools, Email Notices inadvertently sent to bad actor email addresses could jeopardize and damage the reputation of the entire email campaign; likely causing the campaign itself to be flagged and blocked as a source of spam, preventing or delaying Email Notices from being sent to valid email addresses of Settlement Class Members.

42. In addition, the following industry standard best practices for sending email notices for class action litigation are followed. The Email Notices are drafted in such a way that the subject line, the sender, and the body of the message overcome SPAM filters and ensure readership to the fullest extent reasonably practicable. For instance, the Email Notices use an embedded html text format. This format provided easy-to-read text without graphics, tables, images, and other elements that in our experience would increase the likelihood that the messages would be blocked by Internet Service Providers (ISPs) or SPAM filters for this type of communication. The Email Notices are sent from an IP address known to major email providers as one not used to send bulk “SPAM” or “junk” email blasts. Each Email Notice is transmitted with a digital signature to the header and content of the Email Notice, which allows ISPs to programmatically authenticate that the Email Notices are from authorized mail servers. Each Email Notice is also transmitted with a unique message identifier.

43. The Email Notices include an embedded link to the Settlement Website. By clicking the link, recipients are able to access the Long Form Notice and additional information about the Settlement, including the online claim filing module where Settlement Class Members can submit a Claim Form or a payment election electronically. The Email Notices include unique identification numbers and pre-populated information to facilitate electronic claim submission via the Settlement Website.

44. If the receiving email server cannot deliver the message, a “bounce code” is returned along with the unique message identifier. For Email Notices for which a bounce code is received indicating the message is undeliverable for reasons such as an inactive or disabled account, the recipient’s mailbox was full, etc., at least two additional attempts are made to deliver the Email Notice. As of November 24, 2025, 2,145,179 Email Notices remain undeliverable after multiple attempts. The Merchant Acquirers Email Notice is included as **Attachment 8** hereto. The Payment Intermediaries

Email Notice is included as **Attachment 9** hereto. The Managed Active Direct End Merchants Email Notice is included as **Attachment 10** hereto. The Unmanaged Active Direct End Merchants Email Notice is included as **Attachment 11** hereto. The Inactive Direct End Merchants Email Notice is included as **Attachment 12** hereto. The Indirect End Merchants Email Notice is included as **Attachment 13** hereto.

#### *Individual Notice – Second Wave*

45. Pursuant to the Notice Program, Epiq remains on track to send the second wave of direct Notice via mail and email, as applicable, within one hundred sixty-five (165) days after entry of the Preliminary Approval Order (i.e., by January 11, 2026). The Notices will be sent to all End Merchants, Merchant Acquirers, and Payment Intermediaries associated with a MID having at least one identified Misclassified Card Transaction during the years 2007-2023 for which:

- Initial direct Notice was not previously sent and contact information has since been provided to Epiq (e.g., via submitted Merchant Acquirer Information or Payment Intermediary Information); or
- Initial direct Notice was previously sent but with different contact information (i.e., different than was used for the initial direct Notice) and data has since been provided to Epiq (e.g., via submitted Merchant Acquirer Information or Payment Intermediary Information) that Epiq determines to be more current or potentially more current than that used for the initial direct Notice.

#### *Notice Requests*

46. Additionally, a Mailed Notice and Claim Form is mailed to all people who request one via the toll-free telephone number or other means. As of November 24, 2025, Epiq has mailed 113 packages as a result of such requests.

#### *Reminder Notice*

47. Between two hundred thirty and two hundred sixty (230-260) days after entry of the Preliminary Approval Order (i.e., between March 17, 2026, and April 16, 2026), Epiq will send an Email Reminder Notice to End Merchants (other than Unmanaged Active Direct End Merchants) who have not filed a Claim Form for whom an available valid email address is

available, and was not previously undeliverable.

48. No later than 30 days before the Settlement Claim Deadline, Epiq will also make at least two reasonable outreach efforts to obtain Managed Active Direct End Merchants Payment Details where the Managed Active Direct End Merchants has not yet submitted this information.

#### ***Media Notice Plan***

49. The robust media campaign approved and directed by the Court has also commenced and continues to run, targeting demographic groups of individuals most likely to operate businesses in the United States. The Media Notice Plan includes the following elements as detailed below.

#### ***National Business Print Publications & Newspaper***

50. To target business owners and adults in business and finance occupations, the Publication Notice is running in the selected leading national business publications as detailed in the following table.

<b><i>National Business Publications &amp; Newspapers</i></b>	<b><i>On-Sale Dates</i></b>	<b><i>Ad Size</i></b>	<b><i>Page Positions</i></b>
<i>Barron's</i>	9/20/25 & 11/15/25	Half Page	29 & 27
<i>Financial Times</i>	9/18/2025 & 11/10/25	Quarter Page	7 & 16
<i>Forbes</i>	Oct/Nov (print 10/14/25, online 9/23/25) & Dec/Jan (print 12/16/25, online 11/25/25)	Full Page	83 & TBD
<i>Fortune</i>	Oct/Nov (print 10/21/25, digital mag 10/8/14) & Dec/Jan (print 12/16/25, digital mag 12/1/25)	Half Page	111 & TBD
<i>IBD Weekly (Investor's Business Daily)</i>	9/22/25 & 11/10/25	Sixth Page	B9 & A13
<i>New York Times</i>	9/18/25 & 11/10/25	Quarter Page	B5 & B2
<i>Wall Street Journal</i>	9/18/25 & 11/10/25	Sixth Page	B8 & B3

51. The selected seven business publications have a combined circulation of over two million. An example of the Publication Notice as it appeared in these selected national business publications is included as **Attachment 14** hereto.

***Mainstream Consumer Magazines***

52. To target all demographic groups, the Publication Notice appeared in two selected leading weekly and monthly publications. The Notice appeared twice each in *People* and *Sports Illustrated*, for a total of four insertions. The Notice appeared as a highly visible, half-page notice in each publication. The Publication Notice ran in the selected consumer magazines as detailed in the following table.

<b><i>Mainstream Consumer Magazines</i></b>	<b><i>On-Sale Dates</i></b>	<b><i>Page Positions</i></b>
<i>People</i>	10/6 /25 & 11/14/25	60 & 22
<i>Sports Illustrated</i>	10/21/25 & 11/18/25	11 & 21

53. The selected publications have a combined circulation of 3.7 million. The individual tear sheets of the Publication Notice as it appeared in each of these selected consumer magazine publications are included as **Attachment 15** hereto.

***U.S. Territories Newspapers***

54. The Publication Notice appeared twice as a standard magazine sized, full page ad unit in English and Spanish language newspapers targeting the U.S. territories. The Publication Notice ran in the selected newspapers as detailed in the following table.

<b><i>U.S. Territories Newspapers</i></b>	<b><i>Distribution</i></b>	<b><i>On-Sale Date</i></b>	<b><i>Page Position</i></b>
<i>El Nuevo Dia (Puerto Rico)</i>	Puerto Rico	9/25/25 & 10/30/25	49 & 15
<i>El Vocero De Puerto Rico</i>	Puerto Rico	9/25/25 & 10/30/25	14 & 11
<i>Primera Hora</i>	Puerto Rico	9/25/25 & 10/30/25	27 & 15
<i>Samoa News</i>	American Samoa	10/2/25 & 11/14/25	8 & 8
<i>Virgin Islands Daily News</i>	U.S. Virgin Islands	10/2/25 & 10/30/25	13 & 13

55. The selected publications have a combined circulation of over 442,000. An example of the Publication Notice as it appeared in these publications is included as **Attachment 16** hereto.

***Trade and Specialty Publications***

56. The Publication Notice is running in trade and specialty publications, which cover

major categories such as direct marketing, restaurants, hotels, travel, drug stores, supermarkets, retailers, franchises, among others.<sup>5</sup> The Publication Notice is running in the selected trade and specialty publications as detailed in the following table.

<i>Trade and Specialty Publications</i>	<i>On-Sale Date(s)</i>	<i>Page Position(s)</i>
<b>Direct Marketing &amp; Internet</b>		
<i>Sales &amp; Marketing Management (digital only)</i>	10/13/25 & 12/16/25	15 & TBD
<b>Restaurant</b>		
<i>Nation's Restaurant News</i>	10/15/25 & 11/15/25	38 & 47
<i>FSR</i>	10/1/25 & 12/1/25	39 & TBD
<i>Today's Restaurant News (digital only)</i>	9/29/25 & 12/1/25	9 & TBD
<b>Hotel &amp; Hospitality</b>		
<i>Hotel Business</i>	10/15/25 & 12/14/25	27 & TBD
<i>Hotels</i>	11/6/25 & 12/11/25	73 & TBD
<b>Gov't, Education &amp; Utilities</b>		
<i>Education Week</i>	9/29/25 & 12/1/25	35 & TBD
<b>General Business</b>		
<i>Crain's New York</i>	9/22/25 & 11/10/25	5 & 31
<i>Crain's Chicago</i>	9/22/25 & 11/10/25	11 & 31
<i>Crain's Detroit</i>	9/22/25 & 11/10/25	25 & 7
<i>Crain's Cleveland</i>	9/22/25 & 11/10/25	5 & 7
<b>Travel</b>		
<i>Travel Weekly</i>	9/22/25 & 11/10/25	16 & 11
<i>Luxury Travel Advisor</i>	10/8/25 & 12/2/25	29 & TBD
<b>Supermarkets</b>		
<i>Supermarket News</i>	10/7/25 & 12/1/25	14 & TBD
<i>Progressive Grocer</i>	10/15/25 & 12/15/25	49 & TBD
<b>Drug Stores</b>		
<i>Drug Store News</i>	10/28/25 & 12/9/25	67 & TBD

<sup>5</sup> *Public Utilities Fortnightly* was included in the Notice Plan. However, the publication refused to run the notice ad. In our experience, this happens on occasion that a publication refuses to run an ad.

<i>Trade and Specialty Publications</i>	<i>On-Sale Date(s)</i>	<i>Page Position(s)</i>
<b>Franchise</b>		
<i>Franchise Times</i>	10/1/25 & 11/1/25	25 & 81
<b>Independent Hardware / Paint retailers</b>		
<i>Hardware Retailing</i>	10/1/25 & 12/1/25	48 & TBD
<b>C Stores/Petroleum</b>		
<i>Convenience Store News</i>	10/28/25 & 12/1/25	73 & TBD
<i>C-Store Decisions</i>	10/1/25 & 12/1/25	76 & TBD
<b>Retail</b>		
<i>Mass Market Retailers</i>	10/13/25 & 11/24/25	79 & 116
<i>Chain Store Age</i>	10/7/25 & 11/25/25	27 & 19
<i>Retail Merchandiser (digital only)</i>	10/24/25 & 1/19/26	7 & TBD

57. The selected publications have a combined circulation of over 937,000. An example of the Publication Notice as it appeared in these publications is included as **Attachment 17** hereto.

#### *Local Business Journals*

58. The Publication Notice appeared twice as a half-page ad unit in local business journals, covering major metropolitan areas in the United States in English. The Publication Notice ran once in September and once in October<sup>6</sup> in the selected local business journals as detailed in the following table.

<i>Local Business Journal</i>	<i>On-Sale Dates</i>	<i>Page Positions</i>
Albany Business Review	9/26/25 & 10/24/25	9 & 5
Albuquerque Business First	9/26/25 & 10/24/25	3 & 3
Atlanta Business Chronicle	9/26/25 & 10/24/25	35A & 4A
Austin Business Journal	9/26/25 & 10/24/25	9 & A9
Baltimore Business Journal	9/26/25 & 10/24/25	5 & 7
Birmingham Business Journal	9/26/25 & 10/24/25	3 & 3
Boston Business Journal	9/26/25 & 10/24/25	4 & 5

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<sup>6</sup> *Inside the Valley*, is scheduled to run on December 21, 2025.

<i>Local Business Journal</i>	<i>On-Sale Dates</i>	<i>Page Positions</i>
Buffalo Business First	9/26/25 & 10/24/25	7 & 9
Charlotte Business Journal	9/26/25 & 10/24/25	7 & 15
Cincinnati Business Courier	9/26/25 & 10/24/25	12 & 24
Columbus Business First	9/26/25 & 10/24/25	5 & 5
Dallas Business Journal	9/26/25 & 10/24/25	11 & 10
Dayton Business Journal	9/26/25 & 10/24/25	6 & 6
Denver Business Journal	9/26/25 & 10/24/25	5 & 6
Triad Business Journal	9/26/25 & 10/24/25	9 & 3
Pacific Business News	9/26/25 & 10/24/25	13 & 3
Houston Business Journal	9/26/25 & 10/24/25	6 & 19
Jacksonville Business Journal	9/26/25 & 10/24/25	3 & 3
Kansas City Business Journal	9/26/25 & 10/24/25	3 & 11
Louisville Business First	9/26/25 & 10/24/25	13 & 32
Memphis Business Journal	9/26/25 & 10/24/25	3 & 3
South Florida Business Journal	9/26/25 & 10/24/25	11 & A3
Milwaukee Business Journal	9/26/25 & 10/24/25	3 & 21
Minneapolis/St. Paul Business Journal	9/26/25 & 10/24/25	5 & 15
Nashville Business Journal	9/26/25 & 10/24/25	4 & 33
Orlando Business Journal	9/26/25 & 10/24/25	25 & 7
Philadelphia Business Journal	9/26/25 & 10/24/25	3 & 3
Phoenix Business Journal	9/26/25 & 10/24/25	17 & 4
Pittsburgh Business Times	9/26/25 & 10/24/25	23 & 11
Portland Business Journal	9/26/25 & 10/24/25	9 & 9
Triangle Business Journal	9/26/25 & 10/24/25	5 & 23
Sacramento Business Journal	9/26/25 & 10/24/25	3 & 7
San Antonio Business Journal	9/26/25 & 10/24/25	7 & 7
San Francisco Business Times	9/26/25 & 10/24/25	3 & 3

<i>Local Business Journal</i>	<i>On-Sale Dates</i>	<i>Page Positions</i>
Silicon Valley Business Journal	9/26/25 & 10/24/25	7 & 9
Puget Sound Business Journal	9/26/25 & 10/24/25	9 & 9
St. Louis Business Journal	9/26/25 & 10/24/25	11 & 11
Tampa Bay Business Journal	9/26/25 & 10/24/25	17 & 4
Washington Business Journal	9/26/25 & 10/24/25	9 & 9
Wichita Business Journal	9/26/25 & 10/24/25	7 & 4
Alaska Journal of Commerce	9/21/25 & 10/26/25	20 & 20
Central New York Business Journal	9/22/25 & 10/20/25	5 & 3
Business Record (Central Iowa)	9/26/25 & 10/24/25	8 & 24
Fairfield County Business Journal & Westchester County Business Journal n/k/a (Westfair Business Journal)	9/22/25 & 10/20/25	7 & 12
Long Island Business News	9/26/25 & 10/24/25	7 & 7
Los Angeles Business Journal	9/22/25 & 10/20/25	2 & 2
Mississippi Business Journal (Jackson)	Oct. 2025 & Nov. 2025	17 & 67
New Orleans City Business	9/19/25 & 10/15/25	7 & 7
NJBIZ	9/22/25 & 10/20/25	3 & 7
Orange County Business	9/22/25 & 10/20/25	16 & 5
Pacific Coast Business Times	9/26/25 & 10/24/25	8A & 7A
Rochester Business Journal	9/26/25 & 10/24/25	5 & 11
San Diego Business Journal	9/22/25 & 10/20/25	2 & 2
Inside the Valley (f/k/a San Fernando Valley Business Journal)	10/20/25 & 12/21/25	49 & TBD
North Bay Business Journal	9/22/25 & 10/20/25	9 & 8
The Journal Record (Oklahoma)	9/22/25 & 10/20/25	3A & 3A

59. The selected local business journals have a combined circulation of more than 692,000. An example of the Publication Notice as it appeared in these publications is included as **Attachment 18** hereto.

***Specialty Language Publications***

60. To provide notice to foreign language speaking and minority business owners and adults in business and finance occupations affected by the Settlement, the Publication Notice appeared in specialty language and/or minority focused publications, newspapers, and newspaper groups. The Publication Notice appeared as a half-page ad unit two times in selected daily, weekly, and monthly publications. The Publication Notice was translated into Spanish, Chinese, Japanese, Korean, Russian, and Vietnamese. The Publication Notice ran in the selected specialty language publications as detailed in the following table.

<b><i>Specialty Language Publications</i></b>	<b><i>Frequency</i></b>	<b><i>On-Sale Dates</i></b>	<b><i>Page Positions</i></b>
Afro-American	1 x Weekly (Sa)	9/27/25 & 11/1/25	A6 & A2
Al Dia	1 x Weekly (W)	9/24/25 & 10/29/25	6A & 5A
Asian Journal (Las Vegas)	1 x Weekly (Th)	10/2/25 & 10/30/25	5 & 3
Asian Journal (Los Angeles)	1 x Weekly (Sa)	10/4/25 & 11/1/25	3 & 3
Atlanta Inquirer	1 x Weekly (Sa)	9/27/25 & 11/1/25	5 & 2
Atlanta Voice	1 x Weekly (F)	9/26/25 & 10/31/25	7 & 7
Boston Banner (Baystate Banner)	1 x Weekly (Th)	9/25/25 & 10/30/25	9 & 2
California Journal for Filipino Americans	1 x Weekly (F)	10/10/25 & 10/31/25	13 & 13
Chicago Citizen Newspaper Group (6 Papers – Forced Combo)	1 x Weekly (W)	9/24/25 & 10/29/25	9 & 7
China Press – Philadelphia Ed.	1 x Weekly (F)	10/3/25 & 10/31/25	B2 & A3
Chinese Daily News – (World Journal Los Angeles (Th-Sa Ed.)	3 x Weekly (Th, F, Sa)	10/2/25 & 10/30/25	A4 & A4
Crusader Group (Chicago – Gary – Forced Combo)	1 x Weekly (Sa)	9/27/25 & 11/1/25	3/3 & 7/9
Daily Sun New York	1 x Weekly (F)	10/7/25 & 10/31/25	6 & 6
Dallas Chinese News	1 x Weekly (F)	10/3/25 & 10/31/25	A13 & A13
Dallas Examiner	1 x Weekly (Th)	9/25/25 & 10/30/25	3 & 7
El Diario (Formerly El Diario La Prensa)	Daily	9/25/25 & 10/30/25	7 & 7

<i>Specialty Language Publications</i>	<i>Frequency</i>	<i>On-Sale Dates</i>	<i>Page Positions</i>
El Especialito – Northern Jersey (6 Zones)	1 x Weekly (F)	9/26/25 & 10/31/25	16, 13, 11, 16, 14, 25 & 15, 15, 17, 23, 15, 16
El Mundo	1 x Weekly (Th)	9/25/25 & 12/4/25	5 & TBD
El Observador	1 x Weekly (F)	9/26/25 & 10/31/25	15 & 24
El Planeta	Monthly	10/10/25 & 11/7/25	9 & 7
El Pregonero	Monthly	10/9/25 & 11/6/25	9 & 11
El Reportero	1 x Weekly (F)	9/26/25 & 10/31/25	5 & 5
El Sol Latino (Philadelphia)	1 x Weekly (Th)	9/25/25 & 10/30/25	5 & 3
El Tiempo Latino	1 x Weekly (F)	9/26/25 & 10/31/25	A9 & A7
Epoch Times – Chicago (Chinese Ed.)	1 x Weekly (F)	10/3/25 & 10/31/25	B12 & B12
Epoch Times – Dallas (Chinese Ed.)	1 x Weekly (F)	10/3/25 & 10/31/25	1 & A12
Epoch Times – New York (Chinese Ed.)	1 x Weekly (F)	10/3/25 & 10/31/25	A11 & A11
Epoch Times – Philadelphia (Chinese Ed.)	1 x Weekly (F)	10/3/25 & 10/31/25	A11 & A11
Forward Times	1 x Weekly (W)	9/24/25 & 10/29/25	5A & 6A
Houston Defender	1 x Weekly (Th)	9/25/25 & 10/30/25	9 & 8
Houston Sun	1 x Weekly (F)	9/26/25 & 10/31/25	8 & 8
Impacto Latino Newspaper	1 x Weekly (Th)	9/25/25 & 10/30/25	9 & 11
Korea Daily – Los Angeles	6 x Weekly (M, Tu, W, Th, F, Sa)	10/2/25 & 10/30/25	26 & 30
Korea Daily – New York	6 x Weekly (M, Tu, W, Th, F, Sa)	10/2/25 & 10/30/25	8 & 6
Korea Times – Chicago	1 x Weekly (Tu)	9/30/25 & 10/28/25	A4 & A4
Korea Times – Los Angeles	1 x Weekly (F)	10/3/25 & 10/31/25	A13 & A13
Korea Times – New York Ed.	Daily	10/2/25 & 10/30/25	A3 & A3
Korean New York Daily (New York Ilbo, The)	4 x Weekly (M, Tu, W, Th)	10/2/25 & 10/30/25	A4 & A8
Korean Phila Times	1 x Weekly (F)	10/3/25 & 10/31/25	31 & 29
La Informacion	1 x Weekly (Th)	9/25/25 & 10/30/25	5 & 5

<i>Specialty Language Publications</i>	<i>Frequency</i>	<i>On-Sale Dates</i>	<i>Page Positions</i>
La Opinion	Daily	9/25/25 & 10/30/25	7 & 7
La Opinion De La Bahia (Formerly El Mensajero)	1 x Weekly (Su)	9/28/25 & 11/9/25	5 & 3
La Raza	1 x Weekly (Su)	9/28/25 & 10/26/285	3 & 7
La Voz De Houston	1 x Weekly (W)	9/24/25 & 10/29/25	V3 & V3
La Voz Hispana	1 x Weekly (Th)	9/25/25 & 10/30/25	12 & 13
Lawndale Group News	2 x Weekly (Su, Th)	9/25/25 & 10/30/25	5 & 5
Lighthouse (Los Angeles Ed.)	2x Monthly	9/30/25 & 10/28/25	46 & 36
Los Angeles News Observer	1 x Weekly (Th)	9/25/25 & 10/30/25	A10 & A9
Metro Chinese Weekly	1 x Weekly (F)	10/3/25 & 10/31/25	A3 & A13
Metro Viet News	1 x Weekly (F)	10/3/25 & 10/31/25	13 & 24
Mundo Hispanico	1 x Weekly (Th)	10/24/25 & 11/21/25	17 & 17
New York Amsterdam News	1 x Weekly (Th)	9/25/25 & 10/30/25	27 & 33
New York Trend	1 x Weekly (Th)	9/25/25 & 10/30/25	5 & 5
Ngoi Viet Daily News	Daily	10/2/25 & 10/30/25	A5 & A7
Novedades News	1 x Weekly (W)	9/24/25 & 10/29/25	12 & 12
NY Japion	1 x Weekly (F)	10/3/25 & 11/7/25	6 & 6
Philadelphia Asian News	2x Monthly	10/17/25 & 11/14/25	4 & 4
Philadelphia Observer	1 x Weekly (Th)	9/25/25 & 10/30/25	9 & 9
Philadelphia Sunday Sun	1 x Weekly (F)	9/28/25 & 11/2/25	9 & 12
Philadelphia Tribune	Daily	9/25/25 & 10/30/25	4A & 5A
Philippine News – Los Angeles Ed.	1 x Weekly (F)	10/3/25 & 10/30/25	12 & 17
Pinoy News magazine (Formerly Pinoy Monthly)	1 x Monthly	10/3/25 & 10/31/25	23 & 22
Post News Group Newspaper Network (8 Paper Combo)	1 x Weekly (W)	9/24/25 & 10/29/25	8 & 7
Precinct Reporter Tri-County Bulletin/Long Beach Leader	1 x Weekly (Th)	9/25/25 & 10/30/25	A8, A6, A6 & A7, A5, A5
Reporter Publications (3 papers – Sun Reporter Publishing Co.)	1 x Weekly (Th)	9/25/25 & 10/30/25	8 & 3

<i>Specialty Language Publications</i>	<i>Frequency</i>	<i>On-Sale Dates</i>	<i>Page Positions</i>
Rolling Out New York	1 x Weekly (Th)	9/25/25 & 10/30/25	5 & 5
Russkaya Reklama – New York Ed.	1 x Weekly (F)	10/3/25 & 10/31/25	A4 & A25
Saigon Times	Weekly (F)	10/3/25 & 10/31/25	16A & 16A
San Francisco Bay View Newspaper	1 x Monthly	11/1/25 & 12/1/25	11 & TBD
Seikatsu Press	1 x Weekly (Sa)	10/4/25 & 11/1/25	2 & 3
Sing Tao Daily – Chicago (Mon. – Thur. Ed.)	Daily	10/2/25 & 10/30/25	A8 & A6
Sing Tao Daily – New York (Mon. – Thur. Ed.)	4 x Weekly (M, Tu, W, Th)	10/2/25 & 10/30/25	A8 & A6
Sing Tao Daily – Southern California (Mon. – Thur. Ed.)	4 x Weekly (M, Tu, W, Th)	10/2/25 & 10/30/25	A14 & A13
Svet	1 x Weekly (F)	10/3/25 & 10/31/25	6 & 3
US Asian Post (Chicago)	1 x Weekly (F)	10/3/25 & 10/31/25	10 & 10
US Asian Post (Los Angeles)	1 x Weekly (F)	10/3/25 & 10/31/25	10 & 10
US Asian Post (New York)	1 x Weekly (F)	10/3/25 & 10/31/25	10 & 10
Via Times	1 x Monthly	10/15/25 & 11/15/25	11 & 11
Viet Bao Daily News – LA Ed. (Formerly Known as Viet Bao Kinh Te)	1 x Weekly (F)	10/3/25 & 10/31/25	16 & 15
Vocero Hispano	1 x Weekly (F)	9/26/25 & 10/31/25	20 & 20
Washington Hispanic	1 x Weekly (F)	9/26/25 & 10/31/25	7A & 3A
Washington Informer	1 x Weekly (Th)	9/25/25 & 10/30/25	17 & 17
Wave Community Newspapers (7 publications)	1 x Weekly (Th)	9/25/25 & 10/30/25	16 & 3
World Journal New York – Chinese Daily News (Sun. – Thurs. Ed.)	5 x Weekly (Su, M, Tu, W, Th)	10/2/25 & 10/30/25	A4 & A4

61. The selected specialty language and/or minority focused publications and newspapers have a combined circulation of over 3.7 million. An example of the Publication Notice as it appeared in these publications is included as **Attachment 19** hereto.

***Display Banner Notices***

62. The Notice Program also includes targeted digital advertising in English and Spanish on the selected advertising networks *Google Display Network* and *Yahoo Audience Network*, which together represent thousands of digital properties across all major content categories. These Digital Notices target Adults 18+ and business owners, business and finance, black owned business, women owned business, and minority owned business. All Digital Notices are designed to encourage engagement by Settlement Class Members—by linking directly to the Settlement Website, allowing visitors easy access to the claim filing portal and relevant information and documents, including the Long Form Notice. Consistent with best practices, the Digital Notices use language from the Long Form Notice headline, which allow users to identify themselves as potential Settlement Class Members.

63. The Digital Notices are currently running. More details regarding the target audiences, run dates, specific ad types of the Digital Notices, and the number of impressions are included in the following table.

<i>Network/Property</i>	<i>Target Audience</i>	<i>Ad Sizes</i>	<i>Run Dates</i>	<i>Planned Impressions</i>
<i>Google Display Network</i>	Adults 18+ and Affinity Audience for business owner, business and finance, Black owned business, women owned business, and/or minority owned business	728x90, 300x250, 300x600 & 970x250	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	140,000,000
<i>Google Display Network</i>	Adults 18+ and Intent Audience for business owner and/or business and finance		9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	120,000,000
<i>Yahoo Audience Network</i>	Adults 18+; business and finance content		9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	100,000,000
<b>TOTAL</b>				<b>360,000,000</b>

64. Combined, we estimate that approximately 360 million impressions will be generated by the Display Banner Notices during a three-month period. As of November 24, 2025, 263.8 million impressions have run.

### *Specialty Language Websites*

65. Digital Notices are running across a variety of websites focused on non-English speakers with approximately 100 million combined impressions. Digital Notices are running in Spanish, Chinese, Korean, Vietnamese, Japanese, Thai, and Russian, as appropriate. The majority of foreign language Digital Notices are in Spanish, given it is the most spoken language after English in the United States. More details regarding the target audiences, specific ad types of the Digital Notices, language, run dates, and the number of impressions are included in the following table.

<i>Digital Plan</i>	<i>Target Audience</i>	<i>Ad Size</i>	<i>Language</i>	<i>Run Dates</i>	<i>Impressions</i>
<i>Spanish Website Targeting</i>	Adults 18+	728x90, 300x250, 300x600 & 970x250	Spanish	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	60,000,000
<i>Multi-cultural Language Targeting</i>	Adults 18+; business and finance content	728x90, 300x250, 300x600 & 970x250	Spanish, Chinese, Japanese, Thai, Vietnamese, Korean & Russian	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	40,000,000
<b>TOTAL</b>					<b>100,000,000</b>

66. Combined, we estimate that approximately 100 million impressions will be generated by these Digital Notices during a three-month period. As of November 24, 2025, 72.2 million impressions have been generated by Digital Notices on specialty language websites.

### *Social Media*

67. The Digital Notices are running on the leading social media platforms in the United States, including *Facebook*, *Instagram*, *X (Twitter)*, *LinkedIn*, *YouTube*, and *Reddit*. For *YouTube*, the Digital Notices are 30-second video ads directing viewers to the Settlement Website. The social media campaign targets users based on job titles as well as uses an interest-based approach which focuses on the interests that users exhibit while on the social media platforms, capitalizing on the Target Audience's propensity to engage in social media.

68. More details regarding the target audiences, specific ad types of the Digital Notices, run dates, and the number of impressions are included in the following table.

<i>Digital Plan</i>	<i>Target Audience</i>	<i>Ad Size(s)</i>	<i>Run Dates</i>	<i>Planned Impressions</i>
<i>Facebook</i>	Adults 18+ with interest in Discover, business and/or small business	Newsfeed & Right Hand Column	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	100,000,000
<i>Facebook</i>	Adults 18+ who are in business & finance or with demographics of small business owner	Newsfeed & Right Hand Column	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	75,000,000
<i>Facebook</i>	Adults 18+ with job title of business owner <sup>7</sup>	Newsfeed & Right Hand Column	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	25,000,000
<i>Facebook</i>	Target Followers of Her Magazine Facebook page	Newsfeed & Right Hand Column	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	500,000
<i>Instagram</i>	Adults 18+ with interest in Discover, business and/or small business	Newsfeed	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	50,000,000
<i>Instagram</i>	Adults 18+ who are in business & finance or with demographics of small business owner	Newsfeed	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	10,000,000
<i>Instagram</i>	Adults 18+ with job title of business owner	Newsfeed	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	10,000,000
<i>Instagram</i>	Target Followers of Her Magazine Instagram Account	Newsfeed	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	500,000
<i>X (Twitter)</i>	Adults 18+ with interests in business owner, business & finance and/or small business	Twitter Feed Ads	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	10,000,000
<i>X (Twitter)</i>	Adults 18+ and Post Engagement Targeting for Business Owner, Small Business Owner, Black Owned Business, Women Owned Business, Minority Owned Business and/or Discover Merchant Services	Twitter Feed Ads	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	30,000,000

<sup>7</sup> Job titles may include auto body owner, daycare owner, dry cleaner/laundromat owner, gym owner, hotel/motel owner, landscaping owner, retail merchandise store owner, salon owner, spa owner or restaurant owner.

<i>Digital Plan</i>	<i>Target Audience</i>	<i>Ad Size(s)</i>	<i>Run Dates</i>	<i>Planned Impressions</i>
<i>LinkedIn</i>	Adults 18+ with job titles in senior management <sup>8</sup>	LinkedIn Feed Ads	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	10,000,000
<i>YouTube</i>	Adults 18+ and Affinity Audience for business owner, business and finance, Black owned business, women owned business, and/or minority owned business	:30 second video ads	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	20,000,000
<i>YouTube</i>	Adults 18+ and Intent Audience for business owner and/or business and finance	:30 second video ads	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	10,000,000
<i>YouTube</i>	Adults 18+ and select channel and video targeting <sup>9</sup>	:30 second video ads	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	10,000,000
<i>Reddit</i>	Adults 18+ targeted to feeds r/Business, r/SmallBusiness, r/Entrepreneurs/, /r/BusinessHub/ and /r/Businessideas/	Reddit Feed Ads	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	9,325,000
<i>Reddit</i>	Keyword Targeting: Black Owned Business, Women Owned Business, and/or Minority Owned Business	Reddit Feed Ads	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	5,000,000
<b>TOTAL</b>				<b>375,325,000</b>

69. Combined, we estimate that approximately 375.3 million impressions will be generated by these Digital Notices during a three-month period. As of November 24, 2025, 260 million impressions have run through the above-noted social media platforms. As applicable,

<sup>8</sup> Job titles include Owner, Business Partner, CEO, President, Vice President, CFO, CTO, COO, CIO, Business Director, Chief of Staff and/or Manager, among others.

<sup>9</sup> Select channel and video targeting may include youtube.com/bloomberg, youtube.com/Forbes, youtube.com/InsiderBusiness, youtube.com/wsj, youtube.com/markets, and/or youtube.com/CNBC, among others.

clicking on the Digital Notice brings the reader to the Settlement Website, which provides easy access to the claim filing portal and relevant information and documents, including the Long Form Notice. Examples of the various types of Digital Notices are included as **Attachment 20** hereto.

***Business/Financial Websites***

70. Digital Notices are running on the websites of several financial media outlets mirrored in the print portion of the Notice Plan, including the *Bizjournals.com*, *Bloomberg.com*, *Forbes.com*, *WSJ.com*, *Time.com*, *Fortune.com*, *Inc.com*, and *BusinessInsider.com*. A one-time notice ran in the *Forbes Women Newsletter Bundle of Forbes Women*, *Forbes Daily*, and *Forbes Weekly*. Notices link directly to the Settlement Website, which provides easy access to the claim filing portal and relevant information and documents, including the Long Form Notice. More details regarding the target audiences, specific ad types of the Digital Notices, run dates, and the number of impressions are included in the following table.

<b><i>Digital Plan</i></b>	<b><i>Target Audience</i></b>	<b><i>Ad Size(s)</i></b>	<b><i>Run Dates</i></b>	<b><i>Impressions</i></b>
<i>Bizjournals.com National</i>	Adults 18+; business and finance content	728x90, 300x250, 300x600 & 970x250	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	15,000,000
<i>Bizjournals.com DMA Targeted to Chicago</i>	DMA Targeted to Chicago, IL Local News & Article Pages	Mobile Interscroller, XL Banners, Leaderboard, Island & Mobile	9/12/25 – 11/11/25	226,808
<i>Bizjournals.com DMA Targeted to Cleveland</i>	DMA Targeted to Cleveland, OH Local News & Article Pages	Mobile Interscroller, XL Banners, Leaderboard, Island & Mobile	9/12/25 – 11/15/25	226,808
<i>Bizjournals.com DMA Targeted to Los Angeles</i>	DMA Targeted to Los Angeles, CA Local News & Article Pages	Mobile Interscroller, XL Banners, Leaderboard, Island & Mobile	9/12/25 – 12/20/25	226,808
<i>Bizjournals.com DMA Targeted to New York</i>	DMA Targeted to New York, NY Local News & Article Pages	Mobile Interscroller, XL Banners, Leaderboard, Island & Mobile	9/12/25 – 11/11/25	226,808

<i>Digital Plan</i>	<i>Target Audience</i>	<i>Ad Size(s)</i>	<i>Run Dates</i>	<i>Impressions</i>
<i>Bloomberg.com</i>	Adults 18+; business and finance content	728x90, 300x250, 300x600 & 970x250	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	1,250,000
<i>Forbes.com</i>	Adults 18+; business and finance content		9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	2,500,000
<i>Forbes Women Newsletter Bundle: ForbesWomen, Forbes Daily, and Forbes Weekly</i>	800,000 Subscribers	970x250 + Logo	9/18/25 – 9/24/25	850,000
<i>WSJ.com</i>	Adults 18+; business and finance content	728x90, 300x250, 300x600 & 970x250	9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	3,000,000
<i>Time.com</i>	Adults 18+; business and finance content		9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	500,000
<i>Fortune.com</i>	Adults 18+; business and finance content		9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	500,000
<i>Inc.com</i>	Adults 18+; business and finance content		9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	500,000
<i>BusinessInsider.com</i>	Adults 18+; business and finance content		9/18/25 – 10/17/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	500,000
<b>TOTAL</b>				

71. Combined, we estimate that approximately 25.5 million impressions will be generated by these Digital Notices during a three-month period. As of November 24, 2025, 17.8 million impressions have run on the above noted business and financial websites. As applicable, clicking on the Digital Notice brings the reader to the Settlement Website, which provides easy access to the claim filing portal and relevant information and documents, including the Long Form Notice. Examples of the various types of Digital Notices are included as **Attachment 21** hereto.

#### ***Digital Internet Sponsored Search***

72. To facilitate Settlement Class Members with locating the Settlement Website, sponsored search listings are acquired on the three most highly-visited internet search engines: *Google*, *Yahoo!* and *Bing*. When search engine visitors search on common keyword combinations such as

“credit card settlement,” “Discover lawsuit,” or “payment card litigation,” the sponsored search listing is generally displayed at the top of the page prior to the search results or in the upper right hand column.

73. The sponsored listings are running from September 11, 2025, through the claim submission deadline of May 18, 2026. As of November 24, 2025, the sponsored search listings have been displayed 397,244 times, resulting in 43,538 clicks that displayed the Settlement Website. A complete list of the sponsored search keyword combinations is included as **Attachment 22** hereto. Examples of the sponsored search listing as displayed on each search engine are included as **Attachment 23** hereto.

### *Streaming TV and Podcasts*

74. Streaming 30-second video placements were purchased and are airing on connected television and streaming services including *ESPN+*, *Hulu*, and *Sling*, among others. Notices are also placed during traditional commercial breaks on ad-supported streaming plans and targeted to individuals who consume business/financial oriented content online. Airing video ad notices on streaming services allows the digital notice to be distributed on any device where an individual chooses to consume their content and entertainment, including mobile devices, tablets, computers, and/or connected televisions.

75. Streaming 30-second audio ad placements were purchased and are airing across major Podcast platforms such as *Spotify*, *Apple*, and *Google*. Podcasts are an excellent way to reach an engaged audience based on targeted content. More details regarding the target audience, ad size, run dates, and the number of impressions are included in the following table.

<i>Media</i>	<i>Target/ Section</i>	<i>Ad Size</i>	<i>Run Date(s)</i>	<i>Impressions</i>
<i>Streaming TV</i>	Adults 18+; Business Owner, Race/Ethnicity: African American and Affinity: Business, Entrepreneurship; and Gender: Women + Affinity: Business, Entrepreneurship	:30 second video ads	10/10/25 – 11/8/25 11/29/25 – 12/28/25	6,000,000
<i>Podcast Targeting (Spotify, Apple, Google)</i>	Entrepreneurship, Business news and Professional content	:30 second audio ads	9/25/25 – 10/24/25 11/10/25 – 11/24/25 12/8/25 – 12/22/25	3,000,000
<b>TOTAL</b>				<b>9,000,000</b>

76. Combined, we estimate that approximately 9 million impressions will be generated by these streaming TV and podcast video and audio placements during a three-month period. As of November 24, 2025, 4.4 million impressions ran on streaming TV and podcasts nationwide. The streaming TV and podcast script is included as **Attachment 24** hereto.

### ***Streaming Radio Campaign***

77. Internet streaming radio spots focus on stations of general interest and served on internet and satellite radio are running via the *Sirius XM Radio* (app) and *Pandora Streaming Radio*, which are likely to be listened to by the Target Audience. *Sirius XM Radio* and *Pandora Streaming Radio* are played on desktop, mobile, tablet, television, and in automobiles (*Sirius XM Radio* in automobiles uses satellite signal; however, users can stream the internet enabled content from their mobile devices). The radio campaign consists of 30-second streaming radio spots that are airing nationwide. As of November 24, 2025, 2.4 million streaming radio spots have already run on *Sirius XM Radio* and *Pandora*.

78. The Pandora streaming radio campaign is scheduled to run 1,515,151 streaming radio spots nationwide with accompanying Digital Notices on the Pandora app/website. As of November 24, 2025, audio spots and 191,809 Digital Notice impressions have run.

79. Both Pandora and Sirius XM run for three separate time periods (“flights”) from September 25, 2025, through December 22, 2025. The first flight ran from September 25, 2025, through October 24, 2025. The second flight ran from November 10, 2025, through November 24, 2025. The third flight is scheduled to run from December 8, 2025, through December 22, 2025. The streaming radio script is the same as the streaming TV and podcast script, included in the prior attachment.

### ***Informational Release***

80. To build additional reach and extend exposures, on September 11, 2025, a party-neutral Informational Release was issued nationally over PR Newswire’s US1 and Multicultural Newslines in English, Spanish, and Chinese (traditional and simplified). Additionally, the release was also sent to over 430 contacts in the small business category. The Informational Release included the address of the Settlement Website and the toll-free telephone number. The

Informational Release served a valuable role by providing additional notice exposures beyond that which was provided by the paid media. The Informational Release in English, Spanish, and Chinese (both simplified Chinese and traditional Chinese) is included as **Attachment 25** hereto.

***Business and Business Professional Associations***

81. Epiq assembled a comprehensive list of the largest business and business professional associations in the United States (“Outreach List”). In early January 2026, Epiq will be sending a summary of the Notice describing the Settlement and referencing the Settlement Website URL to access the Long Form Notice and other Court documents, and the claim filing portal. The communication will be sent to the Outreach List requesting that the associations contact their membership and share information about the Settlement, including how to obtain a Notice and Claim Form. The Outreach List is included as **Attachment 26** hereto. The proposed Notice to Business and Business Professional Associations is included as **Attachment 27** hereto.

***Settlement Website***

82. On September 10, 2025, in conjunction with the commencement of the Notice Program, Epiq substantially updated the dedicated Settlement Website ([www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com)) with information regarding the Settlement and ability to submit Settlement Claims among other capabilities. Relevant documents posted on the Settlement Website include the Summary Notices, Long Form Notice, Preliminary Approval Order, Settlement Agreement, Claims Form and operative Complaints. The Long Form Notice and Claim Forms are available in English, Spanish, Russian, Japanese, Chinese, Korean, Thai, and Vietnamese. In addition to allowing Settlement Class Members to submit a Claim Form, the Settlement Website provides instructions for Merchant Acquirers and Payment Intermediaries to provide Merchant Acquirer Information and Payment Intermediary Information, respectively. The Settlement Website also includes relevant dates (including for court hearings), answers to Frequently Asked Questions (“FAQs”), instructions for how Settlement Class Members may opt-out (request exclusion) from or object to the Settlement, contact information for the Settlement Administrator, and other case-related information. The Settlement Website is optimized for display on mobile phones. The Settlement Website address was prominently displayed in the Notices and

Digital Notices link directly to the Settlement Website. As of November 24, 2025, there have been 501,102 unique visitor sessions to the Settlement Website, and 3,090,815 web pages have been presented. The Long Form Notice in English is included as **Attachment 28** hereto.

***Toll-free Telephone Number***

83. On September 10, 2025, Epiq commenced providing live agent support on the main toll-free telephone number 1-888-655-3176 to allow Settlement Class Members the ability to obtain additional information and support. Callers are able to request direct Notice and the applicable Claim Form by email and/or mail, listen to answers to FAQs, and speak with a live operator during normal business hours. The automated telephone system is available 24 hours per day, 7 days per week. The toll-free telephone numbers were prominently displayed in all notice documents, as applicable. A separate toll-free telephone number was established for entities identified as having specialized issues such as third-party filers, Merchant Acquirers, and Payment Intermediaries was also launched. The following administration statistics reflect activity for both toll-free telephone numbers. As of November 24, 2025, there have been 10,523 calls comprised of 96,947 minutes of use, and agents have handled 6,885 incoming calls representing 85,130 minutes of use and 3,241 outbound calls representing 12,793 minutes of use.

***Email Inbox and Postal Mailing Address***

84. A postal mailing address and email address (info@DiscoverMerchantSettlement.com) were established for the Settlement and continue to be available, allowing Settlement Class Members the opportunity to request additional information or ask questions.

***Opt-Out Requests and Objections***

85. As of November 24, 2025, Epiq has received 49 requests to opt-out of the Settlement Class (this includes complete and incomplete submissions). Epiq will continue to receive and process opt-out requests leading up to the deadline. As of November 24, 2025, Epiq is not aware of any objections to the Settlement.

***Claim Submission & Distribution Options***

86. The Notices provided a detailed summary of the relevant information about the Settlement, including the Settlement Website address and how Settlement Class Members could

submit a Claim Form online or by mail by the deadline. With any method of submitting a Claim Form, Settlement Class Members are given the option of receiving a mailed check or, at the election of the Settlement Class Member, a payment transmitted by ACH to the Settlement Class Member's designated U.S. bank account. Counsel for the parties determined the payment options available to Settlement Class Members. The method of payment selected does not impact Epiq's compensation for its work as the Settlement Administrator, and no payment method was discouraged relative to other options.

87. The deadline for Settlement Class Members to file a Claim Form is May 18, 2026. As of November 24, 2025, Epiq has received 382,729 Claim Forms (201,358 online and 181,371 paper). These numbers are preliminary. Since the claim filing deadline is more than five months away, based on our experience in handling similar settlements and given the additional notice efforts between now and the claim filing deadline, Epiq anticipates a significant increase in the number of Claims Forms filed by the deadline. As standard practice, Epiq is conducting an ongoing quality control review of the Claim Forms received. After detailed review, the total number of Claim Forms received will likely change (e.g., due to removed duplicate or invalid Claim Forms).

### **CONCLUSION**

88. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, and by case law pertaining to the recognized notice standards under Federal Rule of Civil Procedure 23. This framework directs that the notice plan be optimized to reach the class, and to provide class members with easy access to the details of how the class action may impact their rights under the Settlement. All of these requirements are being met with the Notice Program.

89. Epiq is implementing and remains on track to complete all aspects of the Notice Program, including sending individual direct notice by postal mail and/or email to all identified Settlement Class Members with an available mailing address and/or valid email address; and running all aspects of the comprehensive media notice campaign.

90. The media notice campaign alone is expected to reach at least 85% of all Settlement Class Members with an average frequency of 4.0 times, once fully complete. Reflected in the

calculated reach and average frequency are an extensive schedule of national business publications, digital and social media, including audio and video noticing. While not measured, Notices appearing in trade publications, local business journals, specialty language publications, U.S. territory newspapers, internet sponsored search listings, an informational release, business association outreach, and a Settlement Website further enhance the notice efforts and provide the Settlement Class with additional exposure to notice. Combined, Epiq estimates that the entire Notice Program (including the mailed/emailed notice and the unmeasured portions of the media) will reach in excess of 90% of the Settlement Class, once fully complete.

91. The Federal Judicial Center’s (“FJC’s”) *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide*, which is relied upon for federal cases, states that, “the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%.”<sup>10</sup> Here, we have developed and are implementing a Notice Program that will readily achieve a reach at the upper end of that standard, once fully complete.

92. All elements of the Notice Program have timely and effectively commenced, consistent with the Settlement Agreement and the Court’s Preliminary Approval Order. The remaining elements of the Notice Program are on schedule to be implemented as planned. After the Notice Program is complete, and prior to the Final Approval Hearing, I will provide a subsequent declaration detailing the implementation of all elements and adequacy of the Notice Program.

93. Based on my extensive experience of designing and implementing class action notice programs, it is my opinion the Notice Program for this Settlement provides the best notice practicable under the circumstances, conforms to all aspects of Federal Rules of Civil Procedure Rule 23 regarding notice, comports with the guidance for effective notice articulated in the Manual for Complex Litigation, Fourth and applicable FJC materials and guidance, and satisfies the requirements of due process, including its “desire to actually inform” requirement.

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<sup>10</sup> FED. JUDICIAL CTR, *JUDGES’ CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3* (2010), available at <https://www.fjc.gov/content/judges-class-action-notice-and-claims-process-checklist-and-plain-language-guide-0>.

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

Executed on November 26, 2025.

A handwritten signature in black ink, appearing to read 'C. Azari', positioned above a horizontal line.

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Cameron R. Azari, Esq.

# Attachment 1

## DISCOVER CARD MERCHANT CLASS ACTION SETTLEMENT

**If you accepted or processed Discover credit cards between 2007-2023, you could be eligible to get a cash payment from a class action settlement.**

*A federal court authorized this notice.*

**\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

**\*To receive a payment, you must provide additional information by November 12, 2025 and file a claim by May 18, 2026\***

**For more information, read this notice, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), or call 1-877-535-8067.**

**What is this notice about?** A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

**Who is included?** The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

You are receiving this notice because records indicate that you are a Merchant Acquirer, which is a type of Settlement Class Member included in the settlement. Records further indicate that you are associated with one or more Discover merchant identifiers ("MIDs") in Discover's database. A list of these Discover MIDs can be accessed at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) using the credentials found at the top of the Claim Form provided with this notice.

**What can I get?** Under the proposed settlement, Discover will make payments to eligible Settlement Class Members who submit valid claims. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors, including the total estimated interchange fee overcharge for each Discover merchant identifier (or "MID") associated with you, how interchange fee charges for each MID were allocated among entities associated with the same MID, and the total aggregate dollar amount of all settlement payments. For more information, including to view the detailed calculation methodology or to review the list of MIDs associated with you, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

**How do I get a payment?** To receive a settlement payment, you must do **both** of the following:

1. You **must submit additional information**, called your "Merchant Acquirer Information," to the Settlement Administrator by **November 12, 2025**. The Settlement Administrator has provided a letter with this notice that includes a recommended data layout for the required Merchant Acquirer Information component fields and options for how this information may be securely submitted to the Settlement Administrator, or go to [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo). If you would like to receive another copy of this letter, contact the Settlement Administrator at 1-877-535-8067 or [DirectServices@DiscoverMerchantSettlement.com](mailto:DirectServices@DiscoverMerchantSettlement.com).
2. You **must also submit a claim**, postmarked or submitted online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), by **May 18, 2026**.

The Settlement Administrator will validate claims and review all information submitted and will determine allocations and payment amounts pursuant to the terms of the settlement. Payments will be sent to eligible Settlement Class Members if and when the settlement is approved by the Court and becomes final.

**What are my options?** You must provide the additional information indicated above and you may file a claim to request a payment. Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. To exclude yourself, mail a request for exclusion containing the information described at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), postmarked by **March 25, 2026**, to: Discover Card Merchant Settlement Exclusion Requests, c/o Epiq Class Action, PO Box 5370, Portland, OR 97228-5370. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court's orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, you can object to or comment on the settlement or Settlement Class Counsel's request for attorneys' fees, expenses, and service awards for the Settlement Class Representatives who brought the lawsuits. To object, you must submit to the Court a signed, written objection containing the information described at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) by **March 25, 2026**. Visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) for more information.

**What happens next?** The Court will hold a hearing, currently scheduled for **May 20, 2026 at 9:30 a.m. (CT)**, at the United States District Court for the Northern District of Illinois, Courtroom 2319, 219 South Dearborn Street, Chicago, IL 60604, to decide whether to approve the settlement, attorneys' fees (not to exceed \$25 million) plus reimbursement of litigation expenses (not to exceed \$1 million), and service awards of up to \$7,500 to each of five Settlement Class Representatives. Under the terms of the settlement, any amounts awarded by the Court to Settlement Class Counsel and Settlement Class Representatives will be paid by Discover separate from (in other words, in addition to) settlement payments paid to Settlement Class Members. The date and time of this hearing may change without further notice, or the Court could order that this hearing be held remotely or telephonically. Check [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) for updates.

**Who represents me?** The Court has appointed Lief Cabraser Heimann & Bernstein LLP, Dilworth Paxson LLP, and The Kick Law Firm, APC to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply to the Court for compensation, to be paid by Discover separate from and on top of the payments to Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

**How do I get more information?** For more information, including to view copies of case documents, the full Settlement Agreement, the settlement payment calculation methodology, and Settlement Class Counsel's fee application, or to file a claim online or print out a hard copy claim form to file by mail, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com). You can also call 1-877-535-8067 or contact Settlement Class Counsel at 1-800-971-8881.

**PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE**

**Discover Card Merchant Settlement  
Class Action Settlement Administrator**  
c/o Epiq Class Action  
PO Box 2497  
Portland OR 97208-2497

**DISCOVER**  
Action Required By  
November 12, 2025

Legal Name: [REDACTED]  
Claimant ID: [REDACTED]  
PIN: [REDACTED]

Submit your claim online:

Scan the QR code to file a claim online via your phone, computer, tablet, or other smart device.



• COURT-APPROVED MERCHANT ACQUIRER CLAIM FORM •

If you accepted or processed Discover credit cards between 2007–2023, you could be eligible to get a payment from a class action settlement.

You **must** (1) provide your Merchant Acquirer Information (see back and enclosed Instructions for Submitting Merchant Acquirer Information) by November 12, 2025, to be eligible to receive a settlement payment; and (2) file a claim online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) or mail the claim form to the address below, by May 18, 2026.

**Provide and/or Confirm Claimant Information.**

Legal name of business, entity or person that accepted and/or processed Discover credit cards 2007–2023 ( <input type="checkbox"/> Check this box if the Legal Name preprinted at the top of this page is correct):	
(If applicable) Doing business as (DBA) name of business, entity or person (if any) that accepted and/or processed Discover credit cards 2007–2023 ( <input type="checkbox"/> Check this box if the DBA Name preprinted at the top of this page is correct):	
Postal Mailing Address ( <input type="checkbox"/> Check this box if mailing address preprinted at the top of this page is correct):	
Taxpayer Identification Number (SSN, EIN or ITIN)	
Email	Phone

**Your signature is required.**

By signing below, I attest the information provided is correct, I have sufficient authority to submit a claim for this entity, and, to the best of my knowledge and belief, no other person or entity has a claim to any Settlement Payment I am seeking in connection with this Settlement. I understand that the Merchant Acquirer Information must be provided to the Settlement Administrator in an electronically stored information (ESI) format by November 12, 2025, or this claim may not be considered complete and any settlement award could be forfeited.

Signature	Date (mm/dd/yyyy)
Printed Name	Title/Position

**File your claim online or mail this Claim Form to:  
Discover Card Merchant Settlement Administrator, PO Box 2497, Portland, OR 97208-2497**  
Please review additional options on the **back** of this form.

To get this Claim Form and other information in Spanish Español, Russian Русский, Korean 한국어, Vietnamese Tiếng Việt, Japanese 日本語, Chinese 汉语, or Thai ภาษาไทย, please visit [DiscoverMerchantSettlement.com](http://DiscoverMerchantSettlement.com)

### Merchant Acquirer Information Requirements.

In addition to submitting a claim, you **must** provide Merchant Acquirer Information by **November 12, 2025**, or you may forfeit any right to a settlement payment. Separate Instructions for Submitting Merchant Acquirer Information are included with this claim packet with detailed instructions on the information you must provide. (Note that the Claim Form [on the reverse side] is due by **May 18, 2026**.)

### Need assistance?

For free assistance, call 1-877-535-8067, Monday through Friday, 9:00 a.m. to 7:00 p.m. ET, or email [DirectServices@DiscoverMerchantSettlement.com](mailto:DirectServices@DiscoverMerchantSettlement.com).

### Optional: Tell us your preferred payment method.

Eligible claimants will be mailed checks if the Settlement becomes final. If you want to receive a payment electronically instead, you may securely provide your payment information at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

### Optional: Fill out an IRS Form W-9.

You may be required to fill out a Form W-9 in connection with a future settlement payment. To save time, you may provide this information now at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) or complete and return the form below.

If you do not submit an IRS Form W-9, and are required to do so, then your settlement payment could be subject to federal and state backup withholding.

### Substitute IRS W-9 Request for Taxpayer Identification Number and Certification

Claimant Legal Name (as registered with IRS or SSA). For Individual or Sole Proprietorship, enter name: LAST, FIRST, MIDDLE INITIAL

Doing Business As (DBA) name(s) that accepted Discover or business name of Sole Proprietorship. If you are a franchisee, please indicate franchise DBA name.

Taxpayer Identification Number (TIN) – Provide Only One. **Partnership or Corporation:** enter your Federal Employer Identification Number (FEIN or EIN). **Individual or Sole Proprietor:** enter your Social Security Number (SSN). This number must belong to the Claimant Legal Name listed above.

Federal Employer Identification Number (FEIN) (NN-NNNNNNN)	OR	Social Security Number (NNN-NN-NNNN)
<input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>		<input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

Tax Classification (check only one)

- |   |  |  |  |                                  |
|---|--|--|--|----------------------------------|
| <input type="checkbox"/> Individual/sole proprietor | <input type="checkbox"/> Partnership       | <input type="checkbox"/> LLC C corporation | <input type="checkbox"/> Non-Profit Incorporated   | Exempt Payee Code (if any) _____ |
| <input type="checkbox"/> C corporation              | <input type="checkbox"/> Trust/estate      | <input type="checkbox"/> LLC S corporation | <input type="checkbox"/> Non-Profit Unincorporated |                                  |
| <input type="checkbox"/> S corporation              | <input type="checkbox"/> Government entity | <input type="checkbox"/> LLC partnership   | <input type="checkbox"/> Other _____               |                                  |

I certify that: (1) The number shown on this form is my correct taxpayer identification number; and (2) I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and (3) I am a U.S. citizen or other U.S. person (including a U.S. resident alien). Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 herein.

Signature	Date (mm/dd/yyyy)
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**For free assistance, call us at 1-877-535-8067, Monday through Friday, 9:00 a.m. to 7:00 p.m. ET, or send us an email at [DirectServices@DiscoverMerchantSettlement.com](mailto:DirectServices@DiscoverMerchantSettlement.com).**



**Discover Merchant Settlement  
Class Action Settlement Administrator**

c/o Epiq Class Action  
PO Box 2497  
Portland OR 97208-2497

Action Required By:  
**November 12, 2025**

Entity Name: [REDACTED]  
Claimant ID: [REDACTED]  
PIN: [REDACTED]  
Notice Issuance Date: September 11, 2025

## **INSTRUCTIONS FOR SUBMITTING MERCHANT ACQUIRER INFORMATION**

Please review these instructions for submitting your Merchant Acquirer Information to be eligible for a settlement payment and develop a plan for how to meet the deadline of November 12, 2025.

If you have any questions, Epiq Class Action and Claims Solutions, Inc. ("Epiq"), the Court-appointed Settlement Administrator, has established a dedicated Merchant Acquirer team to assist by phone at 1 877-535-8067, 9:00 a.m. - 6:00 p.m. ET, Monday-Friday (except holidays), or by email at DirectServices@DiscoverMerchantSettlement.com (3-5 business days response time).

### **Step One: Review the List of Discover MIDs and Potential Settlement Class Members Associated with Your Organization.**

As a Merchant Acquirer, you must submit information about businesses for which you processed Discover credit cards. This information should be organized by the merchant identifier code, or "MID," assigned by Discover in its merchant acquiring systems to identify an End Merchant.

Discover has provided Epiq with a database identifying all Discover MIDs that had at least one Misclassified Card Transaction from January 1, 2007, to December 31, 2023. That database includes additional information about those MIDs including, where available, legal name and DBA name, physical address, email address, TIN, non-Discover MID, open date, and last transaction date, among other fields. From this database, Discover and/or the Settlement Administrator have identified MIDs that are currently believed to be associated with your organization.

To review and securely download a list of Discover MIDs associated with your organization, go online to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) and register using the Claimant ID and PIN Number shown above.

### **Step Two: Compile Merchant Acquirer Information Data in the Recommended File Layout.**

Merchant Acquirer Information is needed for each End Merchant<sup>1</sup> or other Downstream Entity<sup>2</sup> for whom you processed a Discover Card transaction between 2007 through 2023.<sup>3</sup> The required information falls into two categories:

**Category One:** Data identifying each End Merchant and Downstream Entity by (a) legal and DBA names, (b) TIN(s), (c) your organization's Merchant Identifier, (d) the Discover MID(s), (e) last known postal mailing address(es), and (f) email address(es). **Note:** If any Discover MIDs associated with your organization are not assigned by you to a distinct End Merchant or other Downstream Entity (where, for example, you or your Downstream Entity assigned and aggregated multiple distinct End Merchants to a single Discover MID), then you must provide the unique merchant identification code created and assigned by you to the End Merchant or other Downstream Entity ("Non-Discover MID"). Non-Discover MIDs should be unique to a distinct End Merchant or other Downstream Entity.

<sup>1</sup> "End Merchant" is defined at Section 2.20 of the Settlement Agreement, available at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

<sup>2</sup> "Downstream Entities" is defined at Section 2.18 of the Settlement Agreement.

<sup>3</sup> "Merchant Acquirer Information" and "Payment Intermediary Information" are defined at Sections 2.31 and 2.53 of the Settlement Agreement.

**Discover Card Merchant Settlement  
Instructions for Submitting Merchant Acquirer Information  
Response Deadline: November 12, 2025  
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Entity Name: [REDACTED]

**Category Two:** Documentation and/or other information sufficient to reasonably demonstrate which portion of Discover interchange fees was paid by your organization (i.e., attributable to your organization), on the one hand, as opposed to any of your End Merchants or Downstream Entities, on the other. Such documentation or information may include, for example, reliable data or documentation showing the pricing arrangement(s) between your organization and the End Merchant or other Downstream Entity and the years in which such arrangement(s) were in effect or that otherwise demonstrates that interchange fees were or were not passed on to your End Merchant or other Downstream Entity.

Please refer to the **File Layout Guidelines** attached to these instructions, which specify the recommended field name, type, and length, along with explanatory notes as applicable for you to generate and/or calculate a data field's value. Please also complete and transmit the **Data Questionnaire** attached to these instructions. The **File Layout Guidelines** and **Data Questionnaire** are also available at [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo).

**Step Three: Securely Transmit Your Merchant Acquirer Information to Epiq.**

Securely transmit your Merchant Acquirer Information to Epiq using one of these methods:

- (1) Upload your information online using the credentials at the top of the first page of these Instructions, at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) during the claims filing process or by using the upload functionality included in the "My Claims" tab after logging into the site; or
- (2) Request that the Settlement Administrator email you a link to its SFTP system to upload your information; or
- (3) Request that Epiq follow your preferred procedures for transmitting information to third parties, whether through your own SFTP or otherwise.

Should you require a mutual non-disclosure agreement before you send your Merchant Acquirer Information, contact Epiq's Direct Services team for a form non-disclosure agreement.

Questions about reimbursement for reasonable expenses incurred in compiling the Merchant Acquirer Information may be directed to Epiq's Direct Services team. Any reimbursement issued will require a sworn, written accounting of your expenses no later than 30 calendar days after you tender data file(s) to Epiq.

Not a Merchant Acquirer? After you register, log onto your account and go to [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo) OR go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), to My Claims, where you will find instructions on how to challenge your designation as a Merchant Acquirer.

**Questions about these instructions?** Contact Epiq's dedicated Direct Services team by phone at **1-877-535-8067**, 9:00 a.m. - 6:00 p.m. ET, Monday-Friday (except holidays) or by email at [DirectServices@DiscoverMerchantSettlement.com](mailto:DirectServices@DiscoverMerchantSettlement.com) (3-5 business days response time). Please note that Epiq is required by the Settlement Agreement to undertake additional efforts to obtain required information from any Merchant Acquirer that does not timely provide sufficient information.

Thank you for your cooperation.

## File Layout Guidelines

### Merchant Acquirers Submit Information by November 12, 2025 Payment Intermediaries Submit Information by February 25, 2026

#### 1. Purpose

A proposed class action settlement has been reached in lawsuits alleging that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Your organization has been identified as a “Merchant Acquirer”<sup>1</sup> or “Payment Intermediary”<sup>2</sup> under the terms of the settlement.

To participate in and administer the settlement, your organization is being asked to provide information about businesses for which you processed Discover-issued credit cards. These businesses are referred to in the settlement as “Downstream Entities.”<sup>3</sup> Information about your Downstream Entities is needed to notify those businesses about the proposed class action settlement and to calculate settlement payments for eligible businesses.

To participate in the settlement, you must provide certain information reflected in the data fields below for each Downstream Entity associated with each Discover MID linked to your organization from January 1, 2007 through December 31, 2023 (the “Relevant Period”). A list of Discover MIDs linked to your organization is available at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) using the Claimant ID and PIN listed in your notice mailing or email. This list represents Discover MIDs that could be connected to your organization and processed one or more misclassified Discover Card transactions during the Relevant Period. This list may not include all of your organization’s Discover MIDs and may be updated as additional data is received.

For purposes of this request, the terms “you” and “your organization” includes any divisions or subsidiaries that are owned or operated by you and your predecessors, including any businesses that were acquired by you or your subsidiaries.

#### 2. Data Requirements

**Please provide the information in “Table 1 – Template Field Layout” below. Fields required to make accurate and complete payments are marked in bold and with an asterisk (\*).** A .csv template file is available at [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo). The fields defined in Table 1 correspond to the column headers in the .csv template sample supplied to illustrate the desired data layout. **Your data file(s) should be provided in a tab delimited or pipe delimited ASCII file format.**

Each row of data you provide should represent a distinct Downstream Entity for a given Discover MID. If there is more than one Downstream Entity for a Discover MID, use a unique row of data for each Downstream Entity per the guidance in Table 1.

Please compile the requested information from any databases or reporting repositories that you currently use in the ordinary course of your business that contain the most relevant information.

If you do not maintain data in a manner that will enable you to compile the data in the file format below, please contact the dedicated Merchant Acquirer team to assist by phone at 1-877-535-8067, 9:00 a.m. - 6:00 p.m. ET, Monday-Friday (except holidays), or by email at [DirectServices@DiscoverMerchantSettlement.com](mailto:DirectServices@DiscoverMerchantSettlement.com) (3-5 business days response time).

#### 3. Submission Process

Once your data is compiled, you must submit it to the Settlement Administrator along with the required supporting Data Questionnaire attached to this document and available at [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo).

<sup>1</sup> “Merchant Acquirer” is defined at Section 2.30 of the Settlement Agreement.

<sup>2</sup> “Payment Intermediary” is defined at Section 2.52 of the Settlement Agreement.

<sup>3</sup> “Downstream Entities” is defined at Section 2.18 of the Settlement Agreement.

Data should be securely transmitted to the Settlement Administrator using one of these methods:

- a. Upload your information online using the credentials at the top of the first page of these instructions at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com); or
- b. Request that the Settlement Administrator email you a link to its SFTP system to upload your information; or
- c. Request that the Settlement Administrator follow your preferred procedures for transmitting information to third parties, whether through your own SFTP or otherwise.

#### **4. Review**

Once your data is submitted, the Settlement Administrator will review it for completeness, accessibility, and compatibility with the Settlement Administrator's system requirements. The Settlement Administrator may contact you for clarification and/or to request additional information.

The Settlement Administrator may compare the information you provide to publicly available sources such as the Nilson Report for validation purposes. Additional details regarding the quality checks and resolution approach can be found at: [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo).

The Settlement Administrator has developed a quality control (QC) tool to assist you in identifying issues before you submit your data which will streamline the data review process. The QC tool (QC\_tool.xlsx) is available at [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo).

#### **5. Confidentiality**

Your data will be designated and maintained as confidential and will not be disclosed except as provided for in the settlement or by Court order. The Settlement Administrator may communicate and share information with Discover, Discover's Counsel, and Settlement Class Counsel, as is reasonably necessary to carry out its duties under the settlement. A mutual non-disclosure agreement is available, should your organization require one. Please contact the dedicated Merchant Acquirer team to assist you.

**Table 1 – Template Field Layout**

Field Name	Field Type	Field Format or Length	Description
<b>Admin MID*</b>	Text	Numeric; 21 digits	<p>“Admin MID” field is a unique identifier, comprised of the Acquirer ID and Discover MID, and will be used by the Settlement Administrator to connect your response data to the data on its system. The Admin MID is available at <a href="http://www.DiscoverMerchantSettlement.com">www.DiscoverMerchantSettlement.com</a>. After you register using your Claimant ID and PIN, you will have access to the MID list which contains the “Admin MID” field.</p> <p>Please provide the corresponding Admin MID in each row of data associated with a particular Discover MID. If you are adding records for a Discover MID not reflected on your MID list, you may omit this field.</p>
Responding Organization’s Merchant Identifier 1	Text	Numeric; 15 digits	<p>The “Responding Organization’s Merchant Identifier” is the Merchant Identifier you use to identify an entity for whom you processed Discover card transactions from 2007 – 2023.</p> <p>There may be a 1:1 alignment between your Merchant Identifier and a single Discover MID. Alternatively, you may have multiple Merchant Identifiers transacting through a single Discover MID. We need to understand the relationship between your Merchant Identifiers and the Discover MIDs.</p> <p>If you recognize more than one Merchant Identifier for a given Merchant Acquirer or Payment Intermediary because of renumbering (due to acquirer consolidation, business acquisition, business restructuring, etc.) or any other reason, please include this information in a separate field. Please include as many columns as you need to capture all Merchant Identifiers used by you for a given entity.</p> <p>If one of the Merchant Identifiers for an entity is considered the primary identification code, provide this code in the “Responding Organization’s Merchant Identifier 1” field.</p>
Responding Organization’s Merchant Identifier 2	Text	Numeric; 15 digits	See description for “Responding Organization’s Merchant Identifier 1.”

Field Name	Field Type	Field Format or Length	Description
Downstream Entity Identifier 1	Text	Numeric; Alphanumeric	<p>A “Downstream Entity Identifier” is the identification code you use to identify an entity that is “downstream” of the Merchant Identifier and has transactions that aggregate up to a Discover MID.</p> <p>There may be a 1:1 alignment between your Merchant Identifier, the Downstream Entity Identifier, and a single Discover MID. Alternatively, there may be multiple Downstream Entity Merchant Identifiers that transact through your Merchant Identifier and/or a single Discover MID. It is imperative that this relationship is clear in the data being provided.</p> <p>For example, if you issued a Merchant Identifier for ABC Processing Co. and, as part of “Know Your Client” follow up, they have advised your organization that they utilize that Merchant Identifier to process transactions for 10 additional businesses and have provided you with their identification numbers related to those 10 businesses, please provide these identification codes.</p> <p>If you recognize more than one Downstream Entity Identifier for a given Downstream Entity because of renumbering (due to acquirer consolidation, business acquisition, business restructuring, etc.) or any other reason, please include this information in a separate field. Please include as many columns as you need to capture all Downstream Entity Identifiers used by you for a given entity.</p> <p>If one of the Downstream Entity Identifiers for an entity is considered the primary identification code, provide this in the “Downstream Entity Identifiers 1” field.</p>
Downstream Entity Identifier 2	Text	Numeric; Alphanumeric	See description for “Downstream Entity Identifier 1.”
<b>Legal Name*</b>	Text	Alphanumeric; 60 characters	
DBA Name	Text	Alphanumeric; 60 characters	“DBA” Doing Business As.
<b>TIN*</b>	Text	9 characters	US federal “TIN” or Tax Identification Number: FEIN, SSN, or ITIN.
<b>Discover MID*</b>	Text	Numeric; 15 digits	A “MID” or Merchant Identifier code as assigned by Discover. In rare cases, a Discover MID may exceed or fall short of the standard 15 digits and/or contain alphabetic characters. In these instances, your data will still be accepted.
<b>Entity Address Type*</b>	Text	“Legal”, “HQ”, “Bill To”, or “DBA”	Provide the listed address elements for the entity associated with the Merchant Identifier(s) provided. If there are multiple entities associated to the listed Merchant Identifier(s), you must provide a separate row for each entity’s contact information.

Field Name	Field Type	Field Format or Length	Description
Entity Street Address 1*	Text		Identify which address type from the hierarchy list noted below that most closely aligns to your business records as the "Entity Address Type".  <b>General Instructions for address selection:</b> <i>Unless you are a Payment Intermediary or Payment Facilitator (PayFac)</i> , the order of preference should you have multiple addresses in your records would be: (1) legal address, (2) headquarters address (if no legal address), (3) a "bill to" address (if no legal or headquarters address exists), or (4) DBA address (if none of the prior options exist in your business records). Each of the listed fields should come from the same, best address record based on the hierarchy above. If email is stored separately from addresses, you may populate multiple email addresses separated by a semicolon.
Entity Street Address 2	Text		
Entity City*	Text		
Entity State*	Text		
Entity Zip/Postal Code*	Text		
Entity Country*	Text		
Entity Email Address*	Text		
Entity Attention/Contact Person	Text		<b>Payment Intermediary/Payment Facilitator (PayFac) special instructions for address selection:</b> The address information provided should be for the ultimate end merchant, which most commonly will be the DBA address, thus reversing the order of preference to be: (1) DBA address, (2) a "bill to" address (if no DBA address exists), (3) headquarters address (if no DBA or "bill to" address exists), or (4) legal address (if none of the prior options exist in your business records).  <b>NOTE FOR ALL RESPONDING ORGANIZATIONS:</b> If your business records contain addresses associated to Downstream Entity Merchant Identifiers, please provide those as additional records in the data output with the associated names.
Entity Phone Number	Text	Numeric; 9-digit	
Is Payment Intermediary and/or Payment Facilitator?	Yes/No	"YES", "NO", or "UNKNOWN"	If yes, you are indicating awareness that the entity associated with this Merchant Identifier has further assigned use of the Merchant Identifier to one or more downstream businesses who processed Discover Card transactions through this Merchant Identifier between 2007-2023.
Is End Merchant or merchant of record?	Yes/No	"YES", "NO", or "UNKNOWN"	If yes, your business records reflect the entity is the merchant of record who accepted the Discover Cards being presented and there are no additional entities downstream of the listed entity.
Is Franchisor?	Yes/No	"YES", "NO", or "UNKNOWN"	If yes, your business records indicate this entity is a franchisor.
Is Franchisee?	Yes/No	"YES", "NO", or "UNKNOWN"	If yes, your business records indicate this entity is a franchisee.
Chain Identifier	Text	Numeric; Alphanumeric	If this is a chained entity, provide the chain identifier from your business records.
Open Date of Merchant Account*	Date	YYYYMMDD	If unknown, "19000101".
Close Date of Merchant Account*	Date	YYYYMMDD	If closed, but the closure date is unknown, "19000101". If still open "21000101".
Last Processed Transaction Date*	Date	YYYYMMDD	If none or unknown, "19000101".

Field Name	Field Type	Field Format or Length	Description
<b>[YYYY] Bundled Pricing Agreement?*</b> <sup>‡</sup>	Yes/No	“YES” or “NO”	Indicate whether your organization had a “bundled” pricing agreement, whereby Discover fees were paid wholly by your organization and not passed on to, or paid by, the Downstream Entity.  <i>“[YYYY]” reflects the given year of provided data. For example, “[2007] Bundled Pricing Agreement?” for the year 2007.</i>  <b>PLEASE NOTE:</b> You must provide a column of data or equivalent information for each year your organization is claiming and/or providing data for in order for the Settlement Administrator to properly allocate the MID restitution.
<b>[YYYY] Pct of Discover Fees Paid by Responding Organization*</b> <sup>‡</sup>	Decimal	Limit to three decimal places. For example, “1.000” for 100.0% or “0.655” for 65.5%.	Provide the estimated percent or portion of Discover fees paid individually by your organization, as opposed to the Downstream Entity. <sup>1,2,3,4</sup>  <b>PLEASE NOTE:</b> You must provide a column of data or equivalent information for each year your organization is claiming where you have indicated “Bundled Pricing Agreement = No” and/or you are providing data for in order for the Settlement Administrator to properly allocate the MID restitution.
<b>[YYYY] Pct of Discover Fees Paid by Entity*</b> <sup>‡</sup>	Decimal	Limit to three decimal places. For example, “1.000” for 100.0% or “0.655” for 65.5%.	Provide the estimated percent or portion of Discover fees passed on to, or paid by, the Downstream Entity. <sup>1,2,3,4</sup>  <b>PLEASE NOTE:</b> You must provide a column of data or equivalent information for each year your organization is claiming where you have indicated “Bundled Pricing Agreement = No” and/or providing data for in order for the Settlement Administrator to properly allocate the MID restitution.

<sup>‡</sup>Annual allocation information must be provided for each year from 2007 to 2023. Failure to provide either “Bundled Pricing Agreement” or both “Pct of Discover Fees Paid by Responding Organization” **and** “Pct of Discover Fees Paid by Downstream Entity” fields may result in 100% of associated settlement payments being paid to Downstream Entities. When populating these allocation fields, you should use reasonable efforts to identify and report all available information. If your data is limited, including for prior years, you may extrapolate your data back to the open date for each MID.

1. In making its final allocation decisions, the Settlement Administrator reserves the right to request additional information related to your organization’s pricing and/or payment agreements with End Merchants or other Downstream Entities.
2. If you are unsure about whether you offered bundled pricing or how to calculate “[YYYY] Pct of Discover Fees Paid by Downstream Entity” and “[YYYY] Pct of Discover Fees Paid by Responding Organization”, please provide data or documentation showing your Downstream Entities’ pricing arrangements(s) with you and the years in which such arrangements were in effect or that otherwise demonstrate that interchange fees caused by Misclassified Card Transactions were or were not passed on to Downstream Entities.
3. To determine “[YYYY] Pct of Discover Fees Paid by Downstream Entity” and “[YYYY] Pct of Discover Fees Paid by Responding Organization” for a given MID, fee pricing agreements may be considered. For example, if your organization has a “bundled” pricing agreement for a given year, this may mean that Discover’s fees by card type (e.g., commercial, rewards, premium, or premium plus) were paid by your organization and were not passed through to the entity with whom you contracted. Therefore, a “bundled” pricing relationship might mean your organization paid 100% of Discover fees for that year. Alternatively, if your organization did not have a “bundled” pricing agreement for a given year, then your organization likely did not pay 100% of Discover fees for that year.

4. For cases in which a given MID has one direct Downstream Entity (e.g., a Payment Intermediary or End Merchant) and a pricing agreement change in a given year [YYYY], Discover Commercial Card transaction volumes and/or relative timing can be considered to determine “[YYYY] Pct of Discover Fees Paid by Downstream Entity” and “[YYYY] Pct of Discover Fees Paid by Responding Organization.”
5. For cases in which a given MID has multiple Downstream Entities below the MID level, relative Discover Commercial Card transaction volumes for each Downstream Entity may be considered to determine “[YYYY] Pct of Discover Fees Paid by Downstream Entity” and “[YYYY] Pct of Discover Fees Paid by Responding Organization.” Additional guidance for populating these fields in cases with multiple Downstream Entities below the MID level can be found at [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo).

### Data Questionnaire

**Please fill out the following information to assist the Settlement Administrator in processing your organization’s data.**

Name of organization providing data.	
Address of organization providing data.	
Organization contact for questions about data: Name and Title	
Organization contact for questions about data: Telephone number	
Organization contact for questions about data: Email	
Any software and/or programming language (e.g., Python) by which data is being produced, and any other information necessary for the Settlement Administrator to access your data file(s) (e.g., encryption passwords).	
For each distinct data file, the respective file name and the number of rows in each respective file.	
For all data file(s) together, the sum total number of all rows of data produced (i.e., control totals for the Settlement Administrator to validate all rows of all files have been received).	
The name(s) of each document provided. Documents should include: field mapping, code label sets, metadata and pricing documentation, as well as information needed by the Settlement Administrator to upload, process, analyze and understand the data file(s) provided by your organization.	

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Location: \_\_\_\_\_

Position: \_\_\_\_\_

# Attachment 2

## DISCOVER CARD MERCHANT CLASS ACTION SETTLEMENT

**If you accepted or processed Discover credit cards between 2007-2023, you could be eligible to get a cash payment from a class action settlement.**

*A federal court authorized this notice.*

**\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

**\*To receive a payment, you must provide additional information by February 25, 2026 and file a claim by May 18, 2026\***

**For more information, read this notice, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), or call 1-877-535-8067.**

**What is this notice about?** A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

**Who is included?** The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

You are receiving this notice because records indicate that you are a Payment Intermediary, which is a type of Settlement Class Member included in the settlement. A list of any associated Discover merchant identifiers ("MIDs") can be accessed at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) using the credentials found at the top of the Claim Form provided with this notice.

**What can I get?** Under the proposed settlement, Discover will make payments to eligible Settlement Class Members who submit valid claims. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors, including the total estimated interchange fee overcharge for each Discover merchant identifier (or "MID") associated with you, how interchange fee charges for each MID were allocated among entities associated with the same MID, and the total aggregate dollar amount of all settlement payments. For more information, including to view the detailed calculation methodology or to review the list of MIDs associated with you, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

**How do I get a payment?** To receive a settlement payment, you must do **both** of the following:

1. You **must submit additional information**, called your "Payment Intermediary Information," to the Settlement Administrator by **February 25, 2026**. The Settlement Administrator has provided a letter with this notice that includes a recommended data layout for the required Payment Intermediary Information component fields and options for how this information may be securely submitted to the Settlement Administrator, or go to [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo). If you would like to receive another copy of this letter, contact the Settlement Administrator at 1-877-535-8067 or [DirectServices@DiscoverMerchantSettlement.com](mailto:DirectServices@DiscoverMerchantSettlement.com).
2. You **must also submit a claim**, postmarked or submitted online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), by **May 18, 2026**.

The Settlement Administrator will validate claims and review all information submitted and will determine allocations and payment amounts pursuant to the terms of the settlement. Payments will be sent to eligible Settlement Class Members if and when the settlement is approved by the Court and becomes final.

**What are my options?** You must provide the additional information indicated above and you may file a claim to request a payment. Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. To exclude yourself, mail a request for exclusion containing the information described at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), postmarked by **March 25, 2026**, to: Discover Card Merchant Settlement Exclusion Requests, c/o Epiq Class Action, PO Box 5370, Portland, OR 97228-5370. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court's orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, you can object to or comment on the settlement or Settlement Class Counsel's request for attorneys' fees, expenses, and service awards for the Settlement Class Representatives who brought the lawsuits. To object, you must submit to the Court a signed, written objection containing the information described at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) by **March 25, 2026**. Visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) for more information.

**What happens next?** The Court will hold a hearing, currently scheduled for **May 20, 2026 at 9:30 a.m. (CT)**, at the United States District Court for the Northern District of Illinois, Courtroom 2319, 219 South Dearborn Street, Chicago, IL 60604, to decide whether to approve the settlement, attorneys' fees (not to exceed to \$25 million) plus reimbursement of litigation expenses (not to exceed \$1 million), and service awards of up to \$7,500 to each of five Settlement Class Representatives. Under the terms of the settlement, any amounts awarded by the Court to Settlement Class Counsel and Settlement Class Representatives will be paid by Discover separate from (in other words, in addition to) settlement payments paid to Settlement Class Members. The date and time of this hearing may change without further notice, or the Court could order that this hearing be held remotely or telephonically. Check [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) for updates.

**Who represents me?** The Court has appointed Lief Cabraser Heimann & Bernstein LLP, Dilworth Paxson LLP, and The Kick Law Firm, APC to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply to the Court for compensation, to be paid by Discover separate from and on top of the payments to Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

**How do I get more information?** For more information, including to view copies of case documents, the full Settlement Agreement, the settlement payment calculation methodology, and Settlement Class Counsel's fee application, or to file a claim online or print out a hard copy claim form to file by mail, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com). You can also call 1-877-535-8067 or contact Settlement Class Counsel at 1-800-971-8881.

**PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE**

**Discover Card Merchant Settlement  
Class Action Settlement Administrator**

c/o Epiq Class Action  
PO Box 2497  
Portland OR 97208-2497

**DISCOVER**  
Action Required By  
February 25, 2026

Legal Name: [REDACTED]  
Claimant ID: [REDACTED]  
PIN: [REDACTED]

Submit your claim online:

Scan the QR code to file a claim online via your phone, computer, tablet, or other smart device.



• COURT-APPROVED PAYMENT INTERMEDIARY CLAIM FORM •

If you accepted or processed Discover credit cards between 2007–2023, you could be eligible to get a payment from a class action settlement.

You **must** (1) provide your Payment Intermediary Information (see back and enclosed Instructions for Submitting Payment Intermediary Information) by February 25, 2026 to be eligible to receive a settlement payment; and (2) file a claim online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) or mail this claim form to the address listed below, by May 18, 2026.

**Provide and/or Confirm Claimant Information.**

Legal name of business, entity or person that accepted and/or processed Discover credit cards 2007–2023 <input type="checkbox"/> Check this box if the Legal Name preprinted at the top of this page is correct):	
(If applicable) Doing business as (DBA) name of business, entity or person (if any) that accepted and/or processed Discover credit cards 2007–2023 <input type="checkbox"/> Check this box if the DBA Name preprinted at the top of this page is correct):	
Postal Mailing Address <input type="checkbox"/> Check this box if mailing address preprinted at the top of this page is correct):	
Taxpayer Identification Number (SSN, EIN or ITIN)	
Email	Phone

**Your signature is required.**

By signing below, I attest the information provided is correct, I have sufficient authority to submit a claim for this entity, and, to the best of my knowledge and belief, no other person or entity has a claim to any Settlement Payment I am seeking in connection with this Settlement. I understand that the Payment Intermediary Information must be provided to the Settlement Administrator in an electronically stored information (ESI) format by February 25, 2026, or this claim may not be considered complete and any settlement award could be forfeited.

Signature	Date (mm/dd/yyyy)
Printed Name	Title/Position

**File your claim online or mail this Claim Form to:  
Discover Card Merchant Settlement Administrator, PO Box 2497, Portland, OR 97208-2497**

**Please review additional options on the back of this form.**

To get this Claim Form and other information in Spanish Español, Russian Русский, Korean 한국어, Vietnamese Tiếng Việt, Japanese 日本語, Chinese 汉语, or Thai ภาษาไทย, please visit [DiscoverMerchantSettlement.com](http://DiscoverMerchantSettlement.com)

**Payment Intermediary Information Requirements.**

In addition to submitting a claim, you **must** provide Payment Intermediary Information by **February 25, 2026** or you may forfeit any right to a settlement payment. Separate Instructions for Submitting Payment Intermediary Information are included with this claim packet with detailed instructions on the information you must provide. (Note that the Claim Form [on the reverse side] is due by **May 18, 2026**).

**Need assistance?**

For free assistance or if you do not believe your organization qualifies as a Payment Intermediary (as defined in the Settlement Agreement) and need to change your Payment Intermediary status, call the Settlement Administrator at 1-877-535-8067, Monday through Friday, 9:00 a.m. to 7:00 p.m. ET, or email [DirectServices@DiscoverMerchantSettlement.com](mailto:DirectServices@DiscoverMerchantSettlement.com).

**Optional: Tell us your preferred payment method.**

Eligible claimants will be mailed checks if the Settlement becomes final. If you want to receive a payment electronically instead, you may securely provide your payment information at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

**Optional: Fill out an IRS Form W-9.**

You may be required to fill out a Form W-9 in connection with a future settlement payment. To save time, you may provide this information now at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) or complete and return the form below.

If you do not submit an IRS Form W-9, and are required to do so, then your settlement payment could be subject to federal and state backup withholding.

**Substitute IRS W-9 Request for Taxpayer Identification Number and Certification**

Claimant Legal Name (as registered with IRS or SSA). For Individual or Sole Proprietorship, enter name: LAST, FIRST, MIDDLE INITIAL

Doing Business As (DBA) name(s) that accepted Discover or business name of Sole Proprietorship. If you are a franchisee, please indicate franchise DBA name.

Taxpayer Identification Number (TIN) - Provide Only One. **Partnership or Corporation:** enter your Federal Employer Identification Number (FEIN or EIN). **Individual or Sole Proprietor:** enter your Social Security Number (SSN). This number must belong to the Claimant Legal Name listed above.

Federal Employer Identification Number (FEIN) (NN-NNNNNN)	OR	Social Security Number (NNN-NN-NNNN)									
<table border="1" style="width: 100%;"> <tr> <td style="width: 25%;"> </td> <td style="width: 25%;">-</td> <td style="width: 25%;"> </td> <td style="width: 25%;"> </td> </tr> </table>		-				<table border="1" style="width: 100%;"> <tr> <td style="width: 25%;"> </td> <td style="width: 25%;">-</td> <td style="width: 25%;"> </td> <td style="width: 25%;">-</td> <td style="width: 25%;"> </td> </tr> </table>		-		-	
	-										
	-		-								

Tax Classification (check only one)

- |   |  |  |  |                                  |
|---|--|--|--|----------------------------------|
| <input type="checkbox"/> Individual/sole proprietor | <input type="checkbox"/> Partnership       | <input type="checkbox"/> LLC C corporation | <input type="checkbox"/> Non-Profit Incorporated   | Exempt Payee Code (if any) _____ |
| <input type="checkbox"/> C corporation              | <input type="checkbox"/> Trust/estate      | <input type="checkbox"/> LLC S corporation | <input type="checkbox"/> Non-Profit Unincorporated |                                  |
| <input type="checkbox"/> S corporation              | <input type="checkbox"/> Government entity | <input type="checkbox"/> LLC partnership   | <input type="checkbox"/> Other _____               |                                  |

I certify that: (1) The number shown on this form is my correct taxpayer identification number; and (2) I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and (3) I am a U.S. citizen or other U.S. person (including a U.S. resident alien). Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 herein.

Signature	Date (mm/dd/yyyy)
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**For free assistance, call us at 1-877-535-8067, Monday through Friday, 9:00 a.m. to 7:00 p.m. ET, or send us an email at [DirectServices@DiscoverMerchantSettlement.com](mailto:DirectServices@DiscoverMerchantSettlement.com).**

To get this Claim Form and other information in Spanish Español, Russian Русский, Korean 한국어, Vietnamese Tiếng Việt, Japanese 日本語, Chinese 汉语, or Thai ภาษาไทย, please visit [DiscoverMerchantSettlement.com](http://DiscoverMerchantSettlement.com)



**Discover Merchant Settlement  
Class Action Settlement Administrator**

c/o Epiq Class Action  
PO Box 2497  
Portland OR 97208-2497

Action Required By:  
**February 25, 2026**

Entity Name: [REDACTED]  
Claimant ID: [REDACTED]  
PIN: [REDACTED]  
Notice Issuance Date: September 11, 2025

**INSTRUCTIONS FOR SUBMITTING PAYMENT INTERMEDIARY INFORMATION**

Please review these instructions for submitting your Payment Intermediary Information to be eligible for a settlement payment and develop a plan for how to meet the deadline of February 25, 2026.

If you have any questions, Epiq Class Action and Claims Solutions, Inc. (“Epiq”), the Court-appointed Settlement Administrator, has established a dedicated Payment Intermediary team to assist by phone at 1 877-535-8067, 9:00 a.m. – 6:00 p.m. ET, Monday-Friday (except holidays), or by email at DirectServices@DiscoverMerchantSettlement.com (3-5 business days response time).

**Step One: Review the List of Discover MIDs and Potential Settlement Class Members Associated with Your Organization.**

As a Payment Intermediary, you must submit information about businesses for which you processed Discover credit cards. This information should be organized by the merchant identifier code, or “MID,” assigned by Discover in its merchant acquiring systems to identify an End Merchant.

Discover has provided Epiq with a database identifying all Discover MIDs that had at least one Misclassified Card Transaction from January 1, 2007, to December 31, 2023. That database includes additional information about those MIDs including, where available, legal name and DBA name, physical address, email address, TIN, non-Discover MID, open date, and last transaction date, among other fields. From this database, Discover and/or the Settlement Administrator have identified MIDs that are currently believed to be associated with your organization.

To review and securely download a list of Discover MIDs associated with your organization, go online to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) and register using the Claimant ID and PIN Number shown above.

**Step Two: Compile Payment Intermediary Information Data in the Recommended File Layout.**

Payment Intermediary Information is needed for each End Merchant<sup>1</sup> or other Downstream Entity<sup>2</sup> for whom you processed a Discover Card transaction between 2007 through 2023.<sup>3</sup> The required information falls into two categories:

**Category One:** Data identifying each End Merchant and Downstream Entity by (a) legal and DBA names, (b) TIN(s), (c) your organization’s Merchant Identifier, (d) the Discover MID(s), (e) last known postal mailing address(es), and (f) email address(es). **Note:** If any Discover MIDs associated with your organization are not assigned by you to a distinct End Merchant or other Downstream Entity (where, for example, you or your Downstream Entity assigned and aggregated multiple distinct End Merchants to a single Discover MID), then you must provide the unique merchant identification code created and assigned by you to the End Merchant or other Downstream Entity (“Non-Discover MID”). Non-Discover MIDs should be unique to a distinct End Merchant or other Downstream Entity.

<sup>1</sup> “End Merchant” is defined at Section 2.20 of the Settlement Agreement, available at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

<sup>2</sup> “Downstream Entities” is defined at Section 2.18 of the Settlement Agreement.

<sup>3</sup> “Merchant Acquirer Information” and “Payment Intermediary Information” are defined at Sections 2.31 and 2.53 of the Settlement Agreement.

**Discover Card Merchant Settlement**  
**Instructions for Submitting Payment Intermediary Information**  
**Response Deadline: February 25, 2026**  
**Page 2 of 2**

Entity Name: [REDACTED]

**Category Two:** Documentation and/or other information sufficient to reasonably demonstrate which portion of Discover interchange fees was paid by your organization (*i.e.*, attributable to your organization), on the one hand, as opposed to any of your End Merchants or Downstream Entities, on the other. Such documentation or information may include, for example, reliable data or documentation showing the pricing arrangement(s) between your organization and the End Merchant or other Downstream Entity and the years in which such arrangement(s) were in effect or that otherwise demonstrates that interchange fees were or were not passed on to your End Merchant or other Downstream Entity.

Please refer to the **File Layout Guidelines** attached to these instructions, which specify the recommended field name, type, and length, along with explanatory notes as applicable for you to generate and/or calculate a data field's value. Please also complete and transmit the **Data Questionnaire** attached to these instructions. The **File Layout Guidelines** and **Data Questionnaire** are also available at [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo).

**Step Three: Securely Transmit Your Payment Intermediary Information to Epiq.**

Securely transmit your Payment Intermediary Information to Epiq using one of these methods:

- (1) Upload your information online using the credentials at the top of the first page of these Instructions, at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) during the claims filing process or by using the upload functionality included in the "My Claims" tab after logging into the site; or
- (2) Request that the Settlement Administrator email you a link to its SFTP system to upload your information; or
- (3) Request that Epiq follow your preferred procedures for transmitting information to third parties, whether through your own SFTP or otherwise.

Should you require a mutual non-disclosure agreement before you send your Payment Intermediary Information, contact Epiq's Direct Services team for a form non-disclosure agreement.

Questions about reimbursement for reasonable expenses incurred in compiling the Payment Intermediary Information may be directed to Epiq's Direct Services team. Any reimbursement issued will require a sworn, written accounting of your expenses no later than 30 calendar days after you tender data file(s) to Epiq.

Not a Payment Intermediary? After you register, log onto your account and go to [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo) OR go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), to My Claims, where you will find instructions on how to challenge your designation as a Payment Intermediary.

**Questions about these instructions?** Contact Epiq's dedicated Direct Services team by phone at **1-877-535-8067**, 9:00 a.m. - 6:00 p.m. ET, Monday-Friday (except holidays) or by email at [DirectServices@DiscoverMerchantSettlement.com](mailto:DirectServices@DiscoverMerchantSettlement.com) (3-5 business days response time). Please note that Epiq is required by the Settlement Agreement to undertake additional efforts to obtain required information from any Payment Intermediary that does not timely provide sufficient information.

Thank you for your cooperation.

## File Layout Guidelines

### Merchant Acquirers Submit Information by November 12, 2025 Payment Intermediaries Submit Information by February 25, 2026

#### 1. Purpose

A proposed class action settlement has been reached in lawsuits alleging that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Your organization has been identified as a “Merchant Acquirer”<sup>1</sup> or “Payment Intermediary”<sup>2</sup> under the terms of the settlement.

To participate in and administer the settlement, your organization is being asked to provide information about businesses for which you processed Discover-issued credit cards. These businesses are referred to in the settlement as “Downstream Entities.”<sup>3</sup> Information about your Downstream Entities is needed to notify those businesses about the proposed class action settlement and to calculate settlement payments for eligible businesses.

To participate in the settlement, you must provide certain information reflected in the data fields below for each Downstream Entity associated with each Discover MID linked to your organization from January 1, 2007 through December 31, 2023 (the “Relevant Period”). A list of Discover MIDs linked to your organization is available at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) using the Claimant ID and PIN listed in your notice mailing or email. This list represents Discover MIDs that could be connected to your organization and processed one or more misclassified Discover Card transactions during the Relevant Period. This list may not include all of your organization’s Discover MIDs and may be updated as additional data is received.

For purposes of this request, the terms “you” and “your organization” includes any divisions or subsidiaries that are owned or operated by you and your predecessors, including any businesses that were acquired by you or your subsidiaries.

#### 2. Data Requirements

**Please provide the information in “Table 1 – Template Field Layout” below. Fields required to make accurate and complete payments are marked in bold and with an asterisk (\*).** A .csv template file is available at [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo). The fields defined in Table 1 correspond to the column headers in the .csv template sample supplied to illustrate the desired data layout. **Your data file(s) should be provided in a tab delimited or pipe delimited ASCII file format.**

Each row of data you provide should represent a distinct Downstream Entity for a given Discover MID. If there is more than one Downstream Entity for a Discover MID, use a unique row of data for each Downstream Entity per the guidance in Table 1.

Please compile the requested information from any databases or reporting repositories that you currently use in the ordinary course of your business that contain the most relevant information.

If you do not maintain data in a manner that will enable you to compile the data in the file format below, please contact the dedicated Payment Intermediary team to assist by phone at 1-877-535-8067, 9:00 a.m. – 6:00 p.m. ET, Monday-Friday (except holidays), or by email at [DirectServices@DiscoverMerchantSettlement.com](mailto:DirectServices@DiscoverMerchantSettlement.com) (3-5 business days response time).

#### 3. Submission Process

Once your data is compiled, you must submit it to the Settlement Administrator along with the required supporting Data Questionnaire attached to this document and available at [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo).

<sup>1</sup> “Merchant Acquirer” is defined at Section 2.30 of the Settlement Agreement.

<sup>2</sup> “Payment Intermediary” is defined at Section 2.52 of the Settlement Agreement.

<sup>3</sup> “Downstream Entities” is defined at Section 2.18 of the Settlement Agreement.

Data should be securely transmitted to the Settlement Administrator using one of these methods:

- a. Upload your information online using the credentials at the top of the first page of these instructions at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com); or
- b. Request that the Settlement Administrator email you a link to its SFTP system to upload your information; or
- c. Request that the Settlement Administrator follow your preferred procedures for transmitting information to third parties, whether through your own SFTP or otherwise.

#### **4. Review**

Once your data is submitted, the Settlement Administrator will review it for completeness, accessibility, and compatibility with the Settlement Administrator's system requirements. The Settlement Administrator may contact you for clarification and/or to request additional information.

The Settlement Administrator may compare the information you provide to publicly available sources such as the Nilson Report for validation purposes. Additional details regarding the quality checks and resolution approach can be found at: [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo).

The Settlement Administrator has developed a quality control (QC) tool to assist you in identifying issues before you submit your data which will streamline the data review process. The QC tool (QC\_tool.xlsx) is available at [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo).

#### **5. Confidentiality**

Your data will be designated and maintained as confidential and will not be disclosed except as provided for in the settlement or by Court order. The Settlement Administrator may communicate and share information with Discover, Discover's Counsel, and Settlement Class Counsel, as is reasonably necessary to carry out its duties under the settlement. A mutual non-disclosure agreement is available, should your organization require one. Please contact the dedicated Payment Intermediary team to assist you.

**Table 1 – Template Field Layout**

Field Name	Field Type	Field Format or Length	Description
Admin MID*	Text	Numeric; 21 digits	<p>“Admin MID” field is a unique identifier, comprised of the Acquirer ID and Discover MID, and will be used by the Settlement Administrator to connect your response data to the data on its system. The Admin MID is available at <a href="http://www.DiscoverMerchantSettlement.com">www.DiscoverMerchantSettlement.com</a>. After you register using your Claimant ID and PIN, you will have access to the MID list which contains the “Admin MID” field.</p> <p>Please provide the corresponding Admin MID in each row of data associated with a particular Discover MID. If you are adding records for a Discover MID not reflected on your MID list, you may omit this field.</p>
Responding Organization’s Merchant Identifier 1	Text	Numeric; 15 digits	<p>The “Responding Organization’s Merchant Identifier” is the Merchant Identifier you use to identify an entity for whom you processed Discover card transactions from 2007 – 2023.</p> <p>There may be a 1:1 alignment between your Merchant Identifier and a single Discover MID. Alternatively, you may have multiple Merchant Identifiers transacting through a single Discover MID. We need to understand the relationship between your Merchant Identifiers and the Discover MIDs.</p> <p>If you recognize more than one Merchant Identifier for a given Merchant Acquirer or Payment Intermediary because of renumbering (due to acquirer consolidation, business acquisition, business restructuring, etc.) or any other reason, please include this information in a separate field. Please include as many columns as you need to capture all Merchant Identifiers used by you for a given entity.</p> <p>If one of the Merchant Identifiers for an entity is considered the primary identification code, provide this code in the “Responding Organization’s Merchant Identifier 1” field.</p>
Responding Organization’s Merchant Identifier 2	Text	Numeric; 15 digits	See description for “Responding Organization’s Merchant Identifier 1.”

Field Name	Field Type	Field Format or Length	Description
Downstream Entity Identifier 1	Text	Numeric; Alphanumeric	<p>A "Downstream Entity Identifier" is the identification code you use to identify an entity that is "downstream" of the Merchant Identifier and has transactions that aggregate up to a Discover MID.</p> <p>There may be a 1:1 alignment between your Merchant Identifier, the Downstream Entity Identifier, and a single Discover MID. Alternatively, there may be multiple Downstream Entity Merchant Identifiers that transact through your Merchant Identifier and/or a single Discover MID. It is imperative that this relationship is clear in the data being provided.</p> <p>For example, if you issued a Merchant Identifier for ABC Processing Co. and, as part of "Know Your Client" follow up, they have advised your organization that they utilize that Merchant Identifier to process transactions for 10 additional businesses and have provided you with their identification numbers related to those 10 businesses, please provide these identification codes.</p> <p>If you recognize more than one Downstream Entity Identifier for a given Downstream Entity because of renumbering (due to acquirer consolidation, business acquisition, business restructuring, etc.) or any other reason, please include this information in a separate field. Please include as many columns as you need to capture all Downstream Entity Identifiers used by you for a given entity.</p> <p>If one of the Downstream Entity Identifiers for an entity is considered the primary identification code, provide this in the "Downstream Entity Identifiers 1" field.</p>
Downstream Entity Identifier 2	Text	Numeric; Alphanumeric	See description for "Downstream Entity Identifier 1."
<b>Legal Name*</b>	Text	Alphanumeric; 60 characters	
DBA Name	Text	Alphanumeric; 60 characters	"DBA" Doing Business As.
<b>TIN*</b>	Text	9 characters	US federal "TIN" or Tax Identification Number: FEIN, SSN, or ITIN.
<b>Discover MID*</b>	Text	Numeric; 15 digits	A "MID" or Merchant Identifier code as assigned by Discover. In rare cases, a Discover MID may exceed or fall short of the standard 15 digits and/or contain alphabetic characters. In these instances, your data will still be accepted.
<b>Entity Address Type*</b>	Text	"Legal", "HQ", "Bill To", or "DBA"	Provide the listed address elements for the entity associated with the Merchant Identifier(s) provided. If there are multiple entities associated to the listed Merchant Identifier(s), you must provide a separate row for each entity's contact information.

Field Name	Field Type	Field Format or Length	Description
Entity Street Address 1*	Text		Identify which address type from the hierarchy list noted below that most closely aligns to your business records as the "Entity Address Type".  <b>General Instructions for address selection:</b> <i>Unless you are a Payment Intermediary or Payment Facilitator (PayFac)</i> , the order of preference should you have multiple addresses in your records would be: (1) legal address, (2) headquarters address (if no legal address), (3) a "bill to" address (if no legal or headquarters address exists), or (4) DBA address (if none of the prior options exist in your business records). Each of the listed fields should come from the same, best address record based on the hierarchy above. If email is stored separately from addresses, you may populate multiple email addresses separated by a semicolon.
Entity Street Address 2	Text		
Entity City*	Text		
Entity State*	Text		
Entity Zip/Postal Code*	Text		
Entity Country*	Text		
Entity Email Address*	Text		
Entity Attention/Contact Person	Text		<b>Payment Intermediary/Payment Facilitator (PayFac) special instructions for address selection:</b> The address information provided should be for the ultimate end merchant, which most commonly will be the DBA address, thus reversing the order of preference to be: (1) DBA address, (2) a "bill to" address (if no DBA address exists), (3) headquarters address (if no DBA or "bill to" address exists), or (4) legal address (if none of the prior options exist in your business records).  <b>NOTE FOR ALL RESPONDING ORGANIZATIONS:</b> If your business records contain addresses associated to Downstream Entity Merchant Identifiers, please provide those as additional records in the data output with the associated names.
Entity Phone Number	Text	Numeric; 9-digit	
Is Payment Intermediary and/or Payment Facilitator?	Yes/No	"YES", "NO", or "UNKNOWN"	If yes, you are indicating awareness that the entity associated with this Merchant Identifier has further assigned use of the Merchant Identifier to one or more downstream businesses who processed Discover Card transactions through this Merchant Identifier between 2007-2023.
Is End Merchant or merchant of record?	Yes/No	"YES", "NO", or "UNKNOWN"	If yes, your business records reflect the entity is the merchant of record who accepted the Discover Cards being presented and there are no additional entities downstream of the listed entity.
Is Franchisor?	Yes/No	"YES", "NO", or "UNKNOWN"	If yes, your business records indicate this entity is a franchisor.
Is Franchisee?	Yes/No	"YES", "NO", or "UNKNOWN"	If yes, your business records indicate this entity is a franchisee.
Chain Identifier	Text	Numeric; Alphanumeric	If this is a chained entity, provide the chain identifier from your business records.
Open Date of Merchant Account*	Date	YYYYMMDD	If unknown, "19000101".
Close Date of Merchant Account*	Date	YYYYMMDD	If closed, but the closure date is unknown, "19000101". If still open "21000101".
Last Processed Transaction Date*	Date	YYYYMMDD	If none or unknown, "19000101".

Field Name	Field Type	Field Format or Length	Description
[YYYY] Bundled Pricing Agreement?††	Yes/No	“YES” or “NO”	Indicate whether your organization had a “bundled” pricing agreement, whereby Discover fees were paid wholly by your organization and not passed on to, or paid by, the Downstream Entity.  <i>“[YYYY]” reflects the given year of provided data. For example, “[2007] Bundled Pricing Agreement?” for the year 2007.</i>  <b>PLEASE NOTE:</b> You must provide a column of data or equivalent information for each year your organization is claiming and/or providing data for in order for the Settlement Administrator to properly allocate the MID restitution.
[YYYY] Pct of Discover Fees Paid by Responding Organization††	Decimal	Limit to three decimal places. For example, “1.000” for 100.0% or “0.655” for 65.5%.	Provide the estimated percent or portion of Discover fees paid individually by your organization, as opposed to the Downstream Entity. <sup>1,2,3,4</sup>  <b>PLEASE NOTE:</b> You must provide a column of data or equivalent information for each year your organization is claiming where you have indicated “Bundled Pricing Agreement = No” and/or you are providing data for in order for the Settlement Administrator to properly allocate the MID restitution.
[YYYY] Pct of Discover Fees Paid by Entity††	Decimal	Limit to three decimal places. For example, “1.000” for 100.0% or “0.655” for 65.5%.	Provide the estimated percent or portion of Discover fees passed on to, or paid by, the Downstream Entity. <sup>1,2,3,4</sup>  <b>PLEASE NOTE:</b> You must provide a column of data or equivalent information for each year your organization is claiming where you have indicated “Bundled Pricing Agreement = No” and/or providing data for in order for the Settlement Administrator to properly allocate the MID restitution.

†Annual allocation information must be provided for each year from 2007 to 2023. Failure to provide either “Bundled Pricing Agreement” **or both** “Pct of Discover Fees Paid by Responding Organization” **and** “Pct of Discover Fees Paid by Downstream Entity” fields may result in 100% of associated settlement payments being paid to Downstream Entities. When populating these allocation fields, you should use reasonable efforts to identify and report all available information. If your data is limited, including for prior years, you may extrapolate your data back to the open date for each MID.

1. In making its final allocation decisions, the Settlement Administrator reserves the right to request additional information related to your organization’s pricing and/or payment agreements with End Merchants or other Downstream Entities.
2. If you are unsure about whether you offered bundled pricing or how to calculate “[YYYY] Pct of Discover Fees Paid by Downstream Entity” and “[YYYY] Pct of Discover Fees Paid by Responding Organization”, please provide data or documentation showing your Downstream Entities’ pricing arrangements(s) with you and the years in which such arrangements were in effect or that otherwise demonstrate that interchange fees caused by Misclassified Card Transactions were or were not passed on to Downstream Entities.
3. To determine “[YYYY] Pct of Discover Fees Paid by Downstream Entity” and “[YYYY] Pct of Discover Fees Paid by Responding Organization” for a given MID, fee pricing agreements may be considered. For example, if your organization has a “bundled” pricing agreement for a given year, this may mean that Discover’s fees by card type (e.g., commercial, rewards, premium, or premium plus) were paid by your organization and were not passed through to the entity with whom you contracted. Therefore, a “bundled” pricing relationship might mean your organization paid 100% of Discover fees for that year. Alternatively, if your organization did not have a “bundled” pricing agreement for a given year, then your organization likely did not pay 100% of Discover fees for that year.

4. For cases in which a given MID has one direct Downstream Entity (e.g., a Payment Intermediary or End Merchant) and a pricing agreement change in a given year [YYYY], Discover Commercial Card transaction volumes and/or relative timing can be considered to determine “[YYYY] Pct of Discover Fees Paid by Downstream Entity” and “[YYYY] Pct of Discover Fees Paid by Responding Organization.”
5. For cases in which a given MID has multiple Downstream Entities below the MID level, relative Discover Commercial Card transaction volumes for each Downstream Entity may be considered to determine “[YYYY] Pct of Discover Fees Paid by Downstream Entity” and “[YYYY] Pct of Discover Fees Paid by Responding Organization.” Additional guidance for populating these fields in cases with multiple Downstream Entities below the MID level can be found at [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo).

### Data Questionnaire

**Please fill out the following information to assist the Settlement Administrator in processing your organization’s data.**

Name of organization providing data.	
Address of organization providing data.	
Organization contact for questions about data: Name and Title	
Organization contact for questions about data: Telephone number	
Organization contact for questions about data: Email	
Any software and/or programming language (e.g., Python) by which data is being produced, and any other information necessary for the Settlement Administrator to access your data file(s) (e.g., encryption passwords).	
For each distinct data file, the respective file name and the number of rows in each respective file.	
For all data file(s) together, the sum total number of all rows of data produced (i.e., control totals for the Settlement Administrator to validate all rows of all files have been received).	
The name(s) of each document provided. Documents should include: field mapping, code label sets, metadata and pricing documentation, as well as information needed by the Settlement Administrator to upload, process, analyze and understand the data file(s) provided by your organization.	

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Location: \_\_\_\_\_

Position: \_\_\_\_\_

# Attachment 3

DISCOVER CARD MERCHANT CLASS ACTION SETTLEMENT

**If you accepted or processed Discover credit cards between 2007-2023, you could be eligible to get a cash payment from a class action settlement.**

*A federal court authorized this notice.*

**\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

**\*To receive a payment, tell the Settlement Administrator how you want your payment sent by May 18, 2026\***

You may receive more than one notice about this settlement. Follow the instructions for each unique Claimant ID and PIN you receive.

**For more information, read this notice, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), or call 1-877-535-8067**

**What is this notice about?** A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

**Who is included?** The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

You are receiving this notice because records indicate that you are a **Managed Active Direct End Merchant**, which is a type of Settlement Class Member included in the settlement. Records further indicate that you are associated with one or more Discover merchant identifiers ("MIDs") in Discover's database. A list of these Discover MIDs can be accessed at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) using the credentials found at the top of the Claim Form provided with this notice.

**What can I get?** Under the proposed settlement, Discover will make payments to eligible Settlement Class Members who submit valid claims. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors, including the total estimated interchange fee overcharge for each Discover merchant identifier (or "MID") associated with you, how interchange fee charges for each MID were allocated among entities associated with the same MID, and the total aggregate dollar amount of all settlement payments. For more information, including to view the detailed calculation methodology or to review the list of MIDs associated with you, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

**How do I get a payment?** To receive a settlement payment, you must provide your payment information (where you want the payment sent) to the Settlement Administrator, and confirm the proper entity to receive payment, by **May 18, 2026**. For your convenience, a Payment Information Form is included with this notice.

Your business may be more than one type of Settlement Class Member. You may receive more than one notice and may need to take further action to receive payment or full payment.

The Settlement Administrator will validate claims and review all information submitted and will determine allocations and payment amounts pursuant to the terms of the settlement. Payments will be sent to eligible Settlement Class Members if and when the settlement is approved by the Court and becomes final.



**What are my options?** You can provide the information listed above under “How do I get a payment?” Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. To exclude yourself, mail a request for exclusion containing the information described at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), postmarked by **March 25, 2026**, to: Discover Card Merchant Settlement Exclusion Requests, c/o Epiq Class Action, PO Box 5370, Portland, OR 97228-5370. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court’s orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, you can object to or comment on the settlement or Settlement Class Counsel’s request for attorneys’ fees, expenses, and service awards for the Settlement Class Representatives who brought the lawsuits. To object, you must submit to the Court a signed, written objection containing the information described at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) by **March 25, 2026**. Visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) for more information.

**What happens next?** The Court will hold a hearing, currently scheduled for **May 20, 2026 at 9:30 a.m. (CT)**, at the United States District Court for the Northern District of Illinois, Courtroom 2319, 219 South Dearborn Street, Chicago, IL 60604, to decide whether to approve the settlement, attorneys’ fees (not to exceed \$25 million) plus reimbursement of litigation expenses (not to exceed \$1 million), and service awards of up to \$7,500 to each of five Settlement Class Representatives. Under the terms of the settlement, any amount awarded by the Court to Settlement Class Counsel and Settlement Class Representatives will be paid by Discover separate from (in other words, in addition to) settlement payments paid to Settlement Class Members. The date and time of this hearing may change without further notice, or the Court could order that this hearing be held remotely or telephonically. Check [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) for updates.

**Who represents me?** The Court has appointed Lief Cabraser Heimann & Bernstein LLP, Dilworth Paxson LLP, and The Kick Law Firm to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply to the Court for compensation, to be paid by Discover separate from and on top of the payments to Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

**How do I get more information?** For more information, including to view copies of case documents, the full Settlement Agreement, the settlement payment calculation methodology, and Settlement Class Counsel’s fee application, or to submit your payment information, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com). You can also call 1-877-535-8067 or contact Settlement Class Counsel at 1-800-971-8881.

**PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE**

**Discover Card Merchant Settlement  
Class Action Settlement Administrator**

c/o Epiq Class Action  
PO Box 2497  
Portland OR 97208-2497

**DISCOVER**  
Submission Deadline  
May 18, 2026



Claimant ID: [Redacted]  
PIN: [Redacted]

Submit your payment information online:

Scan the QR code to file a claim online via your phone, computer, tablet, or other smart device.



000 00000003 000000000 0003 0005 00002 INS:

**• MANAGED ACTIVE DIRECT END MERCHANT PAYMENT INFORMATION FORM •**

**Instructions:**

As a Managed Direct End Merchant, you need to submit this Payment Information Form on or before May 18, 2026 to receive a Settlement Payment. You can submit this form online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com). Or, if you prefer, you can fill out the below form and mail it back using the courtesy reply envelope that is enclosed with this form.

**Item 1:** To the best of your knowledge, did your entity process Discover credit cards on behalf of other businesses (e.g., franchisees)?  Yes  No

(NOTE: If Yes, the Settlement Administrator will contact you about additional information that may be needed pursuant to the Settlement Agreement at Section 2.29).

**Item 2:** Please choose and complete only **one** option below.

**Pay by Check:**

Payee Name ( Check this box if the Name preprinted at the top of this page is the correct payee):  
[Redacted]

Attention (optional):  
[Redacted]

Street Address 1:  
[Redacted]

Street Address 2:  
[Redacted]

City	State	Zip Code
[Redacted]	[Redacted]	[Redacted]

**Pay Electronically by ACH:**

Account Type:  
 Business Checking  
 Personal Checking  
 Savings

Bank Routing Number (9 digits):  
[Redacted]

Account Number:  
[Redacted]

Payee Name ( Check this box if the Name preprinted at the top of this page is the correct payee):  
[Redacted]

**Optional: Fill out an IRS Form W-9.**

You will likely be required to fill out a Form W-9 in connection with any settlement payment issued. To save time, you may provide this information now at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

Submit online or mail the completed Payment Information Form using the enclosed courtesy reply envelope to:

**Discover Card Merchant Settlement Administrator,  
PO Box 2497, Portland, OR 97208-2497**



# Attachment 4

**Discover Card Merchant Settlement  
Class Action Settlement Administrator**  
c/o Epiq Class Action  
PO Box 2497  
Portland, OR 97208-2497

**DISCOVER**  
Submission Deadline  
May 18, 2026

Claimant ID: [REDACTED]  
PIN: [REDACTED]

**Submit your Payment Information and/or  
Claim online:**

Scan the QR code to file a  
claim online via your phone,  
computer, tablet, or other  
smart device.



DISCOVER CARD MERCHANT CLASS ACTION SETTLEMENT

**If you accepted or processed Discover credit cards  
between 2007-2023, you could be eligible to get a cash payment  
from a class action settlement.**

*A federal court authorized this notice.*

**\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

**You may receive more than one notice about this settlement. Follow the  
instructions for each unique Claimant ID and PIN you receive.**

**For more information, read this notice, visit  
[www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), or call 1-877-535-8067**

**What is this notice about?** A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

**Who is included?** The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

You are receiving this notice because records indicate that you are an **Unmanaged Active Direct End Merchant**, which is a type of Settlement Class Member included in the settlement. Records further indicate that you are associated with one or more Discover merchant identifiers ("MIDs") in Discover's database. A list of these Discover MIDs can be accessed at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) using the credentials found at the top of this notice.

**What can I get?** Under the proposed settlement, Discover will make payments to eligible Settlement Class Members. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors, including the total estimated interchange fee overcharge for each Discover merchant identifier (or "MID") associated with you, how interchange fee charges for each MID were allocated among entities associated with the same MID, and the total aggregate dollar amount of all settlement payments. For more information, including to view the detailed calculation methodology or to review the list of MIDs associated with you, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).



**How do I get a payment?** You have already been deemed payment eligible. Once the settlement is approved and becomes final, a payment will be sent to you at the address on file with the Settlement Administrator. To update your address, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

Your business may be more than one type of Settlement Class Member. You may receive more than one notice and may need to take further action to receive payment or full payment.

The Settlement Administrator will validate claims and review all information submitted and will determine allocations and payment amounts pursuant to the terms of the settlement. Payments will be sent to eligible Settlement Class Members if and when the settlement is approved by the Court and becomes final.

**What are my options?** You can do nothing and receive a settlement payment. Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. To exclude yourself, mail a request for exclusion containing the information described at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), postmarked by **March 25, 2026**, to: Discover Card Merchant Class Action Settlement Exclusion Requests, c/o Epiq Class Action, PO Box 5370, Portland, OR 97228-5370. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court's orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, you can object to or comment on the settlement or Settlement Class Counsel's request for attorneys' fees, expenses, and service awards for the Settlement Class Representatives who brought the lawsuits. To object, you must submit to the Court and the Settlement Administrator a signed, written objection containing the information described at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) by **March 25, 2026**. Visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) for more information.

**What happens next?** The Court will hold a hearing, currently scheduled for **May 20, 2026 at 9:30 a.m. (CT)**, at the United States District Court for the Northern District of Illinois, Courtroom 2319, 219 South Dearborn Street, Chicago, IL 60604, to decide whether to approve the settlement, attorneys' fees (not to exceed to \$25 million) plus reimbursement of litigation expenses (not to exceed \$1 million), and service awards of up to \$7,500 to each of five Settlement Class Representatives. Under the terms of the settlement, any amounts awarded by the Court to Settlement Class Counsel and Settlement Class Representatives will be paid by Discover separate from (in other words, in addition to) settlement payments paid to Settlement Class Members. The date and time of this hearing may change without further notice, or the Court could order that this hearing be held remotely or telephonically. Check [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) for updates.

**Who represents me?** The Court has appointed Lief Cabraser Heimann & Bernstein LLP, Dilworth Paxson LLP, and The Kick Law Firm, APC to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply to the Court for compensation, to be paid by Discover separate from and on top of the payments to Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

**How do I get more information?** For more information, including to view copies of case documents, the full Settlement Agreement, the settlement payment calculation methodology, and Settlement Class Counsel's fee application, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com). You can also call 1-877-535-8067 or contact Settlement Class Counsel at 1-800-971-8881.

**PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE**

# Attachment 5

## DISCOVER CARD MERCHANT CLASS ACTION SETTLEMENT

**If you accepted or processed Discover credit cards between 2007-2023, you could be eligible to get a cash payment from a class action settlement.**

*A federal court authorized this notice.*

**\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

**\*To receive a payment, you must file a claim by May 18, 2026\***

For more information, read this notice, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), or call 1-888-655-3176.

**What is this notice about?** A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

**Who is included?** The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

You are receiving this notice because records indicate that you are an Inactive Direct End Merchant, which is a type of Settlement Class Member included in the settlement. Records further indicate that you are associated with one or more Discover merchant identifiers ("MIDs") in Discover's database. A list of these Discover MIDs can be accessed at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) using the credentials found at the top of the Claim Form provided with this notice.

**What can I get?** Under the proposed settlement, Discover will make payments to eligible Settlement Class Members who submit valid claims. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors, including the total estimated interchange fee overcharge for each Discover merchant identifier (or "MID") associated with you, how interchange fee charges for each MID were allocated among entities associated with the same MID, and the total aggregate dollar amount of all settlement payments. For more information, including to view the detailed calculation methodology or to review the list of MIDs associated with you, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

**How do I get a payment?** To receive a settlement payment, you **must submit a claim**, postmarked or submitted online, by **May 18, 2026**. You can: (a) submit a claim form online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), or (b) fill out the claim form enclosed with this notice and mail it to the Settlement Administrator at the address listed in the form.

The Settlement Administrator will validate claims and review all information submitted and will determine allocations and payment amounts pursuant to the terms of the settlement. Payments will be sent to eligible Settlement Class Members if and when the settlement is approved by the Court and becomes final.

**What are my options?** You can file a claim for a payment. Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. To exclude yourself, mail a request for exclusion containing the information described at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), postmarked by **March 25, 2026**, to: Discover Card Merchant Settlement Exclusion Requests, c/o Epiq Class Action, PO Box 5370, Portland, OR 97228-5370. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court's orders and judgments and will release any claims against

Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, you can object to or comment on the settlement or Settlement Class Counsel's request for attorneys' fees, expenses, and service awards for the Settlement Class Representatives who brought the lawsuits. To object, you must submit to the Court a signed, written objection containing the information described at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) by **March 25, 2026**. Visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) for more information.

**What happens next?** The Court will hold a hearing, currently scheduled for **May 20, 2026 at 9:30 a.m. (CT)**, at the United States District Court for the Northern District of Illinois, Courtroom 2319, 219 South Dearborn Street, Chicago, IL 60604, to decide whether to approve the settlement, attorneys' fees (not to exceed to \$25 million) plus reimbursement of litigation expenses (not to exceed \$1 million), and service awards of up to \$7,500 to each of five Settlement Class Representatives. Under the terms of the settlement, any amounts awarded by the Court to Settlement Class Counsel and Settlement Class Representatives will be paid by Discover separate from (in other words, in addition to) settlement payments paid to Settlement Class Members. The date and time of this hearing may change without further notice, or the Court could order that this hearing be held remotely or telephonically. Check [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) for updates.

**Who represents me?** The Court has appointed Lief Cabraser Heimann & Bernstein LLP, Dilworth Paxson LLP, and The Kick Law Firm, APC to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply to the Court for compensation, to be paid by Discover separate from and on top of the payments to Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

**How do I get more information?** For more information, including to view copies of case documents, the full Settlement Agreement, the settlement payment calculation methodology, and Settlement Class Counsel's fee application, or to file a claim online or print out a hard copy claim form to file by mail, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com). You can also call 1-888-655-3176 or contact Settlement Class Counsel at 1-800-971-8881.

**PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE**

**Discover Card Merchant Settlement  
Class Action Settlement Administrator**

c/o Epiq Class Action  
PO Box 2497  
Portland OR 97208-2497

**DISCOVER**  
Submission Deadline  
May 18, 2026

Legal Name: [REDACTED]  
Tax ID: [REDACTED]  
Claimant ID: [REDACTED]  
PIN: [REDACTED]



Submit your claim online:

Scan the QR code to file a claim online via your phone, computer, tablet, or other smart device.



• COURT-APPROVED CLAIM FORM •

If you accepted or processed Discover credit cards between 2007–2023, you could be eligible to get a payment from a class action settlement.

You **must** file a claim to receive a payment under the Settlement. You can file a claim online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) or by filling out and mailing this Claim Form to the address listed below.

**Provide and/or Confirm Claimant Information.**

<b>Legal name</b> of business, entity or person that accepted and/or processed Discover credit cards 2007–2023 <input type="checkbox"/> Check this box if the Legal Name preprinted at the top of this page is correct):	
<b>(If applicable) Doing business as (DBA) name</b> of business, entity or person (if any) that accepted and/or processed Discover credit cards 2007–2023 <input type="checkbox"/> Check this box if the DBA Name preprinted at the top of this page is correct):	
<b>Postal Mailing Address</b> <input type="checkbox"/> Check this box if mailing address preprinted at the top of this page is correct):	
<b>Taxpayer Identification Number</b> (SSN, EIN or ITIN)	
<b>Email</b>	<b>Phone</b>

**Tell us about your acceptance and/or processing of Discover credit cards.**

Are you a franchisor or franchisee? <input type="checkbox"/> Neither <input type="checkbox"/> Franchisor <input type="checkbox"/> Franchisee <input type="checkbox"/> Both
Do/did you process or accept Discover credit cards on behalf of other businesses? <input type="checkbox"/> Yes <input type="checkbox"/> No

**Your signature is required.**

By signing below, I attest the information provided is correct, I have sufficient authority to submit a claim for this entity, and, to the best of my knowledge and belief, no other person or entity has a claim to any Settlement Payment I am seeking in connection with this Settlement.

Signature	Date (mm/dd/yyyy)
Printed Name	Title/Position

**File your claim online or mail this Claim Form to:  
Discover Card Merchant Settlement Administrator, PO Box 2497, Portland, OR 97208-2497  
Please review additional options on the back of this form.**

To get this Claim Form and other information in Spanish Español, Russian Русский, Korean 한국어, Vietnamese Tiếng Việt, Japanese 日本語, Chinese 汉语, or Thai ไทย, please visit [DiscoverMerchantSettlement.com](http://DiscoverMerchantSettlement.com)

**Optional: Tell us your preferred payment method.**

Eligible claimants will be mailed checks if the Settlement becomes final. If you want to receive a payment electronically instead, you may securely provide your payment information at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

**Optional: Fill out an IRS Form W-9.**

You may be required to fill out a Form W-9 in connection with any settlement payment issued. To save time, you may provide this information now at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

**For free assistance, call us at 1-888-655-3176, Monday through Friday, 9:00 a.m. to 8:00 p.m. ET, or send us an email at [info@DiscoverMerchantSettlement.com](mailto:info@DiscoverMerchantSettlement.com).**

# Attachment 6

## **DISCOVER CARD MERCHANT CLASS ACTION SETTLEMENT**

**If you accepted or processed Discover credit cards between 2007-2023, you could be eligible to get a cash payment from a class action settlement.**

*A federal court authorized this notice.*

**\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

**\*To receive a payment, you must file a claim by May 18, 2026\***

For more information, read this notice, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), or call 1-888-655-3176.

**What is this notice about?** A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

**Who is included?** The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

You are receiving this **Standard Notice** because records indicate that you are a Settlement Class Member.

**What can I get?** Under the proposed settlement, Discover will make payments to eligible Settlement Class Members who submit valid claims. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors, including the total estimated interchange fee overcharge for each Discover merchant identifier (or "MID") associated with you, how interchange fee charges for each MID were allocated among entities associated with the same MID, and the total aggregate dollar amount of all settlement payments. For more information, including to view the detailed calculation methodology or to review the list of MIDs associated with you, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

**How do I get a payment?** To receive a settlement payment, you must submit a claim, postmarked or submitted online, by **May 18, 2026**. You can: (a) submit a claim form online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), or (b) fill out the claim form enclosed with this notice and mail it to the Settlement Administrator at the address listed in the form.

The Settlement Administrator will validate claims and review all information submitted and will determine allocations and payment amounts pursuant to the terms of the settlement. Payments will be sent to eligible Settlement Class Members if and when the settlement is approved by the Court and becomes final.

**What are my options?** You can file a claim for a payment. Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. To exclude yourself, mail a request for exclusion containing the information described at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), postmarked by **March 25, 2026**, to: Discover Card Merchant Settlement Exclusion Requests, c/o Epiq Class Action, PO Box 5370 Portland, OR 97228-5370. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court's orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, you can object to or comment on the settlement or Settlement Class Counsel's request for attorneys' fees, expenses, and service awards for the Settlement Class Representatives who brought the lawsuits. To object, you must submit to the Court a signed, written objection containing the information described at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) by **March 25, 2026**. Visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) for more information.

**What happens next?** The Court will hold a hearing, currently scheduled for **May 20, 2026 at 9:30 a.m. (CT)**, at the United States District Court for the Northern District of Illinois, Courtroom 2319, 219 South Dearborn Street, Chicago, IL 60604, to decide whether to approve the settlement, attorneys' fees (not to exceed to \$25 million) plus reimbursement of litigation expenses (not to exceed \$1 million), and service awards of up to \$7,500 to each of five Settlement Class Representatives. Under the terms of the settlement, any amounts awarded by the Court to Settlement Class Counsel and Settlement Class Representatives will be paid by Discover separate from (in other words, in addition to) settlement payments paid to Settlement Class Members. The date and time of this hearing may change without further notice, or the Court could order that this hearing be held remotely or telephonically. Check [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) for updates.

**Who represents me?** The Court has appointed Lieff Cabraser Heimann & Bernstein LLP, Dilworth Paxson LLP, and The Kick Law Firm, APC to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply to the Court for compensation, to be paid by Discover separate from and on top of the payments to Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

**How do I get more information?** For more information, including to view copies of case documents, the full Settlement Agreement, the settlement payment calculation methodology, and Settlement Class Counsel's fee application, or to file a claim online or print out a hard copy claim form to file by mail, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com). You can also call 1-888-655-3176 or contact Settlement Class Counsel at 1-800-971-8881.

**PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE**

**Discover Card Merchant Settlement  
Class Action Settlement Administrator**

c/o Epiq Class Action  
PO Box 2497  
Portland OR 97208-2497

**DISCOVER**  
Submission Deadline  
May 18, 2026

Legal Name: [REDACTED]  
Tax ID: [REDACTED]  
Claimant ID: [REDACTED]  
PIN: [REDACTED]

[REDACTED]

Submit your claim online:

Scan the QR code to file a claim online via your phone, computer, tablet, or other smart device.



• COURT-APPROVED CLAIM FORM •

If you accepted or processed Discover credit cards between 2007–2023, you could be eligible to get a payment from a class action settlement.

You **must** file a claim to receive a payment under the Settlement. You can file a claim online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) or by filling out and mailing this Claim Form to the address listed below.

**Provide and/or Confirm Claimant Information.**

Legal name of business, entity or person that accepted and/or processed Discover credit cards 2007–2023 <input type="checkbox"/> Check this box if the Legal Name preprinted at the top of this page is correct):	
(If applicable) Doing business as (DBA) name of business, entity or person (if any) that accepted and/or processed Discover credit cards 2007–2023 <input type="checkbox"/> Check this box if the DBA Name preprinted at the top of this page is correct):	
Postal Mailing Address <input type="checkbox"/> Check this box if mailing address preprinted at the top of this page is correct):	
Taxpayer Identification Number (SSN, EIN or ITIN)	
Email	Phone

**Tell us about your acceptance and/or processing of Discover credit cards.**

Are you a franchisor or franchisee?	<input type="checkbox"/> Neither	<input type="checkbox"/> Franchisor	<input type="checkbox"/> Franchisee	<input type="checkbox"/> Both
Do/did you process or accept Discover credit cards on behalf of other businesses?		<input type="checkbox"/> Yes	<input type="checkbox"/> No	

**Your signature is required.**

By signing below, I attest the information provided is correct, I have sufficient authority to submit a claim for this entity, and, to the best of my knowledge and belief, no other person or entity has a claim to any Settlement Payment I am seeking in connection with this Settlement.

Signature	Date (mm/dd/yyyy)
Printed Name	Title/Position

**File your claim online or mail this Claim Form to:  
Discover Card Merchant Settlement Administrator, PO Box 2497, Portland, OR 97208-2497  
Please review additional options on the [back](#) of this form.**

To get this Claim Form and other information in Spanish Español, Russian Русский, Korean 한국어, Vietnamese Tiếng Việt, Japanese 日本語, Chinese 汉语, or Thai ภาษาไทย, please visit [DiscoverMerchantSettlement.com](http://DiscoverMerchantSettlement.com)

**Optional: Tell us your preferred payment method.**

Eligible claimants will be mailed checks if the Settlement becomes final. If you want to receive a payment electronically instead, you may securely provide your payment information at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

**Optional: Fill out an IRS Form W-9.**

You may be required to fill out a Form W-9 in connection with any settlement payment issued. To save time, you may provide this information now at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

**For free assistance, call us at 1-888-655-3176, Monday through Friday, 9:00 a.m. to 8:00 p.m. ET, or send us an email at [info@DiscoverMerchantSettlement.com](mailto:info@DiscoverMerchantSettlement.com).**

# Attachment 7



**Discover Card Merchant Settlement  
Class Action Settlement Administrator**

c/o Epiq Class Action  
PO Box 2497  
Portland OR 97208-2497



Claimant ID: [Redacted]  
PIN: [Redacted]

Dear Class Member:

Enclosed please find information about a proposed class action settlement, your rights, and any actions required to participate.

**You May Receive More Than One Notice About this Class Settlement. Please Do Not Discard.**

Your business(es) may be more than one type of Settlement Class Member. As a result, you may receive more than one Notice about this settlement with instructions pertaining to more than one unique Claimant ID and PIN. To receive the full amount of any payment to which you are entitled, please follow the instructions for each unique Claimant ID and PIN you receive.

**1. Link the Unique Claimant IDs and PINs to your Account**

After you register online, log into your account on the settlement website, [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), and add each unique Claimant ID and PIN that you receive. By doing this, you will link the unique Claimant IDs and PINs to your account.

**2. Follow Instructions for Each Unique Claimant ID and PIN to Ensure Maximum Allowable Payment**

Next, follow the instructions in each Notice to be eligible to receive a settlement payment for all Discover Merchant Identifiers (MIDs) associated with your business(es).

**If I Have Questions, Who Should I Contact for Assistance?**

Epiq Class Action and Claims Solutions, Inc. is the court-appointed Administrator and is available to assist you. Call 1-877-535-8067, 9am-7pm ET, Monday through Friday (except holidays), or email at [DirectServices@DiscoverMerchantSettlement.com](mailto:DirectServices@DiscoverMerchantSettlement.com). For additional information about the settlement, including a copy of the Settlement Agreement and answers to Frequently Asked Questions, visit [DiscoverMerchantSettlement.com](http://DiscoverMerchantSettlement.com).

Sincerely,

Discover Card Merchant  
Settlement Administrator

Enclosures: Settlement Notice  
MADEM Summary Notice  
MADEM Payment Information



# Attachment 8

**From:** Discover Merchant Settlement <DiscoverMerchantSettlement@e.epiqnotice.com>  
**To:** [REDACTED]  
**Subject:** Discover Card Merchant Class Action Settlement

Claimant ID: [REDACTED]  
PIN: [REDACTED]

**If you accepted or processed Discover credit cards between 2007-2023, you could be eligible to get a cash payment from a class action settlement.**

*A federal court authorized this notice.*

**\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

**\*To receive a payment, you must provide additional information by November 12, 2025 and [file a claim](#) by May 18, 2026\***

**You may receive more than one notice about this settlement. Follow the instructions for each unique Claimant ID and PIN you receive.**

**For more information, read this notice, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), or call 1-877-535-8067.**

**What is this notice about?** A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

**Who is included?** The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to the Settlement Website above.

You are receiving this notice because records indicate that you are a Merchant Acquirer, which is a type of Settlement Class Member included in the settlement. Records further indicate that you are associated with one or

more Discover merchant identifiers (“MIDs”) in Discover’s database. A list of these Discover MIDs can be accessed at the Settlement Website using the credentials found at the top of this notice.

**What can I get?** Under the proposed settlement, Discover will make payments to eligible Settlement Class Members who submit valid claims. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors, including the total estimated interchange fee overcharge for each Discover merchant identifier (or “MID”) associated with you, how interchange fee charges for each MID were allocated among entities associated with the same MID, and the total aggregate dollar amount of all settlement payments. For more information, including to view the detailed calculation methodology or to review the list of MIDs associated with you, go to the Settlement Website.

**How do I get a payment?** To receive a settlement payment, you must do **both** of the following:

1. You **must submit additional information**, called your “Merchant Acquirer Information,” to the Settlement Administrator by **November 12, 2025**. The Settlement Administrator has provided a letter with your mailed Notice that includes a recommended data layout for the required Merchant Acquirer Information component fields and options for how this information may be securely submitted to the Settlement Administrator, or go to [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo). If you would like to receive another copy of this letter, contact the Settlement Administrator at 1-877-535-8067 or [DirectServices@DiscoverMerchantSettlement.com](mailto:DirectServices@DiscoverMerchantSettlement.com).
2. You **must also submit a claim**, postmarked or submitted online by clicking [here](#), by **May 18, 2026**.

The Settlement Administrator will validate claims and review all information submitted and will determine allocations and payment amounts pursuant to the terms of the settlement. Payments will be sent to eligible Settlement Class Members if and when the settlement is approved by the Court and becomes final.

**What are my options?** You must provide the additional information indicated above and you may file a claim to request a payment. Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. To exclude yourself, mail a request for exclusion containing the information described on the Settlement Website, postmarked by **March 25, 2026**, to: Discover Card Merchant Class Action Settlement Exclusion Requests, c/o Epiq Class Action, PO Box 5370, Portland, OR 97228-5370. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court’s orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself,

you can object to or comment on the settlement or Settlement Class Counsel's request for attorneys' fees, expenses, and service awards for the Settlement Class Representatives who brought the lawsuits. To object, you must submit to the Court a signed, written objection containing the information described on the Settlement Website by **March 25, 2026**. Visit the Settlement Website below for more information.

**What happens next?** The Court will hold a hearing, currently scheduled for **May 20, 2026, at 9:30 a.m. (CT)**, at the United States District Court for the Northern District of Illinois, Courtroom 2319, 219 South Dearborn Street, Chicago, IL 60604, to decide whether to approve the settlement, attorneys' fees (not to exceed to \$25 million) plus reimbursement of litigation expenses (not to exceed \$1 million), and service awards of up to \$7,500 to each of five Settlement Class Representatives. Under the terms of the settlement, any amounts awarded by the Court to Settlement Class Counsel and Settlement Class Representatives will be paid by Discover separate from (in other words, in addition to) settlement payments paid to Settlement Class Members. The date and time of this hearing may change without further notice, or the Court could order that this hearing be held remotely or telephonically. Check the Settlement Website for updates.

**Who represents me?** The Court has appointed Lief Cabraser Heimann & Bernstein LLP, Dilworth Paxson LLP, and The Kick Law Firm, APC to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply to the Court for compensation, to be paid by Discover separate from and on top of the payments to Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

**How do I get more information?** For more information, including to view copies of case documents, the full Settlement Agreement, the settlement payment calculation methodology, and Settlement Class Counsel's fee application, or to file a claim online or print out a hard copy claim form to file by mail, visit the [Settlement Website](#). You can also call 1-877-535-8067 or contact Settlement Class Counsel at 1-800-971-8881.

**PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE**

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If [REDACTED] should not be subscribed or if you need to change your subscription information for Discover Merchant Settlement, [please use this preferences page](#).

# Attachment 9

**From:** Discover Merchant Settlement <DiscoverMerchantSettlement@e.epiqnotice.com>  
**To:** [REDACTED]  
**Subject:** Discover Card Merchant Class Action Settlement

Name	ClaimantID	PIN
[REDACTED]	[REDACTED]	[REDACTED]

**If you accepted or processed Discover credit cards between 2007-2023, you could be eligible to get a cash payment from a class action settlement.**

*A federal court authorized this notice.*

**\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

**\*To receive a payment, you must provide additional information by February 25, 2026 and file a claim by May 18, 2026\***

**You may receive more than one notice about this settlement. Follow the instructions for each unique Claimant ID and PIN you receive.**

**For more information, read this notice, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), or call 1-877-535-8067.**

**What is this notice about?** A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

**Who is included?** The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to the Settlement Website above.

You are receiving this notice because records indicate that you are a Payment Intermediary, which is a type of Settlement Class Member included in the settlement. Records further indicate that you are associated with one or

more Discover merchant identifiers (“MIDs”) in Discover’s database. A list of these Discover MIDs can be accessed at the Settlement Website using the credentials found at the top of this notice.

**What can I get?** Under the proposed settlement, Discover will make payments to eligible Settlement Class Members who submit valid claims. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors, including the total estimated interchange fee overcharge for each Discover merchant identifier (or “MID”) associated with you, how interchange fee charges for each MID were allocated among entities associated with the same MID, and the total aggregate dollar amount of all settlement payments. For more information, including to view the detailed calculation methodology or to review the list of MIDs associated with you, go to the Settlement Website.

**How do I get a payment?** To receive a settlement payment, you must do **both** of the following:

1. You **must submit additional information**, called your “Payment Intermediary Information,” to the Settlement Administrator by **February 25, 2026**. The Settlement Administrator has provided a letter with your mailed Notice that includes a recommended data layout for the required Payment Intermediary Information component fields and options for how this information may be securely submitted to the Settlement Administrator, or go to [www.DiscoverMerchantSettlement.com/DataInfo](http://www.DiscoverMerchantSettlement.com/DataInfo). If you would like to receive another copy of this letter, contact the Settlement Administrator at 1-877-535-8067 or [DirectServices@DiscoverMerchantSettlement.com](mailto:DirectServices@DiscoverMerchantSettlement.com).
2. You **must also submit a claim**, postmarked or submitted online by clicking [here](#), by **May 18, 2026**.

The Settlement Administrator will validate claims and review all information submitted and will determine allocations and payment amounts pursuant to the terms of the settlement. Payments will be sent to eligible Settlement Class Members if and when the settlement is approved by the Court and becomes final.

**What are my options?** You must provide the additional information indicated above and you may file a claim to request a payment. Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. To exclude yourself, mail a request for exclusion containing the information described on the Settlement Website, postmarked by **March 25, 2026**, to: Discover Card Merchant Class Action Settlement Exclusion Requests, c/o Epiq Class Action, PO Box 5370, Portland, OR 97228-5370. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court’s orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself,

you can object to or comment on the settlement or Settlement Class Counsel's request for attorneys' fees, expenses, and service awards for the Settlement Class Representatives who brought the lawsuits. To object, you must submit to the Court a signed, written objection containing the information described on the Settlement Website by **March 25, 2026**. Visit the Settlement Website below for more information.

**What happens next?** The Court will hold a hearing, currently scheduled for **May 20, 2026, at 9:30 a.m. (CT)**, at the United States District Court for the Northern District of Illinois, Courtroom 2319, 219 South Dearborn Street, Chicago, IL 60604, to decide whether to approve the settlement, attorneys' fees (not to exceed to \$25 million) plus reimbursement of litigation expenses (not to exceed \$1 million), and service awards of up to \$7,500 to each of five Settlement Class Representatives. Under the terms of the settlement, any amounts awarded by the Court to Settlement Class Counsel and Settlement Class Representatives will be paid by Discover separate from (in other words, in addition to) settlement payments paid to Settlement Class Members. The date and time of this hearing may change without further notice, or the Court could order that this hearing be held remotely or telephonically. Check the Settlement Website for updates.

**Who represents me?** The Court has appointed Lief Cabraser Heimann & Bernstein LLP, Dilworth Paxson LLP, and The Kick Law Firm, APC to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply to the Court for compensation, to be paid by Discover separate from and on top of the payments to Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

**How do I get more information?** For more information, including to view copies of case documents, the full Settlement Agreement, the settlement payment calculation methodology, and Settlement Class Counsel's fee application, or to file a claim online or print out a hard copy claim form to file by mail, visit the [Settlement Website](#). You can also call 1-877-535-8067 or contact Settlement Class Counsel at 1-800-971-8881.

**PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE**

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If [REDACTED] should not be subscribed or if you need to change your subscription information for Discover Merchant Settlement, [please use this preferences page](#).

# Attachment 10

**From:** Discover Merchant Settlement <DiscoverMerchantSettlement@e.epiqnotice.com>  
**To:** [REDACTED]  
**Subject:** Discover Card Merchant Class Action Settlement

Name	ClaimantID	PIN
[REDACTED]	[REDACTED]	[REDACTED]

**If you accepted or processed Discover credit cards between 2007-2023, you could be eligible to get a cash payment from a class action settlement.**

*A federal court authorized this notice.*

**\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

**\*To receive a payment, tell the Settlement Administrator how you want your payment sent by May 18, 2026\***

**You may receive more than one notice about this settlement. Follow the instructions for each unique Claimant ID and PIN you receive.**

**For more information, read this notice, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), or call 1-877-535-8067.**

**What is this notice about?** A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

**Who is included?** The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to the Settlement Website above.

You are receiving this notice because records indicate that you are a **Managed Active Direct End Merchant**, which is a type of Settlement Class Member included in the settlement. Records further indicate that you are associated with one or more Discover merchant identifiers (“MIDs”) in Discover’s database. A list of these Discover MIDs can be accessed at the Settlement Website using the credentials found at the top of this notice.

**What can I get?** Under the proposed settlement, Discover will make payments to eligible

Settlement Class Members who submit valid claims. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors, including the total estimated interchange fee overcharge for each Discover merchant identifier (or “MID”) associated with you, how interchange fee charges for each MID were allocated among entities associated with the same MID, and the total aggregate dollar amount of all settlement payments. For more information, including to view the detailed calculation methodology or to review the list of MIDs associated with you, go to the Settlement Website.

**How do I get a payment?** To receive a settlement payment, you must provide your payment information (where you want the payment sent) to the Settlement Administrator, and confirm the proper entity to receive payment, by **May 18, 2026**. For your convenience, you may find a Payment Information form online after you register [here](#).

Your business may be more than one type of Settlement Class Member. You may receive more than one notice and may need to take further action to receive payment or full payment.

The Settlement Administrator will validate claims and review all information submitted and will determine allocations and payment amounts pursuant to the terms of the settlement. Payments will be sent to eligible Settlement Class Members if and when the settlement is approved by the Court and becomes final.

**What are my options?** You can provide the information listed above under “How do I get a payment?” Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. To exclude yourself, mail a request for exclusion containing the information described on the Settlement Website, postmarked by **March 25, 2026**, to: Discover Card Merchant Class Action Settlement Exclusion Requests, c/o Epiq Class Action, PO Box 5370, Portland, OR 97228-5370. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court’s orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, you can object to or comment on the settlement or Settlement Class Counsel’s request for attorneys’ fees, expenses, and service awards for the Settlement Class Representatives who brought the lawsuits. To object, you must submit to the Court a signed, written objection containing the information described on the Settlement Website by **March 25, 2026**. Visit the Settlement Website for more information.

**What happens next?** The Court will hold a hearing, currently scheduled for **May 20, 2026, at 9:30 a.m. (CT)**, at the United States District Court for the Northern District of Illinois, Courtroom 2319, 219 South Dearborn Street, Chicago, IL 60604, to decide whether to approve the settlement, attorneys’ fees (not to exceed to \$25 million) plus reimbursement of litigation expenses (not to exceed \$1 million), and service awards of up to \$7,500 to each of five Settlement Class Representatives. Under the terms of the settlement, any amounts awarded by the Court to Settlement Class Counsel and Settlement Class Representatives will be paid by Discover separate from (in other words, in addition to) settlement payments paid to Settlement Class Members. The date and time of this hearing may change without further notice, or the Court could order that this hearing be held remotely or telephonically. Check the Settlement Website for updates.

**Who represents me?** The Court has appointed Lief Cabraser Heimann & Bernstein LLP, Dilworth Paxson LLP, and The Kick Law Firm, APC to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply to the Court for compensation, to be paid by

Discover separate from and on top of the payments to Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

**How do I get more information?** For more information, including to view copies of case documents, the full Settlement Agreement, the settlement payment calculation methodology, and Settlement Class Counsel's fee application, or to submit your payment information, visit the [Settlement Website](#). You can also call 1-877-535-8067 or contact Settlement Class Counsel at 1-800-971-8881.

**PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE**

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If [REDACTED] should not be subscribed or if you need to change your subscription information for Discover Merchant Settlement, [please use this preferences page](#).

# Attachment 11

**From:** Discover Card Merchant Settlement <DiscoverMerchantSettlement@e.epiqnotice.com>  
**Sent:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** Discover Card Merchant Class Action Settlement

Name	ClaimantID	PIN
[REDACTED]	[REDACTED]	[REDACTED]

**If you accepted or processed Discover credit cards between 2007-2023, you could be eligible to get a cash payment from a class action settlement.**

*A federal court authorized this notice.*

**\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

**You may receive more than one notice about this settlement. Follow the instructions for each unique Claimant ID and PIN you receive.**

**For more information, read this notice, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), or call 1-877-535-8067.**

**What is this notice about?** A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

**Who is included?** The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to the Settlement Website above.

You are receiving this notice because records indicate that you are an **Unmanaged Active Direct End Merchant**, which is a type of Settlement Class Member included in the settlement. Records further indicate that you are associated with one or more Discover merchant identifiers ("MIDs") in Discover's database. A list of these Discover MIDs can be accessed at the Settlement Website using the credentials found at the top of this notice.

**What can I get?** Under the proposed settlement, Discover will make payments to eligible Settlement Class Members. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors, including the total estimated interchange fee overcharge

for each Discover merchant identifier (or "MID") associated with you, how interchange fee charges for each MID were allocated among entities associated with the same MID, and the total aggregate dollar amount of all settlement payments. For more information, including to view the detailed calculation methodology or to review the list of MIDs associated with you, go to the Settlement Website.

**How do I get a payment?** You have already been deemed payment eligible. Once the settlement is approved and becomes final, a payment will be sent to you at the address on file with the Settlement Administrator. To update your address, visit the Settlement Website.

Your business may be more than one type of Settlement Class Member. You may receive more than one notice and may need to take further action to receive payment or full payment. The Settlement Administrator will validate claims and review all information submitted and will determine allocations and payment amounts pursuant to the terms of the settlement. Payments will be sent to eligible Settlement Class Members if and when the settlement is approved by the Court and becomes final.

**What are my options?** You can do nothing and receive a settlement payment. Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. To exclude yourself, mail a request for exclusion containing the information described on the Settlement Website, postmarked by **March 25, 2026**, to: Discover Card Merchant Class Action Settlement Exclusion Requests, c/o Epiq Class Action, PO Box 5370, Portland, OR 97228-5370. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court's orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, you can object to or comment on the settlement or Settlement Class Counsel's request for attorneys' fees, expenses, and service awards for the Settlement Class Representatives who brought the lawsuits. To object, you must submit to the Court a signed, written objection containing the information described on the Settlement Website by **March 25, 2026**. Visit the Settlement Website for more information.

**What happens next?** The Court will hold a hearing, currently scheduled for **May 20, 2026 9:30 a.m. (CT)**, at the United States District Court for the Northern District of Illinois, Courtroom 2319, 219 South Dearborn Street, Chicago, IL 60604, to decide whether to approve the settlement, attorneys' fees (not to exceed to \$25 million) plus reimbursement of litigation expenses (not to exceed \$1 million), and service awards of up to \$7,500 to each of five Settlement Class Representatives. Under the terms of the settlement, any amounts awarded by the Court to Settlement Class Counsel and Settlement Class Representatives will be paid by Discover separate from (in other words, in addition to) settlement payments paid to Settlement Class Members. The date and time of this hearing may change without further notice, or the Court could order that this hearing be held remotely or telephonically. Check the Settlement Website for updates.

**Who represents me?** The Court has appointed Lief Cabraser Heimann & Bernstein LLP, Dilworth Paxson LLP, and The Kick Law Firm, APC to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply to the Court for compensation, to be paid by Discover separate from and on top of the payments to Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

**How do I get more information?** For more information, including to view copies of case documents, the full Settlement Agreement, the settlement payment calculation methodology, and

Settlement Class Counsel's fee application, visit the [Settlement Website](#). You can also call 1-877-535-8067 or contact Settlement Class Counsel at 1-800-971-8881.

**PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE**

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If [REDACTED] should not be subscribed or if you need to change your subscription information for Discover Merchant Settlement, [please use this preferences page](#).

# Attachment 12

**From:** Discover Card Merchant Settlement <DiscoverMerchantSettlement@e.epiqnotice.com>  
**To:** [REDACTED]  
**Subject:** Discover Card Merchant Class Action Settlement

**Unique ID      PIN**

[REDACTED]      [REDACTED]

**If you accepted or processed Discover credit cards between 2007-2023, you could be eligible to get a cash payment from a class action settlement.**

*A federal court authorized this notice.*

**\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

**\*To receive a payment, you must [file a claim](#) by May 18, 2026\***

**You may receive more than one notice about this settlement. Follow the instructions for each unique Claimant ID and PIN you receive.**

**For more information, read this notice, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), or call 1-888-655-3176.**

**What is this notice about?** A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

**Who is included?** The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to the Settlement Website above.

You are receiving this notice because records indicate that you are an Inactive Direct End Merchant which is a type of Settlement Class Member

included in the settlement. Records further indicate that you are associated with one or more Discover merchant identifiers (“MIDs”) in Discover’s database. A list of these Discover MIDs can be accessed at the Settlement Website listed above using the credentials found at the top of this notice.

**What can I get?** Under the proposed settlement, Discover will make payments to eligible Settlement Class Members who submit valid claims. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors, including the total estimated interchange fee overcharge for each Discover merchant identifier (or “MID”) associated with you, how interchange fee charges for each MID were allocated among entities associated with the same MID, and the total aggregate dollar amount of all settlement payments. For more information, including to view the detailed calculation methodology or to review the list of MIDs associated with you, go to the Settlement Website.

**How do I get a payment?** To receive a settlement payment, you **must submit a claim**, postmarked or submitted online, by **May 18, 2026**. You can: (a) submit a claim form online by clicking [here](#), or (b) print and fill out the claim form found on the Settlement Website listed above and mail it to the Settlement Administrator at the address listed in the form.

The Settlement Administrator will validate claims and review all information submitted and will determine allocations and payment amounts pursuant to the terms of the settlement. Payments will be sent to eligible Settlement Class Members if and when the settlement is approved by the Court and becomes final.

**What are my options?** You can file a claim for a payment. Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. To exclude yourself, mail a request for exclusion containing the information described on the Settlement Website, postmarked by **March 25, 2026**, to: Discover Card Merchant Class Action Settlement Exclusion Requests, c/o Epiq Class Action, PO Box 5370, Portland, OR 97228-5370. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court’s orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, you can object to or comment on the settlement or Settlement Class Counsel’s request for attorneys’ fees, expenses, and service awards for the Settlement Class Representatives who brought the lawsuits. To object, you must submit to the Court a signed, written objection containing the information described on the Settlement Website by **March 25, 2026**. Visit the Settlement Website for more information.

**What happens next?** The Court will hold a hearing, currently scheduled for **May 20, 2026, at 9:30 a.m. (CT)**, at the United States District Court for the Northern District of Illinois, Courtroom 2319, 219 South Dearborn Street, Chicago, IL 60604, to decide whether to approve the settlement, attorneys’ fees (not to exceed to \$25 million) plus reimbursement of litigation expenses (not to exceed \$1 million), and service awards of up to \$7,500 to each of five

Settlement Class Representatives. Under the terms of the settlement, any amounts awarded by the Court to Settlement Class Counsel and Settlement Class Representatives will be paid by Discover separate from (in other words, in addition to) settlement payments paid to Settlement Class Members. The date and time of this hearing may change without further notice, or the Court could order that this hearing be held remotely or telephonically. Check the Settlement Website for updates.

**Who represents me?** The Court has appointed Lief Cabraser Heimann & Bernstein LLP, Dilworth Paxson LLP, and The Kick Law Firm, APC to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead these lawyers will apply to the Court for compensation, to be paid by Discover separate from and on top of the payments to Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

**How do I get more information?** For more information, including to view copies of case documents, the full Settlement Agreement, the settlement payment calculation methodology, and Settlement Class Counsel's fee application, or to file a claim online or print out a hard copy claim form to file by mail, visit the [Settlement Website](#). You can also call 1-888-655-3176 or contact Settlement Class Counsel at 1-800-971-8881.

**PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE**

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If [REDACTED] should not be subscribed or if you need to change your subscription information for Discover Merchant Settlement, [please use this preferences page](#).

# Attachment 13

**From:** Discover Merchant Settlement <DiscoverMerchantSettlement@e.epiqnotice.com>  
**Sent:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** Discover Card Merchant Class Action Settlement

**Claimant ID:** [REDACTED]  
**PIN:** [REDACTED]

**If you accepted or processed Discover credit cards between 2007-2023, you could be eligible to get a cash payment from a class action settlement.**

*A federal court authorized this notice.*

**\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

**\*To receive a payment, you must [file a claim](#) by May 18, 2026\***

You may receive more than one notice about this settlement. Follow the instructions for each unique Claimant ID and PIN you receive.

**For more information, read this notice, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), or call 1-888-655-3176.**

**What is this notice about?** A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

**Who is included?** The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to the Settlement Website above.

You are receiving this **Standard Notice** because records indicate that you are a Settlement Class Member.

**What can I get?** Under the proposed settlement, Discover will make payments to eligible Settlement Class Members who submit valid claims. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors, including the total estimated

interchange fee overcharge for each Discover merchant identifier (or “MID”) associated with you, how interchange fee charges for each MID were allocated among entities associated with the same MID, and the total aggregate dollar amount of all settlement payments. For more information, including to view the detailed calculation methodology or to review the list of MIDs associated with you, go to the Settlement Website.

**How do I get a payment?** To receive a settlement payment, you must submit a claim, postmarked or submitted online, by **May 18, 2026**. You can: (a) submit a claim form online by clicking [here](#), or (b) print and fill out the claim form found on the Settlement Website listed above and mail it to the Settlement Administrator at the address listed in the form.

The Settlement Administrator will validate claims and review all information submitted and will determine allocations and payment amounts pursuant to the terms of the settlement. Payments will be sent to eligible Settlement Class Members if and when the settlement is approved by the Court and becomes final.

**What are my options?** You can file a claim for a payment. Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. To exclude yourself, mail a request for exclusion containing the information described on the Settlement Website, postmarked by **March 25, 2026**, to: Discover Card Merchant Settlement Exclusion Requests, c/o Epiq Class Action, PO Box 5370 Portland, OR 97228-5370. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court’s orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, you can object to or comment on the settlement or Settlement Class Counsel’s request for attorneys’ fees, expenses, and service awards for the Settlement Class Representatives who brought the lawsuits. To object, you must submit to the Court a signed, written objection containing the information described on the Settlement Website by **March 25, 2026**. Visit the Settlement Website below for more information.

**What happens next?** The Court will hold a hearing, currently scheduled for **May 20, 2026 at 9:30 a.m. (CT)**, at the United States District Court for the Northern District of Illinois, Courtroom 2319, 219 South Dearborn Street, Chicago, IL 60604, to decide whether to approve the settlement, attorneys’ fees (not to exceed to \$25 million) plus reimbursement of litigation expenses (not to exceed \$1 million), and service awards of up to \$7,500 to each of five Settlement Class Representatives. Under the terms of the settlement, any amounts awarded by the Court to Settlement Class Counsel and Settlement Class Representatives will be paid by Discover separate from (in other words, in addition to) settlement payments paid to Settlement Class Members. The date and time of this hearing may change without further notice, or the Court could order that this hearing be held remotely or telephonically. Check the Settlement Website for updates.

**Who represents me?** The Court has appointed Lief Cabraser Heimann & Bernstein LLP, Dilworth Paxson LLP, and The Kick Law Firm, APC to represent the Settlement Class. Together, these lawyers are called Settlement Class Counsel. You do not need to pay these lawyers out of your pocket; instead, these lawyers will apply to the Court for compensation, to be paid by Discover separate from and on top of the payments to Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

**How do I get more information?** For more information, including to view copies of case documents, the full Settlement Agreement, the settlement payment calculation methodology, and Settlement Class Counsel’s fee application, or to file a claim online or print out a hard copy claim

form to file by mail, visit the [Settlement Website](#). You can also call 1-888-655-3176 or contact Settlement Class Counsel at 1-800-971-8881.

**PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE**

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If [REDACTED] should not be subscribed or if you need to change your subscription information for Discover Merchant Settlement, [please use this preferences page](#).

# Attachment 14

OCTOBER/NOVEMBER 2025 FORTUNE.COM



**THE 36-YEAR-OLD CEO  
RESCUING RED LOBSTER**

**LAST CHANCE  
FOR INTEL**

**50 COMPANIES THAT WILL  
CHANGE THE WORLD**

# FORTUNE

## RAMPING UP

**ERIC GLYMAN  
AND KARIM ATIYEH**  
WANT TO BLOW UP  
CORPORATE CARDS  
AND HELP COMPANIES  
SPEND LESS.

**CAN THEIR  
\$22.5 BILLION  
STARTUP  
LIVE UP TO  
THE HYPE?**

● Ramp  
cofounders  
Atiyeh (left)  
and Glyman

VOLUME 192/NUMBER 2

tinue this arduous work, reflect broader issues that Ford worries about—the aging of farm owners and industry consolidation. Who are the available buyers when farmers age out and wish to sell? Between 2017 and 2022, the U.S. lost 142,000 farms, while average farm size increased 5%.

Making agricultural work appealing—sustainable and profitable—is the key to solving these problems, Ford argues. For the security of America’s food system, farmers must be able to thrive. For farmers to thrive, their communities need to thrive.

That’s why Ford has advocated for broadband access in rural America: so farmers’ kids can attend virtual classes and do homework. She also has prioritized medical facilities in rural communities. And her willingness to take on one of the most difficult political issues in America, immigration, also stems from this core belief.

“It’s very complex,” Ford admits. “It’s emotional, it’s fraught.”


**SO WHAT** comes next? Immigration enforcement has been the focus of so much attention during the second Trump administration that not much has been done on immigration policy. The need for work-visa reforms doesn’t grab the same headlines. But

that’s the work that Ford is eager to do, she says. She just needs things to calm down first.

The Business Roundtable supports measures to allow in an increased number of skilled immigrants; a bipartisan solution for Dreamers; and more temporary work visas. That last priority is most relevant to agriculture: The H-2A program allows farmers to employ workers for seasonal work. The dairy industry would like a similar program for year-round work.

Ford bristles when asked if it’s difficult to negotiate with an administration that has been hostile to LGBTQ issues. She has a go-to line about working with people who have different beliefs: “I don’t even agree with some of the things that are said around my own dinner table.”

There is certainly some agreement to build upon, too. The uncomfortable triangle of business, lawmakers, and labor has unexpected corners of alignment: Labor and lawmakers both want agriculture to offer “good” jobs—whether for foreign-born workers or Americans. Business wants a strong economy, as does Trump. Ford is committed to forging a practical path forward, even if it’s a messy one.

“Hope is not a strategy,” she says. “That’s not what we’re doing here.” 

## If you accepted or processed Discover credit cards between 2007–2023, you could be eligible to get a payment from a class action settlement.

**\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

To receive a payment, file a claim by **May 18, 2026**.

### WHAT IS THIS ABOUT?

A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. The misclassification did not impact cardholders. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

### WHO IS INCLUDED?

The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

### WHAT CAN I GET?

To receive a settlement payment, with very limited exceptions, you will need to file a claim by **May 18, 2026** and/or provide additional information to the Settlement Administrator. Under the proposed settlement, Discover will make payments to eligible Settlement Class Members who submit valid claims. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors.

### YOUR OTHER OPTIONS.

You can file a claim for a payment by **May 18, 2026** and/or provide additional information. Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court’s orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, you can object to or comment on any part of the settlement. The deadline to either exclude yourself or object to the settlement is **March 25, 2026**. Visit the website for information on how to exercise these options.

**Submit your claim online:**

Scan the QR code to file a claim online via your phone, computer, tablet, or other smart device.



## Do you have questions or need additional information?



**Visit Online:**  
[www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com)



**Email:**  
[info@DiscoverMerchantSettlement.com](mailto:info@DiscoverMerchantSettlement.com)



**Call:**  
**888-655-3176**

# Attachment 15

**If you accepted or processed Discover credit cards between 2007–2023, you could be eligible to get a payment from a class action settlement.**

**\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

To receive a payment, file a claim by **May 18, 2026**.

#### WHAT IS THIS ABOUT?

A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. The misclassification did not impact cardholders. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

#### WHO IS INCLUDED?

The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

#### WHAT CAN I GET?

To receive a settlement payment, with very limited exceptions, you will need to file a claim by **May 18, 2026** and/or provide additional information to the Settlement Administrator. Under the proposed settlement, Discover will make payments to eligible Settlement Class Members who submit valid claims. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors.

#### YOUR OTHER OPTIONS.

You can file a claim for a payment by **May 18, 2026** and/or provide additional information. Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court's orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, you can object to or comment on any part of the settlement. The deadline to either exclude yourself or object to the settlement is **March 25, 2026**. Visit the website for information on how to exercise these options.

**Submit your claim online:** Scan the QR code to file a claim online via your phone, computer, tablet, or other smart device.



**THE MOST** celebrated book of the author Jonathan Wilson is certainly *Inverting the Pyramid*, a history of soccer tactics that is so thorough that it's used as a textbook by the fictitious Coach Beard on *Ted Lasso* as he attempts to grasp the finer points of the beautiful game.

Wilson's latest is every bit as detailed and just as sprawling. *The Power and the Glory* tells the history of the World Cup, with a chapter devoted to each quadrennial competition. The event's evolution is striking, from the let's-go-to-Uruguay-on-a-lark attitude that pervaded the first tournament, in 1930, to the politicization of the event in the next couple of decades, to the back-scratching and ludicrously huge backroom deals that have come to dominate the news cycle every time a new host is picked.

Wilson weaves in the bigger meaning of the tournament with the action on the pitch, which is delivered with his usual eye for observation. It's an ambitious task, writing about every installment of the world's biggest sporting event, but Wilson pulls it off—powerfully and gloriously. —M.B.

**Do you have questions or need additional information?**



**Visit Online:**  
[www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com)



**Email:**  
[info@DiscoverMerchantSettlement.com](mailto:info@DiscoverMerchantSettlement.com)



**Call:**  
**888-655-3176**

# Attachment 16

## If you accepted or processed Discover credit cards between 2007–2023, you could be eligible to get a payment from a class action settlement.

### **\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

To receive a payment, file a claim by **May 18, 2026**.

#### **WHAT IS THIS ABOUT?**

A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. The misclassification did not impact cardholders. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

#### **WHO IS INCLUDED?**

The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

#### **WHAT CAN I GET?**

To receive a settlement payment, with very limited exceptions, you will need to file a claim by **May 18, 2026**

and/or provide additional information to the Settlement Administrator. Under the proposed settlement, Discover will make payments to eligible Settlement Class Members who submit valid claims. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors.

#### **YOUR OTHER OPTIONS.**

You can file a claim for a payment by **May 18, 2026** and/or provide additional information. Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court's orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, you can object to or comment on any part of the settlement. The deadline to either exclude yourself or object to the settlement is **March 25, 2026**. Visit the website for information on how to exercise these options.

**Submit your claim online:**

Scan the QR code to file a claim online via your phone, computer, tablet, or other smart device.



## Do you have questions or need additional information?



**Visit Online: [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com)**



**Email: [info@DiscoverMerchantSettlement.com](mailto:info@DiscoverMerchantSettlement.com)**



**Call: 888-655-3176**

# Attachment 17

**If you accepted or processed Discover credit cards between 2007–2023, you could be eligible to get a payment from a class action settlement.**

**\*\*YOU MAY BE ENTITLED TO A SETTLEMENT PAYMENT\*\***

To receive a payment, file a claim by **May 18, 2026**.

**WHAT IS THIS ABOUT?**

A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. The misclassification did not impact cardholders. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

**WHO IS INCLUDED?**

The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

**WHAT CAN I GET?**

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**Call:**  
**888-655-3176**

**FEATURE**



The leading event for small but growing restaurant chains is returning to Nashville.

**C-SUITE IN THE HOT SEAT**

This series of mini fireside chats comes to CREATE for the first time. Join Nation's Restaurant News editor-in-chef Sam Oches and managing editor Leigh Anne Zinsmeister as they take turns interviewing big-name operators about how they stayed true to their brand's core values while getting to the next stage of growth.

This year, the hot seats will be filled by Jim Bitticks, president and COO of Dave's Hot Chicken; Jessica Chao, head of brand marketing and corporate affairs for Din Tai Fung North America; Maribeth dela Cruz, president of Jollibee; and R.J. Melman, president and CEO of Lettuce Entertain You.

**SPEED NETWORKING**

New to CREATE this year, restaurant operators can sign up to participate in "speed dating"-style, one-on-one meetings with vendors who will pitch their operations, technology, and food and beverage solutions (and more) during 10-minute rotating meetings.

Participating operators will receive a \$100 Amazon gift card.

Operators can also choose to have conversations with one of NRN's editors, several of whom will be leading discussions on hot topics at Editor Table Talks.

**VIP CELEBRITY FIRESIDE CHAT AND PERFORMANCE BY THE BACON BROTHERS**

The headliner for this year's CREATE event, The Bacon Brothers, features actor Kevin Bacon and Emmy-winning composer Michael Bacon. They'll be taking the main stage on Thursday to chat with Oches about their long careers in the entertainment industry,

including how they stayed true to their roots while making a splash in movies, television, and music.

The session will conclude with an exclusive acoustic performance from the brothers, who began performing together more than two decades ago. They're known for country rock and folk rock music, and just released their 10th studio album, "Ballad of the Brothers," last year.

**FOUNDER TO FOUNDER**

In this Friday session, founders of emerging restaurant brands will get the chance to interview each other about their businesses – what made them successful, challenges they faced, and other pressing topics.

The session will feature conversations between Kim Malek, cofounder and CEO of Salt & Straw; Aaron Noveshen, founder and chairman of Starbird; Nicole Tanner, founder of Swig; and Chris Simms, founder of Lazy Dog.

**CREATED TALKS**

TED Talks are well-known for hosting engaging people who make presentations on (sometimes hyper-specific) topics, and this CREATE-version of the famous talk series is no different.

Closing out CREATE on Friday, three experts will take the stage to discuss artificial intelligence, influencer marketing, and restaurant design.

This session is will feature presentations from Abby Hughes, head of growth and strategy for Belle Communication; Peter Newlin, CEO of Gastamo Group; Bradley Sax, co-CEO of Goldberg's Group; and Rafael LaRue, chief creative officer and partner at Livit. **NRN**

# Attachment 18

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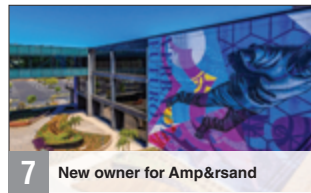
Email:  
[info@DiscoverMerchantSettlement.com](mailto:info@DiscoverMerchantSettlement.com)



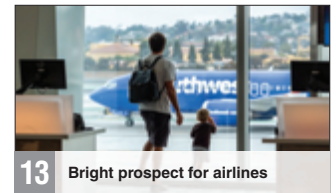
Call:  
**888-655-3176**

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**13** Bright prospect for airlines

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**ENERGY**

**1 STORAGE: POWAY** – NeoVolta, Inc. recently positioned itself to better serve international markets and reduce the impact of battery tariffs in 2026 by signaling its intention to acquire fellow energy storage company Neuba Energy, Inc.

**HEALTH CARE**

**3 CLINICS: CARLSBAD** – Founded in Carlsbad in 2018 in a small storefront by Evan Miller, Gameday Men's Health has grown to have clinics across the U.S., including 40 in Southern California and three in San Diego County with plans to open a fourth.

**LIFE SCIENCES**

**6 BIOTECH: SAN DIEGO** – Proteomics-driven precision medicine company Yatiri Bio, Inc. recently bolstered both its operational footprint and its technical resources with its acquisition of fellow San Diego-based proteomics company NGeneBioAI, Inc.

**REAL ESTATE**

**7 OFFICE: SAN DIEGO** – The 350,000-square-foot former Mission Valley home of the San Diego Union-Tribune, known as Amp&rsand, was acquired by Lincoln Property Company. Based in Dallas, with San Diego offices in Sorrento Valley, Lincoln Property Company plans to substantially renovate a 35,000-square-foot part of the two-building campus that was where the newspaper had it printing presses.

**SDBJ INSIDER**

**3** WTCSO Trip Eyes French Investments

**SERVICES**

**3 LAW: SAN DIEGO** – Just five years after opening a West Coast foothold in San Diego, the employment law firm of Nukk-Freeman & Cerra has grown so fast that it has moved to new downtown offices and is actively recruiting.

**SPECIAL REPORT**

**TRANSPORTATION: NEW T1**

**10 AIR TRAVEL: SAN DIEGO** – The team behind the San Diego International Airport's new Terminal 1 wants you to do a double take the next time you enter the building. Things have changed — drastically.

**12 CONSTRUCTION: SAN DIEGO** – San Diego International Airport's new \$3.8 billion Terminal 1 was designed and built with one overarching goal – make it look and feel like San Diego.

**13 AIR TRAVEL: SAN DIEGO** – The San Diego International Airport's new Terminal 1 will be transformational for the airlines that fly out of it.

**14 RETAIL: SAN DIEGO** – In the new Terminal 1, the San Diego County Regional Airport Authority is reimagining how to welcome visitors and locals alike to San Diego. When it comes to its selected vendors, the vision is clear — local food and culture paint a vivid, authentic picture of the city.

**15 ARTS: SAN DIEGO** – San Diego International Airport's new Terminal 1 is bigger in every way – including its new public art pieces. With a budget of \$10 million, the airport took a thoughtful approach to its aesthetic choices.

**16 CONSTRUCTION: SAN DIEGO** – San Diego International Airport's Terminal 1 is now serving passengers, and more is still yet to come. On Sept. 8, construction crews began preparing for work on Phase 1b of SAN's Terminal 1 – an additional 11 gates for the new terminal, most built over the site of the old T1.

**SPECIAL SECTIONS**

**7 ON THE MOVE**

**19 BEST PLACES TO WORK:** Meet the best of the best – in the small, medium, large and mega categories.

**40 BEST PLACES TO WORK:** Scenes from the 2025 awards ceremony at Julep Venue.

**45 MARKETPLACE**

**45 LEGAL NOTICES**

**TECHNOLOGY**

**1 SOFTWARE: SAN DIEGO** – Following a year in which its revenue grew 19% over the prior year, health care IT company XiFin, Inc. is planning to put the proverbial pedal to the metal.

**4 ELECTRONICS: SAN DIEGO** – RF Industries LLC, a Rancho Bernardo electronics maker that is pivoting from a component supplier to a tech solutions supplier, is on track to beat 2024's financial results.

**4 SOFTWARE: SOLANA BEACH** – Americans spend upwards of 11 million hours each year filling out forms for federal programs like Social Security and Medicaid and to file their income taxes. Artificial intelligence-based startup Turnout is aiming to reduce that burden, navigating claims for tax debt relief and Social Security Disability using its AI assistant.

**TOURISM & HOSPITALITY**

**8 CASINOS: SAN DIEGO** – This month, Harrah's Resort Southern California commenced a \$13.1 million renovation of its High Limit Room. The makeover, slated to open in June 2026, will include an elevated gaming space, modern décor and the room's first full-service bar.

**8 HOSPITALITY: NORTH PARK** – For nearly a decade, the Sweet & Savory Collective (S&S) has built a strong local presence supplying San Diegans' favorite homemade sweet treats. First it was pie with Pop Pie Co., then it was Stella Jean's Handmade Ice Cream. Next on the menu — coffee.

**THE LISTS**

**22 BEST PLACES TO WORK SMALL EMPLOYERS**

**28 BEST PLACES TO WORK MEDIUM EMPLOYERS**

**34 BEST PLACES TO WORK LARGE EMPLOYERS**

**37 BEST PLACES TO WORK MEGA EMPLOYERS**

# Attachment 19

# 黑猩猩之母 珍古德 演講途中 91歲辭世

## 動物保育及靈長類學者 10歲就愛上「人猿泰山」 洛城植樹「以她為名」

記者顏怡如 / 綜合報導

從事黑猩猩田野研究獲得重大突破成果、足跡踏遍全球的動物保育專家兼環保倡議人士珍古德(Jane Goodall)，在美國巡迴演講行程途中，1日在加州因自然原因過世，享壽91歲。位於華府的國際珍古德協會(Jane Goodall Institute)1日在Instagram公布珍古德去世消息。

根據原本排訂行程，珍古德1日要跟一群學生與老師見面，為洛杉磯地區遭到野火侵襲而燒毀的災區展開種植5000棵樹木的計畫。在巴沙迪那(Pasadena)南加州國際高中(EF Academy)舉行的植樹活動開始之前，主辦單位得知珍古德去世的消息。活動發言人馬里諾(Shawna Marino)對美聯社表示，現場舉行默哀之後，第一棵樹便以紀念珍古德的名義種下。

### 記錄黑猩猩如何使用工具

數十年前，珍古德在非洲與黑猩猩一起生活，記錄黑猩猩如何使用工具，從事者外界原本以為只有人類才會的活動，每隻黑猩猩都有不同的個性特質。她的觀察結果以及1960年代接受雜誌、紀錄片專訪，不僅讓世人對人類「最親近的存活生物」因此改觀，更扭轉了民眾對於動物情感與社會複雜程度的想法，珍古德知名度從此打開。1934年出生於倫敦的珍古德曾說，對動物的關注從自己還在爬行的幼年時期就開始。她在著作「在人類的陰影下」(In the Shadow



of Man)裡描述小時候如何躲在離舍觀察母雞下蛋，因為待得太久，母親以為她走失而報警。

### 決心到非洲與野生動物生活

10歲那年，珍古德第一次購買的書是作家巴勒斯(Edgar Rice Burroughs)寫的「人猿泰山」(Tarzan of the Apes)。當時她便下定決心，長大以後要到非洲跟野生動物一起生活。18歲時，珍古德進修秘書課程，打兩份工

。1957年獲邀到肯亞農場旅行，她在奈洛比的自然歷史博物館遇到知名人類學家暨古生物學家利基(Louis Leakey)，利基聘她擔任助理秘書。

### 發現黑猩猩有喜怒哀樂等情緒

任職三年之後，雖然珍古德沒上過大學，利基詢問她是否有興趣到如今的坦尚尼亞研究黑猩猩。研究工作一開始充滿挑戰，她曾因感染瘧疾生病數周。



◀珍古德1997年在內洛比的黑猩猩保護區親吻雌性黑猩猩蘇絲。(美聯社)  
▲珍古德2025年1月在白宮接受前總統拜登頒發總統自由獎章。(路透)

珍古德後來終於取得動物的信任，1960年秋季發現名叫「大衛灰獼」(David Greybeard)的黑猩猩拿著樹枝製成的工具從巢穴中釣出白蟻。各界原以為只有人類才會製作並使用工具。珍古德也發現黑猩猩跟人類一樣有開心、喜悅、悲傷、恐懼等情緒。後來還發現黑猩猩會捲人類似戰爭的行為，1987年她還觀察到一隻黑猩猩收養了非近親的一隻三歲黑猩猩孤兒。

# 馬斯克創紀錄 首躍5000億元富豪

編譯馬雯婷 / 綜合報導

特斯拉(TSLA)與太空探索公司SpaceX的創辦人馬斯克(Elon Musk)1日再次刷新個人財富紀錄，成為史上首位資產達到5000億美元的人物。根據富比世(Forbes)即時億萬富翁排行榜，截至美東時間下午3點30分，這位全球首富的總資產突破關鍵門檻。早在2023年12月，馬斯克就已成為第一位資產超過4000億美元的人。如今，他的財富比排名第二的甲骨文創辦人艾利森(Larry Ellison)

### 全球首富身價再飆

多出約1500億美元，距離成為全球首位「兆萬富翁」(trillionaire)已經走完一半的路。特斯拉股價1日上漲近4%，為馬斯克的財富增添約93億美元。市場對他「重回特斯拉核心業務」的預期持續推升股價。自從他今年4月辭去川普政府的「政府效率部門(DOGE)」負責人一職，並承諾將更多精力投入特斯拉

後，公司股價幾乎翻倍。如今，特斯拉市值距離歷史高點僅差不到10%，而馬斯克所持有的12%股份，市值已達1910億美元。

值得注意的是，這還不包括他根據2018年擔任執行長時獲得的「績效型特斯拉股票期權」，若該期權未被撤銷，今日價值將達1330億美元。然而，這筆期權已於2024年1月遭德拉瓦州法院判定無效，目前馬斯克正就該判決提出上訴。富比世暫時以折半估值將這部分納入他的總資產。



馬斯克1日成為史上首位資產達到5000億美元的人物。(路透)

如果您在 2007 年至 2023 年接受或处理过 Discover 信用卡付款，您可能有资格从集体诉讼和解中获得付款。

**\*\*您可能有资格获得和解付款\*\***

要获得付款，请于 2026 年 5 月 18 日前提出索赔。

### 涉及什么事？

三起相关诉讼已达成拟议集体诉讼和解协议。该等诉讼指控称，自 2007 年起，Discover 公司将某些由其发行的消费者信用卡错误归类为商业信用卡，导致商户及其他相关方承担了过高的交换费。这种错误分类未对持卡人造成影响。Discover 公司否认诉讼的指控，法院尚未裁定哪一方胜诉。相反，该拟议和解协议若获批准，将解决相关诉讼并向和解集体成员提供利益。

### 涉及哪些人？

该和解集体包括在 2007 年 1 月 1 日至 2023 年 12 月 31 日期间参与处理或接受错误分类卡交易的所有终端商户、收单机构及支付中介机构。要查看完整的和解集体定义，包括定义术语和排除实体，请访问 [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com)。

### 我能获得什么？

要获得和解款项，除极少数例外情况外，您需在 2026 年 5 月 18 日前提交索赔申请，和/或向和解管理人提供补充信息。根据拟

议的和解方案，Discover 公司将向提交有效索赔的合格和解集体成员付款。Discover 公司已同意为该和解协议支付 5.4 亿美元至 12.25 亿美元(含利息)。您的结算金额将根据多种因素计算。

### 您可用的其他选择。

您可在 2026 年 5 月 18 日前提出付款索赔和/或提供补充信息。您也可以选择退出和解协议，从而不参与此次和解。在此情况下，您将无法获得本和解协议项下的任何款项，但仍保留就本诉讼所涉索赔或错误分类信用卡交易继续向 Discover 公司提起诉讼的任何相关权利。若您未选择退出，且法院批准该和解协议，您将受法院命令及判决的约束，并放弃针对 Discover 公司在本次诉讼中或与错误分类信用卡交易相关的任何索赔权利。若您未选择退出，则可对和解协议的任何部分提出异议或发表意见。选择退出或对和解协议提出异议的截止日期为 2026 年 3 月 25 日。访问此网站，以了解如何使用这些选项。

### 在线提交 索赔：

扫描二维码，即可通过手机、电脑、平板或其他智能设备在线提交索赔申请。



在线访问：[www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com)

电子邮件：[info@DiscoverMerchantSettlement.com](mailto:info@DiscoverMerchantSettlement.com)

致电：888-655-3176

您是否有疑问或需要补充信息？

# Attachment 20

The image is a screenshot of a Facebook interface. On the left, there is a navigation menu with icons for Meta AI, Friends, Memories, Saved, Groups, Videos, Marketplace, and See more. The main content area shows a post titled "Legal Notice" with a "Sponsored" label. The text of the notice reads: "If you accepted or processed Discover credit cards between 2007-2023, you could be eligible for a payment." Below the text is a large graphic with a dark blue background. The graphic features the text "Payments are available for eligible merchants." at the top, an illustration of a hand holding a blue Discover credit card over a payment terminal, and the text "Submit your claim now!" at the bottom. At the very bottom of the graphic, it says "DISCOVERMERCHANTSETTLEMENT.COM" and "Discover Merchant Settlement" with a "Learn more" button. Below the graphic are icons for Like, Comment, and Share. To the right of the main post, there is a "Sponsored" section with a small image of a phone and the text "Displays2go displays2go.com".



**legal.notice**  
Sponsored



**Payments are available  
for eligible merchants.**

An illustration of a blue credit card with a yellow chip and a black payment terminal. The terminal screen shows a green circle with a white signal icon. The card has "CREDIT CARD" and "9999 9999 9999 9999" printed on it.

**Submit your claim now!**

[Learn more](#)



legal.notice If you accepted/processed Discover credit cards, you could be eligible for a payment.

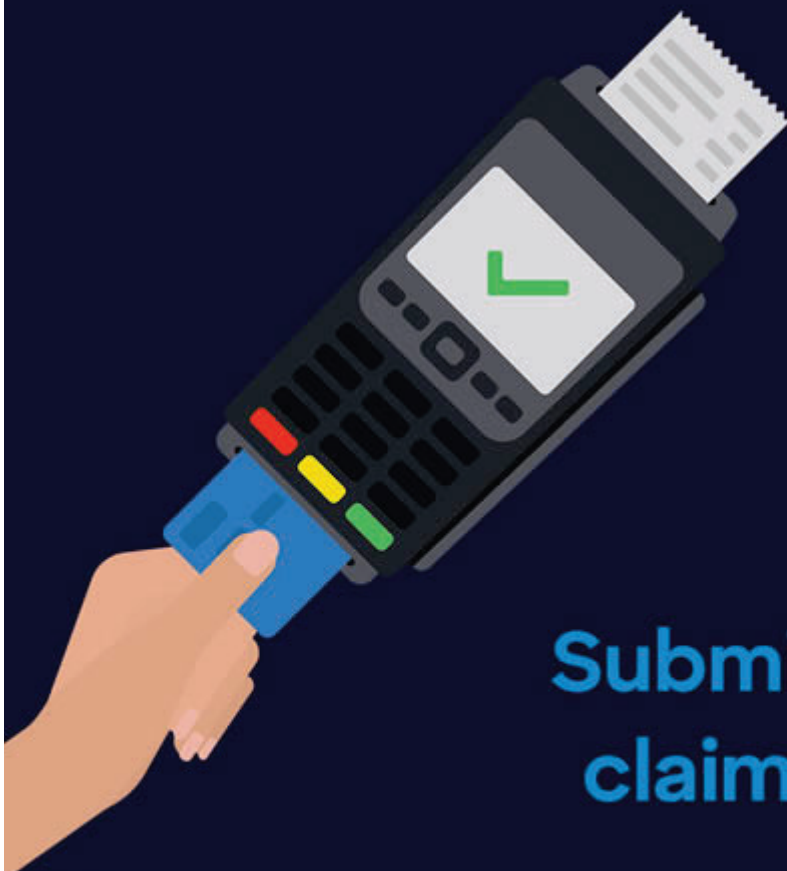
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# Payments are available for eligible merchants.



## Submit your claim now!

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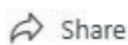
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Vote



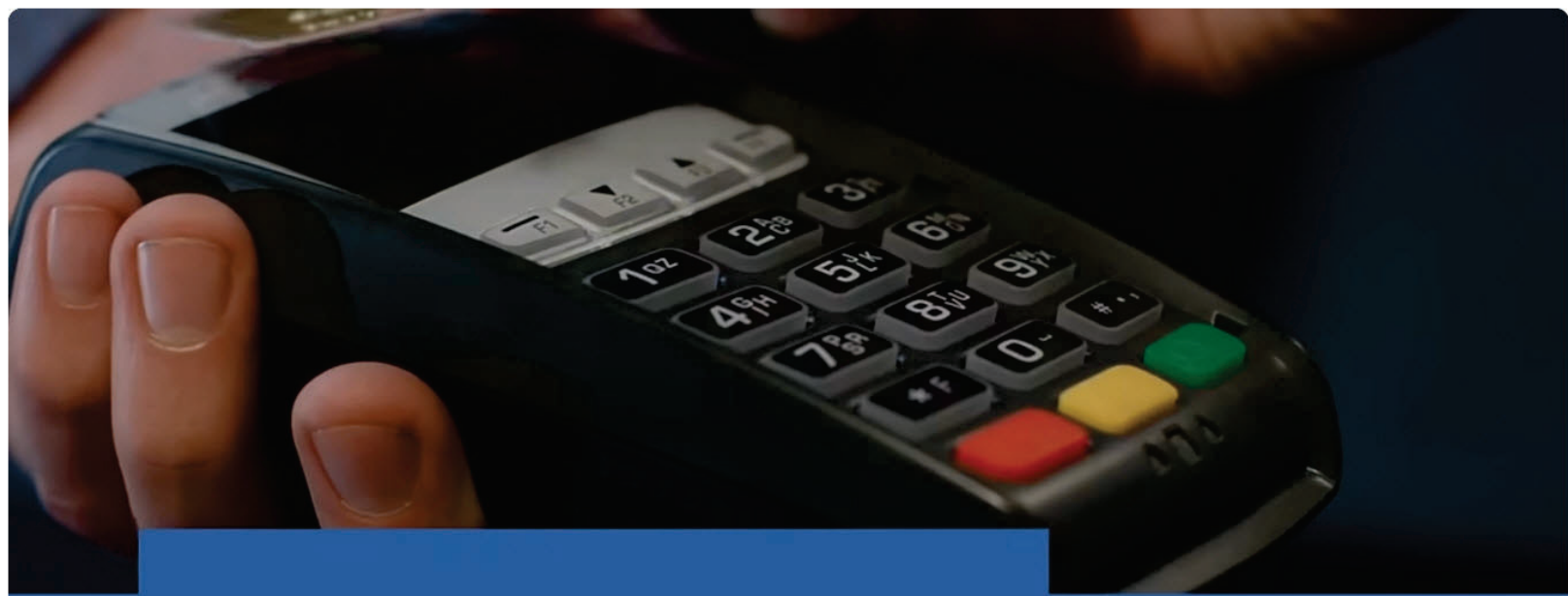
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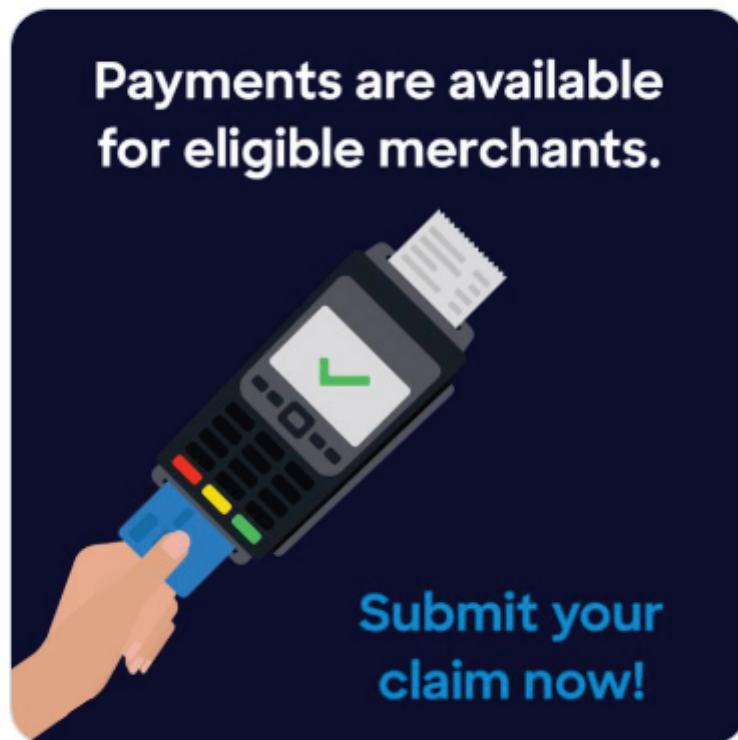
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# Attachment 21

National > News > Technology

## TECHNOLOGY NEWS

[Biotech](#) | 
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 [Information Technology](#) | 
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SEP 18, 2025, 8:54 AM EDT TECHNOLOGY  
**Bob Langer, son launch early-stage VC firm**



SEP 18, 2025, 8:45 AM EDT TECHNOLOGY  
**VC firm launches deep tech accelerator**



SEP 18, 2025, 8:15 AM EDT TECHNOLOGY  
**Tech co. aimed at real estate pros opens US HQ in Austin**



SEP 18, 2025, 7:04 AM EDT TECHNOLOGY  
**Jacksonville firm aims to spark rural tech boom**



SEP 18, 2025, 6:49 AM EDT TECHNOLOGY  
**Detecting blight – plus other ways the city is using AI** INNO

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EDITORS' PICK

# Leading Digital Bank Chime Rolls Out Cash-Back Secured Credit Card

The card pays 1.5% cash back on purchases in categories like groceries, restaurants and gas. Chime is not the first to offer rewards on a secured card, but it has a big potential user base.

By **Jeff Kauflin**, Forbes Staff. Jeff Kauflin is a New Jersey-base... [Follow Author](#)

Published Sep 09, 2025, 08:00am EDT, Updated Sep 12, 2025, 05:26pm EDT

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Chime's cash-back card has some similarities to secured cards offered by Discover and Capital One. CHIME

**C**hime has grown into the largest U.S. digital bank without offering a financial product beloved by Americans: a credit card with rewards. Today it announced one that provides 1.5% cash-back rewards on several categories of spending including groceries, restaurants and gas. The company says it can change those categories every few months.

ADVERTISEMENT

If you accepted or processed Discover credit cards between 2007-2023, you could be eligible for a payment from a class action settlement. Visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) for more information.

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It's a secured card, meaning customers must keep money in their Chime account, and the amount they maintain becomes their spending limit. Secured cards are considered a way for those with thin or weak credit histories who wouldn't qualify for typical credit cards to improve their credit scores.

# Business



EXCLUSIVE

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The overtures mark a shift in the Facebook parent's relationships with news outlets and other publishers.

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## A Cyberattack Crippled Range Rover Production. The Reboot Is Proving Tough.

Hundreds of high-end SUVs usually roll off Jaguar Land Rover's production lines every day. This month, they have fallen silent.

By Stephen Willmot

10 hours ago 5 min read



## Disney Pulls Jimmy Kimmel's Show After Kirk Remarks

The entertainment giant's move follows FCC Chairman Brendan Carr's criticism of the late-night host.

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America's top executives are expressing worry about moves that many see as state capitalism and pressure on the Federal Reserve.

By Chip Cutter

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## Meta Unveils New Smartglasses With Display and AI Abilities

CEO Mark Zuckerberg showed off the device, which can be controlled with small hand movements, at the company's annual hardware and developer conference.

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## Executives at xAI Clashed With Musk Advisers Before Departing

Some who left say they were concerned about the artificial intelligence company's financial projections.

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The Left's Vast Lack of Knowledge

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# Business



EXCLUSIVE

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The overtures mark a shift in the Facebook parent's relationships with news outlets and other publishers.

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America's top executives are expressing worry about moves that many see as state capitalism and pressure on the Federal Reserve.

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CEO Mark Zuckerberg showed off the device, which can be controlled with small hand movements, at the company's annual hardware and developer conference.



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## Executives at xAI Clashed With Musk Advisers Before Departing

Some who left say they were concerned

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#### The Left's Vast Lack of Knowledge

*Barton Swaim*

# Attachment 22

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Discover settlement  
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merchant class action  
merchant card class action  
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merchant class action settlement  
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Discover class action settlement  
payment card class action settlement  
credit card lawsuit  
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merchant card lawsuit  
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payment card lawsuit  
credit card litigation  
merchant litigation  
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merchant card settlement




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**Discover Merchant Settlement | Submit Your Claim Now**

Accepted or processed Discover credit cards between 2007-2023? You could receive payment. Payments are available for eligible merchants from a Class Action Settlement. Claim now.

 Payment Card Settlement  
<https://www.paymentcardsettlement.com>

**Payment Card Settlement | Official Court-Authorized Website ...**

If your business accepted Visa and/or Mastercard between 2004 - 2019, you may be included in a \$5.5 billion Settlement. · Payment Card Interchange Fee Settlement.

**Merchant Portal** >

Welcome to the Merchant Portal for the Payment Card Interchange ...

**Merchant Portal - Login** >

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**FAQs** >

Under the settlement, Visa, Mastercard and the Bank ...

**Documents** >

If your business accepted Visa and/or Mastercard between 2004 ...

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If your business accepted Visa and/or Mastercard between 2004 ...

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 Payments Dive  
<https://www.paymentsdive.com/news/visa-mastercar...>

**Visa, Mastercard \$5.5B settlement advances**

May 20, 2025 — Merchants are awaiting payments from a \$5.5 billion settlement with Visa and Mastercard following a February deadline for claims.

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Debt Help Without the Loans or Bankruptcy. Credit Card Debt Settlement Options. Lower Your Credit Card Debt. Make Just One Monthly Program Payment.

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Our Process

Debt Solutions

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How It Works

Check Your Options

Debt Consolidation Review  
www.debt-consolidation-reviews.org

### Top 5 Credit Card Debt Relief - Get Help Paying Off Your Debt

See If You Qualify for Debt Relief Benefits From BBB+ Accredited Companies. Best 5 Debt Credit Card Debt Relief Companies Compared. Check Out the #1 Company in 2025.

See If You Qualify (2025)

2025's Top Companies

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Top 5 Companies Ranked

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Top Consumer Reviews  
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### Credit Card Debt Settlement - Best Credit Card Debt Relief

Reduce High Interest Debt, Late Penalties, and Fees. Pay Off Your Credit Card Debt Faster. BBB A+ Rated. Debt Relief Made Easy with Independent Expert...

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#1 - National Debt Relief

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Debt Relief Options

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### Payment card interchange fee and merchant discount antitrust...

United States class-action lawsuit filed in 2005

paymentcardsettlement.com

The payment card interchange fee antitrust litigation is a United States class-action lawsuit filed in 2005 by merchants and trade associations against Visa, Mastercard, and numerous financial institutions that issue payment cards. The suit was filed against other allegedly anti-competitive companies in the payment card industry. In February 2019, U.S. District Court for the District of Columbia granted summary judgment in favor of the plaintiffs.



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- payment card settlement scan
- payment card settlement claim
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Sonary  
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## Top 10 Credit Card Processing | 2025's Top Picks Revealed

Sponsored Merchant Service Providers 2025. Choose The Best For Your Business Needs. Looking For Merchant Services? Compare Now & Pick The Best Provider For Your Business!

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## Credit Card Merchant Services | Side-By-Side Comparison

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# \$5.54 billion

The **merchant card settlement** refers to a **\$5.54 billion settlement** for businesses that accepted Visa and/or Mastercard between **2004 and 2019**. This settlement is a result of a class action lawsuit concerning overcharging on interchange fees during that period. Businesses may be eligible for compensation, and the deadline to file claims was **February 4, 2025**. If you accepted these cards during the specified timeframe, you might qualify for a payout.

[↩ Payment Card Settlement](#) +3

Image

Video

# Attachment 24

*Discover*

30-Second Video & Audio Script

*30-Second Video & Audio Script*

This is a Court approved legal notice. If you accepted or processed Discover credit cards between 2007–2023, you could be eligible to get a cash payment from a class action settlement. Claims must be filed by **May 18, 2026** in order to receive payment. To find out more information and to file your claim online, go to the Court-approved official website [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) or call toll free 1-888-655-3176.

# Attachment 25

# If you accepted or processed Discover credit cards between 2007-2023, you could be eligible to get a payment from a class action settlement

USA - English ▼

---

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**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS →**

Sep 11, 2025, 15:00 ET

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CHICAGO, Sept. 11, 2025 /PRNewswire/ --

**WHAT IS THIS ABOUT?** A proposed class action settlement has been reached in three related lawsuits. The lawsuits allege that, beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. The misclassification did not impact cardholders. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. Instead, the proposed settlement, if approved, will resolve the lawsuits and provide benefits to Settlement Class Members.

**WHO IS INCLUDED?** The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. To view the full Settlement Class definition, including defined terms and excluded entities, go to [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

**WHAT CAN I GET?** To receive a settlement payment, with very limited exceptions, you will need to file a claim by **May 18, 2026** and/or provide additional information to the Settlement Administrator. Under the proposed settlement, Discover will make payments to eligible Settlement Class Members who submit valid

claims. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Your settlement payment amount will be calculated based on a variety of factors.

YOUR OTHER OPTIONS. You can file a claim for a payment by **May 18, 2026** and/or provide additional information. Alternatively, you can exclude yourself from the settlement by opting out, in which case you will receive no payment under this settlement and retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, and the Court approves the settlement, you will be bound by the Court's orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. If you do not exclude yourself, you can object to or comment on any part of the settlement. The deadline to either exclude yourself or object to the settlement is **March 25, 2026**. Visit

[www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) information on how to exercise these options.

SOURCE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Si entre los años 2007 y 2023 usted aceptó o procesó tarjetas de débito Discover, podría ser elegible para recibir un pago por una Conciliación de demanda colectiva.

USA - español ▼

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**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS →**

Sep 11, 2025, 15:00 ET

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CHICAGO, 11 de septiembre de 2025 /PRNewswire-HISPANIC PR WIRE/ --

¿DE QUÉ SE TRATA ESTO? Se alcanzó una conciliación de demanda colectiva propuesta en tres demandas relacionadas. Estas demandas alegan que, a partir del año 2007, Discover clasificó de manera errónea como tarjetas de crédito comerciales a determinadas tarjetas de crédito de consumidores emitidas por Discover. Dicha clasificación errónea provocó que comerciantes y otras entidades debieran pagar cargos de intercambio excesivos. La clasificación errónea no afectó a los titulares de las tarjetas. Discover rechaza todas las reclamaciones presentadas en las demandas, y el Tribunal no ha decidido quién está en lo correcto y quién está equivocado. En su lugar, la conciliación propuesta, de aprobarse, resolvería las reclamaciones y otorgaría beneficios a los Miembros del Grupo de Demandantes.

¿QUIÉNES ESTÁN INCLUIDOS? El Grupo de Demandantes incluye a todos los comerciantes finales, los adquirentes de comerciantes y los intermediarios de pago que participaron en el proceso o aceptaron una Transacción de tarjetas clasificadas de manera errónea durante el período comprendido entre el 1 de

enero de 2007 y el 31 de diciembre de 2023. Visite [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) para ver la definición completa del Grupo de Demandantes, incluidas las definiciones de los términos y las entidades excluidas.

¿QUÉ PODRÉ RECIBIR? A fin de recibir un pago de la conciliación, y con excepciones muy limitadas, deberá presentar una reclamación antes del **18 de mayo de 2026** o proporcionar información adicional al Administrador de la Conciliación. Según lo estipulado en la conciliación propuesta, Discover hará pagos a los miembros elegibles del Grupo de Demandantes que presenten reclamaciones válidas. Discover ha aceptado pagar entre \$540 millones y \$1.225 mil millones más intereses en relación con esta conciliación. La cantidad de su pago por la conciliación se calculará en función de diversos factores.

SUS OTRAS OPCIONES. Puede presentar una reclamación antes del **18 de mayo de 2026** para recibir un pago o proporcionar información adicional. Alternativamente, puede excluirse de la conciliación si opta por no participar, en cuyo caso no recibirá ningún pago según esta conciliación y conservará cualquier derecho que pueda tener de demandar a Discover en función de las reclamaciones presentadas en estas demandas o relacionadas con las Transacciones de tarjetas clasificadas de manera errónea. En caso de que no se excluya y que el Tribunal apruebe la conciliación, usted quedará obligado por las órdenes y sentencias del Tribunal y renunciará a cualquier reclamación contra Discover presente en estas demandas o relacionadas con las Transacciones de tarjetas clasificadas de manera errónea. Si no se excluye, puede objetar la conciliación si no le agrada alguna parte de la misma, o presentar comentarios con el mismo fin. La fecha límite para excluirse de la conciliación u objetarla es el **25 de marzo de 2026**. Visite [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) para obtener información sobre cómo ejercer estas opciones.

FUENTE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

# 如果您在 2007 年至 2023 年接受或处理过 Discover 信用卡付款，您可能有资格从集体诉讼和解中获得付款。

USA - Chinese ▾

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NEWS PROVIDED BY

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS →**

Sep 11, 2025, 15:00 ET

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芝加哥2025年9月11日 /美通社/ --

涉及什么事？三起相关诉讼已达成拟议集体诉讼和解协议。该等诉讼指控称，自 2007 年起，Discover 公司将某些由其发行的消费者信用卡错误归类为商业信用卡，导致商户及其他相关方承担了过高的交换费。这种错误分类未对持卡人造成影响。Discover 公司否认诉讼的指控，法院尚未裁定哪一方胜诉。相反，该拟议和解协议若获批准，将解决相关诉讼并向和解集体成员提供利益。

涉及哪些人？该和解集体包括在 2007 年 1 月 1 日至 2023 年 12 月 31 日期间参与处理或接受错误分类卡交易的所有终端商户、收单机构及支付中介机构。要查看完整的和解集体定义，包括定义术语和排除实体，请访问 [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com)。

我能获得什么？要获得和解款项，除极少数例外情况外，您需在 **2026 年 5 月 18 日**前提交索赔申请，和/或向和解管理人提供补充信息。根据拟议的和解方案，Discover 公司将向提交有效索赔的合格和解集体成员付款。Discover 公司已同意为该和解协议支付 5.4 亿美元至 12.25 亿美元（含利息）。您的结算金额将根据多种因素计算。

您可用的其他选择。您可在 **2026 年 5 月 18 日**前提出付款索赔和/或提供补充信息。您也可以选择退出和解协议，从而不参与此次和解。在此情况下，您将无法获得本和解协议项下的任何款项，但仍保留就本诉讼所涉索赔或错误分类信用卡交易继续向 Discover 公司提起诉讼的任何相关权利。若您未选择退出，且法院批准该和解协议，您将受法院命令及判决的约束，并放弃针对 Discover 公司在本次诉讼中或与错误分类信用卡交易相关的任何索赔权利。若您未选择退出，则可对和解协议的任何部分提出异议或发表意见。选择退出或对和解协议提出异议的截止日期为 **2026 年 3 月 25 日**。请访问 [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com)，了解关于如何使用这些选择的更多信息。

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

# 若您在 2007-2023 年間接受或處理 Discover 信用卡 或可獲集體訴訟和解金。

USA - Traditional Chinese ▾

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**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS →**

Sep 11, 2025, 15:00 ET

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芝加哥2025年9月11日 /美通社/ --

這涉及甚麼事件？在三起相關訴訟中，一項擬議已達成集體訴訟和解。訴訟指控，自 2007 年起，Discover 將部分由 Discover 發行的消費者信用卡誤分類為商業信用卡，進而導致商戶及其他相關方承擔過高的交換手續費。該錯誤分類並未影響持卡人。Discover 否認訴訟中的相關指控，而法院目前尚未裁定孰是孰非。。相反地，若獲法院批准，擬議中的和解將解決這些訴訟，並為和解集體成員提補償。

誰是涉事方？和解集體成員包括所有於 2007 年 1 月 1 日至 2023 年 12 月 31 日期間，曾處理或接受被錯誤分類卡片交易的最終商戶、收單機構以及支付中介機構。欲查閱完整的和解集體定義，包括相關術語的解釋及被排除的實體，請瀏覽[www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com)。

我能得到甚麼？除極少數例外情況外，如欲獲支付和解補償金，您必須於 **2026 年 5 月 18 日**前提交申請，及 / 或向和解管理人提供其他所需資訊。在擬議的和解協議下，Discover 將賠款予提交有效申請的合資格和解集體成員。Discover 已同意就本次和解支付 5.4 億至 12.25 億美元，另加利息。您將獲得的和解金賠付總額將根據多種因素進行計算。

您的其他選擇。您可以在 **2026 年 5 月 18 日** 之前提交索賠申請以獲得賠付，和/或提供其他補充資訊。又或者，您也可以選擇退出和解；若您選擇退出，將不會在此次和解下獲得任何賠款，但您將保留針對這些訴訟中的主張，或/與錯誤分類卡交易相關的主張起訴 Discover 的權利。如若您不選擇退出，而法院又批准了此次和解，您將受法院的命令和判決約束，並放棄在這些訴訟中或與錯誤分類卡交易相關的對 Discover 的任何主張。如果您不選擇退出，您則可以對和解的任何部分提出異議或意見。選擇退出或對和解提出異議的截止日期為 **2026 年 3 月 25 日**。請瀏覽 [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) 取得關於如何行使這些選項的相關資訊。

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

# Attachment 26

**ASSOCIATION OUTREACH LIST**

Agricultural Retailers Assoc  
Alabama Grocers Association  
Alabama Retail Assoc  
Albuquerque Chamber of Commerce  
Albuquerque Economic Development  
Albuquerque Hispano Chamber  
Albuquerque Regional Economic Alliance  
American Assoc of Endodontists (AAE)  
American Assoc of Orthodontists (AAO)  
American Asssoc for Taxi Cabs (AATC)  
American Bakers Assoc  
American Beverage Licensee Assoc (ABL)  
American Black Chiropractor Assoc (ABCA)  
American Boat Builders & Repairers Assoc (ABBRA)  
American Booksellers Assoc  
American Chiropractic Assoc (ACA)  
American Dental Association  
American Gem Trade Association (AGTA)  
American Holistic Health Assoc (AHHA)  
American Hospital Assoc (AHA)  
American Hotel and Lodging Association (AHLA)  
American Indian Alaska Native Tourism Association (AIANTA)  
American Indian Chamber / Calif  
American Indigenous Business Leaders  
American Management Associations (AMA)  
American Massage Therapy Assoc (AMTA)  
American Med Spa Assoc (AmSpa)  
American Osteopathic Assoc (AOA)  
American Pet Products Assoc (APPA)  
American Physical Therapy Association (APTA)  
American Public Power Association  
American Society for Dermatologic Surgery Association ASDSA  
American Society of Travel Advisors (ASTA)  
American Trucking Assoc (ATA)  
America's SBDC  
API: Asian Pacific American Chamber of Commerce (APACC)  
Art Dealer Assoc of America (ADAA)  
Asian American Hotel Owners Assoc (AAHOA)  
Asian American Store Owner Association  
Asian Business Association of Los Angeles (ABALA)  
Assoc of Corp Counsel-So Cal  
Assoc of General Counsel (AGC)  
Assoc of Lodging Professionals (ALP)  
Assoc of Marine Industries  
Assoc of Outdoor Rec & Education

Associated Bodywork & Massage Professionals (ABMP)  
Associated Skin Care Professionals (ASCP)  
Association for Financial Professionals, Inc. (AFP)  
Association of Corporate Counsel (ACC)  
Association of Marina Industries (AMI)  
Association of National Advertisers  
Austin Chamber of Commerce  
Austin Economic Development Department  
Automotive Body Parts Association (ABPA)  
Automotive Service Assoc (ASA)  
AZ Retailers Assoc  
Baltimore, MD - Economic Development  
Baltimore, MD Chamber of Commerce  
Black American Chamber of Commerce  
Board Retailers Association  
Bodegas Small Business Group  
Boutique Lifestyle Lodging Association (BLLA)  
Brewers Association  
Calif Attractions & Parks Assoc (CAPA)  
California Chamber of Commerce  
California Chiropractic Assoc (CAL CHIRO)  
California Cleaners Assoc (CCA)  
California Cleaners Association  
California Cosmetology Association  
California Dental Association (CDA)  
California Grocers Association  
California Hotel and Lodging Association (CHLA)  
California Retail Assoc  
Cardiff Assoc  
Carolinas Food Industry Council  
CDC Small Business Finance  
Charlotte Area Chamber of Commerce  
Charlotte, NC - Economic Development  
Chicago Dept of Planning & Development  
Chicagoland Chamber of Commerce  
Coalition of Filipino American Chambers of Commerce (COFACC)  
Colorado Auto Dealers Association  
Colorado Broadcasters Association (CBA)  
Colorado Springs Chamber & EDC  
Columbus Chamber of Commerce  
Connect SBDC  
Connecticut Food Association  
Constant Contact  
County of Los Angeles - Department of Consumer and Business Affairs  
Delaware Food Industry Council  
Denver Metro Chamber of Commerce

Detroit Regional Chamber  
Detroit, MI Economic Development  
Downtown Chula Vista Assoc  
Downtown Hayward Improvement Association  
Dry Cleaning & Laundry Institute (DLI)  
EAST COUNTY SBDC  
East Village Association  
Economic Development Center KC (EDCKC)  
Economic Development Growth Engine (EDGE)  
Economic Recovery Corps  
El Paso Chamber  
El Paso, TX - Economic & International Development  
Export SBDC at World Trade Center San Diego  
Fine Art Dealers Assoc. (FADA)  
Fitness Business Association (FBA)  
Fitness Business Association (FBA)  
FL Dental Assoc. (FDA)  
Florida Retail Federation  
Fort Worth - Economic Development Department  
Fort Worth Chamber  
Fresno Chamber of Commerce  
Fresno County EDC  
Fresno, CA - Economic Development  
Georgia Food Industry Association  
Gift & Home Trade Assoc  
Golden Gate Restaurant Assoc  
Government Finance Officers Association  
Greater Boston Chamber Of Commerce  
Greater Memphis Chamber  
Greater Milwaukee Chamber of Commerce  
Greater MSP  
Greater Nashville Regional Council - Economic & Community Development  
Greater Oklahoma City Chamber (Oklahoma City, OK CoC)  
Greater Phoenix Chamber  
Health & Fitness Association (IHRSA)  
Hispanic Association of Small Businesses  
Hispanic Association on Corporate Responsibility  
Hispanic Metropolitan Chamber  
Hispanic Retail Chamber  
Home Furnishing Association (HFA)  
Hospitality Minnesota  
Houston West Chamber of Commerce  
IDEA Health & Fitness Association  
Illinois Retail Merchants Assoc (IRMA)  
Imperial Valley SBDC  
Independent and Neighborhood Pet Retail Association (IndiePet)  
Independent Restaurant Coalition

Indian American International Chamber of Commerce  
Indian Gaming Association  
Indy Chamber  
International Downtown Association  
International Franchise Association (IFA)  
International Luxury Hotel Assoc (ILHA)  
International Municipal Lawyers Association (IMLA)  
International Pedicure Association  
International Salon & Spa Business Network (ISBN)  
International Sleep Products Assoc (ISPA)  
International Spa Association  
IRC Small Business Development Center (SBDC)  
Jacksonville - Community Planning Division  
Jacksonville - Current Planning Division  
Jacksonville - Development Services Division  
JAX Chamber  
Jewelers of America  
Kansas City Area Development Council  
Kansas City, MO - Office of Economic Development  
KC Chamber  
Korean Chamber of Commerce  
L'ATTITUDE  
Las Vegas Global Economic Alliance  
Las Vegas, NV - Economic Development  
Latino Restaurant Association  
League of United Latin American Citizens (LULAC)  
Little Italy Association of San Diego  
Long Beach Area Chamber of Commerce  
Long Beach, CA - Economic Development  
Los Angeles Area Chamber of Commerce  
Louisiana Retail Merchants Assoc  
Marine Retailers Assoc of the Americas (MRAA)  
Maryland Retailers Alliance  
Massachusetts Economic Development Council  
Massachusetts Package Stores Association  
Massachusetts Retailers Association  
Merchant Advisory Group  
Merchants Payments Coalition  
Mesa Chamber of Commerce  
Mesa, AZ - Economic Development  
Metro Atlanta Chamber  
Metropolitan Milwaukee Association of Commerce  
Milwaukee County - Economic Development Division  
Minneapolis - Community Planning & Economic Development (CPED)  
Minneapolis Regional Chamber of Commerce  
Minnesota Grocers Association (MGA)  
Minnesota Indian Gaming Association (MIGA)

Minnesota Propane Association  
Minnesota Retailers  
Minority Business Development Agency  
Montana Tavern Association (MTA)  
Multilateral Investment Guarantee Agency (MIGA)  
Museum Store Association (MSA)  
Nashville Area Chamber of Commerce  
National Association for Catering and Events (NACE)  
National Association of Chain Drug Stores (NACDS)  
National Association of Convenience Stores (NACS)  
National Association of Credit Management (NACM)  
National Association of Development Companies (NADCO)  
National Association of Theater Owners  
National Black Chamber of Commerce (NBCC)  
National Business Association  
National Center for American Indian Enterprise Development (NCAIED)  
National Cleaners Association  
National Coffee Association  
National Community Pharmacists Association (NCPA)  
National Dental Assoc (NDA)  
National Education Association  
National Federation of Independent Businesses  
National Franchise Association  
National Gay Lesbian Chamber of Commerce (NGLCC)  
National Grocers Association (NGA)  
National Restaurant Association (NRA)  
National Retail Federation  
National Shoe Retailers Association  
National Small Business Association  
National Supermarket Association  
National Tour Association  
Nat'l Association of State Treasurers  
Nat'l Limo Assoc  
NATSO  
National Community Pharmacists Association  
Neighborhood Market Association  
New Hampshire Grocers Assoc  
New Jersey Food Council  
North American Hardware and Paint Association  
North Carolina Retail Merchants Assoc  
North Carolina Retail Merchants Assoc. (NCRMA)  
NORTH SAN DIEGO SBDC  
Northwest Native Chamber  
NSGA - Nat'l Sporting Goods  
NY Assoc of Convenience Stores (NYACS)  
NY Chamber of Commerce  
NY Planning Dept

Oceanside Chamber of Commerce  
Ohio Council of Retail Merchants  
Oklahoma City, OK - ED  
Oklahoma Grocers Assoc  
Omaha, NB -ED  
Omaha, NE CoC  
Otay Mesa Chamber of Commerce  
Outdoor Industry Assoc.  
Pennsylvania Food Merchants Association  
Philadelphia Economic Development  
Philippine American Chamber of Commerce of Oregon (PACCO)  
Phoenix Community and Economic Development Department (CEDD)  
Portland Metro Chamber  
Portland, OR Economic Development  
Professional Beauty Association (PBA)  
Raleigh, NC CoC  
Raleigh, NC -ED  
Redwood City Downtown Business Group  
Retail Bakers of America  
Retail Council of NY  
Retail Industry Leaders Association (RILA)  
Retailers Assoc of Massachusetts  
Sacramento, CA CoC  
Sacramento, CA -ED  
Salon & Spa Pro Assoc  
San Antonio CoC  
San Diego Chamber of Commerce  
San Diego County Hispanic Chamber of Commerce  
San Diego Economic Development  
San Diego Lodging Association  
San Francisco CoC  
San Francisco Office of Economic and Workforce Development  
SCORE Foundation  
Seattle CoC  
Seattle ED  
Small Business Administration  
Society of American Florists (SAF)  
South Carolina Retail Association  
South County Development Council  
South SD SBDC  
Specialty Coffee Association  
Texas Package stores Association  
Texas Retailers Association  
THE BRINK SBDC  
The Chamber of Commerce for Greater Philadelphia  
The Specialty Food Association  
Tire Industry Assoc. (TIA)

Tucson, AZ CoC  
United Bodegas of America  
United States Business Association of E-Commerce (USBAEC)  
United States Hispanic Chamber of Commerce (USHCC)  
United States Pan Asian American Congress (USPAACC)  
US Chamber of Commerce  
US Mainstreet Association  
US Movers Association  
US Tour Operators Association  
Vegas Chamber  
Vietnamese American Chamber of Commerce  
Virginia Trial Lawyers Association  
Washington Retail Association  
Washington, DC Chamber of Commerce  
Washington, DC Economic Development  
Wine Institute  
Wisconsin Fuel and Retailers Association  
Wisconsin Grocers Association  
Wisconsin Restaurant Association  
Women's Business Enterprise National Council (WBENC)

# Attachment 27

To Whom It May Concern,

This notice is to inform you that a proposed class action settlement has been reached in three related lawsuits involving Discover credit cards. Anyone who accepted or processed Discover credit cards between 2007-2023 could be eligible to get a payment from a class action settlement.

**We feel that this settlement could be relevant to your members and kindly ask that you disseminate this information accordingly.**

We have provided the primary focal points below, but for more information, please visit the official court approved settlement website: [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) or call 888-655-3176. You may also wish to review the Long Form Notice or other documents on the [Documents](#) tab of the case website, which contains all of the pertinent details about the Settlement.

**WHO IS INCLUDED?** The Settlement Class includes all End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023.

**WHAT CAN CLASS MEMBERS GET?** To receive a settlement payment, with very limited exceptions, Class Members will need to file a claim by **May 18, 2026** and/or provide additional information to the Settlement Administrator. Under the proposed settlement, Discover will make payments to eligible Settlement Class Members who submit valid claims. Discover has agreed to pay between \$540 million and \$1.225 billion plus interest in connection with this settlement. Settlement payment amounts will be calculated based on a variety of factors. If you believe you are a Settlement Class Member, you can register and [Submit a Claim](#) via the website with or without having received a Notice.

**OTHER OPTIONS.** Class Members can file a claim for a payment by **May 18, 2026** and/or provide additional information. Alternatively, Class Members can exclude themselves from the settlement by opting out, in which case they will receive no payment under this settlement and retain any right they may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. Those who do not exclude themselves, and pending the Court approves the settlement, will be bound by the Court's orders and judgments and will release any claims against Discover in these lawsuits or related to the Misclassified Card Transactions. Class Members who do not exclude themselves can object to or comment on any part of the settlement. The deadline to either exclude or object to the settlement is **March 25, 2026**.

# Attachment 28

**LEGAL NOTICE BY ORDER OF THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF ILLINOIS**

**If you accepted or processed Discover credit cards between 2007-2023, you could be eligible to get a cash payment from a class action settlement.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

- A proposed class action settlement has been reached in three related lawsuits. The proposed Settlement, if approved, would resolve the cases, and provide benefits to Settlement Class Members, including those who submit claims and do not exclude themselves.
- The lawsuits—*CAPP, Inc. v. Discover Financial Services*, Case No. 1:23-cv-04676; *Lemmo's Pizzeria, LLC v. Discover Financial Services*, Case No. 1:23-cv-14250; and *Support Animal Holdings, LLC v. Discover Financial Services*, Case No. 1:23-cv-15297—are pending in the U.S. District Court for the Northern District of Illinois. The lawsuits allege that, beginning in 2007, defendants Discover Financial Services, DFS Services LLC, and Discover Bank (together, "Discover") misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong. The parties have agreed to the Settlement to avoid the expense, uncertainty, and risks associated with litigation.
- If you received a notice about this Settlement by email or mail, you have been identified as a potential member of the Settlement Class and you may be eligible to receive a settlement payment.
- Your legal rights are affected, and you have a choice to make. Your options are explained here.

**YOUR LEGAL RIGHTS AND OPTIONS**

**REQUEST A SETTLEMENT PAYMENT.**

With limited exceptions, all Settlement Class Members must submit a claim by **May 18, 2026** in order to be eligible to receive a settlement payment.

Most Settlement Class Members are Indirect End Merchants and will need to submit a claim to receive a settlement payment. See Question 8 for details.

If your business is defined as a Managed Active Direct End Merchant, you are automatically eligible to receive a settlement payment, but you must submit additional information to receive a payment. See Question 9 for details.

If your business is defined as an Unmanaged Active Direct End Merchant, you are automatically eligible to receive a settlement payment without taking further action. See Question 10 for details.

If your business is defined as a Merchant Acquirer or Payment Intermediary, you must submit *both* a claim *and* additional information described herein to receive a payment. See Questions 12 and 13 for details.

If you are unsure whether you need to submit a claim and want to receive a settlement payment, it is a good idea to submit a claim.

Your business may be more than one type of Settlement Class Member. You may receive more than one notice and may need to take further action to receive payment or full payment.

**DO NOTHING.**

If you do nothing, with limited exceptions, you will not receive a settlement payment, and you will be bound by the Court's orders and judgments and give up any right to sue Discover for the claims in these lawsuits or related to the Misclassified Card Transactions.

<b>EXCLUDE YOURSELF (OPT OUT).</b>	Receive no payment from the Settlement but retain any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. To opt out, you must mail a request for exclusion, postmarked by <b>March 25, 2026</b> . See Question 21 for details.
<b>OBJECT TO THE SETTLEMENT.</b>	Object or comment on the Settlement by <b>March 25, 2026</b> . See Question 22 for details. If you object or comment, you can still receive a payment, provided you file a claim and/or provide the additional information required.
<b>GET ASSISTANCE FILING YOUR CLAIM AT NO COST TO YOU.</b>	<p>The Court has appointed Epiq Class Action &amp; Claims Solutions, Inc. (“Epiq”) to serve as the Claims Administrator. Epiq will provide you free assistance with the filing of your claim and answer any questions you may have about the Settlement.</p> <p>You may have received a communication about this Settlement from a company other than Epiq. You are under no obligation to pay a company to file a claim on your behalf. You may file your own claim, including with assistance from Epiq, at no cost to you.</p>

This Notice summarizes the Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement, which is available at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

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## BASIC INFORMATION

### 1. What is this Notice about?

Plaintiffs CAPP, Inc.; Young Peoples Day Camps Inc.; Prayus Group LLC; Lemmo's Pizzeria, LLC; and Lenny's Casita, LLC (together, "Plaintiffs"), on behalf of the Settlement Class Members, have reached a Settlement with Defendants Discover Financial Services, DFS Services LLC, and Discover Bank (together, "Discover") in three related class action lawsuits. The Court authorized this Notice because you have a right to know about the Settlement and about your options before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuits, the proposed Settlement, your legal rights, and the hearing ("Final Approval Hearing") to be held by the Court to consider whether to finally approve the Settlement.

The Honorable Judge Steven C. Seeger of the United States District Court for the Northern District of Illinois is overseeing these lawsuits. The lawsuits are called *CAPP, Inc. v. Discover Financial Services*, Case No. 1:23-cv-04676; *Lemmo's Pizzeria, LLC v. Discover Financial Services*, Case No. 1:23-cv-14250; and *Support Animal Holdings, LLC v. Discover Financial Services*, Case No. 1:23-cv-15297. The five individual Plaintiffs who have been appointed by the Court as "Settlement Class Representatives" are business entities that processed or accepted a misclassified Discover-issued credit card between 2007 and 2023.

### 2. What is a class action settlement and who is involved?

A class action is a type of lawsuit in which one or more people (or entities) sue on behalf of themselves and other people (or entities) with similar claims. When a class action is settled, all of these people (or entities) together make up the class and are class members. One court will determine if the Settlement is fair for all class members, except for those who exclude themselves from the class.

### 3. Am I part of the Settlement Class?

The Settlement Class for this Settlement is defined as: All End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction during the period from January 1, 2007 through December 31, 2023. Excluded from the Settlement Class are certain people and entities listed on Exhibit A to the Settlement Agreement. A copy of the Settlement Agreement (including Exhibit A) may be found at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com). People (or entities) in the Settlement Class are called "Settlement Class Members."

Broadly speaking, the Settlement Class includes three types of Settlement Class Members: End Merchants, Merchant Acquirers, and Payment Intermediaries. These and other important terms are summarized below. Please refer to the Settlement Agreement, available at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), for the complete definition of these and other defined terms.

- An "**End Merchant**" is an individual or business entity that during 2007-2023 accepted a Discover-issued credit card directly from a person as payment in return for the delivery of goods or services. For purposes of this Settlement, there are four different types of End Merchant: Indirect End Merchant, Inactive Direct End Merchant, Managed Active Direct End Merchant, and Unmanaged Active Direct End Merchant. The requirements to receive a settlement payment differ for each (see Questions 7-14 for more information).
- A "**Merchant Acquirer**" is a business entity that during 2007-2023 had an agreement with Discover to facilitate Discover credit card transactions and was characterized by Discover's rules and regulations as an "Acquirer."

- A **“Payment Intermediary”** is a business entity that during 2007–2023 processed Discover credit card transactions on behalf of another business, but that is neither an End Merchant nor a Merchant Acquirer.
- A **“Misclassified Card Transaction”** means a Discover credit card transaction in which, at the time of processing and according to the records of Discover, the credit card account was classified by Discover Bank as a “commercial” credit card but should have been classified as a consumer credit card (i.e., a “rewards,” “premium,” or “premium plus” card).

If you received a notice of this Settlement by mail or email, records from Discover or another source indicate that you may be a Settlement Class Member. That notice may also indicate what type of Settlement Class Member you likely are.

Your business may be more than one type of Settlement Class Member. You may receive more than one notice and may need to take further action to receive payment or full payment.

## THE CLAIMS IN THE LAWSUIT

### 4. What are these lawsuits about?

Plaintiffs allege in the lawsuits that beginning in 2007, Discover misclassified certain Discover-issued consumer credit cards as commercial credit cards, which in turn caused merchants and others to incur excessive interchange fees. Generally speaking, Discover assesses an “interchange fee” on each Discover credit card transaction. Sometimes, the interchange fee is paid entirely by the End Merchant. In other instances, the interchange fee (or a portion of the fee) is paid by other parties, such as a Merchant Acquirer or Payment Intermediary that has a relationship with the End Merchant. The percentage charged for a particular transaction, or “interchange fee rate,” is sometimes based on factors that include the type of Discover credit card used (e.g., commercial, rewards, premium, or premium plus). Plaintiffs allege that Discover assessed interchange fee overcharges by misclassifying certain consumer credit cards as commercial credit cards between 2007 and 2023.

Plaintiffs filed three related class action lawsuits about these issues. The operative complaints in these lawsuits are available at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com). Discover denies the claims in the lawsuits, and the Court has not decided who is right or wrong.

Plaintiffs and Discover have now agreed to a Settlement to resolve these lawsuits, as described below. By agreeing to the Settlement, Discover has not admitted that it is liable, that it has committed any wrongdoing, or that there is any merit to the allegations and claims in these cases. Instead, the proposed Settlement, if approved, will resolve the lawsuits without deciding who is right or wrong.

The United States District Court for the Northern District of Illinois is overseeing these lawsuits and will determine whether the Settlement should be finally approved.

## THE SETTLEMENT

### 5. What are the terms of the Settlement?

The complete terms of the proposed Settlement are set forth in the Settlement Agreement, which is available at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com). This Notice provides only a summary of the terms of the Settlement. The Settlement benefits and other terms are summarized below.

### 6. How will settlement payments be calculated?

If the Settlement is approved and becomes final, Discover will provide payments to eligible Settlement Class Members who submit valid claims and/or provide additional information to the extent required (see Questions 7-14).

Your settlement payment amount will be calculated based on a variety of factors, including the total estimated interchange fee overcharge for each Discover merchant identifier (called a “MID”) associated with you, how interchange fee charges for each MID were allocated among the Merchant Acquirer (if

any), Payment Intermediaries (if any), and End Merchant associated with the same MID, and the total aggregate dollar amount of all settlement payments.

Discover uses a unique, Discover-specific merchant identifier (or "MID") in its business records. This MID may be different from other identifiers your business uses. Depending on an End Merchant's relationship with Merchant Acquirers and/or Payment Intermediaries, over time, an End Merchant may become associated with more than one MID (e.g., if the End Merchant changed from one payment processor to another), or multiple End Merchants may be assigned to a single MID (e.g., as is common with payment facilitators).

The procedure for determining settlement payment amounts is summarized below. For further detail, please review the full Settlement Agreement, which is available at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

As the first step, Discover has calculated the total estimated interchange fee overcharge attributed to each MID from January 1, 2007 to December 31, 2023, plus applicable interest (a "MID Amount"), based on Discover's data and two formulas developed for this purpose (called the "Methodology"). Pursuant to the terms of the Methodology, the MID Amount will be the higher of the amounts calculated using: (i) a formula that accounts for recently located data from Discover, and (ii) the formula included in a prior version of the Settlement (before such data had been located). For more information, see the Methodology (which is attached as Exhibit B to the Settlement Agreement), available at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

If the Settlement is approved and becomes final, the Settlement Administrator will then determine, for each MID, how the MID Amount is to be allocated (i.e., split up) among all entities associated with that MID, including the Merchant Acquirer (if any), Payment Intermediaries (if any), and End Merchant. The allocations of MID Amounts will be based on the Settlement Administrator's reasonable determination, using all information provided by Discover and through the settlement process, of which entity or entities were responsible for paying the interchange fees for that MID during the relevant time period. If you submit a timely and valid claim and/or provide additional information to the extent required, you will receive notice of the portion of any MID Amount that the Settlement Administrator determines should be allocated to you (an "Allocated MID Amount"). You will have the option to challenge the allocation by providing additional information for the Settlement Administrator's consideration.

After all allocation determinations are finalized, the Settlement Administrator will calculate the settlement payment amount for each eligible Settlement Class Member. If you submit a timely and valid claim and/or provide additional information to the extent required, your settlement payment amount will be calculated as the aggregate total of all Allocated MID Amounts for all MID(s) associated with you, with the following adjustments:

1. *Settlement Base Payments*: Unless any of the conditions below applies, all eligible Settlement Class Members will receive a minimum of \$10—i.e., if your settlement payment would otherwise be less than \$10, your payment will be increased to \$10 by a "base payment" amount.
2. *Settlement Base Payment Maximum*: The Settlement provides for a \$50 million cap on base payments. If the aggregate total of all base payment amounts (pursuant to adjustment 1 above) exceeds \$50 million, then the base payment amounts will be decreased on a *pro rata* basis (which means generally that the amounts will be decreased proportionally) until the aggregate total of all base payment amounts equals \$50 million.
3. *Minimum Total Settlement Payout*: Discover has agreed to pay at least \$540 million to affected End Merchants, Merchant Acquirers, and Payment Intermediaries. If the total of all payment amounts—including payments through the Settlement and any qualifying payments made by Discover outside of the Settlement to resolve claims about the issues asserted in these lawsuits—is less than \$540 million, then each settlement payment amount (including any associated base payment) will be increased on a *pro rata* proportional basis until the total restitution payable by Discover equals \$540 million.
4. *Total Settlement Payout*: Under the Settlement, the maximum Discover will be required to pay to affected End Merchants, Merchant Acquirers, and Payment Intermediaries is \$1.225 billion plus interest. If the total of all payment amounts—including payments through the Settlement and any qualifying payments made by Discover outside of the Settlement to resolve claims about the issues asserted in these lawsuits—is greater than \$1.225 billion plus interest, then each

settlement payment amount (including any associated base payment) will be decreased on a *pro rata* proportional basis until the total restitution payable by Discover equals \$1.225 billion plus interest. Discover may in its sole discretion decide to make payments in excess of \$1.225 billion plus interest.

## 7. How do I get a payment?

With limited exceptions, to receive a settlement payment, you will need to file a claim and/or provide additional information to the Settlement Administrator. The information you need to provide, and when, depends on which type of Settlement Class Member you are. The type of Settlement Class Member you are depends on your role in processing or accepting Discover credit card transactions. Your business may be more than one type of Settlement Class Member. You may receive more than one notice and may need to take further action to receive payment or full payment.

Questions 8-14 below describe each Settlement Class Member type and instructions for what you need to do to receive a settlement payment. Complete definitions for the different types of Settlement Class Members can be found in the Settlement Agreement, available at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com). If you received a notice of this Settlement by mail or email, please refer to that notice to see what type of Settlement Class Member you might be:

If you received a notice letter or email that says . . .	. . . then see
you are receiving a "Standard Notice"	Question 8
you are a Managed Active Direct End Merchant	Question 9
you are an Unmanaged Active Direct End Merchant	Question 10
you are an Inactive Direct End Merchant	Question 11
you are a Merchant Acquirer	Question 12
you may be a Payment Intermediary	Question 13

Please read the instructions in Questions 8-14 carefully. If you are unsure what type of Settlement Class Member you are after reading the descriptions below, or if you think you may be a different type of Settlement Class Member than indicated in the notice you received, you should file a claim as early as possible. The Settlement Administrator will then notify you if additional action is required on your part. Similarly, if you did not receive a notice by mail or email or if you lost the notice you received, and you believe you are a Settlement Class Member, you may still submit a claim, postmarked or submitted online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), by **May 18, 2026**. If you have any questions about what type of Settlement Class Member you are, you can call the Settlement Administrator at 888-655-3176 or email them at [Info@DiscoverMerchantSettlement.com](mailto:Info@DiscoverMerchantSettlement.com).

## 8. Is my business an Indirect End Merchant, and if so, how do I get a payment?

Most Settlement Class Members are Indirect End Merchants.

**Requirements to get a payment:** To receive a settlement payment as an Indirect End Merchant, you **must submit a claim**, postmarked or submitted online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), by **May 18, 2026**. To submit a claim form, you can either: (a) submit one online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com); (b) fill out the claim form you received in the mail and mail it to the Settlement Administrator at the address listed in the form; or (c) download a copy of the claim form at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), fill it out, and mail it to the Settlement Administrator at the address listed in the form.

To determine whether you are an Indirect End Merchant, answer the following question(s):

Questions	No	Yes
A. Do you process or accept Discover credit cards on behalf of other businesses?	Proceed to Question B.	You are likely <b>not</b> an End Merchant. Proceed to Questions 12-13 below to determine whether you are a Merchant Acquirer or Payment Intermediary.
B. Do you have a written contractual relationship <i>directly with Discover</i> to accept Discover credit cards (as opposed to a relationship with a merchant acquirer, a payment processor, or other payment facilitator)?	You are most likely an Indirect End Merchant. Follow the directions in this Question 8 to receive a settlement payment.	You are <b>not</b> an Indirect End Merchant. Proceed to Questions 9-11 below to determine what type of Direct End Merchant you are.

If you are unsure, file a claim and the Settlement Administrator will contact you should additional information be needed.

### 9. Is my business a Managed Active Direct End Merchant, and if so, how do I get a payment?

An Active Direct End Merchant is an End Merchant that (a) has a current written contractual relationship directly with Discover to accept Discover credit cards and that has processed a Discover credit card transaction at any time since May 1, 2025, or (b) had a written contractual relationship directly with Discover to accept Discover credit cards at one point between 2007 and 2023 and that the Settlement Administrator has determined to a reasonable degree of confidence was still in operation as of July 30, 2025. A *Managed* Active Direct End Merchant is an Active Direct End Merchant that also interacts with Discover through a dedicated client relationship manager on a regular basis. Written contractual relationships directly with Discover and *Managed* relationships with Discover are relatively uncommon.

**Requirements to get a payment:** To receive a settlement payment as a Managed Active Direct End Merchant, you must provide your payment information (where you want the payment sent) to the Settlement Administrator, and confirm the proper entity to receive payment, by **May 18, 2026**.

The notice you received by mail or email has instructions about how to submit your payment information. You can submit your payment information online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com). Visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) or contact the Settlement Administrator, at 888-655-3176 or [Info@DiscoverMerchantSettlement.com](mailto:Info@DiscoverMerchantSettlement.com), for more information. Your business may be more than one type of Settlement Class Member. You may receive more than one notice and may need to take further action to receive payment or full payment. Note, the Settlement Administrator may later request a completed IRS Form W-9 before issuing your settlement payment. To save time, you may provide this information online.

### 10. Is my business an Unmanaged Active Direct End Merchant, and if so, how do I get a payment?

An Active Direct End Merchant is an End Merchant that (a) has a current written contractual relationship directly with Discover to accept Discover credit cards and that has processed a Discover credit card transaction at any time since May 1, 2025, or (b) had a written contractual relationship directly with Discover to accept Discover credit cards at one point between 2007 and 2023 and that the Settlement Administrator has determined to a reasonable degree of confidence was still in operation as of July 30, 2025. Written contractual relationships directly with Discover are relatively uncommon. An *Unmanaged* Active Direct End Merchant (as distinguished from a *Managed* Active Direct End Merchant) is an Active Direct End Merchant that does *not* interact with Discover through a dedicated client relationship manager on a regular basis.

**Requirements to get a payment:** As an Unmanaged Active Direct End Merchant, you have already been deemed payment eligible. Once the Settlement is approved and becomes final, a payment for these years will be sent to you at the address on file with the Settlement Administrator. To update your address, visit [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com). Your business may be more than one type of Settlement Class Member. You may receive more than one notice and may need to take further action to receive payment or full payment.

Note, the Settlement Administrator may later request a completed IRS Form W-9 before issuing your settlement payment. To save time, you may provide this information online.

### 11. Is my business an Inactive Direct End Merchant, and if so, how do I get a payment?

Generally speaking, a Direct End Merchant is an End Merchant that has (or had) a written contractual relationship with Discover to accept Discover credit cards. Written contractual relationships directly with Discover are relatively uncommon. An *Inactive* Direct End Merchant is a Direct End Merchant that has not recently processed a Discover credit card transaction under that written contract with Discover or that the Settlement Administrator cannot determine was still in operation as of July 30, 2025.

**Requirements to get a payment:** To receive a settlement payment as an Inactive Direct End Merchant, you **must submit a claim**, postmarked or submitted online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), by **May 18, 2026**.

To submit a claim form, you can either: (a) submit one online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com); (b) fill out the claim form you received in the mail and mail it to the Settlement Administrator at the address listed in the form; or (c) download a copy of the claim form at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), fill it out, and mail it to the Settlement Administrator at the address listed in the form.

### 12. Is my business a Merchant Acquirer, and if so, how do I get a payment?

A Merchant Acquirer is a business entity that during 2007-2023 had an agreement with Discover to facilitate Discover credit card transactions for other businesses and was characterized by Discover's rules and regulations as an "Acquirer."

**Requirements to get a payment:** To receive a settlement payment as a Merchant Acquirer, you must do **both** of the following:

1. By **November 12, 2025, you must submit additional information**, called your "Merchant Acquirer Information," to the Settlement Administrator. The Settlement Administrator is to provide all identified Merchant Acquirers a letter that includes a recommended data layout for the required Merchant Acquirer Information component fields and options for how this information may be securely submitted to the Settlement Administrator. If you would like to receive another copy of this letter, contact the Settlement Administrator at 1-888-655-3176 or [Info@DiscoverMerchantSettlement.com](mailto:Info@DiscoverMerchantSettlement.com).
2. By **May 18, 2026, you must also submit a claim**, postmarked or submitted online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

Note, the Settlement Administrator may later request a completed IRS Form W-9 before issuing your settlement payment. To save time, you may provide this information online after submitting a claim.

### 13. Is my business a Payment Intermediary, and if so, how do I get a payment?

A Payment Intermediary is a business entity that during 2007-2023 processed Discover credit card transactions on behalf of another business, but that is neither an End Merchant nor a Merchant Acquirer.

**Requirements to get a payment:** To receive a settlement payment as a Payment Intermediary, you must do **both** of the following:

1. By **February 25, 2026, you must submit additional information**, called your "Payment Intermediary Information," to the Settlement Administrator. The Settlement Administrator is to provide all identified Payment Intermediaries a letter that includes a recommended data layout for the required Payment Intermediary Information component fields and options for how this information may be securely submitted to the Settlement Administrator. If you would like to receive another copy of this letter, contact the Settlement Administrator at 1-888-655-3176 or [Info@DiscoverMerchantSettlement.com](mailto:Info@DiscoverMerchantSettlement.com).
2. By **May 18, 2026, you must also submit a claim**, postmarked or submitted online at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com).

Note, the Settlement Administrator may later request a completed IRS Form W-9 before issuing your settlement payment. To save time, you may provide this information online after submitting a claim.

#### 14. What if my business is multiple Settlement Class Member types?

In certain limited circumstances, a single entity may be multiple types of Settlement Class Member. For example, a single entity could be a Payment Intermediary *and* an End Merchant. If your legal entity is multiple types of Settlement Class Member, you must fulfill the claim requirements for each respective type in order to complete your claim and receive all payments you may be eligible for under the Settlement. Therefore, if you receive more than one notice, **do not** disregard either notice, as you may need to take further action to receive payment or full payment.

#### 15. Will I be notified about the settlement payment I am eligible to receive?

Yes. The Settlement Administrator will validate claims and review all information submitted and will determine allocations and payment amounts pursuant to the terms of the Settlement. If you submit a timely and valid claim and/or provide additional information to the extent required, before settlement payments are issued, the Settlement Administrator will provide you a notice regarding the amount of estimated interchange fee overcharges allocated to you, and you will be given the option to challenge the allocation by providing additional information for the Settlement Administrator's consideration.

#### 16. How and when will payments be sent?

Settlement payments to eligible Settlement Class Members will be issued after the Settlement is approved and becomes final. Payments will be sent by mailed check or, at the election of the Settlement Class Member, transmitted by ACH payment to the Settlement Class Member's designated U.S. bank account.

Depending on the amount of your settlement payment, the Settlement Administrator may require a completed IRS Form W-9 before issuing payment. To save time, you may provide this information online.

For any settlement payment checks that are not timely cashed or cannot be successfully delivered following reasonable efforts by the Settlement Administrator, those residual amounts will be distributed to a non-profit educational or public benefit organization as a *cy pres* recipient to be proposed by Settlement Class Counsel with input from Discover, subject to Court approval.

### THE LAWYERS REPRESENTING YOU

#### 17. Do I have a lawyer in this case?

Yes. The Court has appointed the following attorneys and law firms to represent the Settlement Class. Together, these lawyers are called "Settlement Class Counsel":

<p>Roger N. Heller Lieff Cabraser Heimann &amp; Bernstein LLP 275 Battery Street, 29th Floor San Francisco, CA 94111</p>	<p>Catherine Pratsinakis Dilworth Paxson LLP 1650 Market Street, Ste. 1200 Philadelphia, PA 19103</p>	<p>Taras Kick The Kick Law Firm, APC 815 Moraga Drive Los Angeles, CA 90049</p>
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You do not have to pay Settlement Class Counsel out of your pocket for their time or expenses incurred in this case. Instead, Settlement Class Counsel will ask the Court for an award of their fees and expenses, as described in Question 18 below.

The Court has also appointed Plaintiffs CAPP, Inc.; Young Peoples Day Camps Inc.; Prayus Group LLC; Lemmo's Pizzeria, LLC; and Lennys Casita, LLC as Settlement Class Representatives to represent the Settlement Class.

## 18. How will the lawyers be paid?

Settlement Class Counsel (see Question 17) will file a motion on or before November 30, 2025 asking the Court to award them attorneys' fees (not to exceed \$25 million) plus reimbursement of their litigation expenses (not to exceed \$1 million). In addition, Settlement Class Counsel will ask the Court to award each of the five Settlement Class Representatives service awards of up to \$7,500 each, to compensate them for their efforts and commitment on behalf of the Settlement Class in these lawsuits. Settlement Class Counsel's motion for attorneys' fees, expenses, and service awards will be available at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) after it is filed.

Under the terms of the Settlement, any amounts awarded by the Court to Settlement Class Counsel and Settlement Class Representatives will be paid by Discover separate from (in other words, in addition to) settlement payments paid to Settlement Class Members. This means that payments approved by the Court to Settlement Class Counsel and Settlement Class Representatives will not affect the amount of any Settlement Class Member's payment.

The attorneys' fees and expenses awarded by the Court will be the only payment to Settlement Class Counsel for their efforts in achieving the Settlement and for their risk in undertaking these lawsuits on behalf of the Settlement Class.

## 19. Should I hire my own lawyer?

You do not need to hire your own lawyer because the Court has appointed Settlement Class Counsel to represent you and the other members of the Settlement Class. However, you have the right to hire your own lawyer. If you want your own lawyer separate from Settlement Class Counsel, you will have to pay that lawyer.

## YOUR RIGHTS AND OPTIONS

## 20. What happens if I do nothing?

If you do nothing, you will not receive any settlement payment unless you are an Unmanaged Active Direct Merchant. See Questions 7-14 for more detail.

If you do not exclude yourself and the Court approves the Settlement, you will give up any right you may have to sue Discover about the claims in these lawsuits or related to the Misclassified Card Transactions. You will also be legally bound by all of the orders that the Court issues and judgments the Court makes in these lawsuits.

## 21. How do I exclude myself from (opt out of) the Settlement Class?

To exclude yourself from the Settlement Class, you must mail a written request for exclusion to: Discover Merchant Settlement Exclusion Requests, c/o Epiq Class Action, PO Box 5370, Portland, OR 97228-5370.

To be effective, your request for exclusion must be postmarked no later than **March 25, 2026**, and must include the following information:

- (a) (i) the Settlement Class Member's full legal name, (ii) any aliases (such as "doing business as" or "DBA" names), (iii) telephone number, (iv) mailing address, (v) email address, (vi) business tax identification number ("TIN"), and (vii) if known, all Discover merchant identifiers ("MIDs") associated with the Settlement Class Member\*;
- (b) the name and case number of the lead lawsuit: *CAPP, Inc. et al. v. Discover Bank et al.*, Case No. 23 cv 4676;
- (c) a clear and unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class; and
- (d) the name(s) and signature(s) of the individual(s) authorized to act on the Settlement Class

Member's behalf. If the person submitting the request for exclusion is doing so on behalf of a Settlement Class Member (such as an attorney or estate), the request must also include the full name of the person submitting the request and the basis of their authority to act on behalf of the Settlement Class Member.

\*If a potential Settlement Class Member receives a notice and claim packet directly from the Settlement Administrator by postal mail and/or email, the Settlement Class Member may register at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) using the Claimant ID and PIN preprinted or prepopulated on the claim form to access a list of the Discover MIDs that the Settlement Administrator has been able to link to that likely Settlement Class Member.

Requests for Exclusion must be specific to an individual Settlement Class Member, and one Settlement Class Member cannot request exclusion on behalf of any other Settlement Class Member or as a class or group. If you are an authorized representative for more than one Settlement Class Member that elects to exclude itself from the Settlement Class, you must submit a separate request for exclusion for each Settlement Class Member.

## 22. How do I object or comment?

If you have not excluded yourself from the Settlement Class, you can object to or comment on the Settlement, Settlement Class Counsel's request for attorneys' fees and expenses, and/or the request for service awards for the Settlement Class Representatives who brought these lawsuits. To object or comment, you must send a signed, written objection or comment to both the Court and the Settlement Administrator that includes the following:

- (a) (i) the Settlement Class Member's full legal name, (ii) any aliases (such as "doing business as" or "DBA" names), (iii) telephone number, (iv) mailing address, (v) email address, (vi) business tax identification number ("TIN"), and (vii) if known, all merchant identifiers ("MIDs") associated with the Settlement Class Member\*;
- (b) the name and case number of the lead lawsuit: *CAPP, Inc. et al. v. Discover Bank et al.*, Case No. 23 cv 4676;
- (c) a description of the specific reasons for the objection or comment;
- (d) if the Settlement Class Member is represented by its own lawyer, the name, address, bar number, and telephone number of the lawyer;
- (e) a statement of whether the Settlement Class Member intends to appear at the Final Approval Hearing, either in person or through its lawyer; and
- (f) (the name(s) and signature(s) of the individual(s) authorized to act on the Settlement Class Member's behalf.

\*If a potential Settlement Class Member receives a notice and claim packet directly from the Settlement Administrator by postal mail and/or email, the Settlement Class Member may register at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) using the Claimant ID and PIN preprinted or prepopulated on the claim form to access a list of the Discover MIDs that the Settlement Administrator has been able to link to that likely Settlement Class Member.

To be considered by the Court, your objection or comment must be (1) filed with the Court or mailed to the Clerk of the Court, and (2) mailed in duplicate to the Settlement Administrator, filed/postmarked no later than **March 25, 2026**. The addresses of the Clerk of the Court and the Settlement Administrator are as follows:

The Court	The Settlement Administrator
Office of the Clerk Dirksen Federal Building United States District Court for the Northern District of Illinois 219 South Dearborn Street Chicago, IL 60604	Discover Merchant Settlement Objections c/o Epiq Class Action PO Box 5370 Portland, OR 97228-5370

Note that an objection may ask the Court to deny approval of the Settlement, but the Court cannot order a different settlement; the Court can only approve or reject this proposed Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuits will continue.

Any Settlement Class Member who does not timely and validly submit an objection waives the right to object or be heard at the Final Approval Hearing.

### 23. What claims are released by the Settlement?

If you are a Settlement Class Member and do not timely and validly exclude yourself from the Settlement Class, and the Settlement is approved and becomes final, the Settlement will be legally binding on you, and you will be bound by all judgments entered in these cases. In exchange for the benefits of the Settlement, you will release the claims in these lawsuits and related to the Misclassified Card Transactions against Discover and its affiliates, as detailed in the Settlement Agreement. The Settlement Agreement, available at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com), describes the claims you are releasing (giving up by staying in the Settlement Class (called "Released Claims").

## THE COURT'S FINAL APPROVAL HEARING

### 24. When and where will the Court consider whether to approve the Settlement?

The Court will hold a Final Approval Hearing, currently scheduled for **9:30 a.m. (Central Time) on May 20, 2026**, in the United States District Court for the Northern District of Illinois, Courtroom 2319, 219 South Dearborn Street, Chicago, IL 60604. The hearing may be moved to a different date or time without additional notice or may be held remotely or telephonically. Please check [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com) for updates or changes.

At the Final Approval Hearing, the Court will consider whether the Settlement should be approved as fair, reasonable, and adequate. The Court will also consider Settlement Class Counsel's application for attorneys' fees, expenses, and service awards. If there are objections or comments, the Court will consider them. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

### 25. Do I have to come to the hearing?

No. Settlement Class Counsel will represent Settlement Class Members and answer questions the Court may have. But you are welcome to come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. So long as you submitted your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

### 26. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. You cannot speak at the hearing if you exclude yourself from the Settlement Class.

## GETTING MORE INFORMATION

### 27. How can I obtain more information?

More information can be found at [www.DiscoverMerchantSettlement.com](http://www.DiscoverMerchantSettlement.com). That website includes important case deadlines, links to case documents including the Settlement Agreement, the complaints in these lawsuits, and other information about the lawsuits and the Settlement. You can also get more information by calling 888-655-3176, or by calling Settlement Class Counsel at 800-971-8881.

You can also get additional information by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at [ecf.ilnd.uscourts.gov](http://ecf.ilnd.uscourts.gov), or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of Illinois, 219 South

Dearborn Street, Chicago, IL 60604, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding federal holidays. Please check the Court's website, [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov), for updates.

**PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.**

# **EXHIBIT 2**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**CAPP, INC., YOUNG PEOPLES DAY  
CAMPS INC., KMJA DAY CAMPS,  
INC., AND PRAYUS GROUP LLC**, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, AND DISCOVER BANK,**

Defendants.

Case No. 1:23-cv-04676

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**LEMMO'S PIZZERIA, LLC**, individually  
and on behalf of all others similarly situated,

Plaintiff,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1-100,**

Defendants.

Case No. 1:23-cv-14250

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**SUPPORT ANIMAL HOLDINGS, LLC, and  
LENNYS CASITA, LLC**, individually, and on  
behalf of all other similarly situated,

Plaintiffs,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1-100,**

Defendants.

Case No. 1:23-cv-15297

**DECLARATION OF CATHERINE PRATSINAKIS IN SUPPORT OF  
MOTION FOR ATTORNEYS' FEES, COSTS AND SERVICE AWARDS**

I, Catherine Pratsinakis, pursuant to 28 U.S.C. § 1746, hereby declare:

1. I am an attorney licensed to practice law in the States of Delaware, Pennsylvania, and New Jersey, and a member in good standing with the Delaware, Pennsylvania, and New Jersey State Bars. I am also a member in good standing of the general bar of the U.S. District Court for the Northern District of Illinois. I am a partner at the law firm Dilworth Paxson LLP (“Dilworth”), Co-chair of its Plaintiffs’ Rights Practice Group, counsel for Plaintiffs CAPP Inc., Young Peoples Day Camps, Inc. and Prayus Group LLC (“CAPP Plaintiffs”) and was appointed by this Court to serve as Settlement Class Counsel for the proposed Settlement of the above-captioned actions (the “Actions”). I have personal knowledge of the facts set forth in this declaration, and could and would testify to them if called upon to do so.

**Background and Experience**

2. Founded in 1933, Dilworth is a broad and diverse regional law firm representing a wide variety of clients ranging from Fortune 500 companies to closely-held businesses, governmental entities, non-profit foundations, and individuals. Dilworth’s Plaintiff’s Rights Practice Group dates back to the pioneer of the modern-day class action – Harold Kohn. We have deep experience in all aspects of complex commercial, class and representative litigation from building successful litigation strategies to obtaining class certification, securing discovery, negotiating settlements, conducting trials, and handling all aspects of appeals.

3. Dilworth is one of the few firms nationwide to offer a 360-degree perspective as our litigators and trial attorneys routinely represent both plaintiffs and defendants in complex litigation. This experience in devising and implementing litigation and trial strategies for plaintiffs and defendants benefits our clients on both sides of the “v.”

4. I have extensive experience prosecuting complex class actions, including the following actions involving consumers, overcharges, banks, financial institutions, and corporate misconduct:

- a. *Verthelyi v. PNM Capital Management, LLC and PennyMac Mortgage Investment Trust*, Case No. 2:2024-cv-05028 (C.D. Cal.): Representing investors in a nationwide class action involving violations of the LIBOR Act.
- b. *DeLuca, et al. v. GPB Auto. Portfolio, LP, et al.*, No. 19-cv-10498-LAK (SDNY): represented investors in a putative class action against GPB auditors; preliminarily approved settlement for \$46 million.
- c. *FritzCo LLC et al v. Verizon Communications Inc. et al*, No. 1:21-cv-10432 (S.D.N.Y.): putative class counsel representing consumers in class action involving an alleged data breach and negligence in the maintenance and operation of a major telecom's security systems.
- d. *In re Cigna-American Specialty Health Administrative Fee Litig.*, No. 2:16-cv-03967-NIQA (E.D. Pa.): represented insureds alleging ERISA violations for overcharging for services by the amount of administrative fees and hiding the fees from insureds, and settled for near full recovery of administrative fee overcharges.
- e. *In re 24 Hour Fitness Prepaid Memberships. Litig.*, No. 4:16-cv-01668-JS (N.D. Cal.): secured a full relief settlement for consumers defrauded by owner of gym facilities.
- f. *Roth v. The Phoenix Companies*, No. 650634/2016 (N.Y. Sup. Ct.): secured ongoing financial reporting, liquidity and enhanced value of bonds in the challenge to a going-dark transaction, with the Court hailing the settlement as "outstanding."
- g. *TRSL v. Greenberg, et al.*, No. 20106 (Del. Ch.): prosecuted a derivative suit against the officers and directors of AIG for certain self-dealing transactions involving related party entities CV Starr, successfully challenged findings of a special litigation committee, and secured a \$115 million settlement on the eve of trial.
- h. *W2007 Grace Acquisition I, Inc., Preferred Stockholder Litig.*, No. 2:13-cv-2777 (W.D. Tenn.): represented preferred stockholders in a breach of fiduciary duty action against a real estate investment trust that was taken private and went "dark" on its stockholders for over five years; settlement valued at over \$76 million for W2007 Grace preferred stockholders; a near 100% claims rate for this settlement following aggressive class member outreach campaign.
- i. *In re Hollinger Int'l Sec. Litig.*, No. 04-CV-0834 (N.D. Ill.): prosecuted a securities fraud class action involving self-dealing and the *Chicago Tribune*, on behalf of defrauded investors that led to the recovery of \$37.5 million.
- j. *In re American International Group, Inc. Consolidated Derivative Litig.*, No. 769 (Del. Ch.): prosecuted a derivative suit challenging officer and board conduct in connection with various accounting schemes, recovering \$90 million for AIG.

- k. *In re Parmalat Sec. Litig.*, MDL 04-1653 (S.D.N.Y.): prosecuted a cross-border securities fraud; succeeded withdrawing the reference from U.S. Bankruptcy Court, allowing stockholders to pursue debtor Parmalat in federal district court; and recovering over \$100 million from defendant banks and other co-conspirators in connection with the most infamous frauds in Italy's history.
5. Over the course of this litigation, I managed the work of Dilworth's attorneys and paralegals who worked on this case. The following are the two primary Dilworth attorneys who worked on this case and their respective backgrounds:

- a. **Catherine Pratsinakis**: I earned my *Juris Doctor* from *Rutgers University- School of Law* in 2001 while simultaneously earning my *Master of Business Administration* in 2001 from *Rutgers Business School*. I also served as an associated editor of the *Rutgers University Law Review*. Since 2001, I have represented the rights and interests of businesses, investors, and consumers, litigating in different industries and practice areas, including consumer, securities, corporate, and antitrust law and have recovered hundreds of millions of dollars. Before primarily focusing my practice on class action litigation and corporate misconduct, I represented businesses in commercial disputes.
- b. **Nina Spizer**: Nina Spizer is a distinguished criminal attorney with a career spanning almost 25 years. Nina previously served as the Chief of the Trial Unit of the Federal Community Defender for the Eastern District of Pennsylvania, where she oversaw complex litigation with national impact. Her role involved supervising every criminal case assigned to the Federal Community Defender, granting her an unparalleled understanding of the charging practices of the United States Attorney's Office and the nuances of the Federal judiciary. While holding this role she also carried a varied case load in federal court and represented clients in high profile cases in the Eastern District of Pennsylvania. With extensive experience in

crisis management, public relations and high profile cases, Nina is known for handling complex cases for clients with varying needs.

**Dilworth's Work in this Litigation**

6. Dilworth has been involved in virtually all aspects of this litigation. Among other things, Dilworth worked on: an extensive pre-filing investigation; drafting of the complaint and amended complaint in the *CAPP* action; conducting discovery in the *CAPP* action; drafting a protective order and confidentiality agreement; developing litigation and negotiation strategy; conducting legal research; preparing for mediation; playing a key role in the mediations and follow-up negotiations; locating, retaining and working with Plaintiffs' experts; reviewing and analyzing documents and data; negotiating and drafting the original written Settlement Agreement, Methodology, notice plan, notice and claim forms, and other Settlement exhibits; working with Epiq to develop and improve the Notice Program, the claims process and other key elements of the administration, including the process for collecting data from Merchant Acquirers and Payment Intermediaries; leading confirmatory discovery efforts including interviewing Discover designees and visiting Discover's headquarters; leading additional confirmatory discovery regarding the later-identified 2007-2015 data; negotiating and drafting the modified written Settlement Agreement, Methodology, and notice plan and other settlement documents, including improvements to the interest terms; drafting preliminary and final settlement approval papers; ongoing work on class notice and other settlement implementation issues; working with the Settlement Administrator regarding settlement implementation, and communicating with class members. Dilworth will continue to expend time on this litigation through the Fairness Hearing, and after the Fairness Hearing should the Court grant final approval of the Settlement.

7. Dilworth staffs its cases appropriately and leanly with the focus on high level of quality and results. We do not operate like a traditional plaintiff firm as most of our clients pay us for our time by the hour. I handled most of the work in this litigation and from time-to-time relied on: (a) partners to assist me with locating and interviewing potential class members, (b) associates to conduct legal research and writing, and (c) partners with unique expertise helpful to the Settlement Class, including: (i) Nina C. Spizer, former Chief of the Trial Unit of the Federal Community Defender for the Eastern District of Pennsylvania, for her trial expertise and experience prosecuting actions brought for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO); (ii) Victoria A. Reider, the former head of the Pennsylvania Department of Banking, for her banking and regulatory expertise; and (iii) John W. Schmehl, Chair of Dilworth's Tax Group, for his tax expertise. In addition, I enlisted the assistance of Chicago-based firm Dicello Levitt LLP, whose attorneys assisted me by performing local counsel functions earlier in the litigation, including filing the original and amended complaints in the *CAPP* Action.

8. During the time that this litigation has been pending, Dilworth has spent considerable time working on this litigation that could have been spent on other matters. Throughout the litigation, the active prosecution and mediation of this matter has consumed a significant percentage of my time that could otherwise have been spent on other fee-generating work. In addition to a substantial percentage of my time, this litigation has also required work by other lawyers, paralegals, and staff at Dilworth that could have otherwise been spent on other fee-generating work.

9. The time that Dilworth has spent on this litigation has been completely contingent on the outcome. Dilworth has not been paid for any of its time spent on this litigation, nor has it been reimbursed for any of its expenses incurred in this litigation.

10. Dilworth also incurred more than \$58,730.05 in un-reimbursed expenses that were necessarily incurred in connection with the prosecution and resolution of this litigation, including

expenses for: expert costs, computer research, travel, and other categories. The following is a breakdown of the expenses for which Dilworth seeks reimbursement in this matter.

<b>Expense</b>	<b>Amount</b>
Air/Rail Transportation/Car Rental	\$3,346.78
Expert	\$46,643.35
Filing/Recordings	\$885.00
Hotel	\$1,230.52
Information Services/Research	\$5,252.48
Meals	\$204.35
Mileage/Parking	\$728.94
Miscellaneous	\$255.83
Service Fees	\$195.88
UPS/Fedex	\$22.80
<b>Total</b>	<b>\$ 58,730.05</b>

11. The foregoing expenses were incurred solely in connection with this litigation and are reflected in Dilworth's accounting records as maintained in the ordinary course of business. These books and records are prepared from invoices, receipts, expense vouchers, check records and other records, and are an accurate record of the expenses incurred in this case.

12. The above expense numbers do not include internal and other costs that Dilworth incurred but for which Dilworth does not seek reimbursement, including costs for telephone and in-house printing.

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

Executed this 30th day of November, 2025, in Philadelphia, Pennsylvania.

*/s/ Catherine Pratsinakis*

# **EXHIBIT 3**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CAPP, INC., YOUNG PEOPLES DAY  
CAMPS INC., KMJA DAY CAMPS,  
INC., AND PRAYUS GROUP LLC, on behalf  
of themselves and all others similarly situated,

Plaintiffs,

v.

DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, AND DISCOVER BANK,

Defendants.

Case No. 1:23-cv-04676

LEMMO'S PIZZERIA, LLC, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1-100,

Defendants.

Case No. 1:23-cv-14250

SUPPORT ANIMAL HOLDINGS, LLC, and  
LENNYS CASITA, LLC, individually, and on  
behalf of all other similarly situated,

Plaintiffs,

v.

DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1-100,

Defendants.

Case No. 1:23-cv-15297

**DECLARATION OF ROGER HELLER IN SUPPORT OF MOTION FOR AN AWARD  
OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

I, Roger Heller, hereby declare and state:

1. I am a member in good standing of the California State Bar and was admitted *pro hac vice* to practice before this Court. See *Lemmo's Pizzeria, LLC v. Discover Fin. Servs.*, No. 1:23-cv-14250 ("the *Lemmo's* action"), ECF No. 27. I am a partner at the law firm of Lief Cabraser Heimann & Bernstein LLP ("LCHB"), one of the plaintiffs' counsel of record in the *Lemmo's* action, and one of the Settlement Class Counsel. I have personal knowledge of the facts set forth in this declaration, and could and would testify competently to them if called upon to do so.

### **Background and Experience**

2. LCHB is one of the oldest, largest, most respected, and most successful law firms in the country representing plaintiffs in class actions, and brings to the table a wealth of class action experience. LCHB has been repeatedly recognized over the years as one of the top plaintiffs' law firms in the country, including by The National Law Journal and The American Lawyer. A copy of LCHB's firm resume, which describes the firm's experience in class action and other complex litigation, can be found at [www.lieffcabraser.com/pdf/Lieff\\_Cabraser\\_Firm\\_Resume.pdf](http://www.lieffcabraser.com/pdf/Lieff_Cabraser_Firm_Resume.pdf), and is not attached hereto given its length.

3. Among the firm's other areas of practice, LCHB has extensive experience prosecuting consumer class actions against banks, payment processing companies, and other financial institutions. By way of example only:

a. LCHB served as Plaintiffs' Liaison Counsel and on the Plaintiffs' Executive Committee in *In re Chase Bank USA, N.A. "Check Loan" Contract Litigation* (MDL No. 2032, N.D. Cal.), a nationwide Multi-District class action alleging that Chase breached its good faith obligation to credit cardholders by modifying the terms of their long-term fixed rate loans. In November 2012, the court granted final approval to a \$100 million nationwide settlement that provided direct payments to approximately one million cardholders and injunctive relief.

b. LCHB served as Co-Class Counsel in *Gutierrez v. Wells Fargo Bank, N.A.*, (No. 07-5923 WHA, N.D. Cal.), a class action alleging unfair practices and false representations by Wells Fargo in connection with its imposition of overdraft charges. In 2013, the court reinstated a \$203 million class judgment that had been entered in 2010 following a bench trial, and in 2014 the reinstated judgment was affirmed by the Court of Appeals.

c. LCHB served on the Plaintiffs' Executive Committee in *In re Checking Account Overdraft Litigation* (MDL 2036, S.D. Fla.), a Multi-District proceeding involving more than two dozen banks and allegations of unfair practices and false representations in connection with the banks' imposition of overdraft charges. Class settlements totaling hundreds of millions of dollars have been approved by the court to date.

d. LCHB served as Co-Class Counsel in *Patti's Pitas, LLC et al. v. Wells Fargo Merchant Services, LLC* (No. 1:17-cv-04583 AKT, E.D.N.Y), a nationwide class action alleging improper charges in connection with processing card transactions. In 2021, the court approved of a class settlement providing up to \$40 million in relief.

e. LCHB served as Co-Class Counsel in *Lusnak v. Bank of America, N.A.* (No. 2:14-cv-01855-GW, N.D. Cal.), a class action challenging Bank of America's failure to pay mortgage escrow interest to its California customers as required by California law. In 2020, the district court granted approval of a \$35 million class settlement that provided direct payments to the settlement class members.

f. LCHB served as Co-Class Counsel in *Cymbalista v. JPMorgan Chase Bank* (E.D.N.Y), a class action alleging that defendant failed to pay interest on mortgage customers' mortgage escrow balances, as required by state law. In 2022, the court granted final approval of a settlement that included an \$11.5 million fund and practice changes.

g. LCHB served as Settlement Class Counsel in *Kline v. The Progressive Corporation* (No. 02-L-6, Illinois Circuit Court, Johnson County), a nationwide class action challenging Progressive Corporation's private passenger automobile insurance sales practices.

In 2002, the court approved a settlement valued at approximately \$450 million, which included both cash and equitable relief.

4. Over the course of this litigation, multiple attorneys and paralegals at LCHB have worked on this case. The following are the primary LCHB attorneys who worked on this case and their respective backgrounds:

a. **Roger N. Heller**: I am a partner at LCHB. I graduated from Columbia University School of Law in 2001, where I was a Senior Editor for the *Columbia Law Review*. From 2001 through 2005, I was a litigation associate at O'Melveny & Myers LLP. From 2005 through 2008, I worked for the non-profit law firm Disability Rights Advocates, where I was a Senior Staff Attorney and worked primarily on prosecuting class actions under federal and state anti-discrimination laws. I joined LCHB in 2008, and became a partner at LCHB in 2011. In 2022, I became the head of LCHB's Consumer Protection practice group. During my time at LCHB, my practice has focused on consumer protection class actions. I have successfully represented large classes in numerous cases, including cases involving false advertising, telecommunications services, consumer banking, payment processing, insurance, and credit cards.

b. **Michael K. Sheen**: Mike Sheen has been a partner at LCHB since 2022, and before that was an associate at the firm from 2018 to 2021. Mr. Sheen graduated from the University of California, Berkeley School of Law in 2012 and was an associate at Milbank, Tweed, Hadley & McCloy LLP between 2012 and 2015. Mr. Sheen clerked for Judge Dale A. Drozd of the United States District Court for the Eastern District of California from 2015 to 2017. Since joining LCHB, Mr. Sheen's practice has focused on consumer protection, securities and financial fraud, and digital privacy.

c. **Margaret M. Becko**: Margaret Becko joined LCHB as an associate in 2022. Ms. Becko graduated from Harvard Law School in 2020 and, after graduation, served as a law clerk to Justice Frank M. Gaziano of the Massachusetts' Supreme Judicial Court and Judge Nathaniel M. Gorton of the United States District Court for Massachusetts. Since joining LCHB,

Ms. Becko's practice has focused on representing plaintiffs in consumer protection, privacy, product defect, and other class actions.

**LCHB's Work in this Litigation**

5. LCHB has been involved in all or virtually all aspects of this litigation. Among other things, LCHB worked on: pre-filing investigation and drafting of the complaint and amended complaint in the *Lemmo's* action; developing litigation and negotiation strategy; conducting legal research; preparing for mediation; the mediations and extensive follow-up negotiations; conducting confirmatory discovery; working with Plaintiffs' experts; reviewing and analyzing documents and data; negotiating and drafting the original written Settlement Agreement, Methodology, notice plan, notice and claim forms, and other Settlement exhibits; crafting the claims and related processes; conducting additional confirmatory discovery regarding the later-identified 2007-2015 data; negotiating and drafting the modified written Settlement Agreement, Methodology, and notice plan and other settlement documents; drafting preliminary and final settlement approval papers; ongoing work on class notice and other settlement implementation issues; working with the Settlement Administrator regarding notice and other settlement implementation, and communicating with class members.

6. With respect to the tasks performed by LCHB in this litigation, the firm took all reasonable and appropriate steps to avoid inefficiencies or duplication of work. Appropriate attorneys and staff were assigned to specific tasks based on their respective experience levels and skills, and clear instruction was provided regarding who was responsible for each task.

7. During the time that this litigation has been pending, LCHB has spent considerable time working on this litigation that could have been spent on other matters. Throughout the litigation, the active prosecution and mediation of this matter has consumed a significant percentage of my time that could otherwise have been spent on other fee-generating work. In addition to a substantial percentage of my time, this litigation has also required considerable work by other lawyers, paralegals, and staff at LCHB that could have otherwise been spent on other fee-generating work.

8. The time that LCHB has spent on this litigation has been completely contingent on the outcome. LCHB has not been paid for any of its time spent on this litigation, nor has it been reimbursed for any of its expenses incurred in this litigation.

9. Further, LCHB will have to spend considerable additional on remaining notice and implementation efforts prior to final approval, in connection with seeking final approval of the Settlement, and on further implementation efforts should the Settlement be approved.

10. LCHB also has incurred more than **\$129,065.14** in un-reimbursed expenses that were necessarily incurred in connection with the prosecution and resolution of this litigation, including expenses for: expert costs, mediation, computer research, and travel. The following is a breakdown of the expenses for which LCHB seeks reimbursement in this matter.

<b>Expense</b>	<b>Amount</b>
Computer Research	\$3,454.62
Mediation Fees	\$42,090.62
Expert Costs	\$68,873.50
Travel	\$14,646.40
<b>Total</b>	<b>\$129,065.14</b>

11. The foregoing expenses were incurred solely in connection with this litigation and are reflected in LCHB's books and records as maintained in the ordinary course of business. These books and records are prepared from invoices, receipts, expense vouchers, check records and other records, and are an accurate record of the expenses incurred in this case.

12. The above expense numbers do not include internal and other costs that LCHB incurred but for which LCHB does not seek reimbursement, including costs for telephone, postage, and in-house printing.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed on November 30, 2025, at San Rafael, CA.

By: s/ Roger Heller

# **EXHIBIT 4**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CAPP, INC., YOUNG PEOPLES DAY  
CAMPS INC., KMJA DAY CAMPS,  
INC., AND PRAYUS GROUP LLC, on behalf  
of themselves and all others similarly situated,

Plaintiffs,

v.

DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, AND DISCOVER BANK,

Defendants.

Case No. 1:23-cv-04676

LEMMO'S PIZZERIA, LLC, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1-100,

Defendants.

Case No. 1:23-cv-14250

SUPPORT ANIMAL HOLDINGS, LLC, and  
LENNYS CASITA, LLC, individually, and on  
behalf of all other similarly situated,

Plaintiffs,

v.

DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1-100,

Defendants.

Case No. 1:23-cv-15297

**DECLARATION OF TARAS KICK IN SUPPORT OF MOTION FOR AN AWARD OF  
ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

I, Taras Kick, declare:

1. I am a member in good standing of the California State Bar and was admitted *pro hac vice*, to practice before this Court. See *Lemmo's Pizzeria, LLC v. Discover Fin. Servs.*, No. 1:23-cv-14250 ("the *Lemmo's* action"), ECF No. 43. I am a shareholder at The Kick Law Firm, APC ("TKLF"), one of the plaintiffs' counsel of record in the *Lemmo's* action, and one of the Settlement Class Counsel. I submit this Declaration in support of Plaintiffs' Motion for an Award of Attorneys' Fees, Costs, and Service Awards. I have personal knowledge of the following, and if called as a witness, could and would competently testify thereto.

### **Background and Experience**

2. I have been a member of the California State Bar since 1989, the year I graduated from the University of Pennsylvania Law School. Prior to that, in 1986, I graduated from Swarthmore College. I have served as class counsel in numerous national and California state class actions, including being appointed lead counsel and a member of plaintiffs' executive committees. From 2012 to September 2017, I was a Commissioner of the California Law Revision Commission, an independent state agency created by statute in 1953 to assist the Legislature and Governor by examining California law and recommending needed reforms, having been appointed by Governor Edmund G. Brown Jr. in 2012, and was Chairperson of the Commission from September 2015 through September 2016 (although my role in this case is independent of any aspect of my duties with the Commission and does not reflect one way or the other any positions of the Commission). For over five years I was a member of the national Board of Directors of Public Justice, including its Class Action Preservation Committee. I am or have been a member of numerous other committees pertaining to consumer class actions, including the American Association for Justice Class Action Litigation Sub-Group; the Consumer Attorneys of California

Class Action Group; the American Bar Association Committee on Class Actions & Derivative Suits; and, the State Bar of California Antitrust and Unfair Competition Litigation section.

3. TKLF's practice is devoted almost exclusively to class actions, with a particular focus on financial institutions' alleged improper fees. The class action cases in which I have been appointed either as lead counsel or co-lead counsel which involved alleged improper fees imposed by a financial institution, and in which final approval was granted, include the following: *Galgano v. TD Bank, N.A.*, United States District Court for the District of New Jersey, Case No. 1:20-cv-5623-KMW-SAK; *Lloyd v. Navy Federal Credit Union*, United States District Court for the Southern District of California, Case No. 3:17-cv-01280; *Story v. SEFCU*, United States District Court for the Northern District of New York, Case No. 1:18-cv-00764; *Smith v. Bank of Hawaii*, United States District Court for the District of Hawaii, Case No. 1:16-cv-00513; *Walker v. People's United Bank*, United States District Court for the District of Connecticut, Case No. 3:17-cv-00304; *Lowe v. NBT Bank, N.A.*, No. 319CV1400MADML, 2022 WL 4621433 (N.D.N.Y. Sept. 30, 2022); *The Columbian Spot v. Dollar Bank*, United States District Court for the Western District of Pennsylvania, Case No. 21-1171; *Richard v. Glens Falls National Bank*, No. 1:20-cv-00734 (BKS/DJS) (N.D.N.Y. July 22, 2022); *Hall, et al. v. Central Bank*, Case No. 20AC-CC00505, in the Missouri Circuit Court for Cole County (Cir. Ct. Cole Cnty.); *Carpenter v. Idaho Central Credit Union*, United States District Court for the District Court of Idaho, Case No. 1:21-cv-00355-SAB; *Burgardt v. The Golden 1 Credit Union*, No. 34-2019-00263962-CU-BC-GDS, Superior Court of the State of California, Sacramento County; *Dominique v. Desert Financial Credit Union*, No. CV2020-053959, Superior Court of the State of Arizona For the County of Maricopa; *Harrold v. MUFG Union Bank, N.A.*, No. BC680214 (Cal. Sup. Ct., Los Angeles Cnty.); *Coleman-Weathersbee v. Michigan State University Federal Credit Union*, United States

District Court for the Eastern District of Michigan, Case No. 2:19-cv-11674; *Salls v. Digital Federal Credit Union*, United States District Court for the District of Massachusetts, Case No. 18-cv-11262-TSH; *Pingston-Poling v. Advia Credit Union*, United States District Court for the Western District of Michigan, Case No. 1:15-CV-1208; *Ketner v. SECU Maryland*, Civil No.:1:15-CV-03594-CCB (D. MD. 2017); *Towner v. 1st MidAmerica Credit Union*, No. 3:15-cv-1162 (S.D. Ill. 2017); *Fry v. MidFlorida Credit Union*, United States District Court for the Middle District of Florida, Case No. 8:15-CV-2743; *Ramirez v. Baxter Credit Union*, United States District Court for the Northern District of California, Case No. 16-cv-03765-SI; *Lynch v. San Diego County Credit Union*, San Diego County Superior Court, Case No. 37-2015-00008551; *Gunter v. United Federal Credit Union*, United States District Court for the District of Nevada, Case No. 3:15-cv-00483-MMD-WGC; *Hernandez v. Point Loma Credit Union*, San Diego County Superior Court, Case No. 37-2013-00053519; *Gray v. Los Angeles Federal Credit Union*, Los Angeles County Superior Court, Case No. BC625500; *Morales v. Kern Schools Federal Credit Union*, Kern County Superior Court, Case No. BCV-15-100538; *Manwaring v. Golden 1 Credit Union*, Sacramento County Superior Court, Case No. 34-2013-00142667; *Casey v. Orange County Credit Union*, Orange County Superior Court No. 30-2013-00658493-CJ-BT-CXC; *Sewell v. Wescom Credit Union*, Los Angeles County Superior Court No. BC5860; *Fernandez v. Altura Credit Union*, Riverside County Superior Court, Case No. RIC1610873; *Hernandez v. Logix Federal Credit Union*, Los Angeles County Superior Court, Case No. BC628495; *Bowens v. Mazuma Federal Credit Union*, United States District Court for the Western District of Missouri, Case No. 15-00758-CV-W-BP; *Santiago v. Meriwest Credit Union*, Sacramento County Superior Court, Case No. 34-2015-00183730.

4. Other attorneys at this firm who have worked on this matter with me include Tyler Dosaj, Gregory Taylor, and Lauren Davis. Mr. Dosaj worked extensively on this matter. Mr. Dosaj

was admitted to the California Bar in 2015, and graduated *cum laude* from Harvard Law School in 2015. While at Harvard Law School, Mr. Dosaj drafted a section of *Newberg on Class Actions* and received the Dean's Scholar Prize. He graduated *summa cum laude* with a B.A. in English from UCLA in 2011. Mr. Taylor graduated from the UCLA School of Law in 2016, where he was a Dean's Merit Scholarship recipient. Ms. Davis graduated from the University of California, Irvine School of Law, in 2012, where she was a member of the *UC Irvine Law Review* Executive Board. Ms. Davis graduated *Phi Beta Kappa* and *magna cum laude* with a Bachelor of Arts degree from Yale University.

#### **TKLF's Work in this Litigation**

5. TKLF has been involved in almost every facet of this matter since the start, including substantial efforts on behalf of the class prior to the filing of any of these three related cases. This includes the following work: conducting an extensive investigation into the factual basis of the complaint, including by interviewing multiple fact witnesses and analyzing publicly available documents regarding the alleged credit card misclassification scheme; interviewing potential class representatives, and analyzing documents from them; obtaining and analyzing publicly available documents related to Discover's interchange fees; gathering other evidence regarding the at-issue interchange fees; conducting legal research regarding potential claims and defenses, including the likely viability of the different potential claims for relief; developing a strategy plan with co-counsel LCHB; drafting the *Lemmo's* complaint; legal research to overcome Discover's anticipated arbitration defenses; research to overcome an Order to Show Cause Regarding Subject Matter Jurisdiction; coordinating transfer of the *Lemmo's* and *Support Animal Holdings* actions to this Court; working with Plaintiffs' experts; preparation for three mediations, participating in them, and performing follow-up work after each; conducting confirmatory

discovery, including on the Methodology, including at Discover's headquarters in Riverwoods, Illinois, along with Plaintiffs' experts; negotiating the language of the Settlement Agreement, including work on developing and revising the notice and claims programs; additional confirmatory discovery regarding the later-identified Discover data; negotiating and drafting the modified written Settlement Agreement, Methodology, and notice plan and other settlement documents; working on the preliminary settlement approval papers; working on the final approval papers; and, ongoing work with class members and the settlement administrator.

6. TKLF undertook this case on a contingent basis, with the understanding that the firm would not be compensated for its efforts unless the case was successful. To date, TKLF has not been paid for any of its time spent on this matter. The time spent on this matter by the firm's attorneys has required considerable work that could have, and would have, been spent on other billable matters. As a result of having accepted and been devoted to this case, it is my informed belief this law firm wound up not representing parties in cases it otherwise would have, and which I am confident would have been successful. Further, TKLF will continue to expend time on this litigation through the Fairness Hearing, and after the Fairness Hearing should the Court grant final approval of the Settlement.

**TKLF's Costs in this Litigation**

7. TKLF also has incurred \$116,472.19 in litigation costs to date in connection with the prosecution and resolution of this litigation, including expenses for: expert costs, mediation fees, filing fees, and travel. The following is a breakdown of the expenses for which TKLF seeks reimbursement:

<b>Expense</b>	<b>Amount</b>
Mediation Fees	\$42,090.62
Expert Fees	\$71,375.50
Filing Fees	\$1,769.50

Travel	\$1,236.57
TOTAL	\$116,472.19

8. The foregoing expenses were incurred solely in connection with this litigation and are reflected in TKLF's books and records as maintained in the ordinary course of business. The above expenses do not include costs that TKLF incurred such as mileage and parking, and TKLF also does not seek reimbursement for legal research costs, telephone, postage, and in-house printing.

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

Executed this 1<sup>st</sup> day of December 2025, at Los Angeles, California.

*/s/ Taras Kick*

\_\_\_\_\_  
Taras Kick

# **EXHIBIT 5**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

**CAPP, INC., YOUNG PEOPLES DAY  
CAMPS INC., KMJA DAY CAMPS,  
INC., AND PRAYUS GROUP LLC**, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, AND DISCOVER BANK,**

Defendants.

Case No. 1:23-cv-04676-SCS

**JOINT DECLARATION OF JOSHUA  
SILVERMAN AND LESLEY PORTNOY  
IN SUPPORT OF PLAINTIFFS'  
MOTIONS FOR FINAL APPROVAL  
AND FOR AN AWARD OF  
ATTORNEYS' FEES AND EXPENSES**

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**LEMMO'S PIZZERIA, LLC**, individually  
and on behalf of all others similarly situated,

Plaintiff,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1-100,**

Defendants.

Case No. 1:23-CV-14250-SCS

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**SUPPORT ANIMAL HOLDINGS, LLC, and  
LENNYS CASITA, LLC**, individually, and on  
behalf of all other similarly situated,

Plaintiffs,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND**

Case No. 1:23-CV-15297-SCS

DOES 1–100,

Defendants.

**JOINT DECLARATION OF JOSHUA SILVERMAN AND LESLEY PORTNOY  
IN SUPPORT OF PLAINTIFFS’ MOTIONS FOR FINAL APPROVAL AND FOR AN  
AWARD OF ATTORNEYS’ FEES AND EXPENSES**

We, Joshua Silverman and Lesley Portnoy, both attorneys, declare as follows:

1. Joshua Silverman, a partner of Pomerantz LLP and Lesley Portnoy, the founding partner of the Portnoy Law Firm LLP, are attorneys of record for plaintiffs in the *Lenny’s Casita LLC* action (formerly known as *Support Animal*) consolidated herein. We have personal knowledge of the facts set forth herein and submit this declaration in support of Plaintiffs’ motions for final approval of class action settlement and for an award of attorneys’ fees and expenses.

2. We believe the settlement is fair, reasonable, and adequate, and should be approved.

3. In connection with the *Lenny’s Casita* action, we investigated the legal and factual bases for the underlying claims, and drafted the initial complaint for that action. We also negotiated consolidation with the other above-captioned actions and submitted declarations in support of the same, attended certain mediation sessions along with co-lead counsel, participated in numerous telephone negotiations, reviewed and suggested revisions to many drafts of the settlement stipulation and related documents, advised our clients on all aspects of the litigation, assisted our clients with compiling information and preparing declarations, reviewed the confirmatory information provided by Discover including attending a full-day on-site review of Discover’s data underlying settlement administration and the code used to process said data, and discussed and reviewed the preliminary approval, modified preliminary approval, and final approval motions. Mr. Silverman, an Illinois-barred attorney, also served as local counsel.

4. **[Paragraphs 4 and 5 are attested to by Mr. Silverman only].** The attorneys from Pomerantz primarily involved in this action are:

a. Joshua Silverman, a graduate of The University of Michigan (1993) and The University of Michigan Law School (1996). He has more than two decades of litigating class actions and other complex litigation. He is the managing partner of the Chicago office of Pomerantz LLP, overseeing six other attorneys. In that capacity, he has recovered hundreds of millions of dollars for class action litigants, including in this District a \$45 million settlement in *In re Groupon, Inc. Sec. Litig.*, No. 1:12-cv-02450 (\$45 million settlement) (N.D. Ill.) (Norgle, J.). In addition to prosecuting securities class actions, he is actively involved in a number of other class actions and multi-district litigations, including *In Re: FTX Cryptocurrency Exchange Collapse Litigation*, 1:23-md-03076-KMM (S.D. Fla.).

b. Christopher Tourek, a graduate of Lafayette College (2010) and the University of Illinois College of Law (2013). He is of counsel at Pomerantz, and has approximately a decade of experience litigating commercial, consumer, and securities class actions.

5. Pomerantz contemporaneously records its litigation expenses in its accounting system. Mr. Silverman has reviewed those expenses, eliminated entries where appropriate, and ensured that it properly tracked the expenses incurred on this case. Such records show that the expenses incurred by Pomerantz on this case through November 14, 2025, are as follows:

<b>Category</b>	<b>Amount</b>
Travel, lodging and meals	\$1,568.14
Electronic research	\$776.51
<b>Total</b>	<b>\$2,344.65</b>

6. **[Paragraphs 6 and 7 are attested to by Lesley Portnoy only].** The attorneys from the Portnoy Law Firm primarily involved in this action are:

a. Lesley Portnoy, a graduate of The University of Pennsylvania (2005) and New York Law School (2009), has nearly two decades of experience litigating class actions and other complex litigation. He is the founding partner of the Portnoy Law Firm, and formerly an attorney at Baker Hostetler LLP, Pomerantz LLP and Glancy Binkow & Goldberg LLP. In that capacity, he has recovered billions of dollars for investors and class action litigants, including In re Bernard L. Madoff Securities Litigation where Mr. Portnoy assisted the SIPC Trustee, Irving Picard, in his efforts to recover billions of dollars for investors; Mr. Portnoy recently successfully assisted in the settlement of, In re Alibaba Group Holdings Securities Litigation, resulting in a \$435 million settlement.

b. Max Newman, a graduate of Hofstra University (2019) and California Western School of Law (2022) assisted in the prosecution of this matter, including legal research, drafting complaints, and attending mediations and settlement discussions on behalf of the class.

7. The Portnoy Law Firm contemporaneously records its litigation expenses in its accounting system. Mr. Portnoy has reviewed those expenses, eliminated entries where appropriate, and ensured that it properly tracked the expenses incurred on this case. Such records show that the expenses incurred by the Portnoy Law Firm on this case through November 14, 2025, are as follows:

Category	Amount
Travel, lodging and meals	\$546.00
<b>Total</b>	<b>\$546.00</b>

We declare under threat of perjury that the foregoing is true and correct.



\_\_\_\_\_  
Joshua B. Silverman

*Lesley Portnoy*

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Lesley Portnoy

# **EXHIBIT 6**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CAPP, INC., YOUNG PEOPLES DAY  
CAMPS INC., KMJA DAY CAMPS, INC.,  
AND PRAYUS GROUP LLC, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, AND DISCOVER BANK,

Defendants.

Case No. 1:23-cv-04676

LEMMO'S PIZZERIA, LLC, individually  
and on behalf of all others similarly situated,

Plaintiff,

v.

DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1-100,

Defendants.

Case No. 1:23-cv-14250

SUPPORT ANIMAL HOLDINGS, LLC, and  
LENNYS CASITA, LLC, individually, and  
on behalf of all other similarly situated,

Plaintiffs,

v.

DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1-100,

Defendants.

Case No. 1:23-cv-15297

**DECLARATION OF BRIAN T. FITZPATRICK**

**I. BACKGROUND AND QUALIFICATIONS**

1. I am the Milton R. Underwood Chair in Free Enterprise and Professor of Law at Vanderbilt University in Nashville, Tennessee. I joined the Vanderbilt law faculty in 2007, after serving as the John M. Olin Fellow at New York University School of Law in 2005 and 2006. I graduated from the University of Notre Dame in 1997 and Harvard Law School in 2000. After law school, I served as a law clerk to The Honorable Diarmuid O'Scannlain on the United States Court of Appeals for the Ninth Circuit and to The Honorable Antonin Scalia on the United States Supreme Court. I also practiced law for several years in Washington, D.C., at Sidley Austin LLP. My C.V. is attached as Exhibit 1. I speak only for myself and not for Vanderbilt.

2. My teaching and research at Vanderbilt have focused on class action litigation. I teach the Civil Procedure, Federal Courts, and Complex Litigation courses. In addition, I have published a number of articles on class action litigation in such journals as the University of Pennsylvania Law Review, the Journal of Empirical Legal Studies, the Vanderbilt Law Review, the Fordham Law Review, the NYU Journal of Law & Business, and the University of Arizona Law Review. My work has been cited by numerous courts, scholars, and media outlets such as the New York Times, USA Today, and Wall Street Journal. I have also been invited to speak at symposia and other events about class action litigation, such as the ABA National Institutes on Class Actions in 2011, 2015, 2016, 2017, 2019, 2023, and 2024; and the ABA Annual Meeting in 2012. Since 2010, I have also served on the Executive Committee of the Litigation Practice Group of the Federalist Society for Law & Public Policy Studies. In 2015, I was elected to the membership of the American Law Institute. In 2021, I became the co-editor of THE CAMBRIDGE HANDBOOK OF CLASS ACTIONS: AN INTERNATIONAL SURVEY (with Randall Thomas).

3. In December 2010, I published an article in the Journal of Empirical Legal Studies entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L.

Stud. 811 (2010) (hereinafter “Empirical Study”). This article is still what I believe to be the most comprehensive examination of federal class action settlements and attorneys’ fees that has ever been published. Unlike other studies of class actions, which have been confined to one subject matter or have been based on samples of cases that were not intended to be representative of the whole (such as settlements approved in published opinions), my study attempted to examine *every* class action settlement approved by a federal court over a two-year period (2006-2007). *See id.* at 812-13. As such, not only is my study an unbiased sample of settlements, but the number of settlements included in my study is also several times the number of settlements per year that has been identified in any other empirical study of class action settlements: over this two-year period, I found 688 settlements, including 79 from the Seventh Circuit alone. *See id.* at 817. I presented the findings of my study at the Conference on Empirical Legal Studies at the University of Southern California School of Law in 2009, at the Meeting of the Midwestern Law and Economics Association at the University of Notre Dame in 2009, and before the faculties of many law schools in 2009 and 2010. Since then, this study has been relied upon regularly by a number of courts, scholars, and testifying experts.<sup>1</sup> I will draw upon this study and I attach it as Exhibit 2.

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<sup>1</sup> *See, e.g., In re Stericycle Sec. Litig.*, 35 F.4th 555, 561 (7th Cir. 2022) (relying on article to assess fees); *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (same); *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 236 (N.D. Ill. 2016); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-cv-4462, 2015 WL 2147679, at \*2-4 (N.D. Ill. May 6, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-cv-4462, 2015 WL 1399367, at \*3-5 (N.D. Ill. Mar. 23, 2015) (same); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 797 (N.D. Ill. 2015) (same); *Pavlik v. FDIC*, No. 10 C 816, 2011 WL 5184445, at \*4 (N.D. Ill. Nov. 1, 2011) (same); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 2022 WL 4329646, at \*5 (D. Mass., Sep. 19, 2022) (same); *de la Cruz v. Manhattan Parking Group*, 2022 WL 3155399, at \*4 (S.D.N.Y., Aug. 8, 2022) (same); *Kukorinis v. Walmart*, 2021 WL 8892812, at \*4 (S.D.Fla., Sep. 21, 2021) (same); *Kuhn v. Mayo Clinic Jacksonville*, No. 3:19-cv-453-MMH-MCR, 2021 WL 1207878, at \*12-13 (M.D. Fla. Mar. 30, 2021) (same); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 MD 2262 (NRB), 2020 WL 6891417, at \*3 (S.D.N.Y. Nov. 24, 2020) (same); *Shah v. Zimmer Biomet Holdings, Inc.*, No. 3:16-cv-815-PPS-MGG, 2020 WL 5627171, at \*10 (N.D. Ind. Sept. 18, 2020) (same); *In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704 (JSR), 2020 WL 3250593, at \*5 (S.D.N.Y. June 16, 2020) (same); *In re Wells Fargo & Co. S’holder Derivative Litig.*, No. 16-cv-05541-JST, 2020 WL 1786159, at \*11 (N.D. Cal. Apr. 7, 2020) (same); *Arkansas Teacher Ret. Sys. v. State St. Bank & Trust Co.*, No. CV 11-10230-MLW,

4. In addition to my empirical works, I have also published many law-and-economics papers on the incentives of attorneys and others in class action litigation. *See, e.g.*, Brian T. Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 Fordham L. Rev. 1151 (2021) (hereinafter "A Fiduciary Judge"); Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little*, 158 U. Pa. L. Rev. 2043 (2010) (hereinafter "Class Action Lawyers"); Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand. L. Rev. 1623 (2009). Much of this work was discussed in a book I published with the University of Chicago Press entitled THE CONSERVATIVE CASE FOR CLASS ACTIONS (2019). The thesis of the book is that the so-called

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2020 WL 949885, 2020 WL 949885, at \*52 (D. Mass. Feb. 27, 2020), *appeal dismissed sub nom. Arkansas Tchr. Ret. Sys. v. State St. Corp.*, No. 20-1365, 2020 WL 5793216 (1st Cir. Sept. 3, 2020) (same); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at \*34 (N.D. Ga. Jan. 13, 2020) (same); *In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. 3:07-cv-05634-CRB, 2019 WL 6327363, at \*4-5 (N.D. Cal. Nov. 26, 2019) (same); *Espinal v. Victor's Cafe 52nd St., Inc.*, No. 16-CV-8057 (VEC), 2019 WL 5425475, at \*2 (S.D.N.Y. Oct. 23, 2019) (same); *James v. China Grill Mgmt., Inc.*, No. 18 Civ. 455 (LGS), 2019 WL 1915298, at \*2 (S.D.N.Y. Apr. 30, 2019) (same); *Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 407 (S.D.N.Y. 2019) (same); *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, No. 14-CV-7126 (JMF), 2018 WL 6250657, at \*2 (S.D.N.Y. Nov. 29, 2018) (same); *Rodman v. Safeway Inc.*, No. 11-cv-03003-JST, 2018 WL 4030558, at \*5 (N.D. Cal. Aug. 23, 2018) (same); *Little v. Washington Metro. Area Transit Auth.*, 313 F. Supp. 3d 27, 38 (D.D.C. 2018) (same); *Hillson v. Kelly Servs. Inc.*, No. 2:15-cv-10803, 2017 WL 3446596, at \*4 (E.D. Mich. Aug. 11, 2017) (same); *Good v. W. Virginia-Am. Water Co.*, No. 14-1374, 2017 WL 2884535, at \*23, \*27 (S.D.W. Va. July 6, 2017) (same); *McGreevy v. Life Alert Emergency Response, Inc.*, 258 F. Supp. 3d 380, 385 (S.D.N.Y. 2017) (same); *Brown v. Rita's Water Ice Franchise Co. LLC*, No. 15-3509, 2017 WL 1021025, at \*9 (E.D. Pa. Mar. 16, 2017) (same); *In re Credit Default Swaps Antitrust Litig.*, No. 13MD2476 (DLC), 2016 WL 2731524, at \*17 (S.D.N.Y. Apr. 26, 2016) (same); *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1246 (D.N.M. 2016); *In re: Cathode Ray Tube (Crt) Antitrust Litig.*, No. 3:07-cv-5944 JST, 2016 WL 721680, at \*42 (N.D. Cal. Jan. 28, 2016) (same); *In re Pool Products Distribution Mkt. Antitrust Litig.*, No. MDL 2328, 2015 WL 4528880, at \*19-20 (E.D. La. July 27, 2015) (same); *In re Neurontin Marketing and Sales Practices Litig.*, 58 F. Supp. 3d 167, 172 (D. Mass. 2014) (same); *Tennille v. W. Union Co.*, No. 09-cv-00938-JLK-KMT, 2014 WL 5394624, at \*4 (D. Colo. Oct. 15, 2014) (same); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 349-51 (S.D.N.Y. 2014) (same); *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 991 F. Supp. 2d 437, 444-46 & n.8 (E.D.N.Y. 2014) (same); *In re Fed. Nat'l Mortg. Association Sec., Derivative, and "ERISA" Litig.*, 4 F. Supp. 3d 94, 111-12 (D.D.C. 2013) (same); *In re Vioxx Prod. Liab. Litig.*, No. 11-1546, 2013 WL 5295707, at \*3-4 (E.D. La. Sep. 18, 2013) (same); *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d 82, 98-99 (D.D.C. 2013) (same); *In re Se. Milk Antitrust Litig.*, No. 2:07-CV 208, 2013 WL 2155387, at \*2 (E.D. Tenn., May 17, 2013) (same); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1081 (S.D. Tex. 2012) (same); *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

“private attorney general” is superior to the public attorney general in the enforcement of the rules that free markets need in order to operate effectively, and that courts should provide proper incentives to encourage such private attorney general behavior. This work, too, has been relied upon by courts and scholars.<sup>2</sup> I have attached the most recent piece—*A Fiduciary Judge*—as Exhibit 3 and will draw upon it in this declaration.

5. I have been asked by class counsel to opine on whether the attorneys’ fees they have requested here are consistent with the empirical studies and other research on the market for contingency fees. In order to formulate my opinion, I reviewed a number of documents provided to me by class counsel; I have attached a list of these documents in Exhibit 4. As I explain, based on my study of contingency fees in both class action and other cases, my opinion is that the fees requested here are consistent with the market rate—if not below it.

## II. CASE BACKGROUND

6. In July 2023, Discover disclosed that it had systematically misclassified certain credit cards and charged higher interchange fees to various businesses than it should have. But class counsel was already investigating the misclassification, *see CAPP Dkt. 59-2*, ¶ 22, and, on the day of Discover’s announcement, they filed the first of these three lawsuits. Two other lawsuits were filed elsewhere and transferred to this court. After initial discovery had commenced, the parties engaged in a lengthy mediation process, the result of which was the original settlement agreement, which the Court preliminarily approved and certified a settlement class on October 22, 2024. *CAPP Dkt. 63*; *CAPP Dkt. 59-2*, ¶¶ 14-21. After the Court preliminarily approved the

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<sup>2</sup> *See, e.g., Briseno v. Henderson*, 998 F.3d 1014, 1025, 1029 (9th Cir. 2021); *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 960 (11th Cir. 2020) (Jordan, J., dissenting); *Neese et al. v. Becerra*, 2022 WL 9497214, at \*2 n.1 (N.D. Tex., Oct. 14, 2022); *Tershakovec v. Ford Motor Co.*, 2021 WL 2700347, at \*18 (S.D. Fla. July 1, 2021); *Vita Nuova, Inc. v. Azar*, 2020 WL 8271942, at \*3 n.5 (N.D. Tex. Dec. 2, 2020).

original settlement, Discover identified additional transactional data for the Settlement Class for the years 2007-2015, and the parties thereafter negotiated modifications to the settlement agreement that provided additional benefits to the Settlement Class. *CAPP* Dkt. 65. The Court granted preliminary approval of the modified settlement and re-certified the settlement class on July 30, 2025. *CAPP* Dkt. 68. The parties are now seeking final approval of the settlement as modified, and class counsel is seeking attorneys' fees.

7. The settlement class includes, with certain exceptions, “[a]ll End Merchants, Merchant Acquirers, and Payment Intermediaries involved in processing or accepting a Misclassified Card Transaction” between January 1, 2007, through December 31, 2023. Settlement Agreement § 2.69. Under the settlement, Discover has agreed to pay affected entities 100% of the alleged overcharges they incurred plus interest, which could total more than \$1.2 billion (plus additional interest running through the final funding date of the escrow fund) if every class member that is required to file a claim files a claim. *See id* §§ 2.79 3.5, Ex. B. But, even if every class member does not file a claim, Discover has agreed to pay out at least \$540 million to the affected entities: class members who file claims will receive pro rata increases in their payments if necessary and no eligible class member will receive less than \$10 (subject to a maximum of \$50 million for all of the “Settlement Base Payments”). *See id.* at §§ 2.37, 2.6, 3.5.4, 3.5.5. In addition, Class counsel may seek up to \$25 million in attorneys' fees and up to \$1 million in expenses, with the fees and expenses awarded to be paid by Discover on top of the payments to Settlement Class Members. *See id.* at § 3.6. In exchange, class members will release Discover and its affiliates from any claims about the issues in this case. *See id.* at §§ 2.57, 2.58, 3.7.

8. Class counsel has now petitioned the court to approve the \$25 million in fees that Discover has agreed to pay.

#### IV. ASSESSMENT OF THE FEE REQUEST

9. Counsel in class actions can only get compensated by approval of a court. *See* Fed. R. Civ. P. 23(h). Usually, this compensation comes from the class members' recovery under the doctrine of unjust enrichment. In this case, however, Discover has agreed to pay class counsel's fees separately, but most courts consider such payments to be economically equivalent to those coming from the class members' recovery because they presume the defendant would have been willing to pay more to settle the case if it did not pay class counsel, too. *See, e.g., In re Gen. Motors Corp. Pickup Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 820 (3d Cir. 1995). Thus, courts usually add the separately paid attorneys' fees to the amount of the settlement to create a "hypothetical" settlement fund and then ask whether and in what amount it would be appropriate to award such fees out of the hypothetical fund. *See, e.g., id.* This is the practice I will follow here.

##### **The Seventh Circuit's Unique Market-Based Approach**

10. In other circuits, courts decide how much to pay class counsel according to a multi-factor test. This is not the Seventh Circuit's approach. Indeed, the Seventh Circuit has criticized the multi-factor approach used in other circuits as a "chopped salad." *In re Synthroid Marketing Litig.*, 264 F.3d 712, 719 (7th Cir. 2001) ("*Synthroid I*") ("[A] list of factors without a rule of decision is just a chopped salad."). Instead, the Seventh Circuit requires district courts to replicate the market for legal services when it sets fees in class actions. *See, e.g., Americana Art China v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 246 (7th Cir. 2014) ("[W]e always seek to replicate the market value of an attorney's services . . . ."); *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 957 (7th Cir. 2013) ("[A]ttorneys' fees in class actions should approximate the market rate that prevails between willing buyers and willing sellers of legal services."); *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011) ("When attorney's fees are

deducted from class damages, the district court must try to assign fees that mimic a hypothetical *ex ante* bargain between the class and its attorneys.”); *Sutton v. Bernard*, 504 F.3d 688, 693 (7th Cir. 2007) (“Because the court chose to wait until the end of litigation, it was required to set the fee by estimating what the parties would have agreed to had negotiations occurred at the outset.”); *In re Synthroid I*, 264 F.3d at 718 (“We have held repeatedly that, when deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services . . . .”). I will follow that market-based methodology here.

### **The Percent Method versus the Lodestar Method**

11. The most common methods courts use to award fees in class actions are known and the “lodestar method” and the “percent method.” Under the lodestar method, the court multiplies class counsel’s hours by their hourly rate and then by a multiplier usually driven by the Circuit’s multi-factor test. Under the percent method, the court simply picks a percentage that the court thinks is appropriate based, again, on the Circuit’s multifactor test. In most circuits, judges have the discretion to award fees using either the percent method or the lodestar method. Under the Seventh Circuit’s market-based approach, however, it is clear that, in my opinion, courts should use the percent method whenever possible because it is well known that the market for legal services in the United States virtually always pays lawyers who work on contingency like class counsel with a percentage of what they have recovered for the client. *See Fitzpatrick, A Fiduciary Guide, supra*, at 1159-61. The lodestar method generally is used with lawyers who work on contingency only in nations that do not permit percentage-based contingency fees. *See id.* Thus, I will use the percent method here. The percent method consists of two steps: calculating the recovery and then selecting the percentage to award class counsel from the recovery.

### **Calculating the Recovery**

12. In most cases, calculating what class counsel have recovered for the class is a relatively simple affair: it is usually equal to the amount of money in the settlement. But it is not so simple here. To begin with, we do not know exactly how much Discover will ultimately pay out to affected entities: it will be at least \$540 million, but it may be in excess of \$1.2 billion depending on the claims. In addition, I note that, after the settlement in this case was reached, the Federal Deposit Insurance Corporation (“FDIC”) also announced that it has apparently ordered Discover to pay the full \$1.2 billion+ amount called for in the settlement, though the FDIC has provided no details about that.<sup>3</sup> So what number should we base class counsel’s fee percentage on: \$540 million, more than \$1.2 billion, or something in between? In my opinion, it does not matter what number we use because even the smallest number—\$540 million—is more than sufficient to support class counsel’s requested fee percentage. Thus, one way to value the recovery here is to be as conservative as possible and value it at \$540 million. Adding the \$25 million in requested attorneys’ fees Discover has also agreed to pay if approved by the court, the total value would then be \$565 million and class counsel’s requested fee percentage would come to 4.4%.

13. It is also true that Discover indicated at the start that it planned to provide some sort of refunds when it first disclosed the misclassifications in July 2023. Thus, another way to value the recovery here is to try to deduct the amounts Discover had planned to refund before suit was

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<sup>3</sup> See Amended and Restated Consent Order, Order for Restitution, and Order to Pay, *In the Matter of Discover Bank Greenwood, Delaware*, Nos. FDIC-23-0014b, FDIC-24-0103b, FDIC-24-0102 (Apr. 16, 2025), available at <https://fdic.gov/discover-bank-enforcement-order.pdf>; Order to Cease and Desist and Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended, *In The Matter of Discover Fin. Servs. & DFS Servs. LLC*, Nos. 25-004-B-HC, 25-004-B-DEO, 25-004-CMP-HC, 25-004-CMP-DEO (Apr. 18, 2025), available at <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20250418a1.pdf>; see also Press Release, Fed. Deposit Ins. Corp., *FDIC Announces Three Orders Against Discover Bank, Greenwood, Delaware* (Apr. 18, 2025), <https://fdic.gov/news/press-releases/2025/fdic-announces-three-orders-against-discover-bank-greenwood-delaware>; Press Release, Fed. Reserve, *Federal Reserve Board Announces Approval of Application by Capital One Financial Corporation to Merge with Discover Financial Services and Issues a Consent Order with Discover* (Apr. 28, 2025).

filed. For example, Discover stated in its July 2023 announcement that it reported “a liability of \$365 million within accrued expenses and other liabilities to provide refunds to merchants and merchant acquirers as a result of the card product misclassification.”<sup>4</sup> It is not entirely clear what the nature of the planned refunds were—it is my understanding that Discover had intended to offset refunds with what it asserted were misclassification-related undercharges—nor how much of the \$365 million would have ultimately gone toward refunds as opposed to legal and other expenses. But, if we want to be as conservative as possible again, we might assume that Discover had planned to distribute the entire \$365 million in the form of some sort of refunds. If this sum is deducted from the bare minimum settlement payout of \$540 million, the difference would come to \$175 million. Adding again the \$25 million in requested attorneys’ fees Discover has also agreed to pay if approved by the court, the total would then be \$200 million and class counsel’s requested fee percentage of that amount would come to 12.5%.

14. In my experience, market practices vary on whether contingency contracts exclude preexisting offers from defendants from their percentage calculations. *See, e.g.*, Herbert Kritzer, RISKS, REPUTATIONS, AND REWARDS: CONTINGENCY FEE LEGAL PRACTICE IN THE UNITED STATES 40 (2004) (noting that lawyers sometimes increase the percentages they charge if they base them only on above-offer recoveries). In my opinion, it does not matter which valuation the Court chooses because, as I explain below, either percentage that would result—4.4% or 12.5%—is at

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<sup>4</sup> Discover Form 8-K, Press Release entitled *Discover Financial Services Reports Second Quarter 2023 Net Income of \$901 Million or \$3.54 Per Diluted Share*, filed July 19, 2023, available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001393612/000139361223000037/dfs-20230719.htm> (“July 19 Press Release”).

or below the market rate. *A fortiori*, any less conservative valuation would yield a fee percentage at or below the market rate as well.

### Selecting the Percentage

15. In theory, judges in the Seventh Circuit could determine the market fee percentage in every class action by holding an auction for the class counsel position at the start of litigation. *See Fitzpatrick, A Fiduciary Guide, supra*, at 1164. In practice, however, this is difficult to do for a variety of reasons that I have canvassed in one of my published articles. *See id.* at 1165-66. Indeed, the obstacles are so severe that auctions are rarely attempted anymore. *See id.* Instead, district courts in the Seventh Circuit almost always set fees *ex post* like courts in other circuits do. In these situations, the Seventh Circuit has instructed district courts to estimate what the *ex ante* market percentage would have been for the legal services rendered by class counsel by looking at circumstantial evidence. This evidence includes:

- 1) *ex ante* fee contracts that large-stakes class members signed with their attorneys in this litigation, *see In re Synthroid Marketing Litig.*, 325 F.3d 974, 976 (7th Cir. 2003) (“*Synthroid II*”) (analyzing fee contracts from large-stakes class members who “hired law firms to conduct this litigation”); *Synthroid I*, 264 F.3d at 719-20 (instructing courts to examine “actual agreements” between large-stakes class members and their attorneys in that very litigation);
- 2) *ex ante* fee contracts large-stakes plaintiffs sign with attorneys in similar litigation, *see Rohm & Haas*, 658 F.3d at 635 (““actual fee contracts that were privately negotiated for similar litigation””), *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005) (same);
- 3) *ex post* fee percentages awarded by other district court judges in similar class action cases, *see Taubenfeld*, 415 F.3d at 599 (affirming award where “the court considered awards

made by courts in other class action cases . . . in the Northern District of Illinois”); *see also Rohm & Haas*, 658 F.3d at 635 (“information from other cases”);

- 4) and how the risks, quality of lawyering, work required, and stakes would have affected the estimated *ex ante* fee percentage; *see Silverman*, 739 F.3d at 958 (affirming above-average fee percentage because district court could have found that the “suit was unusually risky” and “[t]he greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel”); *Rohm & Haas*, 658 F.3d at 636 (affirming award where district court “assessed the amount of work involved, the risks of nonpayment, and the quality of representation”); *Sutton*, 504 F.3d at 693 (“We have said the market price for legal fees ‘depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case.’”); *Taubenfeld*, 415 F.3d at 600 (affirming fee award where “[t]he district court also evaluated other factors,” including “the quality of legal services rendered” and “degree of risk”).<sup>5</sup>

I will examine each of these considerations below.

16. Let me begin with consideration (1): *ex ante* fee agreements with large-stakes class members in this litigation. I understand two of the Settlement Class Representatives are businesses with tens of millions of dollars of revenues every year and that both businesses signed retention

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<sup>5</sup> Courts in this Circuit also sometimes examine auction bids class counsel may have made to lead similar cases. *See Rohm & Haas*, 658 F.3d at 635; *Sutton*, 504 F.3d at 692 n.2; *Taubenfeld*, 415 F.3d at 599; *Synthroid I*, 264 F.3d at 719; *In re Broiler Chicken Antitrust Litig.*, 80 F.4th 797, 802-4 (7th Cir. 2023) (“Bids that class counsel made in auctions around the time this litigation began . . . would ordinarily be good predictors of what *ex ante* bargain would have been negotiated.”) But, as I noted above, auctions are rarely attempted any more for a variety of reasons and I am unaware of any involving class counsel around the time this case commenced.

agreements that provided for the payment of 40% of any recovery if this matter ended up litigated on an individual basis. A fee of 4.4% or 12.5% would be well below this number.

17. Let me move on to consideration (2): fee contracts large-stakes plaintiffs sign with attorneys in similar litigation. In one of my published articles, I canvassed the data that exists on fee agreements that sophisticated corporations enter into when they hire lawyers on contingency. *See Fitzpatrick, A Fiduciary Guide, supra*, at 1159-63. There is admittedly not much systematic data, but the data that does exist suggests that they use the same fee arrangements that personal injury plaintiffs use: flat fee percentages of one-third and the like or percentages that escalate even higher based on procedural maturity. *See id.* The best study comes from patent litigation. *See David L. Schwartz, The Rise of Contingent Fee Representation in Patent Litigation*, 64 Ala. L. Rev. 335 (2012). Patent lawsuits can involve billions of dollars and the most sophisticated corporations in the world. Yet, Professor Schwartz found that the two main ways of setting the fees for contingent fee lawyers in these cases are a flat rate (most cases) or a rate that escalates based on procedural maturity. *Id.* at 360. Of the agreements using a flat fee, the mean rate was 38.6% of the recovery. *Id.* Of the agreements he reviewed that escalated based on procedural maturity, the average percentage upon filing was 28% and the average through appeal was 40.2%. *Id.* Needless to say, either 4.4% or 12.5% would be well below any of these numbers.

18. It is true that patent litigation is not the same as the type of litigation here, which involves claims for unjust enrichment, violations of federal and state statutes, and breach of contract. But I have seen no studies of retainer agreement contingency fees in business-to-business litigation of these particular types. Nonetheless, the reason sophisticated businesses in patent litigation follow the same contingency fee schedule as other plaintiffs is probably because lower percentages create a divergence in the interests of attorneys and their clients and clients who hire

lawyers on contingency do not wish to incur the monitoring costs necessary to prevent shirking; they would rather simply incentivize their attorneys to obtain as much as they can for them and let the invisible hand of incentives take care of the rest. *See Fitzpatrick, A Fiduciary Guide, supra*, at 1162-63. There is no reason why this reasoning would not extend to other types of business-to-business litigation like that here. Thus, in my opinion, the percentage requested here is very likely well below average percentages sophisticated corporations agree to pay in litigation similar to this one.

19. Let me move on to consideration (3): previous class action fee awards in similar cases. The most probative awards, of course, are those in this Circuit because only in this Circuit are district courts instructed to approximate the *ex ante* market rate for lawyering when setting fees in class actions. But, even though the Seventh Circuit has criticized them as a “chopped salad,” it has also held that fee awards in other circuits can be probative because they indicate what counsel who practice in both the Seventh and other circuits are willing to work for. *See In re Broiler Chicken Antitrust Litig.*, 80 F.4th at 804. As a result, I will consider fee awards both inside and outside the Circuit here.

20. Consider first previous class action fee awards in the Seventh Circuit. In my empirical study, I found a mean and median here of 27.4% and 29%, respectively. *See Fitzpatrick, Empirical Study, supra*, at 836. The other large-scale academic studies of fee awards largely agree with these numbers. *See Theodore Eisenberg et al., Attorneys’ Fees in Class Actions: 2009-2013*, 92 N.Y.U. Law Review 937, 951 (2017) (hereinafter “Eisenberg-Miller 2017”) (finding the Seventh Circuit’s mean and median from 2009 to 2013 to be 28% and 30%); Theodore Eisenberg & Geoffrey P. Miller, *Attorneys’ Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical L. Stud. 248, 260 (2010) (hereinafter “Eisenberg-Miller 2010”) (hereinafter “Eisenberg-

Miller 2010”) (finding mean and median in the Seventh Circuit before 2009 of 26% and 24%, respectively). Again, needless to say, either 4.4% or 12.5% would be well below these numbers.

21. It is also true that this data reflects all class action cases, not just business-to-business cases like this one. But none of the published studies break Seventh Circuit data down into subject categories. Thus, this data is the best available. Nonetheless, as I explain below, the nationwide data shows that courts tend to award the same fees in business-to-business class action cases as they do in other class action cases. In my opinion, it is very likely that the same is true in the Seventh Circuit.

22. Consider next previous class action fee awards outside the Seventh Circuit. In my empirical study, the mean award nationwide was 25.4% and the median was 25%. *See Fitzpatrick, Empirical Study, supra*, at 833-34, 838. Again, the other large-scale academic studies of class action fee awards largely agree with these numbers. *See Eisenberg-Miller 2017, supra*, at 951 (finding mean and median of 27% and 29% nationwide); Eisenberg-Miller 2010, *supra*, at 260 (finding mean and median of 24% and 25% nationwide). And, again, either 4.4% or 12.5% would be well below these numbers.

23. This time, however, we do have separate data in business-to-business cases. I called these cases “commercial” cases in my empirical study and I found that the mean and median in these cases were very similar to the mean and median across all cases: 23.3% and 25%, respectively. *See Fitzpatrick, Empirical Study, supra*, at 835. Eisenberg and Miller called them “corporate” cases and found much the same. *See Eisenberg-Miller 2017, supra*, at 952 (finding mean and median of 27% and 29%); Eisenberg-Miller 2010, *supra*, at 262 (finding mean and median of 21% and 19%). Again, either 4.4% or 12.5% would be well below these numbers.

24. It is true that percentages tend to be lower in bigger settlements, *see* Fitzpatrick, *Empirical Study, supra*, at 828; *Eisenberg-Miller 2010, supra*, at 263-65; *Eisenberg-Miller 2017, supra*, at 947-48, and this is a bigger settlement: only a very small percentage of class action settlements reach \$200 million in a given year. *See* Fitzpatrick, *Empirical Study, supra*, at 828. But, even still, either 4.4% or 12.5% would be below the mean and median percentage awarded in cases of this size. *See id.* at 839 (finding mean and median of 17.9% and 16.9%, respectively, in settlements between \$100 million and \$250 million). (The Eisenberg-Miller studies do not report such finely sliced data.) Thus, no matter how you slice the data, the fee percentage requested here is lower than the typical awards in other cases.

25. Let me address finally consideration (4): how the risks, quality, work required, and stakes at issue in this case might have affected the *ex ante* market. As I noted above, I don't think private parties haggle over these things very much in the contingency fee marketplace because they want to incentivize their lawyers to recover as much as possible while having to monitor them as little as possible. Thus, truth be told, I am doubtful an *ex ante* bargain here would have looked much different than the numbers above. But, in order to be complete, I will address these considerations on the assumption that there would have been haggling here. Under the circumstances here, I have no reason to believe the haggling would have gone below even 12.5%, let alone 4.4%.

26. First, Discover admitted that it misclassified some of the card transactions at issue here. Although that might have smoothed a lawyer's path slightly, that is all it would have smoothed it: Discover denied its misclassification violated any law. Moreover, it also made clear its intent to pursue a motion to compel arbitration. Further, there were many risks present over the extent of damages (and whether, for example, an offset for undercharges was appropriate) and how

to deal with Discover's lack of data necessary to identify which entities incurred which fees, which could have significantly affected the calculation of damages and viability of delivering relief outside of a settlement.

27. Second, the government at some point began pursuing Discover. The government can add leverage against a defendant, and this, too, can sometimes suggest to a lawyer that the path would be smoother than usual. *Cf., e.g., In re Broiler Chicken Antitrust Litig.*, 142 F.4th 568, 574 (7th Cir. 2025) (noting that suits “following governmental criminal investigations of the defendants” can “greatly reduced the work required of class counsel”). I do not wish to overstate this too much because I wrote an entire book about how the private bar usually does a better job than the government, even when they pursue the same cases. *See, e.g., Fitzpatrick, THE CONSERVATIVE CASE FOR CLASS ACTIONS 29-47.* Moreover, the fact that the government was pursuing Discover can also discourage counsel from taking on a case like this on a contingency basis because Discover could have reached a resolution with the government that obviated or interfered with the private case; indeed, it is common in antitrust cases, for example, for government investigations to delay private discovery.

28. Third, the stakes in this litigation were large. The Seventh Circuit has sent mixed signals on whether this should produce lower fee percentages during haggling. *Compare, e.g., Synthroid II*, 325 F.3d at 975 (“[T]he market rate, as a percentage of recovery, likely falls as the stakes increase . . . .”) *with Synthroid I*, 264 F.3d at 721 (“This is not to say that systems with declining marginal percentages are always best. They also create declining marginal returns to legal work, ensuring that at some point attorneys’ opportunity cost will exceed the benefits of pushing for a larger recovery, even though extra work could benefit the client. This feature

exacerbates the agency costs inherent in any percentage-of-recovery system.”). Even still, as I noted above, either 4.4% or 12.5% would be below fee awards even in large-stakes cases.

29. For all these reasons, it is my opinion that *ex ante* haggling, if it even had occurred, would have been unlikely to have driven things down below even 12.5%, let alone 4.4%. As I noted above, the usual fee percentage sophisticated corporations agree to in contingency-fee litigation is nearly *three times* as much as even 12.5%. The usual fee percentage awarded in class actions is *twice* as much as even 12.5%. The haggling needed would obviously have been even much greater to get down below 4.4%. And it bears repeating that even these percentages are based on the most conservative valuations possible of the recovery here. If those valuations are relaxed, the fee percentage requested by class counsel would be below 4.4% or 12.5%, perhaps *well below*.

30. I wish to close by discussing something known as the “lodestar crosscheck.” In some circuits, courts “crosscheck” class counsel’s percentage fee request against class counsel’s lodestar to determine whether the resulting multiplier on the lodestar renders the percentage requested “too high.” Only a minority of courts in other circuits do this. *See Fitzpatrick, Empirical Study, supra*, at 833 (finding that only 49% of courts consider lodestar when awarding fees with the percentage method); *Eisenberg-Miller 2017, supra*, at 945 (finding percent method with lodestar crosscheck used 38% of the time versus 54% for percent method without lodestar crosscheck). But, more importantly for our purposes, this practice is virtually unheard of in the market for contingent legal representation, *see Fitzpatrick, A Fiduciary Guide, supra*, at 1167, and, for this reason, the Seventh Circuit has all but told courts not to use it, *see Rohm & Haas Pension Plan*, 658 F.3d at 636 (holding that “a lodestar check is not . . . required methodology” because “[t]he . . . argument . . . that any percentage fee award exceeding a certain lodestar multiplier is

excessive . . . echoes the ‘megafund’ cap we rejected in *Synthroid*”). It is therefore my opinion that the Court should not use it here and I will not do so either.

31. For all these reasons, it is my opinion that the fee requested by class counsel would have been at or below the *ex ante* market percentage.

32. My compensation for this declaration was a flat fee in no way dependent on the outcome of class counsel’s fee petition.

Nashville, TN

November 30, 2025

A handwritten signature in black ink, appearing to read "Brian T. Fitzpatrick", with a long horizontal flourish extending to the right.

Brian T. Fitzpatrick

# Fitzpatrick Decl. Exhibit 1

**BRIAN T. FITZPATRICK**  
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## ACADEMIC APPOINTMENTS

**VANDERBILT UNIVERSITY LAW SCHOOL**, *Milton R. Underwood Chair in Free Enterprise*, 2020 to present

- *FedEx Research Professor*, 2014-2015
- *Professor of Law*, 2012 to present
- *Associate Professor*, 2010-2012; *Assistant Professor*, 2007-2010
- Classes: Civil Procedure, Complex Litigation, Federal Courts, Litigation Finance, Textualism & Originalism
- Hall-Hartman Outstanding Professor Award, 2008-2009 & 2023-2024
- Vanderbilt's Association of American Law Schools Teacher of the Year, 2009

**HARVARD LAW SCHOOL**, *Visiting Professor*, Fall 2018

- Classes: Civil Procedure, Litigation Finance

**FORDHAM LAW SCHOOL**, *Visiting Professor*, Fall 2010

- Classes: Civil Procedure

## EDUCATION

**HARVARD LAW SCHOOL**, J.D., *magna cum laude*, 2000

- Fay Diploma (for graduating first in the class)
- Sears Prize, 1999 (for highest grades in the second year)
- *Harvard Law Review*, Articles Committee, 1999-2000; Editor, 1998-1999
- *Harvard Journal of Law & Public Policy*, Senior Editor, 1999-2000; Editor, 1998-1999
- Research Assistant, David Shapiro, 1999; Steven Shavell, 1999

**UNIVERSITY OF NOTRE DAME**, B.S., Chemical Engineering, *summa cum laude*, 1997

- First runner-up to Valedictorian (GPA: 3.97/4.0)
- Steiner Prize, 1997 (for overall achievement in the College of Engineering)

## CLERKSHIPS

**HON. ANTONIN SCALIA**, Supreme Court of the United States, 2001-2002

**HON. DIARMUID O'SCANNLAIN**, U.S. Court of Appeals for the Ninth Circuit, 2000-2001

## EXPERIENCE

**NEW YORK UNIVERSITY SCHOOL OF LAW**, Feb. 2006 to June 2007  
*John M. Olin Fellow*

**HON. JOHN CORNYN**, United States Senate, July 2005 to Jan. 2006  
*Special Counsel for Supreme Court Nominations*

**SIDLEY AUSTIN LLP**, Washington, DC, 2002 to 2005  
*Litigation Associate*

## **BOOKS**

THE CAMBRIDGE HANDBOOK OF CLASS ACTIONS: AN INTERNATIONAL SURVEY (Cambridge University Press 2021) (ed., with Randall Thomas)

THE CONSERVATIVE CASE FOR CLASS ACTIONS (University of Chicago Press 2019) (winner of the Pound Institute's 2022 Civil Justice Scholarship Award)

## **BOOK CHAPTERS**

*Climate Change and Class Actions* in CLIMATE LIBERALISM: PERSPECTIVES ON LIBERTY, PROPERTY, AND POLLUTION (Jonathan Adler, ed., Palgrave Macmillan 2023)

*How Many Class Actions are Meritless?*, in THE CAMBRIDGE HANDBOOK OF CLASS ACTIONS: AN INTERNATIONAL SURVEY (ed., with Randall Thomas, Cambridge University Press 2021)

*The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?*, in THE CAMBRIDGE HANDBOOK OF CLASS ACTIONS: AN INTERNATIONAL SURVEY (ed., with Randall Thomas, Cambridge University Press 2021) (with Randall Thomas)

*Do Class Actions Deter Wrongdoing?* in THE CLASS ACTION EFFECT (Catherine Piché, ed., Éditions Yvon Blais, Montreal, 2018)

*Judicial Selection in Illinois* in AN ILLINOIS CONSTITUTION FOR THE TWENTY-FIRST CENTURY (Joseph E. Tabor, ed., Illinois Policy Institute, 2017)

*Civil Procedure in the Roberts Court* in BUSINESS AND THE ROBERTS COURT (Jonathan Adler, ed., Oxford University Press, 2016)

*Is the Future of Affirmative Action Race Neutral?* in A NATION OF WIDENING OPPORTUNITIES: THE CIVIL RIGHTS ACT AT 50 (Ellen Katz & Samuel Bagenstos, eds., Michigan University Press, 2016)

## **ACADEMIC ARTICLES**

*A New Source of Data on Class Action Settlements: The Department of Justice's Class Action Fairness Act Log*, J. EMPIRICAL LEGAL STUD. (forthcoming 2026)

*Do Representative Payments Matter? An Empirical Study*, 22 J. EMPIRICAL LEGAL STUD. 414 (2025) (with Colton Cronin)

*Agency Costs in Third Party Litigation Finance Reconsidered*, 25 THEORETICAL INQUIRIES IN LAW 1 (2024) (with Will Marra)

*Distributing Attorney Fees in Multidistrict Litigation*, 13 J. LEG. ANAL. 558 (2021) (with Ed Cheng & Paul Edelman)

*A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 FORD. L. REV. 1151 (2021)

*Many Minds, Many MDL Judges*, 84 L. & CONTEMP. PROBLEMS 107 (2021)

*Objector Blackmail Update: What Have the 2018 Amendments Done?*, 89 FORD. L. REV. 437 (2020)

*Why Class Actions are Something both Liberals and Conservatives Can Love*, 73 VAND. L. REV. 1147 (2020)

*Deregulation and Private Enforcement*, 24 LEWIS & CLARK L. REV. 685 (2020)

*The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?*, 40 NW. J. INT'L L. & BUS. 203 (2020) (with Randall Thomas)

*Can the Class Action be Made Business Friendly?*, 24 N.Z. BUS. L. & Q. 169 (2018)

*Can and Should the New Third-Party Litigation Financing Come to Class Actions?*, 19 THEORETICAL INQUIRIES IN LAW 109 (2018)

*Scalia in the Casebooks*, 84 U. CHI. L. REV. 2231 (2017)

*The Ideological Consequences of Judicial Selection*, 70 VAND. L. REV. 1729 (2017)

*Judicial Selection and Ideology*, 42 OKLAHOMA CITY UNIV. L. REV. 53 (2017) (reprinted in THE ROMANIAN JUDGES' FORUM REVIEW, no. 2 (2023))

*Justice Scalia and Class Actions: A Loving Critique*, 92 NOTRE DAME L. REV. 1977 (2017)

*A Tribute to Justice Scalia: Why Bad Cases Make Bad Methodology*, 69 VAND. L. REV. 991 (2016)

*The Hidden Question in Fisher*, 10 NYU J. L. & LIBERTY 168 (2016)

*An Empirical Look at Compensation in Consumer Class Actions*, 11 NYU J. L. & BUS. 767 (2015) (with Robert Gilbert)

*The End of Class Actions?*, 57 ARIZ. L. REV. 161 (2015)

*The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure*, 98 VA. L. REV. 839 (2012)

*Twombly and Iqbal Reconsidered*, 87 NOTRE DAME L. REV. 1621 (2012)

*Originalism and Natural Law*, 79 FORD. L. REV. 1541 (2011)

*An Empirical Study of Class Action Settlements and their Fee Awards*, 7 J. EMPIRICAL L. STUD. 811 (2010) (selected for the 2009 Conference on Empirical Legal Studies)

*Do Class Action Lawyers Make Too Little?*, 158 U. PA. L. REV. 2043 (2010)

*Originalism and Summary Judgment*, 71 OHIO ST. L.J. 919 (2010)

*The End of Objector Blackmail?*, 62 VAND. L. REV. 1623 (2009) (selected for the 2009 Stanford-Yale Junior Faculty Forum)

*The Politics of Merit Selection*, 74 MISSOURI L. REV. 675 (2009)

*Errors, Omissions, and the Tennessee Plan*, 39 U. MEMPHIS L. REV. 85 (2008)

*Election by Appointment: The Tennessee Plan Reconsidered*, 75 TENN. L. REV. 473 (2008)

*Can Michigan Universities Use Proxies for Race After the Ban on Racial Preferences?*, 13 MICH. J. RACE & LAW 277 (2007)

*Strict Scrutiny of Facially Race-Neutral State Action and the Texas Ten Percent Plan*, 53 Baylor L. Rev. 289 (2001)

## ACADEMIC PRESENTATIONS

*Non-Securities Class Actions in the United States*, Asia-Pacific Law Institute, Seoul National University, Seoul, South Korea (June 16, 2025)

*Seminar on Collective Actions: Bringing Efficiency into the Administration of Justice*, University of Valladolid, Valladolid, Spain (May 22, 2025)

*Collective Actions in Spain: The View from Abroad*, FIDE, Madrid, Spain (May 21, 2025)

*Global Trends in Class Action Litigation*, Perfect Law, London, United Kingdom (April 24, 2025) (panelist)

*Originalism: A Debate*, Clark Symposium on Constitutional Interpretation, University of California Law School, Berkeley, CA (March 17, 2025)

*Is Originalism Really Worse Than Nothing? A Debate*, Vanderbilt Law School, Nashville, TN (February 6, 2025)

*Theories of Mass Litigation*, McGovern Symposium on Civil Litigation, Duke Law School, Durham, NC (December 12, 2024) (panelist)

*The Conservative Case for Private Antitrust Enforcement*, American Antitrust Institute Annual Private Enforcement Conference, National Press Club, Washington, DC (October 30, 2024) (panelist)

*Hot Topics in Class Action Settlement Approval*, National Institute on Class Actions, American Bar Association, Nashville, TN (October 24, 2024) (panelist)

*Non-Securities Class Action Settlements Since CAFA*, University of Missouri Law School, Columbia, MO (September 20, 2024)

*Do Representative Payments Matter? An Empirical Study*, University of Missouri Law School, Columbia, MO (September 20, 2024)

*Non-Securities Class Action Settlements Since CAFA*, University of California at Berkeley Law School, Berkeley, CA (September 18, 2024)

*Do Representative Payments Matter? An Empirical Study*, University of California at Berkeley Law School, Berkeley, CA (September 18, 2024)

*Non-Securities Class Action Settlements in CAFA's First Eleven Years*, Conference of the European Society for Empirical Legal Studies, Universidad Miguel Hernandez, Elche, Spain (June 21, 2024)

*Litigation Financing*, Contemporary Issues in Complex Litigation Conference, Northwestern Law School, Chicago, IL (Mar. 7, 2024) (panelist)

*Non-Securities Class Action Settlements in CAFA's First Eleven Years*, George Mason Law School, Arlington, VA (Feb. 6, 2024)

*Agency Costs in Third Party Litigation Finance Reconsidered*, Third Party Litigation Funding: The Past, The Present, and The Future Conference, Tel Aviv University Buchmann Faculty of Law, Tel Aviv, Israel (June 14, 2023)

*Non-Securities Class Action Settlements in CAFA's First Eleven Years*, University of Florida Law School, Gainesville, FL (Feb. 6, 2023)

*Entrapment of the Little Guy: Resisting the Erosion of Investor, Employee and Consumer Protections*, Institute for Law and Economic Policy, San Diego, CA (Jan. 27, 2023) (panelist)

*A New Source of Data for Non-Securities Class Actions*, William & Mary Law School, Williamsburg, VA (Nov. 10, 2022)

*Can Courts Avoid Politicization in a Polarized America?*, American Bar Association Annual Meeting, Chicago, IL (Aug. 5, 2022) (panelist)

*A New Source of Data for Non-Securities Class Actions*, Seventh Annual Civil Procedure Workshop, Cardozo Law School, New York, NY (May 20, 2022)

*Resolution Issues in Class Actions and Mass Torts*, Miami Law Class Action & Complex Litigation Forum, University of Miami School of Law, Miami, FL (Mar. 11, 2022) (panelist)

*Developments in Discovery Reform*, George Mason Law & Economics Center Fifteenth Annual Judicial Symposium on Civil Justice Issues, Charleston, SC (Nov. 16, 2021) (panelist)

*Locality Litigation and Public Entity Incentives to File Lawsuits: Public Interest, Politics, Public Finance or Financial Gain?*, George Mason Law & Economics Center Symposium on Novel Liability Theories and the Incentives Driving Them, Nashville, TN (Oct. 25, 2021) (panelist)

*A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, University of California Hastings College of the Law, San Francisco, CA (Nov. 3, 2020)

*A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, The Judicial Role in Professional Regulation, Stein Colloquium, Fordham Law School, New York, NY (Oct. 9, 2020)

*Objector Blackmail Update: What Have the 2018 Amendments Done?*, Institute for Law and Economic Policy, Fordham Law School, New York, NY (Feb. 28, 2020)

*Keynote Debate: The Conservative Case for Class Actions*, Miami Law Class Action & Complex Litigation Forum, University of Miami School of Law, Miami, FL (Jan. 24, 2020)

*The Future of Class Actions*, National Consumer Law Center Class Action Symposium, Boston, MA (Nov. 16, 2019) (panelist)

*The Conservative Case for Class Actions*, Center for Civil Justice, NYU Law School, New York, NY (Nov. 11, 2019)

*Deregulation and Private Enforcement*, Class Actions, Mass Torts, and MDLs: The Next 50 Years, Pound Institute Academic Symposium, Lewis & Clark Law School, Portland, OR (Nov. 2, 2019)

*Class Actions and Accountability in Finance*, Investors and the Rule of Law Conference, Institute for Investor Protection, Loyola University Chicago Law School, Chicago, IL (Oct. 25, 2019) (panelist)

*Incentivizing Lawyers as Teams*, University of Texas at Austin Law School, Austin, TX (Oct. 22, 2019)

*"Dueling Pianos": A Debate on the Continuing Need for Class Actions*, National Institute on Class Actions, American Bar Association, Nashville, TN (Oct. 18, 2019) (panelist)

*A Debate on the Utility of Class Actions*, Contemporary Issues in Complex Litigation Conference, Northwestern Law School, Chicago, IL (Oct. 16, 2019) (panelist)

*Litigation Funding*, Forty Seventh Annual Meeting, Intellectual Property Owners Association, Washington, DC (Sep. 26, 2019) (panelist)

*The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?*, International Class Actions Conference, Vanderbilt Law School, Nashville, TN (Aug. 24, 2019)

*A New Source of Class Action Data*, Corporate Accountability Conference, Institute for Law and Economic Policy, San Juan, Puerto Rico (April 12, 2019)

*The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?*, Ninth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 14, 2018)

*MDL: Uniform Rules v. Best Practices*, Miami Law Class Action & Complex Litigation Forum, University of Miami Law School, Miami, FL (Dec. 7, 2018) (panelist)

*Third Party Finance of Attorneys in Traditional and Complex Litigation*, George Washington Law School, Washington, D.C. (Nov. 2, 2018) (panelist)

*MDL at 50 - The 50th Anniversary of Multidistrict Litigation*, New York University Law School, New York, New York (Oct. 10, 2018) (panelist)

*The Discovery Tax*, Law & Economics Seminar, Harvard Law School, Cambridge, Massachusetts (Sep. 11, 2018)

*Empirical Research on Class Actions*, Civil Justice Research Initiative, University of California at Berkeley, Berkeley, California (Apr. 9, 2018)

*A Political Future for Class Actions in the United States?*, The Future of Class Actions Symposium, University of Auckland Law School, Auckland, New Zealand (Mar. 15, 2018)

*The Indian Class Actions: How Effective Will They Be?*, Eighth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 19, 2017)

*Hot Topics in Class Action and MDL Litigation*, University of Miami School of Law, Miami, Florida (Dec. 8, 2017) (panelist)

*Critical Issues in Complex Litigation*, Contemporary Issues in Complex Litigation, Northwestern Law School (Nov. 29, 2017) (panelist)

*The Conservative Case for Class Actions*, Consumer Class Action Symposium, National Consumer Law Center, Washington, DC (Nov. 19, 2017)

*The Conservative Case for Class Actions—A Monumental Debate*, National Institute on Class Actions, American Bar Association, Washington, DC (Oct. 26, 2017) (panelist)

*One-Way Fee Shifting after Summary Judgment*, 2017 Meeting of the Midwestern Law and Economics Association, Marquette Law School, Milwaukee, WI (Oct. 20, 2017)

*The Conservative Case for Class Actions*, Pepperdine Law School Malibu, CA (Oct. 17, 2017)

*One-Way Fee Shifting after Summary Judgment*, Vanderbilt Law Review Symposium on The Future of Discovery, Vanderbilt Law School, Nashville, TN (Oct. 13, 2017)

*The Constitution Revision Commission and Florida's Judiciary*, 2017 Annual Florida Bar Convention, Boca Raton, FL (June 22, 2017)

*Class Actions After Spokeo v. Robins: Supreme Court Jurisprudence, Article III Standing, and Practical Implications for the Bench and Practitioners*, Northern District of California Judicial Conference, Napa, CA (Apr. 29, 2017) (panelist)

*The Ironic History of Rule 23*, Conference on Secrecy, Institute for Law & Economic Policy, Naples, FL (Apr. 21, 2017)

*Justice Scalia and Class Actions: A Loving Critique*, University of Notre Dame Law School, South Bend, Indiana (Feb. 3, 2017)

*Should Third-Party Litigation Financing Be Permitted in Class Actions?*, Fifty Years of Class Actions—A Global Perspective, Tel Aviv University, Tel Aviv, Israel (Jan. 4, 2017)

*Hot Topics in Class Action and MDL Litigation*, University of Miami School of Law, Miami, Florida (Dec. 2, 2016) (panelist)

*The Ideological Consequences of Judicial Selection*, William J. Brennan Lecture, Oklahoma City University School of Law, Oklahoma, City, Oklahoma (Nov. 10, 2016)

*After Fifty Years, What's Class Action's Future*, ABA National Institute on Class Actions, Las Vegas, Nevada (Oct. 20, 2016) (panelist)

*Where Will Justice Scalia Rank Among the Most Influential Justices*, State University of New York at Stony Brook, Long Island, New York (Sep. 17, 2016)

*The Ironic History of Rule 23*, University of Washington Law School, Seattle, WA (July 14, 2016)

*A Respected Judiciary—Balancing Independence and Accountability*, 2016 Annual Florida Bar Convention, Orlando, FL (June 16, 2016) (panelist)

*What Will and Should Happen to Affirmative Action After Fisher v. Texas*, American Association of Law Schools Annual Meeting, New York, NY (January 7, 2016) (panelist)

*Litigation Funding: The Basics and Beyond*, NYU Center on Civil Justice, NYU Law School, New York, NY (Nov. 20, 2015) (panelist)

*Do Class Actions Offer Meaningful Compensation to Class Members, or Do They Simply Rip Off Consumers Twice?*, ABA National Institute on Class Actions, New Orleans, LA (Oct. 22, 2015) (panelist)

*Arbitration and the End of Class Actions?*, Quinnipiac-Yale Dispute Resolution Workshop, Yale Law School, New Haven, CT (Sep. 8, 2015) (panelist)

*The Next Steps for Discovery Reform: Requester Pays*, Lawyers for Civil Justice Membership Meeting, Washington, DC (May 5, 2015)

*Private Attorney General: Good or Bad?*, 17th Annual Federalist Society Faculty Conference, Washington, DC (Jan. 3, 2015)

*Liberty, Judicial Independence, and Judicial Power*, Liberty Fund Conference, Santa Fe, NM (Nov. 13-16, 2014) (participant)

*The Economics of Objecting for All the Right Reasons*, 14th Annual Consumer Class Action Symposium, Tampa, FL (Nov. 9, 2014)

*Compensation in Consumer Class Actions: Data and Reform*, Conference on The Future of Class Action Litigation: A View from the Consumer Class, NYU Law School, New York, NY (Nov. 7, 2014)

*The Future of Federal Class Actions: Can the Promise of Rule 23 Still Be Achieved?*, Northern District of California Judicial Conference, Napa, CA (Apr. 13, 2014) (panelist)

*The End of Class Actions?*, Conference on Business Litigation and Regulatory Agency Review in the Era of Roberts Court, Institute for Law & Economic Policy, Boca Raton, FL (Apr. 4, 2014)

*Should Third-Party Litigation Financing Come to Class Actions?*, University of Missouri School of Law, Columbia, MO (Mar. 7, 2014)

*Should Third-Party Litigation Financing Come to Class Actions?*, George Mason Law School, Arlington, VA (Mar. 6, 2014)

*Should Third-Party Litigation Financing Come to Class Actions?*, Roundtable for Third-Party Funding Scholars, Washington & Lee University School of Law, Lexington, VA (Nov. 7-8, 2013)

*Is the Future of Affirmative Action Race Neutral?*, Conference on A Nation of Widening Opportunities: The Civil Rights Act at 50, University of Michigan Law School, Ann Arbor, MI (Oct. 11, 2013)

*The Mass Tort Bankruptcy: A Pre-History*, The Public Life of the Private Law: A Conference in Honor of Richard A. Nagareda, Vanderbilt Law School, Nashville, TN (Sep. 28, 2013) (panelist)

*Rights & Obligations in Alternative Litigation Financing and Fee Awards in Securities Class Actions*, Conference on the Economics of Aggregate Litigation, Institute for Law & Economic Policy, Naples, FL (Apr. 12, 2013) (panelist)

*The End of Class Actions?*, Symposium on Class Action Reform, University of Michigan Law School, Ann Arbor, MI (Mar. 16, 2013)

*Toward a More Lawyer-Centric Class Action?*, Symposium on Lawyering for Groups, Stein Center for Law & Ethics, Fordham Law School, New York, NY (Nov. 30, 2012)

*The Problem: AT & T as It Is Unfolding*, Conference on *AT & T Mobility v. Concepcion*, Cardozo Law School, New York, NY (Apr. 26, 2012) (panelist)

*Standing under the Statements and Accounts Clause*, Conference on Representation without Accountability, Fordham Law School Corporate Law Center, New York, NY (Jan. 23, 2012)

*The End of Class Actions?*, Washington University Law School, St. Louis, MO (Dec. 9, 2011)

*Book Preview Roundtable: Accelerating Democracy: Matching Social Governance to Technological Change*, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law, Chicago, IL (Sep. 15-16, 2011) (participant)

*Is Summary Judgment Unconstitutional? Some Thoughts About Originalism*, Stanford Law School, Palo Alto, CA (Mar. 3, 2011)

*The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure*, Northwestern Law School, Chicago, IL (Feb. 25, 2011)

*The New Politics of Iowa Judicial Retention Elections: Examining the 2010 Campaign and Vote*, University of Iowa Law School, Iowa City, IA (Feb. 3, 2011) (panelist)

*The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure*, Washington University Law School, St. Louis, MO (Oct. 1, 2010)

*Twombly and Iqbal Reconsidered*, Symposium on Business Law and Regulation in the Roberts Court, Case Western Reserve Law School, Cleveland, OH (Sep. 17, 2010)

*Do Class Action Lawyers Make Too Little?*, Institute for Law & Economic Policy, Providenciales, Turks & Caicos (Apr. 23, 2010)

*Originalism and Summary Judgment*, Georgetown Law School, Washington, DC (Apr. 5, 2010)

*Theorizing Fee Awards in Class Action Litigation*, Washington University Law School, St. Louis, MO (Dec. 11, 2009)

*An Empirical Study of Class Action Settlements and their Fee Awards*, 2009 Conference on Empirical Legal Studies, University of Southern California Law School, Los Angeles, CA (Nov. 20, 2009)

*Originalism and Summary Judgment*, Symposium on Originalism and the Jury, Ohio State Law School, Columbus, OH (Nov. 17, 2009)

*An Empirical Study of Class Action Settlements and their Fee Awards*, 2009 Meeting of the Midwestern Law and Economics Association, University of Notre Dame Law School, South Bend, IN (Oct. 10, 2009)

*The End of Objector Blackmail?*, Stanford-Yale Junior Faculty Forum, Stanford Law School, Palo Alto, CA (May 29, 2009)

*An Empirical Study of Class Action Settlements and their Fee Awards*, University of Minnesota School of Law, Minneapolis, MN (Mar. 12, 2009)

*The Politics of Merit Selection*, Symposium on State Judicial Selection and Retention Systems, University of Missouri Law School, Columbia, MO (Feb. 27, 2009)

*The End of Objector Blackmail?*, Searle Center Research Symposium on the Empirical Studies of Civil Liability, Northwestern University School of Law, Chicago, IL (Oct. 9, 2008)

*Alternatives To Affirmative Action After The Michigan Civil Rights Initiative*, University of Michigan School of Law, Ann Arbor, MI (Apr. 3, 2007) (panelist)

## **OTHER PUBLICATIONS**

*Life, Law & Liberty: Confessions of a Judicial Introspectionist*, SCOTUSBLOG (Oct. 24, 2025)

*Is the 5th Circuit Too Extreme for the Supreme Court Yet?*, SCOTUSBLOG (Sep. 10, 2025)

*The Perils of Using Class Actions as a Replacement for Universal Injunctions*, SCOTUSBLOG (Aug. 12, 2025)

*Senate's Tax Bill Picks Winners and Losers in Litigation Finance*, BLOOMBERG LAW (June 20, 2025)

*Las acciones colectivas 'opt out', 'win win win' para la justicia española*, EL CONFIDENCIAL (June 11, 2025)

*Trump is Right About One Thing: Nationwide Injunctions Need Fixing*, THE BERKSHIRE EAGLE (Apr. 9, 2025)

*We Don't Need the Consumer Financial Protection Bureau—We Have Courts*, THE HILL (Mar. 15, 2025)

*Is the Fifth Circuit Really Too Conservative for the Supreme Court?* THE NATIONAL LAW JOURNAL (Aug. 15, 2024)

*Judicial Profile: Hon. Charles Breyer*, THE FEDERAL LAWYER (Summer 2024)

*Racial Preferences Won't Go Easily*, WALL ST. J. (June 1, 2023)

*Memo to Mitch: Repeal the Republican Tax Increase*, THE HILL (July 17, 2020)

*The Right Way to End Qualified Immunity*, THE HILL (June 25, 2020)

*I Still Remember*, 133 HARV. L. REV. 2458 (2020)

*Proposed Reforms to Texas Judicial Selection*, 24 TEX. R. L. & POL. 307 (2020)

*The Conservative Case for Class Actions?*, NATIONAL REVIEW (Nov. 13, 2019)

*9th Circuit Split: What's the math say?*, DAILY JOURNAL (Mar. 21, 2017)

*Former clerk on Justice Antonin Scalia and his impact on the Supreme Court*, THE CONVERSATION (Feb. 24, 2016)

*Lessons from Tennessee Supreme Court Retention Election*, THE TENNESSEAN (Aug. 20, 2014)

*Public Needs Voice in Judicial Process*, THE TENNESSEAN (June 28, 2013)

*Did the Supreme Court Just Kill the Class Action?*, THE QUARTERLY JOURNAL (April 2012)

*Let General Assembly Confirm Judicial Selections*, CHATTANOOGA TIMES FREE PRESS (Feb. 19, 2012)

*“Tennessee Plan” Needs Revisions*, THE TENNESSEAN (Feb. 3, 2012)

*How Does Your State Select Its Judges?*, INSIDE ALEC 9 (March 2011) (with Stephen Ware)

*On the Merits of Merit Selection*, THE ADVOCATE 67 (Winter 2010)

*Supreme Court Case Could End Class Action Suits*, SAN FRANCISCO CHRONICLE (Nov. 7, 2010)

*Kagan is an Intellect Capable of Serving Court*, THE TENNESSEAN (Jun. 13, 2010)

*Confirmation “Kabuki” Does No Justice*, POLITICO (July 20, 2009)

*Selection by Governor may be Best Judicial Option*, THE TENNESSEAN (Apr. 27, 2009)

*Verdict on Tennessee Plan May Require a Jury*, THE MEMPHIS COMMERCIAL APPEAL (Apr. 16, 2008)

*Tennessee’s Plan to Appoint Judges Takes Power Away from the Public*, THE TENNESSEAN (Mar. 14, 2008)

*Process of Picking Judges Broken*, CHATTANOOGA TIMES FREE PRESS (Feb. 27, 2008)

*Disorder in the Court*, LOS ANGELES TIMES (Jul. 11, 2007)

*Scalia’s Mistake*, NATIONAL LAW JOURNAL (Apr. 24, 2006)

*GM Backs Its Bottom Line*, DETROIT FREE PRESS (Mar. 19, 2003)

*Good for GM, Bad for Racial Fairness*, LOS ANGELES TIMES (Mar. 18, 2003)

*10 Percent Fraud*, WASHINGTON TIMES (Nov. 15, 2002)

## **OTHER PRESENTATIONS**

*Ethics & Professionalism*, Class Action & Pharmaceutical and Medical Device Sections, American Association for Justice Annual Convention, Nashville, TN (July 21, 2024) (panelist)

*Abstention*, Tennessee Attorney General’s Office Continuing Legal Education, Nashville, TN (Apr. 13, 2022)

*The Need for New Lower Court Judgeships, 30 Years in the Making*, Committee on the Judiciary, Subcommittee on Courts, Intellectual Property, and the Internet, United States House of Representatives, Washington, D.C. (Feb. 24, 2021)

*Does the Way We Choose our Judges Affect Case Outcomes?*, American Legislative Exchange Council 2018 Annual Meeting, New Orleans, LA (August 10, 2018) (panelist)

*Oversight of the Structure of the Federal Courts*, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, United States Senate, Washington, D.C. (July 31, 2018)

*Where Will Justice Scalia Rank Among the Most Influential Justices*, The Leo Bearman, Sr. American Inn of Court, Memphis, TN (Mar. 21, 2017)

*Bringing Justice Closer to the People: Examining Ideas for Restructuring the 9th Circuit*, Subcommittee on Courts, Intellectual Property, and the Internet, United States House of Representatives, Washington, D.C. (Mar. 16, 2017)

*Supreme Court Review 2016: Current Issues and Cases Update*, Nashville Bar Association, Nashville, TN (Sep. 15, 2016) (panelist)

*A Respected Judiciary—Balancing Independence and Accountability*, Florida Bar Annual Convention, Orlando, FL (June 16, 2016) (panelist)

*Future Amendments in the Pipeline: Rule 23*, Tennessee Bar Association, Nashville, TN (Dec. 2, 2015)

*The New Business of Law: Attorney Outsourcing, Legal Service Companies, and Commercial Litigation Funding*, Tennessee Bar Association, Nashville, TN (Nov. 12, 2014)

*Hedge Funds + Lawsuits = A Good Idea?*, Vanderbilt University Alumni Association, Washington, DC (Sep. 3, 2014)

*Judicial Selection in Historical and National Perspective*, Committee on the Judiciary, Kansas Senate (Jan. 16, 2013)

*The Practice that Never Sleeps: What's Happened to, and What's Next for, Class Actions*, ABA Annual Meeting, Chicago, IL (Aug. 3, 2012) (panelist)

*Life as a Supreme Court Law Clerk and Views on the Health Care Debate*, Exchange Club, Nashville, TN (Apr. 3, 2012)

*The Tennessee Judicial Selection Process—Shaping Our Future*, Tennessee Bar Association Leadership Law Retreat, Dickson, TN (Feb. 3, 2012) (panelist)

*Reexamining the Class Action Practice*, ABA National Institute on Class Actions, New York, NY (Oct. 14, 2011) (panelist)

*Judicial Selection in Kansas*, Committee on the Judiciary, Kansas House of Representatives (Feb. 16, 2011)

*Judicial Selection and the Tennessee Constitution*, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Mar. 24, 2009)

*What Would Happen if the Judicial Selection and Evaluation Commissions Sunset?*, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Feb. 24, 2009)

*Judicial Selection in Tennessee*, Chattanooga Bar Association, Chattanooga, TN (Feb. 27, 2008) (panelist)

*Ethical Implications of Tennessee's Judicial Selection Process*, Tennessee Bar Association, Nashville, TN (Dec. 12, 2007)

## **PROFESSIONAL ASSOCIATIONS**

Referee, Israel Science Foundation  
Referee, Journal of Legal Studies  
Referee, Journal of Law, Economics and Organization  
Referee, Journal of Empirical Legal Studies  
Referee, Supreme Court Economic Review  
Reviewer, Aspen Publishing  
Reviewer, Bloomsbury  
Reviewer, Cambridge University Press  
Reviewer, University Press of Kansas  
Reviewer, Palgrave Macmillan  
Reviewer, Oxford University Press  
Reviewer, Routledge  
Member, American Law Institute  
Member, American Bar Association  
Member, Tennessee Advisory Committee to the U.S. Commission on Civil Rights, 2009-2015  
Board of Directors, Tennessee Stonewall Bar Association, 2012-2022  
American Swiss Foundation Young Leaders' Conference, 2012  
Bar Admission, District of Columbia & California (inactive)

## **COMMUNITY ACTIVITIES**

Board of Directors, Beacon Center of Tennessee, 2018-present; Board of Directors, Nashville Ballet, 2011-2017 & 2019-2022; Nashville Talking Library for the Blind, 2008-2009

## Fitzpatrick Decl. Exhibit 2



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# An Empirical Study of Class Action Settlements and Their Fee Awards

*Brian T. Fitzpatrick\**

This article is a comprehensive empirical study of class action settlements in federal court. Although there have been prior empirical studies of federal class action settlements, these studies have either been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as those settlements approved in published opinions). By contrast, in this article, I attempt to study every federal class action settlement from the years 2006 and 2007. As far as I am aware, this study is the first attempt to collect a complete set of federal class action settlements for any given year. I find that district court judges approved 688 class action settlements over this two-year period, involving nearly \$33 billion. Of this \$33 billion, roughly \$5 billion was awarded to class action lawyers, or about 15 percent of the total. Most judges chose to award fees by using the highly discretionary percentage-of-the-settlement method, and the fees awarded according to this method varied over a broad range, with a mean and median around 25 percent. Fee percentages were strongly and inversely associated with the size of the settlement. The age of the case at settlement was positively associated with fee percentages. There was some variation in fee percentages depending on the subject matter of the litigation and the geographic circuit in which the district court was located, with lower percentages in securities cases and in settlements from the Second and Ninth Circuits. There was no evidence that fee percentages were associated with whether the class action was certified as a settlement class or with the political affiliation of the judge who made the award.

## I. INTRODUCTION

Class actions have been the source of great controversy in the United States. Corporations fear them.<sup>1</sup> Policymakers have tried to corral them.<sup>2</sup> Commentators and scholars have

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<sup>1</sup>See, e.g., Robert W. Wood, *Defining Employees and Independent Contractors*, *Bus. L. Today* 45, 48 (May–June 2008).

<sup>2</sup>See Private Securities Litigation Reform Act (PSLRA) of 1995, Pub. L. No. 104-67, 109 Stat. 737 (codified as amended in scattered sections of 15 U.S.C.); Class Action Fairness Act of 2005, 28 U.S.C. §§ 1453, 1711–1715 (2006).

suggested countless ways to reform them.<sup>3</sup> Despite all the attention showered on class actions, and despite the excellent empirical work on class actions to date, the data that currently exist on how the class action system operates in the United States are limited. We do not know, for example, how much money changes hands in class action litigation every year. We do not know how much of this money goes to class action lawyers rather than class members. Indeed, we do not even know how many class action cases are resolved on an annual basis. To intelligently assess our class action system as well as whether and how it should be reformed, answers to all these questions are important. Answers to these questions are equally important to policymakers in other countries who are currently thinking about adopting U.S.-style class action devices.<sup>4</sup>

This article tries to answer these and other questions by reporting the results of an empirical study that attempted to gather all class action settlements approved by federal judges over a recent two-year period, 2006 and 2007. I use class action settlements as the basis of the study because, even more so than individual litigation, virtually all cases certified as class actions and not dismissed before trial end in settlement.<sup>5</sup> I use federal settlements as the basis of the study for practical reasons: it was easier to identify and collect settlements approved by federal judges than those approved by state judges. Systematic study of class action settlements in state courts must await further study;<sup>6</sup> these future studies are important because there may be more class action settlements in state courts than there are in federal court.<sup>7</sup>

This article attempts to make three contributions to the existing empirical literature on class action settlements. First, virtually all the prior empirical studies of federal class action settlements have either been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as those settlements approved in published opinions). In this article, by contrast, I attempt to collect every federal class action settlement from the years 2006 and 2007. As far as I am aware, this study is the first to attempt to collect a complete set of federal class action settlements for

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<sup>3</sup>See, e.g., Robert G. Bone, *Agreeing to Fair Process: The Problem with Contractarian Theories of Procedural Fairness*, 83 *B.U.L. Rev.* 485, 490–94 (2003); Allan Erbsen, *From “Predominance” to “Resolvability”: A New Approach to Regulating Class Actions*, 58 *Vand. L. Rev.* 995, 1080–81 (2005).

<sup>4</sup>See, e.g., Samuel Issacharoff & Geoffrey Miller, *Will Aggregate Litigation Come to Europe?*, 62 *Vand. L. Rev.* 179 (2009).

<sup>5</sup>See, e.g., Emery Lee & Thomas E. Willing, *Impact of the Class Action Fairness Act on the Federal Courts: Preliminary Findings from Phase Two’s Pre-CAFA Sample of Diversity Class Actions 11* (Federal Judicial Center 2008); Tom Baker & Sean J. Griffith, *How the Merits Matter: D&O Insurance and Securities Settlements*, 157 *U. Pa. L. Rev.* 755 (2009).

<sup>6</sup>Empirical scholars have begun to study state court class actions in certain subject areas and in certain states. See, e.g., Robert B. Thompson & Randall S. Thomas, *The Public and Private Faces of Derivative Suits*, 57 *Vand. L. Rev.* 1747 (2004); Robert B. Thompson & Randall S. Thomas, *The New Look of Shareholder Litigation: Acquisition-Oriented Class Actions*, 57 *Vand. L. Rev.* 133 (2004); *Findings of the Study of California Class Action Litigation* (Administrative Office of the Courts) (First Interim Report, 2009).

<sup>7</sup>See Deborah R. Hensler et al., *Class Action Dilemmas: Pursuing Public Goals for Private Gain* 56 (2000).

any given year.<sup>8</sup> As such, this article allows us to see for the first time a complete picture of the cases that are settled in federal court. This includes aggregate annual statistics, such as how many class actions are settled every year, how much money is approved every year in these settlements, and how much of that money class action lawyers reap every year. It also includes how these settlements are distributed geographically as well as by litigation area, what sort of relief was provided in the settlements, how long the class actions took to reach settlement, and an analysis of what factors were associated with the fees awarded to class counsel by district court judges.

Second, because this article analyzes settlements that were approved in both published and unpublished opinions, it allows us to assess how well the few prior studies that looked beyond securities cases but relied only on published opinions capture the complete picture of class action settlements. To the extent these prior studies adequately capture the complete picture, it may be less imperative for courts, policymakers, and empirical scholars to spend the considerable resources needed to collect unpublished opinions in order to make sound decisions about how to design our class action system.

Third, this article studies factors that may influence district court judges when they award fees to class counsel that have not been studied before. For example, in light of the discretion district court judges have been delegated over fees under Rule 23, as well as the salience the issue of class action litigation has assumed in national politics, realist theories of judicial behavior would predict that Republican judges would award smaller fee percentages than Democratic judges. I study whether the political beliefs of district court judges are associated with the fees they award and, in doing so, contribute to the literature that attempts to assess the extent to which these beliefs influence the decisions of not just appellate judges, but trial judges as well. Moreover, the article contributes to the small but growing literature examining whether the ideological influences found in published judicial decisions persist when unpublished decisions are examined as well.

In Section II of this article, I briefly survey the existing empirical studies of class action settlements. In Section III, I describe the methodology I used to collect the 2006–2007 federal class action settlements and I report my findings regarding these settlements. District court judges approved 688 class action settlements over this two-year period, involving over \$33 billion. I report a number of descriptive statistics for these settlements, including the number of plaintiff versus defendant classes, the distribution of settlements by subject matter, the age of the case at settlement, the geographic distribution of settlements, the number of settlement classes, the distribution of relief across settlements, and various statistics on the amount of money involved in the settlements. It should be noted that despite the fact that the few prior studies that looked beyond securities settlements appeared to oversample larger settlements, much of the analysis set forth in this article is consistent with these prior studies. This suggests that scholars may not need to sample unpublished as well as published opinions in order to paint an adequate picture of class action settlements.

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<sup>8</sup>Of course, I cannot be certain that I found every one of the class actions that settled in federal court over this period. Nonetheless, I am confident that if I did not find some, the number I did not find is small and would not contribute meaningfully to the data reported in this article.

In Section IV, I perform an analysis of the fees judges awarded to class action lawyers in the 2006–2007 settlements. All told, judges awarded nearly \$5 billion over this two-year period in fees and expenses to class action lawyers, or about 15 percent of the total amount of the settlements. Most federal judges chose to award fees by using the highly discretionary percentage-of-the-settlement method and, unsurprisingly, the fees awarded according to this method varied over a broad range, with a mean and median around 25 percent. Using regression analysis, I confirm prior studies and find that fee percentages are strongly and inversely associated with the size of the settlement. Further, I find that the age of the case is positively associated with fee percentages but that the percentages were not associated with whether the class action was certified as a settlement class. There also appeared to be some variation in fee percentages depending on the subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all other areas, and district courts in some circuits—the Ninth and the Second (in securities cases)—awarded lower fee percentages than courts in many other circuits. Finally, the regression analysis did not confirm the realist hypothesis: there was no association between fee percentage and the political beliefs of the judge in any regression.

## II. PRIOR EMPIRICAL STUDIES OF CLASS ACTION SETTLEMENTS

There are many existing empirical studies of federal securities class action settlements.<sup>9</sup> Studies of securities settlements have been plentiful because for-profit organizations maintain lists of all federal securities class action settlements for the benefit of institutional investors that are entitled to file claims in these settlements.<sup>10</sup> Using these data, studies have shown that since 2005, for example, there have been roughly 100 securities class action settlements in federal court each year, and these settlements have involved between \$7 billion and \$17 billion per year.<sup>11</sup> Scholars have used these data to analyze many different aspects of these settlements, including the factors that are associated with the percentage of

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<sup>9</sup>See, e.g., James D. Cox & Randall S. Thomas, Does the Plaintiff Matter? An Empirical Analysis of Lead Plaintiffs in Securities Class Actions, 106 Colum. L. Rev. 1587 (2006); James D. Cox, Randall S. Thomas & Lynn Bai, There are Plaintiffs and . . . there are Plaintiffs: An Empirical Analysis of Securities Class Action Settlements, 61 Vand. L. Rev. 355 (2008); Theodore Eisenberg, Geoffrey Miller & Michael A. Perino, A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions after *Goldberger v. Integrated Resources, Inc.*, 29 Wash. U.J.L. & Pol'y 5 (2009); Michael A. Perino, Markets and Monitors: The Impact of Competition and Experience on Attorneys' Fees in Securities Class Actions (St. John's Legal Studies, Research Paper No. 06-0034, 2006), available at <<http://ssrn.com/abstract=870577>> [hereinafter Perino, Markets and Monitors]; Michael A. Perino, The Milberg Weiss Prosecution: No Harm, No Foul? (St. John's Legal Studies, Research Paper No. 08-0135, 2008), available at <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1133995](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1133995)> [hereinafter Perino, Milberg Weiss].

<sup>10</sup>See, e.g., RiskMetrics Group, available at <<http://www.riskmetrics.com/scas>>.

<sup>11</sup>See Cornerstone Research, Securities Class Action Settlements: 2007 Review and Analysis 1 (2008), available at <[http://securities.stanford.edu/Settlements/REVIEW\\_1995-2007/Settlements\\_Through\\_12\\_2007.pdf](http://securities.stanford.edu/Settlements/REVIEW_1995-2007/Settlements_Through_12_2007.pdf)>.

the settlements that courts have awarded to class action lawyers.<sup>12</sup> These studies have found that the mean and median fees awarded by district court judges are between 20 percent and 30 percent of the settlement amount.<sup>13</sup> These studies have also found that a number of factors are associated with the percentage of the settlement awarded as fees, including (inversely) the size of the settlement, the age of the case, whether a public pension fund was the lead plaintiff, and whether certain law firms were class counsel.<sup>14</sup> None of these studies has examined whether the political affiliation of the federal district court judge awarding the fees was associated with the size of awards.

There are no comparable organizations that maintain lists of nonsecurities class action settlements. As such, studies of class action settlements beyond the securities area are much rarer and, when they have been done, rely on samples of settlements that were not intended to be representative of the whole. The two largest studies of class action settlements not limited to securities class actions are a 2004 study by Ted Eisenberg and Geoff Miller,<sup>15</sup> which was recently updated to include data through 2008,<sup>16</sup> and a 2003 study by Class Action Reports.<sup>17</sup> The Eisenberg-Miller studies collected data from class action settlements in both state and federal courts found from court opinions published in the Westlaw and Lexis databases and checked against lists maintained by the CCH Federal Securities and Trade Regulation Reporters. Through 2008, their studies have now identified 689 settlements over a 16-year period, or less than 45 settlements per year.<sup>18</sup> Over this 16-year period, their studies found that the mean and median settlement amounts were, respectively, \$116 million and \$12.5 million (in 2008 dollars), and that the mean and median fees awarded by district courts were 23 percent and 24 percent of the settlement, respectively.<sup>19</sup> Their studies also performed an analysis of fee percentages and fee awards. For the data through 2002, they found that the percentage of the settlement awarded as fees was associated with the size of the settlement (inversely), the age of the case, and whether the

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<sup>12</sup>See, e.g., Eisenberg, Miller & Perino, *supra* note 9, at 17–24, 28–36; Perino, *Markets and Monitors*, *supra* note 9, at 12–28, 39–44; Perino, Milberg Weiss, *supra* note 9, at 32–33, 39–60.

<sup>13</sup>See, e.g., Eisenberg, Miller & Perino, *supra* note 9, at 17–18, 22, 28, 33; Perino, *Markets and Monitors*, *supra* note 9, at 20–21, 40; Perino, Milberg Weiss, *supra* note 9, at 32–33, 51–53.

<sup>14</sup>See, e.g., Eisenberg, Miller & Perino, *supra* note 9, at 14–24, 29–30, 33–34; Perino, *Markets and Monitors*, *supra* note 9, at 20–28, 41; Perino, Milberg Weiss, *supra* note 9, at 39–58.

<sup>15</sup>See Theodore Eisenberg & Geoffrey Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. Empirical Legal Stud. 27 (2004).

<sup>16</sup>See Theodore Eisenberg & Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. Empirical Legal Stud. 248 (2010) [hereinafter Eisenberg & Miller II].

<sup>17</sup>See Stuart J. Logan, Jack Moshman & Beverly C. Moore, Jr., *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Rep. 169 (Mar.–Apr. 2003).

<sup>18</sup>See Eisenberg & Miller II, *supra* note 16, at 251.

<sup>19</sup>*Id.* at 258–59.

district court went out of its way to comment on the level of risk that class counsel had assumed in pursuing the case.<sup>20</sup> For the data through 2008, they regressed only fee awards and found that the awards were inversely associated with the size of the settlement, that state courts gave lower awards than federal courts, and that the level of risk was still associated with larger awards.<sup>21</sup> Their studies have not examined whether the political affiliations of the federal district court judges awarding fees were associated with the size of the awards.

The Class Action Reports study collected data on 1,120 state and federal settlements over a 30-year period, or less than 40 settlements per year.<sup>22</sup> Over the same 10-year period analyzed by the Eisenberg-Miller study, the Class Action Reports data found mean and median settlements of \$35.4 and \$7.6 million (in 2002 dollars), as well as mean and median fee percentages between 25 percent and 30 percent.<sup>23</sup> Professors Eisenberg and Miller performed an analysis of the fee awards in the Class Action Reports study and found the percentage of the settlement awarded as fees was likewise associated with the size of the settlement (inversely) and the age of the case.<sup>24</sup>

### III. FEDERAL CLASS ACTION SETTLEMENTS, 2006 AND 2007

As far as I am aware, there has never been an empirical study of all federal class action settlements in a particular year. In this article, I attempt to make such a study for two recent years: 2006 and 2007. To compile a list of all federal class settlements in 2006 and 2007, I started with one of the aforementioned lists of securities settlements, the one maintained by RiskMetrics, and I supplemented this list with settlements that could be found through three other sources: (1) broad searches of district court opinions in the Westlaw and Lexis databases,<sup>25</sup> (2) four reporters of class action settlements—*BNA Class Action Litigation Report*, *Mealey's Jury Verdicts and Settlements*, *Mealey's Litigation Report*, and the *Class Action World* website<sup>26</sup>—and (3) a list from the Administrative Office of Courts of all district court cases

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<sup>20</sup>See Eisenberg & Miller, *supra* note 15, at 61–62.

<sup>21</sup>See Eisenberg & Miller II, *supra* note 16, at 278.

<sup>22</sup>See Eisenberg & Miller, *supra* note 15, at 34.

<sup>23</sup>*Id.* at 47, 51.

<sup>24</sup>*Id.* at 61–62.

<sup>25</sup>The searches consisted of the following terms: (“class action” & (settle! /s approv! /s (2006 2007))); (((counsel attorney) /s fee /s award!) & (settle! /s (2006 2007)) & “class action”); (“class action” /s settle! & da(aft 12/31/2005 & bef 1/1/2008)); (“class action” /s (fair reasonable adequate) & da(aft 12/31/2005 & bef 1/1/2008)).

<sup>26</sup>See <<http://classactionworld.com/>>.

coded as class actions that terminated by settlement between 2005 and 2008.<sup>27</sup> I then removed any duplicate cases and examined the docket sheets and court orders of each of the remaining cases to determine whether the cases were in fact certified as class actions under either Rule 23, Rule 23.1, or Rule 23.2.<sup>28</sup> For each of the cases verified as such, I gathered the district court's order approving the settlement, the district court's order awarding attorney fees, and, in many cases, the settlement agreements and class counsel's motions for fees, from electronic databases (such as Westlaw or PACER) and, when necessary, from the clerk's offices of the various federal district courts. In this section, I report the characteristics of the settlements themselves; in the next section, I report the characteristics of the attorney fees awarded to class counsel by the district courts that approved the settlements.

#### A. Number of Settlements

I found 688 settlements approved by federal district courts during 2006 and 2007 using the methodology described above. This is almost the exact same number the Eisenberg-Miller study found over a 16-year period in both federal *and* state court. Indeed, the number of annual settlements identified in this study is *several times* the number of annual settlements that have been identified in any prior empirical study of class action settlements. Of the 688 settlements I found, 304 were approved in 2006 and 384 were approved in 2007.<sup>29</sup>

#### B. Defendant Versus Plaintiff Classes

Although Rule 23 permits federal judges to certify either a class of plaintiffs or a class of defendants, it is widely assumed that it is extremely rare for courts to certify defendant classes.<sup>30</sup> My findings confirm this widely held assumption. Of the 688 class action settlements approved in 2006 and 2007, 685 involved plaintiff classes and only three involved

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<sup>27</sup>I examined the AO lists in the year before and after the two-year period under investigation because the termination date recorded by the AO was not necessarily the same date the district court approved the settlement.

<sup>28</sup>See Fed. R. Civ. P. 23, 23.1, 23.2. I excluded from this analysis opt-in collective actions, such as those brought pursuant to the provisions of the Fair Labor Standards Act (see 29 U.S.C. § 216(b)), if such actions did not also include claims certified under the opt-out mechanism in Rule 23.

<sup>29</sup>A settlement was assigned to a particular year if the district court judge's order approving the settlement was dated between January 1 and December 31 of that year. Cases involving multiple defendants sometimes settled over time because defendants would settle separately with the plaintiff class. All such partial settlements approved by the district court on the same date were treated as one settlement. Partial settlements approved by the district court on different dates were treated as different settlements.

<sup>30</sup>See, e.g., Robert H. Klonoff, Edward K.M. Bilich & Suzette M. Malveaux, *Class Actions and Other Multi-Party Litigation: Cases and Materials* 1061 (2d ed. 2006).

defendant classes. All three of the defendant-class settlements were in employment benefits cases, where companies sued classes of current or former employees.<sup>31</sup>

### C. Settlement Subject Areas

Although courts are free to certify Rule 23 classes in almost any subject area, it is widely assumed that securities settlements dominate the federal class action docket.<sup>32</sup> At least in terms of the number of settlements, my findings reject this conventional wisdom. As Table 1 shows, although securities settlements comprised a large percentage of the 2006 and 2007 settlements, they did not comprise a majority of those settlements. As one would have

Table 1: The Number of Class Action Settlements Approved by Federal Judges in 2006 and 2007 in Each Subject Area

<i>Subject Matter</i>	<i>Number of Settlements</i>	
	<i>2006</i>	<i>2007</i>
Securities	122 (40%)	135 (35%)
Labor and employment	41 (14%)	53 (14%)
Consumer	40 (13%)	47 (12%)
Employee benefits	23 (8%)	38 (10%)
Civil rights	24 (8%)	37 (10%)
Debt collection	19 (6%)	23 (6%)
Antitrust	13 (4%)	17 (4%)
Commercial	4 (1%)	9 (2%)
Other	18 (6%)	25 (6%)
Total	304	384

NOTE: Securities: cases brought under federal and state securities laws. Labor and employment: workplace claims brought under either federal or state law, with the exception of ERISA cases. Consumer: cases brought under the Fair Credit Reporting Act as well as cases for consumer fraud and the like. Employee benefits: ERISA cases. Civil rights: cases brought under 42 U.S.C. § 1983 or cases brought under the Americans with Disabilities Act seeking nonworkplace accommodations. Debt collection: cases brought under the Fair Debt Collection Practices Act. Antitrust: cases brought under federal or state antitrust laws. Commercial: cases between businesses, excluding antitrust cases. Other: includes, among other things, derivative actions against corporate managers and directors, environmental suits, insurance suits, Medicare and Medicaid suits, product liability suits, and mass tort suits.

SOURCES: Westlaw, PACER, district court clerks' offices.

<sup>31</sup>See *Halliburton Co. v. Graves*, No. 04-00280 (S.D. Tex., Sept. 28, 2007); *Rexam, Inc. v. United Steel Workers of Am.*, No. 03-2998 (D. Minn. Aug. 29, 2007); *Rexam, Inc. v. United Steel Workers of Am.*, No. 03-2998 (D. Minn. Sept. 17, 2007).

<sup>32</sup>See, e.g., John C. Coffee, Jr., *Reforming the Security Class Action: An Essay on Deterrence and its Implementation*, 106 *Colum. L. Rev.* 1534, 1539–40 (2006) (describing securities class actions as “the 800-pound gorilla that dominates and overshadows other forms of class actions”).

expected in light of Supreme Court precedent over the last two decades,<sup>33</sup> there were almost no mass tort class actions (included in the “Other” category) settled over the two-year period.

Although the Eisenberg-Miller study through 2008 is not directly comparable on the distribution of settlements across litigation subject areas—because its state and federal court data cannot be separated (more than 10 percent of the settlements were from state court<sup>34</sup>) and because it excludes settlements in fee-shifting cases—their study through 2008 is the best existing point of comparison. Interestingly, despite the fact that state courts were included in their data, their study through 2008 found about the same percentage of securities cases (39 percent) as my 2006–2007 data set shows.<sup>35</sup> However, their study found many more consumer (18 percent) and antitrust (10 percent) cases, while finding many fewer labor and employment (8 percent), employee benefits (6 percent), and civil rights (3 percent) cases.<sup>36</sup> This is not unexpected given their reliance on published opinions and their exclusion of fee-shifting cases.

#### D. Settlement Classes

The Federal Rules of Civil Procedure permit parties to seek certification of a suit as a class action for settlement purposes only.<sup>37</sup> When the district court certifies a class in such circumstances, the court need not consider whether it would be manageable to try the litigation as a class.<sup>38</sup> So-called settlement classes have always been more controversial than classes certified for litigation because they raise the prospect that, at least where there are competing class actions filed against the same defendant, the defendant could play class counsel off one another to find the one willing to settle the case for the least amount of money.<sup>39</sup> Prior to the Supreme Court’s 1997 opinion in *Amchem Products, Inc. v. Windsor*,<sup>40</sup> it was uncertain whether the Federal Rules even permitted settlement classes. It may therefore be a bit surprising to learn that 68 percent of the federal settlements in 2006 and 2007 were settlement classes. This percentage is higher than the percentage found in the Eisenberg-Miller studies, which found that only 57 percent of class action settlements in

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<sup>33</sup>See, e.g., Samuel Issacharoff, *Private Claims, Aggregate Rights*, 2008 Sup. Ct. Rev. 183, 208.

<sup>34</sup>See Eisenberg & Miller II, *supra* note 16, at 257.

<sup>35</sup>*Id.* at 262.

<sup>36</sup>*Id.*

<sup>37</sup>See Martin H. Redish, *Settlement Class Actions, The Case-or-Controversy Requirement, and the Nature of the Adjudicatory Process*, 73 U. Chi. L. Rev. 545, 553 (2006).

<sup>38</sup>See *Amchem Prods., Inc v Windsor*, 521 U.S. 591, 620 (1997).

<sup>39</sup>See Redish, *supra* note 368, at 557–59.

<sup>40</sup>521 U.S. 591 (1997).

state and federal court between 2003 and 2008 were settlement classes.<sup>41</sup> It should be noted that the distribution of litigation subject areas among the settlement classes in my 2006–2007 federal data set did not differ much from the distribution among nonsettlement classes, with two exceptions. One exception was consumer cases, which were nearly three times as prevalent among settlement classes (15.9 percent) as among nonsettlement classes (5.9 percent); the other was civil rights cases, which were four times as prevalent among nonsettlement classes (18.0 percent) as among settlements classes (4.5 percent). In light of the skepticism with which the courts had long treated settlement classes, one might have suspected that courts would award lower fee percentages in such settlements. Nonetheless, as I report in Section III, whether a case was certified as a settlement class was not associated with the fee percentages awarded by federal district court judges.

### *E. The Age at Settlement*

One interesting question is how long class actions were litigated before they reached settlement. Unsurprisingly, cases reached settlement over a wide range of ages.<sup>42</sup> As shown in Table 2, the average time to settlement was a bit more than three years (1,196 days) and the median time was a bit under three years (1,068 days). The average and median ages here are similar to those found in the Eisenberg-Miller study through 2002, which found averages of 3.35 years in fee-shifting cases and 2.86 years in non-fee-shifting cases, and

Table 2: The Number of Days, 2006–2007, Federal Class Action Cases Took to Reach Settlement in Each Subject Area

<i>Subject Matter</i>	<i>Average</i>	<i>Median</i>	<i>Minimum</i>	<i>Maximum</i>
Securities	1,438	1,327	392	3,802
Labor and employment	928	786	105	2,497
Consumer	963	720	127	4,961
Employee benefits	1,162	1,161	164	3,157
Civil rights	1,373	1,360	181	3,354
Debt collection	738	673	223	1,973
Antitrust	1,140	1,167	237	2,480
Commercial	1,267	760	163	5,443
Other	1,065	962	185	3,620
All	1,196	1,068	105	5,443

SOURCE: PACER.

<sup>41</sup>See Eisenberg & Miller II, *supra* note 16, at 266.

<sup>42</sup>The age of the case was calculated by subtracting the date the relevant complaint was filed from the date the settlement was approved by the district court judge. The dates were taken from PACER. For consolidated cases, I used the date of the earliest complaint. If the case had been transferred, consolidated, or removed, the date the complaint was filed was not always available from PACER. In such cases, I used the date the case was transferred, consolidated, or removed as the start date.

medians of 4.01 years in fee-shifting cases and 3.0 years in non-fee-shifting cases.<sup>43</sup> Their study through 2008 did not report case ages.

The shortest time to settlement was 105 days in a labor and employment case.<sup>44</sup> The longest time to settlement was nearly 15 years (5,443 days) in a commercial case.<sup>45</sup> The average and median time to settlement varied significantly by litigation subject matter, with securities cases generally taking the longest time and debt collection cases taking the shortest time. Labor and employment cases and consumer cases also settled relatively early.

#### *F. The Location of Settlements*

The 2006–2007 federal class action settlements were not distributed across the country in the same way federal civil litigation is in general. As Figure 1 shows, some of the geographic circuits attracted much more class action attention than we would expect based on their docket size, and others attracted much less. In particular, district courts in the First, Second, Seventh, and Ninth Circuits approved a much larger share of class action settlements than the share of all civil litigation they resolved, with the First, Second, and Seventh Circuits approving nearly double the share and the Ninth Circuit approving one-and-one-half times the share. By contrast, the shares of class action settlements approved by district courts in the Fifth and Eighth Circuits were less than one-half of their share of all civil litigation, with the Third, Fourth, and Eleventh Circuits also exhibiting significant underrepresentation.

With respect to a comparison with the Eisenberg-Miller studies, their federal court data through 2008 can be separated from their state court data on the question of the geographic distribution of settlements, and there are some significant differences between their federal data and the numbers reflected in Figure 1. Their study reported considerably higher proportions of settlements than I found from the Second (23.8 percent), Third (19.7 percent), Eighth (4.8 percent), and D.C. (3.3 percent) Circuits, and considerably lower proportions from the Fourth (1.3 percent), Seventh (6.8 percent), and Ninth (16.6 percent) Circuits.<sup>46</sup>

Figure 2 separates the class action settlement data in Figure 1 into securities and nonsecurities cases. Figure 2 suggests that the overrepresentation of settlements in the First and Second Circuits is largely attributable to securities cases, whereas the overrepresentation in the Seventh Circuit is attributable to nonsecurities cases, and the overrepresentation in the Ninth is attributable to both securities and nonsecurities cases.

It is interesting to ask why some circuits received more class action attention than others. One hypothesis is that class actions are filed in circuits where class action lawyers

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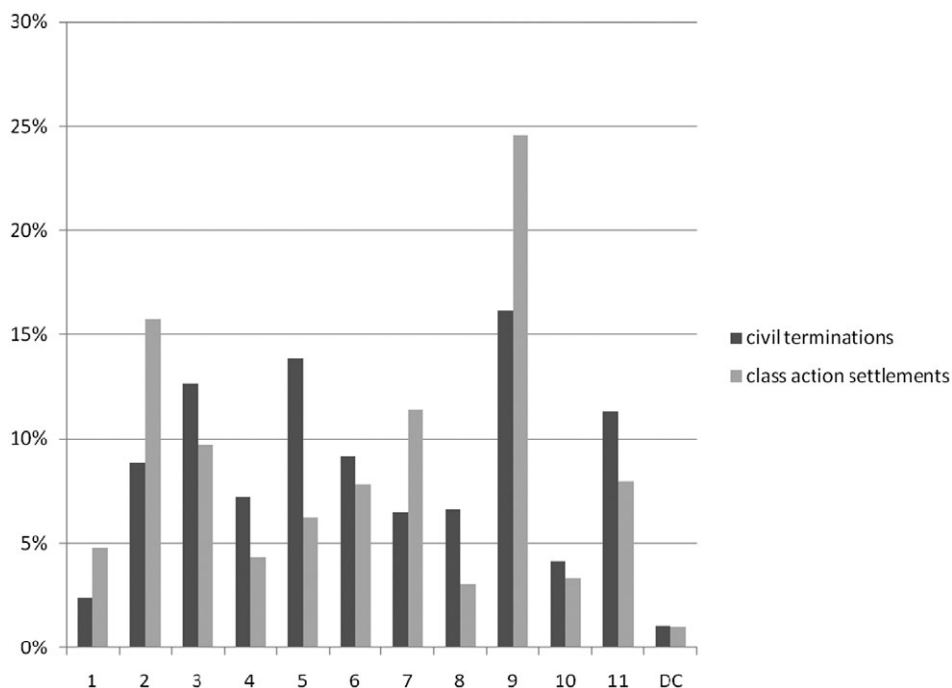
<sup>43</sup>See Eisenberg & Miller, *supra* note 15, at 59–60.

<sup>44</sup>See *Clemmons v. Rent-a-Center W., Inc.*, No. 05-6307 (D. Or. Jan. 20, 2006).

<sup>45</sup>See *Allapattah Servs. Inc. v. Exxon Corp.*, No. 91-0986 (S.D. Fla. Apr. 7, 2006).

<sup>46</sup>See Eisenberg & Miller II, *supra* note 16, at 260.

Figure 1: The percentage of 2006–2007 district court civil terminations and class action settlements in each federal circuit.



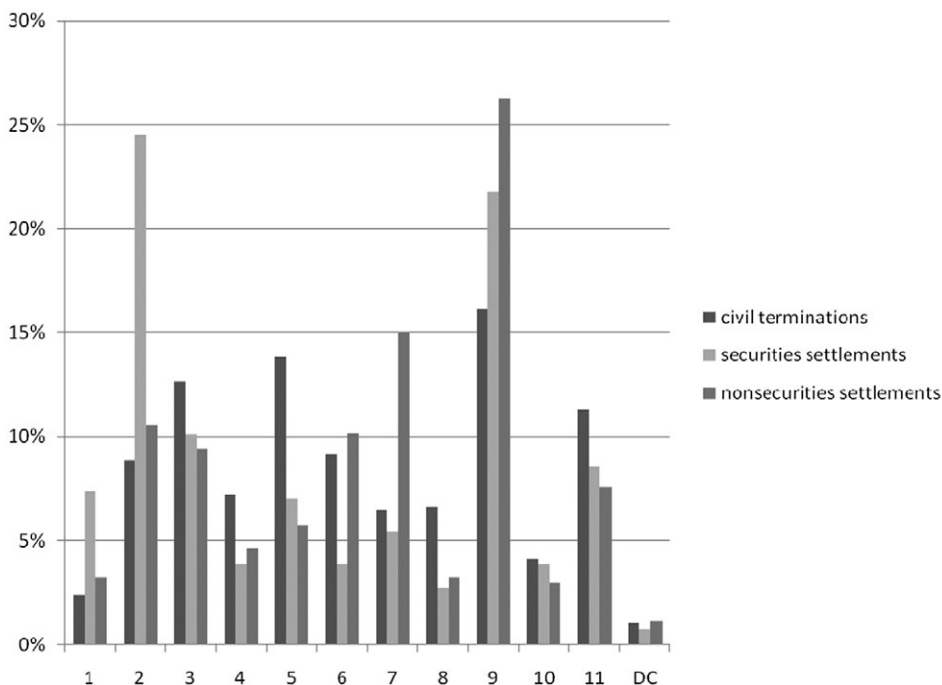
SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <<http://www.uscourts.gov/stats/index.html>>).

believe they can find favorable law or favorable judges. Federal class actions often involve class members spread across multiple states and, as such, class action lawyers may have a great deal of discretion over the district in which file suit.<sup>47</sup> One way law or judges may be favorable to class action attorneys is with regard to attorney fees. In Section III, I attempt to test whether district court judges in the circuits with the most over- and undersubscribed class action dockets award attorney fees that would attract or discourage filings there; I find no evidence that they do.

Another hypothesis is that class action suits are settled in jurisdictions where defendants are located. This might be the case because although class action lawyers may have discretion over where to file, venue restrictions might ultimately restrict cases to jurisdic-

<sup>47</sup>See Samuel Issacharoff & Richard Nagareda, *Class Settlements Under Attack*, 156 U. Pa. L. Rev. 1649, 1662 (2008).

Figure 2: The percentage of 2006–2007 district court civil terminations and class action settlements in each federal circuit.



SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <<http://www.uscourts.gov/stats/index.html>>).

tions in which defendants have their corporate headquarters or other operations.<sup>48</sup> This might explain why the Second Circuit, with the financial industry in New York, sees so many securities suits, and why other circuits with cities with a large corporate presence, such as the First (Boston), Seventh (Chicago), and Ninth (Los Angeles and San Francisco), see more settlements than one would expect based on the size of their civil dockets.

Another hypothesis might be that class action lawyers file cases wherever it is most convenient for them to litigate the cases—that is, in the cities in which their offices are located. This, too, might explain the Second Circuit’s overrepresentation in securities settlements, with prominent securities firms located in New York, as well as the

<sup>48</sup>See 28 U.S.C. §§ 1391, 1404, 1406, 1407. See also *Foster v. Nationwide Mut. Ins. Co.*, No. 07-04928, 2007 U.S. Dist. LEXIS 95240 at \*2–17 (N.D. Cal. Dec. 14, 2007) (transferring venue to jurisdiction where defendant’s corporate headquarters were located). One prior empirical study of securities class action settlements found that 85 percent of such cases are filed in the home circuit of the defendant corporation. See James D. Cox, Randall S. Thomas & Lynn Bai, Do Differences in Pleading Standards Cause Forum Shopping in Securities Class Actions?: Doctrinal and Empirical Analyses, 2009 Wis. L. Rev. 421, 429, 440, 450–51 (2009).

overrepresentation of other settlements in some of the circuits in which major metropolitan areas with prominent plaintiffs' firms are found.

### G. *Type of Relief*

Under Rule 23, district court judges can certify class actions for injunctive or declaratory relief, for money damages, or for a combination of the two.<sup>49</sup> In addition, settlements can provide money damages both in the form of cash as well as in the form of in-kind relief, such as coupons to purchase the defendant's products.<sup>50</sup>

As shown in Table 3, the vast majority of class actions settled in 2006 and 2007 provided cash relief to the class (89 percent), but a substantial number also provided in-kind relief (6 percent) or injunctive or declaratory relief (23 percent). As would be

Table 3: The Percentage of 2006 and 2007 Class Action Settlements Providing Each Type of Relief in Each Subject Area

<i>Subject Matter</i>	<i>Cash</i>	<i>In-Kind Relief</i>	<i>Injunctive or Declaratory Relief</i>
Securities ( <i>n</i> = 257)	100%	0%	2%
Labor and employment ( <i>n</i> = 94)	95%	6%	29%
Consumer ( <i>n</i> = 87)	74%	30%	37%
Employee benefits ( <i>n</i> = 61)	90%	0%	34%
Civil rights ( <i>n</i> = 61)	49%	2%	75%
Debt collection ( <i>n</i> = 42)	98%	0%	12%
Antitrust ( <i>n</i> = 30)	97%	13%	7%
Commercial ( <i>n</i> = 13)	92%	0%	62%
Other ( <i>n</i> = 43)	77%	7%	33%
All ( <i>n</i> = 688)	89%	6%	23%

NOTE: Cash: cash, securities, refunds, charitable contributions, contributions to employee benefit plans, forgiven debt, relinquishment of liens or claims, and liquidated repairs to property. In-kind relief: vouchers, coupons, gift cards, warranty extensions, merchandise, services, and extended insurance policies. Injunctive or declaratory relief: modification of terms of employee benefit plans, modification of compensation practices, changes in business practices, capital improvements, research, and unliquidated repairs to property.

SOURCES: Westlaw, PACER, district court clerks' offices.

<sup>49</sup>See Fed. R. Civ. P. 23(b).

<sup>50</sup>These coupon settlements have become very controversial in recent years, and Congress discouraged them in the Class Action Fairness Act of 2005 by tying attorney fees to the value of coupons that were ultimately redeemed by class members as opposed to the value of coupons offered class members. See 28 U.S.C. § 1712.

expected in light of the focus on consumer cases in the debate over the anti-coupon provision in the Class Action Fairness Act of 2005,<sup>51</sup> consumer cases had the greatest percentage of settlements providing for in-kind relief (30 percent). Civil rights cases had the greatest percentage of settlements providing for injunctive or declaratory relief (75 percent), though almost half the civil rights cases also provided some cash relief (49 percent). The securities settlements were quite distinctive from the settlements in other areas in their singular focus on cash relief: every single securities settlement provided cash to the class and almost none provided in-kind, injunctive, or declaratory relief. This is but one example of how the focus on securities settlements in the prior empirical scholarship can lead to a distorted picture of class action litigation.

#### H. Settlement Money

Although securities settlements did not comprise the majority of federal class action settlements in 2006 and 2007, they did comprise the majority of the money—indeed, the *vast majority* of the money—involved in class action settlements. In Table 4, I report the total amount of ascertainable value involved in the 2006 and 2007 settlements. This amount

Table 4: The Total Amount of Money Involved in Federal Class Action Settlements in 2006 and 2007

Subject Matter	Total Ascertainable Monetary Value in Settlements (and Percentage of Overall Annual Total)			
	2006 (n = 304)		2007 (n = 384)	
Securities	\$16,728	76%	\$8,038	73%
Labor and employment	\$266.5	1%	\$547.7	5%
Consumer	\$517.3	2%	\$732.8	7%
Employee benefits	\$443.8	2%	\$280.8	3%
Civil rights	\$265.4	1%	\$81.7	1%
Debt collection	\$8.9	<1%	\$5.7	<1%
Antitrust	\$1,079	5%	\$660.5	6%
Commercial	\$1,217	6%	\$124.0	1%
Other	\$1,568	7%	\$592.5	5%
Total	\$22,093	100%	\$11,063	100%

NOTE: Dollar amounts are in millions. Includes all determinate payments in cash or cash equivalents (such as marketable securities), including attorney fees and expenses, as well as any in-kind relief (such as coupons) or injunctive relief that was valued by the district court.

SOURCES: Westlaw, PACER, district court clerks' offices.

<sup>51</sup>See, e.g., 151 Cong. Rec. H723 (2005) (statement of Rep. Sensenbrenner) (arguing that consumers are “seeing all of their gains go to attorneys and them just getting coupon settlements from the people who have allegedly done them wrong”).

includes all determinate<sup>52</sup> payments in cash or cash equivalents (such as marketable securities), including attorney fees and expenses, as well as any in-kind relief (such as coupons) or injunctive relief that was valued by the district court.<sup>53</sup> I did not attempt to assign a value to any relief that was not valued by the district court (even if it may have been valued by class counsel). It should be noted that district courts did not often value in-kind or injunctive relief—they did so only 18 percent of the time—and very little of Table 4—only \$1.3 billion, or 4 percent—is based on these valuations. It should also be noted that the amounts in Table 4 reflect only what defendants *agreed to pay*; they do not reflect the amounts that defendants *actually paid* after the claims administration process concluded. Prior empirical research has found that, depending on how settlements are structured (e.g., whether they awarded a fixed amount of money to each class member who eventually files a valid claim or a pro rata amount of a fixed settlement to each class member), defendants can end up paying much less than they agreed.<sup>54</sup>

Table 4 shows that in both years, around three-quarters of all the money involved in federal class action settlements came from securities cases. Thus, in this sense, the conventional wisdom about the dominance of securities cases in class action litigation is correct. Figure 3 is a graphical representation of the contribution each litigation area made to the total number and total amount of money involved in the 2006–2007 settlements.

Table 4 also shows that, in total, over \$33 billion was approved in the 2006–2007 settlements. Over \$22 billion was approved in 2006 and over \$11 billion in 2007. It should be emphasized again that the totals in Table 4 understate the amount of money defendants agreed to pay in class action settlements in 2006 and 2007 because they exclude the unascertainable value of those settlements. This understatement disproportionately affects litigation areas, such as civil rights, where much of the relief is injunctive because, as I noted, very little of such relief was valued by district courts. Nonetheless, these numbers are, as far as I am aware, the first attempt to calculate how much money is involved in federal class action settlements in a given year.

The significant discrepancy between the two years is largely attributable to the 2006 securities settlement related to the collapse of Enron, which totaled \$6.6 billion, as well as to the fact that seven of the eight 2006–2007 settlements for more than \$1 billion were approved in 2006.<sup>55</sup> Indeed, it is worth noting that the eight settlements for more than \$1

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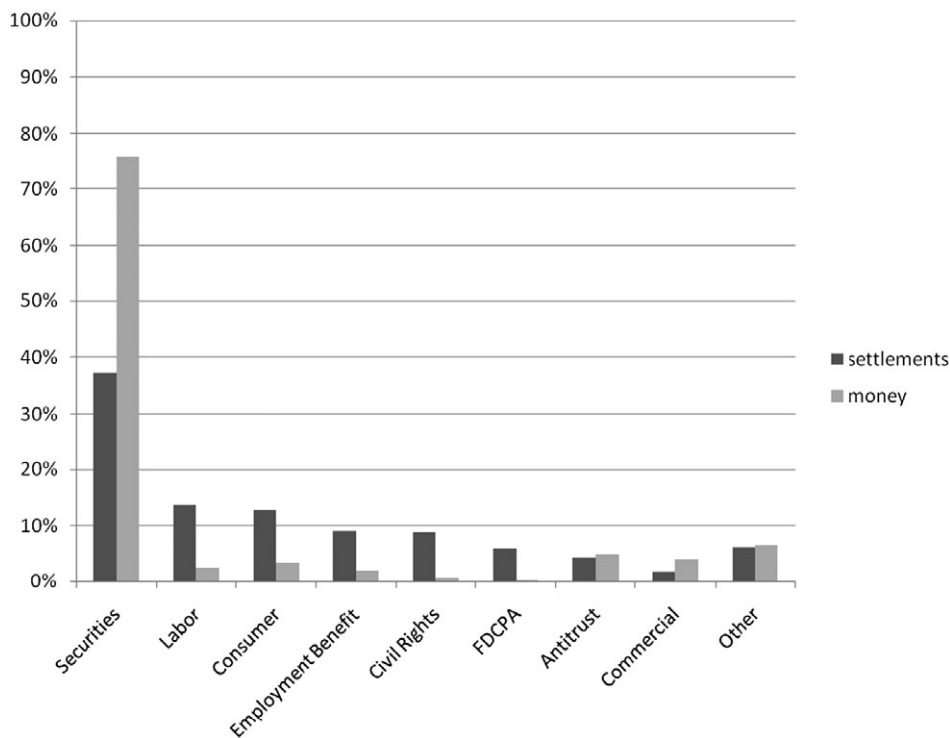
<sup>52</sup>For example, I excluded awards of a fixed amount of money to each class member who eventually filed a valid claim (as opposed to settlements that awarded a pro rata amount of a fixed settlement to each class member) if the total amount of money set aside to pay the claims was not set forth in the settlement documents.

<sup>53</sup>In some cases, the district court valued the relief in the settlement over a range. In these cases, I used the middle point in the range.

<sup>54</sup>See Hensler et al., *supra* note 7, at 427–30.

<sup>55</sup>See *In re Enron Corp. Secs. Litig.*, MDL 1446 (S.D. Tex. May 24, 2006) (\$6,600,000,000); *In re Tyco Int'l Ltd. Multidistrict Litig.*, MDL 02-1335 (D.N.H. Dec. 19, 2007) (\$3,200,000,000); *In re AOL Time Warner, Inc. Secs. & "ERISA" Litig.*, MDL 1500 (S.D.N.Y. Apr. 6, 2006) (\$2,500,000,000); *In re Diet Drugs Prods. Liab. Litig.*, MDL 1203 (E.D. Pa. May 24, 2006) (\$1,275,000,000); *In re Nortel Networks Corp. Secs. Litig. (Nortel I)*, No. 01-1855 (S.D.N.Y. Dec. 26, 2006) (\$1,142,780,000); *In re Royal Ahold N.V. Secs. & ERISA Litig.*, 03-1539 (D. Md. Jun. 16, 2006)

Figure 3: The percentage of 2006–2007 federal class action settlements and settlement money from each subject area.



SOURCES: Westlaw, PACER, district court clerks' offices.

billion accounted for almost \$18 billion of the \$33 billion that changed hands over the two-year period. That is, a mere 1 percent of the settlements comprised over 50 percent of the value involved in federal class action settlements in 2006 and 2007. To give some sense of the distribution of settlement size in the 2006–2007 data set, Table 5 sets forth the number of settlements with an ascertainable value beyond fee, expense, and class-representative incentive awards (605 out of the 688 settlements). Nearly two-thirds of all settlements fell below \$10 million.

Given the disproportionate influence exerted by securities settlements on the total amount of money involved in class actions, it is unsurprising that the average securities settlement involved more money than the average settlement in most of the other subject areas. These numbers are provided in Table 6, which includes, again, only the settlements

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(\$1,100,000,000); *Allapattah Servs. Inc. v. Exxon Corp.*, No. 91-0986 (S.D. Fla. Apr. 7, 2006) (\$1,075,000,000); *In re Nortel Networks Corp. Secs. Litig. (Nortel II)*, No. 05-1659 (S.D.N.Y. Dec. 26, 2006) (\$1,074,270,000).

Table 5: The Distribution by Size of 2006–2007 Federal Class Action Settlements with Ascertainable Value

<i>Settlement Size (in Millions)</i>	<i>Number of Settlements</i>
[\$0 to \$1]	131 (21.7%)
(\$1 to \$10]	261 (43.1%)
(\$10 to \$50]	139 (23.0%)
(\$50 to \$100]	33 (5.45%)
(\$100 to \$500]	31 (5.12%)
(\$500 to \$6,600]	10 (1.65%)
Total	605

NOTE: Includes only settlements with ascertainable value beyond merely fee, expense, and class-representative incentive awards.

SOURCES: Westlaw, PACER, district court clerks' offices.

Table 6: The Average and Median Settlement Amounts in the 2006–2007 Federal Class Action Settlements with Ascertainable Value to the Class

<i>Subject Matter</i>	<i>Average</i>	<i>Median</i>
Securities ( <i>n</i> = 257)	\$96.4	\$8.0
Labor and employment ( <i>n</i> = 88)	\$9.2	\$1.8
Consumer ( <i>n</i> = 65)	\$18.8	\$2.9
Employee benefits ( <i>n</i> = 52)	\$13.9	\$5.3
Civil rights ( <i>n</i> = 34)	\$9.7	\$2.5
Debt collection ( <i>n</i> = 40)	\$0.37	\$0.088
Antitrust ( <i>n</i> = 29)	\$60.0	\$22.0
Commercial ( <i>n</i> = 12)	\$111.7	\$7.1
Other ( <i>n</i> = 28)	\$76.6	\$6.2
All ( <i>N</i> = 605)	\$54.7	\$5.1

NOTE: Dollar amounts are in millions. Includes only settlements with ascertainable value beyond merely fee, expense, and class-representative incentive awards.

SOURCES: Westlaw, PACER, district court clerks' offices.

with an ascertainable value beyond fee, expense, and class-representative incentive awards. The average settlement over the entire two-year period for all types of cases was almost \$55 million, but the median was only \$5.1 million. (With the \$6.6 billion Enron settlement excluded, the average settlement for all ascertainable cases dropped to \$43.8 million and, for securities cases, dropped to \$71.0 million.) The average settlements varied widely by litigation area, with securities and commercial settlements at the high end of around \$100

million, but the median settlements for nearly every area were bunched around a few million dollars. It should be noted that the high average for commercial cases is largely due to one settlement above \$1 billion;<sup>56</sup> when that settlement is removed, the average for commercial cases was only \$24.2 million.

Table 6 permits comparison with the two prior empirical studies of class action settlements that sought to include nonsecurities as well as securities cases in their purview. The Eisenberg-Miller study through 2002, which included both common-fund and fee-shifting cases, found that the mean class action settlement was \$112 million and the median was \$12.9 million, both in 2006 dollars,<sup>57</sup> more than double the average and median I found for all settlements in 2006 and 2007. The Eisenberg-Miller update through 2008 included only common-fund cases and found mean and median settlements in federal court of \$115 million and \$11.7 million (both again in 2006 dollars),<sup>58</sup> respectively; this is still more than double the average and median I found. This suggests that the methodology used by the Eisenberg-Miller studies—looking at district court opinions that were published in Westlaw or Lexis—oversampled larger class actions (because opinions approving larger class actions are, presumably, more likely to be published than opinions approving smaller ones). It is also possible that the exclusion of fee-shifting cases from their data through 2008 contributed to this skew, although, given that their data through 2002 included fee-shifting cases and found an almost identical mean and median as their data through 2008, the primary explanation for the much larger mean and median in their study through 2008 is probably their reliance on published opinions. Over the same years examined by Professors Eisenberg and Miller, the Class Action Reports study found a smaller average settlement than I did (\$39.5 million in 2006 dollars), but a larger median (\$8.48 million in 2006 dollars). It is possible that the Class Action Reports methodology also oversampled larger class actions, explaining its larger median, but that there are more “mega” class actions today than there were before 2003, explaining its smaller mean.<sup>59</sup>

It is interesting to ask how significant the \$16 billion that was involved annually in these 350 or so federal class action settlements is in the grand scheme of U.S. litigation. Unfortunately, we do not know how much money is transferred every year in U.S. litigation. The only studies of which I am aware that attempt even a partial answer to this question are the estimates of how much money is transferred in the U.S. “tort” system every year by a financial services consulting firm, Tillinghast-Towers Perrin.<sup>60</sup> These studies are not directly

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<sup>56</sup>See *Allapattah Servs. Inc. v. Exxon Corp.*, No. 91-0986 (S.D. Fla. Apr. 7, 2006) (approving \$1,075,000,000 settlement).

<sup>57</sup>See Eisenberg & Miller, *supra* note 15, at 47.

<sup>58</sup>See Eisenberg & Miller II, *supra* note 16, at 262.

<sup>59</sup>There were eight class action settlements during 2006 and 2007 of more than \$1 billion. See note 55 *supra*.

<sup>60</sup>Some commentators have been critical of Tillinghast’s reports, typically on the ground that the reports overestimate the cost of the tort system. See M. Martin Boyer, *Three Insights from the Canadian D&O Insurance Market: Inertia, Information and Insiders*, 14 *Conn. Ins. L.J.* 75, 84 (2007); John Fabian Witt, *Form and Substance in the Law of*

comparable to the class action settlement numbers because, again, the number of tort class action settlements in 2006 and 2007 was very small. Nonetheless, as the tort system no doubt constitutes a large percentage of the money transferred in all litigation, these studies provide something of a point of reference to assess the significance of class action settlements. In 2006 and 2007, Tillinghast-Towers Perrin estimated that the U.S. tort system transferred \$160 billion and \$164 billion, respectively, to claimants and their lawyers.<sup>61</sup> The total amount of money involved in the 2006 and 2007 federal class action settlements reported in Table 4 was, therefore, roughly 10 percent of the Tillinghast-Towers Perrin estimate. This suggests that in merely 350 cases every year, federal class action settlements involve the same amount of wealth as 10 percent of the entire U.S. tort system. It would seem that this is a significant amount of money for so few cases.

#### IV. ATTORNEY FEES IN FEDERAL CLASS ACTION SETTLEMENTS, 2006 AND 2007

##### A. Total Amount of Fees and Expenses

As I demonstrated in Section III, federal class action settlements involved a great deal of money in 2006 and 2007, some \$16 billion a year. A perennial concern with class action litigation is whether class action lawyers are reaping an outsized portion of this money.<sup>62</sup> The 2006–2007 federal class action data suggest that these concerns may be exaggerated. Although class counsel were awarded some \$5 billion in fees and expenses over this period, as shown in Table 7, only 13 percent of the settlement amount in 2006 and 20 percent of the amount in 2007 went to fee and expense awards.<sup>63</sup> The 2006 percentage is lower than the 2007 percentage in large part because the class action lawyers in the Enron securities settlement received less than 10 percent of the \$6.6 billion corpus. In any event, the percentages in both 2006 and 2007 are far lower than the portions of settlements that contingency-fee lawyers receive in individual litigation, which are usually at least 33 percent.<sup>64</sup> Lawyers received less than 33 percent of settlements in fees and expenses in virtually every subject area in both years.

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Counterinsurgency Damages, 41 *Loy. L.A.L. Rev.* 1455, 1475 n.135 (2008). If these criticisms are valid, then class action settlements would appear even more significant as compared to the tort system.

<sup>61</sup>See Tillinghast-Towers Perrin, *U.S. Tort Costs: 2008 Update 5* (2008). The report calculates \$252 billion in total tort “costs” in 2007 and \$246.9 billion in 2006, *id.*, but only 65 percent of those costs represent payments made to claimants and their lawyers (the remainder represents insurance administration costs and legal costs to defendants). See Tillinghast-Towers Perrin, *U.S. Tort Costs: 2003 Update 17* (2003).

<sup>62</sup>See, e.g., Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?* 158 *U. Pa. L. Rev.* 2043, 2043–44 (2010).

<sup>63</sup>In some of the partial settlements, see note 29 *supra*, the district court awarded expenses for all the settlements at once and it was unclear what portion of the expenses was attributable to which settlement. In these instances, I assigned each settlement a pro rata portion of expenses. To the extent possible, all the fee and expense numbers in this article exclude any interest known to be awarded by the courts.

<sup>64</sup>See, e.g., Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 *DePaul L. Rev.* 267, 284–86 (1998) (reporting results of a survey of Wisconsin lawyers).

Table 7: The Total Amount of Fees and Expenses Awarded to Class Action Lawyers in Federal Class Action Settlements in 2006 and 2007

<i>Subject Matter</i>	<i>Total Fees and Expenses Awarded in Settlements (and as Percentage of Total Settlement Amounts) in Each Subject Area</i>	
	<i>2006 (n = 292)</i>	<i>2007 (n = 363)</i>
Securities	\$1,899 (11%)	\$1,467 (20%)
Labor and employment	\$75.1 (28%)	\$144.5 (26%)
Consumer	\$126.4 (24%)	\$65.3 (9%)
Employee benefits	\$57.1 (13%)	\$71.9 (26%)
Civil rights	\$31.0 (12%)	\$32.2 (39%)
Debt collection	\$2.5 (28%)	\$1.1 (19%)
Antitrust	\$274.6 (26%)	\$157.3 (24%)
Commercial	\$347.3 (29%)	\$18.2 (15%)
Other	\$119.3 (8%)	\$103.3 (17%)
Total	\$2,932 (13%)	\$2,063 (20%)

NOTE: Dollar amounts are in millions. Excludes settlements in which fees were not (or at least not yet) sought (22 settlements), settlements in which fees have not yet been awarded (two settlements), and settlements in which fees could not be ascertained due to indefinite award amounts, missing documents, or nonpublic side agreements (nine settlements).

SOURCES: Westlaw, PACER, district court clerks' offices.

It should be noted that, in some respects, the percentages in Table 7 overstate the portion of settlements that were awarded to class action attorneys because, again, many of these settlements involved indefinite cash relief or noncash relief that could not be valued.<sup>65</sup> If the value of all this relief could have been included, then the percentages in Table 7 would have been even lower. On the other hand, as noted above, not all the money defendants agree to pay in class action settlements is ultimately collected by the class.<sup>66</sup> To the extent leftover money is returned to the defendant, the percentages in Table 7 understate the portion class action lawyers received relative to their clients.

### *B. Method of Awarding Fees*

District court judges have a great deal of discretion in how they set fee awards in class action cases. Under Rule 23, federal judges are told only that the fees they award to class counsel

<sup>65</sup>Indeed, the large year-to-year variation in the percentages in labor, consumer, and employee benefits cases arose because district courts made particularly large valuations of the equitable relief in a few settlements and used the lodestar method to calculate the fees in these settlements (and thereby did not consider their large valuations in calculating the fees).

<sup>66</sup>See Hensler et al., *supra* note 7, at 427–30.

must be “reasonable.”<sup>67</sup> Courts often exercise this discretion by choosing between two approaches: the lodestar approach or the percentage-of-the-settlement approach.<sup>68</sup> The lodestar approach works much the way it does in individual litigation: the court calculates the fee based on the number of hours class counsel actually worked on the case multiplied by a reasonable hourly rate and a discretionary multiplier.<sup>69</sup> The percentage-of-the-settlement approach bases the fee on the size of the settlement rather than on the hours class counsel actually worked: the district court picks a percentage of the settlement it thinks is reasonable based on a number of factors, one of which is often the fee lodestar (sometimes referred to as a “lodestar cross-check”).<sup>70</sup> My 2006–2007 data set shows that the percentage-of-the-settlement approach has become much more common than the lodestar approach. In 69 percent of the settlements reported in Table 7, district court judges employed the percentage-of-the-settlement method with or without the lodestar cross-check. They employed the lodestar method in only 12 percent of settlements. In the other 20 percent of settlements, the court did not state the method it used or it used another method altogether.<sup>71</sup> The pure lodestar method was used most often in consumer (29 percent) and debt collection (45 percent) cases. These numbers are fairly consistent with the Eisenberg-Miller data from 2003 to 2008. They found that the lodestar method was used in only 9.6 percent of settlements.<sup>72</sup> Their number is no doubt lower than the 12 percent number found in my 2006–2007 data set because they excluded fee-shifting cases from their study.

### C. *Variation in Fees Awarded*

Not only do district courts often have discretion to choose between the lodestar method and the percentage-of-the-settlement method, but each of these methods leaves district courts with a great deal of discretion in how the method is ultimately applied. The courts

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<sup>67</sup>Fed. R. Civ. P. 23(h).

<sup>68</sup>The discretion to pick between these methods is most pronounced in settlements where the underlying claim was not found in a statute that would shift attorney fees to the defendant. See, e.g., *In re Thirteen Appeals Arising out of San Juan DuPont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995) (permitting either percentage or lodestar method in common-fund cases); *Goldberger v. Integrated Res. Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (same); *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (same). By contrast, courts typically used the lodestar approach in settlements arising from fee-shifting cases.

<sup>69</sup>See Eisenberg & Miller, *supra* note 15, at 31.

<sup>70</sup>*Id.* at 31–32.

<sup>71</sup>These numbers are based on the fee method described in the district court’s order awarding fees, unless the order was silent, in which case the method, if any, described in class counsel’s motion for fees (if it could be obtained) was used. If the court explicitly justified the fee award by reference to its percentage of the settlement, I counted it as the percentage method. If the court explicitly justified the award by reference to a lodestar calculation, I counted it as the lodestar method. If the court explicitly justified the award by reference to both, I counted it as the percentage method with a lodestar cross-check. If the court calculated neither a percentage nor the fee lodestar in its order, then I counted it as an “other” method.

<sup>72</sup>See Eisenberg & Miller II, *supra* note 16, at 267.

that use the percentage-of-the-settlement method usually rely on a multifactor test<sup>73</sup> and, like most multifactor tests, it can plausibly yield many results. It is true that in many of these cases, judges examine the fee percentages that other courts have awarded to guide their discretion.<sup>74</sup> In addition, the Ninth Circuit has adopted a presumption that 25 percent is the proper fee award percentage in class action cases.<sup>75</sup> Moreover, in securities cases, some courts presume that the proper fee award percentage is the one class counsel agreed to when it was hired by the large shareholder that is now usually selected as the lead plaintiff in such cases.<sup>76</sup> Nonetheless, presumptions, of course, can be overcome and, as one court has put it, “[t]here is no hard and fast rule mandating a certain percentage . . . which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of each case.”<sup>77</sup> The court added: “[i]ndividualization in the exercise of a discretionary power [for fee awards] will alone retain equity as a living system and save it from sterility.”<sup>78</sup> It is therefore not surprising that district courts awarded fees over a broad range when they used the percentage-of-the-settlement method. Figure 4 is a graph of the distribution of fee awards as a percentage of the settlement in the 444 cases where district courts used the percentage method with or without a lodestar cross-check and the fee percentages were ascertainable. These fee awards are exclusive of awards for expenses whenever the awards could be separated by examining either the district court’s order or counsel’s motion for fees and expenses (which was 96 percent of the time). The awards ranged from 3 percent of the settlement to 47 percent of the settlement. The average award was 25.4 percent and the median was 25 percent. Most fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent. The Eisenberg-Miller study through 2008 found a slightly lower mean (24 percent) but the same median (25 percent) among its federal court settlements.<sup>79</sup>

It should be noted that in 218 of these 444 settlements (49 percent), district courts said they considered the lodestar calculation as a factor in assessing the reasonableness of the fee percentages awarded. In 204 of these settlements, the lodestar multiplier resulting

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<sup>73</sup>The Eleventh Circuit, for example, has identified a nonexclusive list of 15 factors that district courts might consider. See *Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 772 n.3, 775 (11th Cir. 1991). See also *In re Tyco Int’l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 265 (D.N.H. 2007) (five factors); *Goldberger v. Integrated Res. Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (six factors); *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000) (seven factors); *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 385 (D. Md. 2006) (13 factors); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988) (12 factors); *In re Baan Co. Sec. Litig.*, 288 F. Supp. 2d 14, 17 (D.D.C. 2003) (seven factors).

<sup>74</sup>See Eisenberg & Miller, *supra* note 15, at 32.

<sup>75</sup>See *Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003).

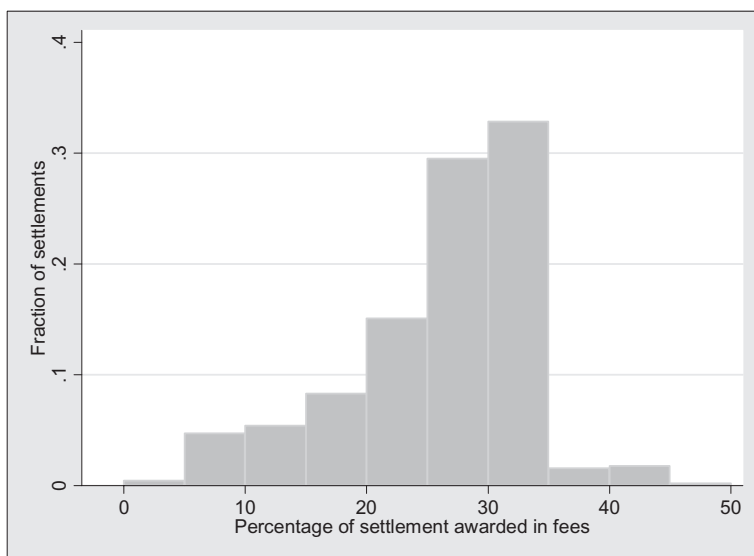
<sup>76</sup>See, e.g., *In re Cendant Corp. Litig.*, 264 F.3d 201, 282 (3d Cir. 2001).

<sup>77</sup>*Camden I Condo. Ass’n*, 946 F.2d at 774.

<sup>78</sup>*Camden I Condo. Ass’n*, 946 F.2d at 774 (alterations in original and internal quotation marks omitted).

<sup>79</sup>See Eisenberg & Miller II, *supra* note 16, at 259.

*Figure 4:* The distribution of 2006–2007 federal class action fee awards using the percentage-of-the-settlement method with or without lodestar cross-check.



SOURCES: Westlaw, PACER, district court clerks' offices.

from the fee award could be ascertained. The lodestar multiplier in these cases ranged from 0.07 to 10.3, with a mean of 1.65 and a median of 1.34. Although there is always the possibility that class counsel are optimistic with their timesheets when they submit them for lodestar consideration, these lodestar numbers—only one multiplier above 6.0, with the bulk of the range not much above 1.0—strike me as fairly parsimonious for the risk that goes into any piece of litigation and cast doubt on the notion that the percentage-of-the-settlement method results in windfalls to class counsel.<sup>80</sup>

Table 8 shows the mean and median fee percentages awarded in each litigation subject area. The fee percentages did not appear to vary greatly across litigation subject areas, with most mean and median awards between 25 percent and 30 percent. As I report later in this section, however, after controlling for other variables, there were statistically significant differences in the fee percentages awarded in some subject areas compared to others. The mean and median percentages for securities cases were 24.7 percent and 25.0 percent, respectively; for all nonsecurities cases, the mean and median were 26.1 percent and 26.0 percent, respectively. The Eisenberg-Miller study through 2008 found mean awards ranging from 21–27 percent and medians from 19–25 percent,<sup>81</sup> a bit lower than the ranges in my

<sup>80</sup>It should be emphasized, of course, that these 204 settlements may not be representative of the settlements where the percentage-of-the-settlement method was used without the lodestar cross-check.

<sup>81</sup>See Eisenberg & Miller II, *supra* note 16, at 262.

Table 8: Fee Awards in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Subject Matter</i>	<i>Percentage of Settlement Awarded as Fees</i>	
	<i>Mean</i>	<i>Median</i>
Securities ( <i>n</i> = 233)	24.7	25.0
Labor and employment ( <i>n</i> = 61)	28.0	29.0
Consumer ( <i>n</i> = 39)	23.5	24.6
Employee benefits ( <i>n</i> = 37)	26.0	28.0
Civil rights ( <i>n</i> = 20)	29.0	30.3
Debt collection ( <i>n</i> = 5)	24.2	25.0
Antitrust ( <i>n</i> = 23)	25.4	25.0
Commercial ( <i>n</i> = 7)	23.3	25.0
Other ( <i>n</i> = 19)	24.9	26.0
All ( <i>N</i> = 444)	25.7	25.0

SOURCES: Westlaw, PACER, district court clerks' offices.

2006–2007 data set, which again, may be because they oversampled larger settlements (as I show below, district courts awarded smaller fee percentages in larger cases).

In light of the fact that, as I noted above, the distribution of class action settlements among the geographic circuits does not track their civil litigation dockets generally, it is interesting to ask whether one reason for the pattern in class action cases is that circuits oversubscribed with class actions award higher fee percentages. Although this question will be taken up with more sophistication in the regression analysis below, it is worth describing here the mean and median fee percentages in each of the circuits. Those data are presented in Table 9. Contrary to the hypothesis set forth in Section III, two of the circuits most oversubscribed with class actions, the Second and the Ninth, were the only circuits in which the mean fee awards were *under* 25 percent. As I explain below, these differences are statistically significant and remain so after controlling for other variables.

The lodestar method likewise permits district courts to exercise a great deal of leeway through the application of the discretionary multiplier. Figure 5 shows the distribution of lodestar multipliers in the 71 settlements in which district courts used the lodestar method and the multiplier could be ascertained. The average multiplier was 0.98 and the median was 0.92, which suggest that courts were not terribly prone to exercise their discretion to deviate from the amount of money encompassed in the lodestar calculation. These 71

Table 9: Fee Awards in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Circuit</i>	<i>Percentage of Settlement Awarded as Fees</i>	
	<i>Mean</i>	<i>Median</i>
First ( <i>n</i> = 27)	27.0	25.0
Second ( <i>n</i> = 72)	23.8	24.5
Third ( <i>n</i> = 50)	25.4	29.3
Fourth ( <i>n</i> = 19)	25.2	28.0
Fifth ( <i>n</i> = 27)	26.4	29.0
Sixth ( <i>n</i> = 25)	26.1	28.0
Seventh ( <i>n</i> = 39)	27.4	29.0
Eighth ( <i>n</i> = 15)	26.1	30.0
Ninth ( <i>n</i> = 111)	23.9	25.0
Tenth ( <i>n</i> = 18)	25.3	25.5
Eleventh ( <i>n</i> = 35)	28.1	30.0
DC ( <i>n</i> = 6)	26.9	26.0

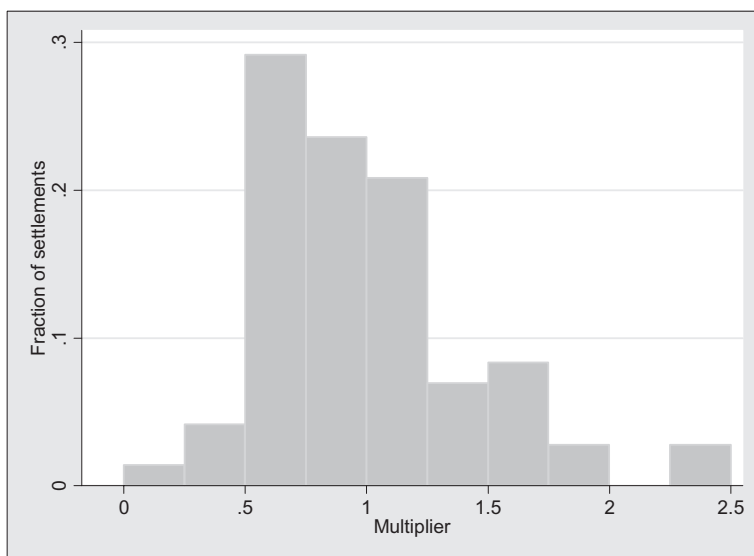
SOURCES: Westlaw, PACER, district court clerks' offices.

settlements were heavily concentrated within the consumer (median multiplier 1.13) and debt collection (0.66) subject areas. If cases in which district courts used the percentage-of-the-settlement method with a lodestar cross-check are combined with the lodestar cases, the average and median multipliers (in the 263 cases where the multipliers were ascertainable) were 1.45 and 1.19, respectively. Again—putting to one side the possibility that class counsel are optimistic with their timesheets—these multipliers appear fairly modest in light of the risk involved in any piece of litigation.

#### *D. Factors Influencing Percentage Awards*

Whether district courts are exercising their discretion over fee awards wisely is an important public policy question given the amount of money at stake in class action settlements. As shown above, district court judges awarded class action lawyers nearly \$5 billion in fees and expenses in 2006–2007. Based on the comparison to the tort system set forth in Section III, it is not difficult to surmise that in the 350 or so settlements every year, district court judges

Figure 5: The distribution of lodestar multipliers in 2006–2007 federal class action fee awards using the lodestar method.



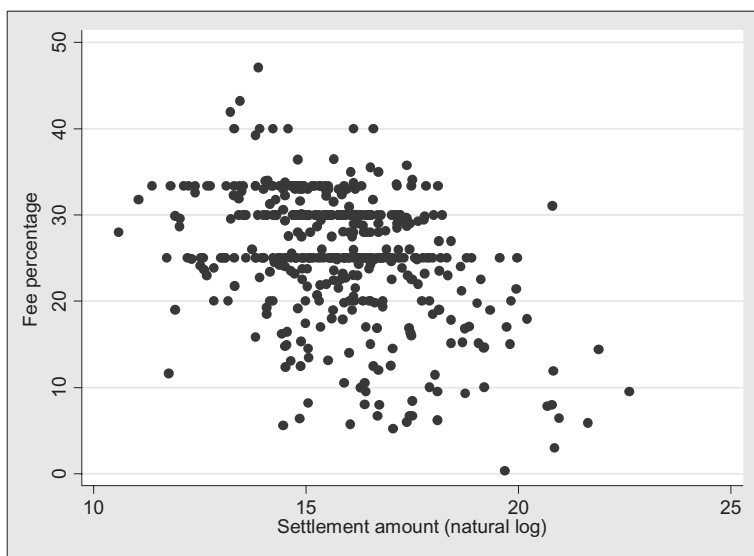
SOURCES: Westlaw, PACER, district court clerks' offices.

are awarding a significant portion of all the annual compensation received by contingency-fee lawyers in the United States. Moreover, contingency fees are arguably the engine that drives much of the noncriminal regulation in the United States; unlike many other nations, we regulate largely through the ex post, decentralized device of litigation.<sup>82</sup> To the extent district courts could have exercised their discretion to award billions more or billions less to class action lawyers, district courts have been delegated a great deal of leeway over a big chunk of our regulatory horsepower. It is therefore worth examining how district courts exercise their discretion over fees. This examination is particularly important in cases where district courts use the percentage-of-the-settlement method to award fees: not only do such cases comprise the vast majority of settlements, but they comprise the vast majority of the money awarded as fees. As such, the analysis that follows will be confined to the 444 settlements where the district courts used the percentage-of-the-settlement method.

As I noted, prior empirical studies have shown that fee percentages are strongly and inversely related to the size of the settlement both in securities fraud and other cases. As shown in Figure 6, the 2006–2007 data are consistent with prior studies. Regression analysis, set forth in more detail below, confirms that after controlling for other variables, fee percentage is strongly and inversely associated with settlement size among all cases, among securities cases, and among all nonsecurities cases.

<sup>82</sup>See, e.g., Samuel Issacharoff, *Regulating after the Fact*, 56 DePaul L. Rev. 375, 377 (2007).

Figure 6: Fee awards as a function of settlement size in 2006–2007 class action cases using the percentage-of-the-settlement method with or without lodestar cross-check.



SOURCES: Westlaw, PACER, district court clerks’ offices.

As noted above, courts often look to fee percentages in other cases as one factor they consider in deciding what percentage to award in a settlement at hand. In light of this practice, and in light of the fact that the size of the settlement has such a strong relationship to fee percentages, scholars have tried to help guide the practice by reporting the distribution of fee percentages across different settlement sizes.<sup>83</sup> In Table 10, I follow the Eisenberg-Miller studies and attempt to contribute to this guidance by setting forth the mean and median fee percentages, as well as the standard deviation, for each decile of the 2006–2007 settlements in which courts used the percentage-of-the-settlement method to award fees. The mean percentages ranged from over 28 percent in the first decile to less than 19 percent in the last decile.

It should be noted that the last decile in Table 10 covers an especially wide range of settlements, those from \$72.5 million to the Enron settlement of \$6.6 billion. To give more meaningful data to courts that must award fees in the largest settlements, Table 11 shows the last decile broken into additional cut points. When both Tables 10 and 11 are examined together, it appears that fee percentages tended to drift lower at a fairly slow pace until a settlement size of \$100 million was reached, at which point the fee percentages plunged well below 20 percent, and by the time \$500 million was reached, they plunged well below 15 percent, with most awards at that level under even 10 percent.

<sup>83</sup>See Eisenberg & Miller II, *supra* note 16, at 265.

Table 10: Mean, Median, and Standard Deviation of Fee Awards by Settlement Size in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Settlement Size (in Millions)</i>	<i>Mean</i>	<i>Median</i>	<i>SD</i>
[\$0 to \$0.75] ( <i>n</i> = 45)	28.8%	29.6%	6.1%
(\$0.75 to \$1.75] ( <i>n</i> = 44)	28.7%	30.0%	6.2%
(\$1.75 to \$2.85] ( <i>n</i> = 45)	26.5%	29.3%	7.9%
(\$2.85 to \$4.45] ( <i>n</i> = 45)	26.0%	27.5%	6.3%
(\$4.45 to \$7.0] ( <i>n</i> = 44)	27.4%	29.7%	5.1%
(\$7.0 to \$10.0] ( <i>n</i> = 43)	26.4%	28.0%	6.6%
(\$10.0 to \$15.2] ( <i>n</i> = 45)	24.8%	25.0%	6.4%
(\$15.2 to \$30.0] ( <i>n</i> = 46)	24.4%	25.0%	7.5%
(\$30.0 to \$72.5] ( <i>n</i> = 42)	22.3%	24.9%	8.4%
(\$72.5 to \$6,600] ( <i>n</i> = 45)	18.4%	19.0%	7.9%

SOURCES: Westlaw, PACER, district court clerks' offices.

Table 11: Mean, Median, and Standard Deviation of Fee Awards of the Largest 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Settlement Size (in Millions)</i>	<i>Mean</i>	<i>Median</i>	<i>SD</i>
(\$72.5 to \$100] ( <i>n</i> = 12)	23.7%	24.3%	5.3%
(\$100 to \$250] ( <i>n</i> = 14)	17.9%	16.9%	5.2%
(\$250 to \$500] ( <i>n</i> = 8)	17.8%	19.5%	7.9%
(\$500 to \$1,000] ( <i>n</i> = 2)	12.9%	12.9%	7.2%
(\$1,000 to \$6,600] ( <i>n</i> = 9)	13.7%	9.5%	11%

SOURCES: Westlaw, PACER, district court clerks' offices.

Prior empirical studies have not examined whether fee awards are associated with the political affiliation of the district court judges making the awards. This is surprising because realist theories of judicial behavior would predict that political affiliation would influence fee decisions.<sup>84</sup> It is true that as a general matter, political affiliation may influence district court judges to a lesser degree than it does appellate judges (who have been the focus of most of the prior empirical studies of realist theories): district court judges decide more routine cases and are subject to greater oversight on appeal than appellate judges. On the other hand, class action settlements are a bit different in these regards than many other decisions made by district court judges. To begin with, class action settlements are almost never appealed, and when they are, the appeals are usually settled before the appellate court hears the case.<sup>85</sup> Thus, district courts have much less reason to worry about the constraint of appellate review in fashioning fee awards. Moreover, one would think the potential for political affiliation to influence judicial decision making is greatest when legal sources lead to indeterminate outcomes and when judicial decisions touch on matters that are salient in national politics. (The more salient a matter is, the more likely presidents will select judges with views on the matter and the more likely those views will diverge between Republicans and Democrats.) Fee award decisions would seem to satisfy both these criteria. The law of fee awards, as explained above, is highly discretionary, and fee award decisions are wrapped up in highly salient political issues such as tort reform and the relative power of plaintiffs' lawyers and corporations. I would expect to find that judges appointed by Democratic presidents awarded higher fees in the 2006–2007 settlements than did judges appointed by Republican presidents.

The data, however, do not appear to bear this out. Of the 444 fee awards using the percentage-of-the-settlement approach, 52 percent were approved by Republican appointees, 45 percent were approved by Democratic appointees, and 4 percent were approved by non-Article III judges (usually magistrate judges). The mean fee percentage approved by Republican appointees (25.6 percent) was slightly *greater* than the mean approved by Democratic appointees (24.9 percent). The medians (25 percent) were the same.

To examine whether the realist hypothesis fared better after controlling for other variables, I performed regression analysis of the fee percentage data for the 427 settlements approved by Article III judges. I used ordinary least squares regression with the dependent variable the percentage of the settlement that was awarded in fees.<sup>86</sup> The independent

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<sup>84</sup>See generally C.K. Rowland & Robert A. Carp, *Politics and Judgment in Federal District Courts* (1996). See also Max M. Schanzenbach & Emerson H. Tiller, *Reviewing the Sentencing Guidelines: Judicial Politics, Empirical Evidence, and Reform*, 75 U. Chi. L. Rev. 715, 724–25 (2008).

<sup>85</sup>See Brian T. Fitzpatrick, *The End of Objector Blackmail?* 62 Vand. L. Rev. 1623, 1640, 1634–38 (2009) (finding that less than 10 percent of class action settlements approved by federal courts in 2006 were appealed by class members).

<sup>86</sup>Professors Eisenberg and Miller used a square root transformation of the fee percentages in some of their regressions. I ran all the regressions using this transformation as well and it did not appreciably change the results. I also ran the regressions using a natural log transformation of fee percentage and with the dependent variable natural log of the fee amount (as opposed to the fee percentage). None of these models changed the results

variables were the natural log of the amount of the settlement, the natural log of the age of the case (in days), indicator variables for whether the class was certified as a settlement class, for litigation subject areas, and for circuits, as well as indicator variables for whether the judge was appointed by a Republican or Democratic president and for the judge's race and gender.<sup>87</sup>

The results for five regressions are in Table 12. In the first regression (Column 1), only the settlement amount, case age, and judge's political affiliation, gender, and race were included as independent variables. In the second regression (Column 2), all the independent variables were included. In the third regression (Column 3), only securities cases were analyzed, and in the fourth regression (Column 4), only nonsecurities cases were analyzed.

In none of these regressions was the political affiliation of the district court judge associated with fee percentage in a statistically significant manner.<sup>88</sup> One possible explanation for the lack of evidence for the realist hypothesis is that district court judges elevate other preferences above their political and ideological ones. For example, district courts of both political stripes may succumb to docket-clearing pressures and largely rubber stamp whatever fee is requested by class counsel; after all, these requests are rarely challenged by defendants. Moreover, if judges award class counsel whatever they request, class counsel will not appeal and, given that, as noted above, class members rarely appeal settlements (and when they do, often settle them before the appeal is heard),<sup>89</sup> judges can thereby virtually guarantee there will be no appellate review of their settlement decisions. Indeed, scholars have found that in the vast majority of cases, the fees ultimately awarded by federal judges are little different than those sought by class counsel.<sup>90</sup>

Another explanation for the lack of evidence for the realist hypothesis is that my data set includes both unpublished as well as published decisions. It is thought that realist theories of judicial behavior lose force in unpublished judicial decisions. This is the case because the kinds of questions for which realist theories would predict that judges have the most room to let their ideologies run are questions for which the law is ambiguous; it is

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appreciably. The regressions were also run with and without the 2006 Enron settlement because it was such an outlier (\$6.6 billion); the case did not change the regression results appreciably. For every regression, the data and residuals were inspected to confirm the standard assumptions of linearity, homoscedasticity, and the normal distribution of errors.

<sup>87</sup>Prior studies of judicial behavior have found that the race and sex of the judge can be associated with his or her decisions. See, e.g., Adam B. Cox & Thomas J. Miles, *Judging the Voting Rights Act*, 108 *Colum. L. Rev.* 1 (2008); Donald R. Songer et al., *A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals*, 56 *J. Pol.* 425 (1994).

<sup>88</sup>Although these coefficients are not reported in Table 8, the gender of the district court judge was never statistically significant. The race of the judge was only occasionally significant.

<sup>89</sup>See Fitzpatrick, *supra* note 85, at 1640.

<sup>90</sup>See Eisenberg & Miller II, *supra* note 16, at 270 (finding that state and federal judges awarded the fees requested by class counsel in 72.5 percent of settlements); Eisenberg, Miller & Perino, *supra* note 9, at 22 ("judges take a light touch when it comes to reviewing fee requests").

Table 12: Regression of Fee Percentages in 2006–2007 Settlements Using Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

<i>Independent Variable</i>	<i>Regression Coefficients (and Robust t Statistics)</i>				
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
Settlement amount (natural log)	-1.77 (-5.43)**	-1.76 (-8.52)**	-1.76 (-7.16)**	-1.41 (-4.00)**	-1.78 (-8.67)**
Age of case (natural log days)	1.66 (2.31)**	1.99 (2.71)**	1.13 (1.21)	1.72 (1.47)	2.00 (2.69)**
Judge's political affiliation (1 = Democrat)	-0.630 (-0.83)	-0.345 (-0.49)	0.657 (0.76)	-1.43 (-1.20)	-0.232 (-0.34)
Settlement class		0.150 (0.19)	0.873 (0.84)	-1.62 (-1.00)	0.124 (0.15)
1st Circuit		3.30 (2.74)**	4.41 (3.32)**	0.031 (0.01)	0.579 (0.51)
2d Circuit		0.513 (0.44)	-0.813 (-0.61)	2.93 (1.14)	-2.23 (-1.98)**
3d Circuit		2.25 (1.99)**	4.00 (3.85)**	-1.11 (-0.50)	—
4th Circuit		2.34 (1.22)	0.544 (0.19)	3.81 (1.35)	—
5th Circuit		2.98 (1.90)*	1.09 (0.65)	6.11 (1.97)**	0.230 (0.15)
6th Circuit		2.91 (2.28)**	0.838 (0.57)	4.41 (2.15)**	—
7th Circuit		2.55 (2.23)**	3.22 (2.36)**	2.90 (1.46)	-0.227 (-0.20)
8th Circuit		2.12 (0.97)	-0.759 (-0.24)	3.73 (1.19)	-0.586 (-0.28)
9th Circuit		—	—	—	-2.73 (-3.44)**
10th Circuit		1.45 (0.94)	-0.254 (-0.13)	3.16 (1.29)	—
11th Circuit		4.05 (3.44)**	3.85 (3.07)**	4.14 (1.88)*	—
DC Circuit		2.76 (1.10)	2.60 (0.80)	2.41 (0.64)	—
Securities case		—	—	—	—
Labor and employment case		2.93 (3.00)**	—	—	2.85 (2.94)**
Consumer case		-1.65 (-0.88)	—	-4.39 (-2.20)**	-1.62 (-0.88)
Employee benefits case		-0.306 (-0.23)	—	-4.23 (-2.55)**	-0.325 (-0.26)
Civil rights case		1.85 (0.99)	—	-2.05 (-0.97)	1.76 (0.95)
Debt collection case		-4.93 (-1.71)*	—	-7.93 (-2.49)**	-5.04 (-1.75)*
Antitrust case		3.06 (2.11)**	—	0.937 (0.47)	2.78 (1.98)**

Table 12 *Continued*

Independent Variable	Regression Coefficients (and Robust t Statistics)				
	1	2	3	4	5
Commercial case		-0.028 (-0.01)		-2.65 (-0.73)	0.178 (0.05)
Other case		-0.340 (-0.17)		-3.73 (-1.65)	-0.221 (-0.11)
Constant	42.1 (7.29)**	37.2 (6.08)**	43.0 (6.72)**	38.2 (4.14)**	40.1 (7.62)**
N	427	427	232	195	427
R <sup>2</sup>	.20	.26	.37	.26	.26
Root MSE	6.59	6.50	5.63	7.24	6.48

NOTE: \*\*significant at the 5 percent level; \*significant at the 10 percent level. Standard errors in Column 1 were clustered by circuit. Indicator variables for race and gender were included in each regression but not reported.

SOURCES: Westlaw, PACER, district court clerks' offices, Federal Judicial Center.

thought that these kinds of questions are more often answered in published opinions.<sup>91</sup> Indeed, most of the studies finding an association between ideological beliefs and case outcomes were based on data sets that included only published opinions.<sup>92</sup> On the other hand, there is a small but growing number of studies that examine unpublished opinions as well, and some of these studies have shown that ideological effects persisted.<sup>93</sup> Nonetheless, in light of the discretion that judges exercise with respect to fee award decisions, it hard to characterize *any* decision in this area as “unambiguous.” Thus, even when unpublished, I would have expected the fee award decisions to exhibit an association with ideological beliefs. Thus, I am more persuaded by the explanation suggesting that judges are more concerned with clearing their dockets or insulating their decisions from appeal in these cases than with furthering their ideological beliefs.

In all the regressions, the size of the settlement was strongly and inversely associated with fee percentages. Whether the case was certified as a settlement class was not associated

<sup>91</sup>See, e.g., Ahmed E. Taha, Data and Selection Bias: A Case Study, 75 UMKC L. Rev. 171, 179 (2006).

<sup>92</sup>Id. at 178–79.

<sup>93</sup>See, e.g., David S. Law, Strategic Judicial Lawmaking: Ideology, Publication, and Asylum Law in the Ninth Circuit, 73 U. Cin. L. Rev. 817, 843 (2005); Deborah Jones Merritt & James J. Brudney, Stalking Secret Law: What Predicts Publication in the United States Courts of Appeals, 54 Vand. L. Rev. 71, 109 (2001); Donald R. Songer, Criteria for Publication of Opinions in the U.S. Courts of Appeals: Formal Rules Versus Empirical Reality, 73 Judicature 307, 312 (1990). At the trial court level, however, the studies of civil cases have found no ideological effects. See Laura Beth Nielsen, Robert L. Nelson & Ryon Lancaster, Individual Justice or Collective Legal Mobilization? Employment Discrimination Litigation in the Post Civil Rights United States, 7 J. Empirical Legal Stud. 175, 192–93 (2010); Denise M. Keele et al., An Analysis of Ideological Effects in Published Versus Unpublished Judicial Opinions, 6 J. Empirical Legal Stud. 213, 230 (2009); Orley Ashenfelter, Theodore Eisenberg & Stewart J. Schwab, Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes, 24 J. Legal Stud. 257, 276–77 (1995). With respect to criminal cases, there is at least one study at the trial court level that has found ideological effects. See Schanzenbach & Tiller, *supra* note 81, at 734.

with fee percentages in any of the regressions. The age of the case at settlement was associated with fee percentages in the first two regressions, and when the settlement class variable was removed in regressions 3 and 4, the age variable became positively associated with fee percentages in nonsecurities cases but remained insignificant in securities cases. Professors Eisenberg and Miller likewise found that the age of the case at settlement was positively associated with fee percentages in their 1993–2002 data set,<sup>94</sup> and that settlement classes were not associated with fee percentages in their 2003–2008 data set.<sup>95</sup>

Although the structure of these regressions did not permit extensive comparisons of fee awards across different litigation subject areas, fee percentages appeared to vary somewhat depending on the type of case that settled. Securities cases were used as the baseline litigation subject area in the second and fifth regressions, permitting a comparison of fee awards in each nonsecurities area with the awards in securities cases. These regressions show that awards in a few areas, including labor/employment and antitrust, were more lucrative than those in securities cases. In the fourth regression, which included only nonsecurities cases, labor and employment cases were used as the baseline litigation subject area, permitting comparison between fee percentages in that area and the other nonsecurities areas. This regression shows that fee percentages in several areas, including consumer and employee benefits cases, were lower than the percentages in labor and employment cases.

In the fifth regression (Column 5 of Table 12), I attempted to discern whether the circuits identified in Section III as those with the most overrepresented (the First, Second, Seventh, and Ninth) and underrepresented (the Fifth and Eighth) class action dockets awarded attorney fees differently than the other circuits. That is, perhaps district court judges in the First, Second, Seventh, and Ninth Circuits award greater percentages of class action settlements as fees than do the other circuits, whereas district court judges in the Fifth and Eighth Circuits award smaller percentages. To test this hypothesis, in the fifth regression, I included indicator variables only for the six circuits with unusual dockets to measure their fee awards against the other six circuits combined. The regression showed statistically significant association with fee percentages for only two of the six unusual circuits: the Second and Ninth Circuits. In both cases, however, the direction of the association (i.e., the Second and Ninth Circuits awarded *smaller* fees than the baseline circuits) was opposite the hypothesized direction.<sup>96</sup>

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<sup>94</sup>See Eisenberg & Miller, *supra* note 15, at 61.

<sup>95</sup>See Eisenberg & Miller II, *supra* note 16, at 266.

<sup>96</sup>This relationship persisted when the regressions were rerun among the securities and nonsecurities cases separately. I do not report these results, but, even though the First, Second, and Ninth Circuits were oversubscribed with securities class action settlements and the Fifth, Sixth, and Eighth were undersubscribed, there was no association between fee percentages and any of these unusual circuits except, again, the inverse association with the Second and Ninth Circuits. In nonsecurities cases, even though the Seventh and Ninth Circuits were oversubscribed and the Fifth and the Eighth undersubscribed, there was no association between fee percentages and any of these unusual circuits except again for the inverse association with the Ninth Circuit.

The lack of the expected association with the unusual circuits might be explained by the fact that class action lawyers forum shop along dimensions other than their potential fee awards; they might, for example, put more emphasis on favorable class-certification law because there can be no fee award if the class is not certified. As noted above, it might also be the case that class action lawyers are unable to engage in forum shopping at all because defendants are able to transfer venue to the district in which they are headquartered or another district with a significant connection to the litigation.

It is unclear why the Second and Ninth Circuits were associated with lower fee awards despite their heavy class action dockets. Indeed, it should be noted that the Ninth Circuit was the baseline circuit in the second, third, and fourth regressions and, in all these regressions, district courts in the Ninth Circuit awarded smaller fees than courts in many of the other circuits. The lower fees in the Ninth Circuit may be attributable to the fact that it has adopted a presumption that the proper fee to be awarded in a class action settlement is 25 percent of the settlement.<sup>97</sup> This presumption may make it more difficult for district court judges to award larger fee percentages. The lower awards in the Second Circuit are more difficult to explain, but it should be noted that the difference between the Second Circuit and the baseline circuits went away when the fifth regression was rerun with only nonsecurities cases.<sup>98</sup> This suggests that the awards in the Second Circuit may be lower *only* in securities cases. In any event, it should be noted that the lower fee awards from the Second and Ninth Circuits contrast with the findings in the Eisenberg-Miller studies, which found no intercircuit differences in fee awards in common-fund cases in their data through 2008.<sup>99</sup>

## V. CONCLUSION

This article has attempted to fill some of the gaps in our knowledge about class action litigation by reporting the results of an empirical study that attempted to collect all class action settlements approved by federal judges in 2006 and 2007. District court judges approved 688 class action settlements over this two-year period, involving more than \$33 billion. Of this \$33 billion, nearly \$5 billion was awarded to class action lawyers, or about 15 percent of the total. District courts typically awarded fees using the highly discretionary percentage-of-the-settlement method, and fee awards varied over a wide range under this method, with a mean and median around 25 percent. Fee awards using this method were strongly and inversely associated with the size of the settlement. Fee percentages were positively associated with the age of the case at settlement. Fee percentages were not associated with whether the class action was certified as a settlement class or with the

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<sup>97</sup>See note 75 *supra*. It should be noted that none of the results from the previous regressions were affected when the Ninth Circuit settlements were excluded from the data.

<sup>98</sup>The Ninth Circuit's differences persisted.

<sup>99</sup>See Eisenberg & Miller II, *supra* note 16, at 260.

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political affiliation of the judge who made the award. Finally, there appeared to be some variation in fee percentages depending on subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all of the other litigation areas, and district courts in the Ninth Circuit and in the Second Circuit (in securities cases) awarded lower fee percentages than district courts in several other circuits. The lower awards in the Ninth Circuit may be attributable to the fact that it is the only circuit that has adopted a presumptive fee percentage of 25 percent.

# Fitzpatrick Decl. Exhibit 3

## A FIDUCIARY JUDGE'S GUIDE TO AWARDING FEES IN CLASS ACTIONS

Brian T. Fitzpatrick\*

*It is often said that judges act as fiduciaries for the absent class members in class action litigation. If we take this seriously, how then should judges award fees to the lawyers who represent these class members? The answer is to award fees the same way rational class members would want if they could do it on their own. In this Essay, I draw on economic models and data from the market for legal representation of sophisticated clients to describe what these fee practices should look like. Although more data from sophisticated clients is no doubt needed, what we do know calls into question several fee practices that are in common use today: (1) presuming that class counsel should earn only 25 percent of any recovery, (2) reducing that percentage further if class counsel recovers more than \$100 million, and (3) reducing that percentage even further if it exceeds class counsel's lodestar by some multiple.*

### INTRODUCTION

Judges take a much more active role in class action litigation than they do in individual litigation. First and foremost, they decide whether the case will proceed as a class action on behalf of absent parties.<sup>1</sup> In doing so, they decide whether the litigation will bind the absent class members at all. They also decide which lawyers will represent absent class members,<sup>2</sup> whether and on what terms absent class members will settle,<sup>3</sup> and how much absent class members must pay their lawyers.<sup>4</sup>

Judges do these things because absent class members are involuntary plaintiffs. Sometimes they are stuck in the class action whether they like it

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1. See FED. R. CIV. P. 23(c)(1)(A).
2. *Id.* r. 23(g).
3. *Id.* r. 23(e).
4. See *id.* r. 23(h).

or not because they are not allowed to opt out.<sup>5</sup> Even when they can opt out, sometimes they do not receive notice that they are even part of the class action.<sup>6</sup> Even when they can opt out and do receive notice, there may be no point to opting out because they have so little at stake they would never sue on their own.<sup>7</sup> Judges therefore step in to make decisions on their behalves.

For this reason, it is often said that judges act as fiduciaries for absent class members.<sup>8</sup> This description may be more figurative than literal because judges do not dwell on the implications of that description when they discharge their duties in class actions.<sup>9</sup> But in this Essay, I take the description seriously and ask what it means for one of those duties: the duty to decide how much absent class members must pay the lawyers appointed to represent them.

It is important to note that this is not the only perspective from which we might try to guide fee decisions in class action litigation. For example, we might put to the side the private interests of class members and focus instead on what fees are best for social welfare. I have taken that perspective in the past.<sup>10</sup> But in this Essay, I wish to try something different: how should judges set fees if they are really acting as fiduciaries to class members?

Drawing on agency law, my answer is that judges should set fees in the same way rational class members would have set them at the outset of the case if they had had the opportunity to do so. If judges could perfectly

5. *Id.* r. 23(c)(2)(B)(v).

6. *Id.* r. 23(c)(2)(B) (requiring courts to direct only “the best notice that is practicable under the circumstances”); *see also* Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950) (holding that notice need only be “reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”).

7. *See* BRIAN T. FITZPATRICK, THE CONSERVATIVE CASE FOR CLASS ACTIONS 59–61 (2019) (noting that class actions are necessary because individuals lack the incentive to sue to remedy small harms); *id.* at 88 (noting that class members often do expend much effort to collect payments from the class fund); Theodore Eisenberg & Geoffrey Miller, *The Role of Opt-Outs and Objectors in Class Action Litigation: Theoretical and Empirical Issues*, 57 VAND. L. REV. 1529, 1533 (2004) (finding that “opt-out . . . rates increase as per capita recovery increases”).

8. *See, e.g.*, Flanagan, Lieberman, Hoffman & Swaim v. Ohio Pub. Emps. Ret. Sys., 814 F.3d 652, 657 (2d Cir. 2016); Ehrheart v. Verizon Wireless, 609 F.3d 590, 594 (3d Cir. 2010); Rodriguez v. West Publ’g Corp., 563 F.3d 948, 968 (9th Cir. 2009); *In re* Wireless Tel. Fed. Cost Recovery Fees Litig., 396 F.3d 922, 932 (8th Cir. 2005); Reynolds v. Beneficial Nat’l Bank, 288 F.3d 277, 279–80 (7th Cir. 2002) (“We and other courts have gone so far as to term the district judge in the settlement phase of a class action suit a fiduciary of the class.”); *In re* Corrugated Container Antitrust Litig., 643 F.2d 195, 225 (5th Cir. 1981); Ray v. Mechel Bluestone, Inc., No. 15-CV-03014, 2018 WL 1309731, at \*4 (S.D.W. Va. Mar. 13, 2018); Jackson v. Innovative Sec. Servs., LLC, 283 F.R.D. 13, 15 (D.D.C. 2012); *In re* Lupron Mktg. & Sales Pracs. Litig., 345 F. Supp. 2d 135, 138 (D. Mass. 2004); *see also* 4 WILLIAM B. RUBENSTEIN, NEWBERG ON CLASS ACTIONS § 13:40 (5th ed. 2020) (noting that in class action litigation “the law requires the judge to act as a fiduciary” of absent class members).

9. *See, e.g.*, Lisa L. Casey, *Reforming Securities Class Actions from the Bench: Judging Fiduciaries and Fiduciary Judging*, 2003 BYU L. REV. 1239, 1322 (“[C]ourts portraying themselves as fiduciaries fail to articulate what the status requires in this context, much less what they have done to satisfy their fiduciary duties for the benefit of absent class members.”).

10. *See generally* Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?*, 158 U. PA. L. REV. 2043 (2010).

monitor class counsel, any fee arrangement that class counsel would accept would work because the judge could always ensure that counsel would work hard for the class. But it is not realistic to think that class counsel can be monitored perfectly—and it may not even be realistic to think that class counsel can be monitored well (particularly when the monitoring is usually done at the end of the process rather than during). What would rational class members want then? In this Essay, I draw on two sources to answer this question: economic models of rational actors and data from marketplaces where clients exhibit their actual preferences.

According to the economic models, there is no fee formula that entirely relieves clients of monitoring lawyers who work on contingency, like class counsel does. Moreover, the models are indeterminate: the optimal formula depends on *how well* clients can monitor and *what* clients can monitor best. For example, the well-known formula that pays lawyers a percentage of what they recover requires clients to monitor against their lawyers settling cases prematurely for a smaller recovery than would have been obtained had the litigation continued; the lower the percentage, the greater the need to monitor. This danger of premature settlement can be mitigated by paying a percentage that escalates as the litigation matures or the recovery increases. The danger can be all but eliminated by a formula that pays a percentage plus a fee equal to the lawyer's normal hourly rate for the hours worked to achieve the recovery—i.e., contingent lodestar plus percentage—but then this requires the client to verify the lawyer's lodestar. Whether the percentage method or the contingent-lodestar-plus-percentage method is preferable will therefore depend on which sort of monitoring the client prefers: verifying the lodestar or guarding against premature settlement.

The data we have from the marketplace for contingent representation shows that clients prefer to monitor against premature settlement over verifying the lodestar. No one—not even the most sophisticated client—appears to use the contingent-lodestar-plus-percentage formula. Rather, drawing on preexisting data and new data I recently collected, I show that even sophisticated clients use the percentage method. Moreover, they use the same fixed and escalating percentages that unsophisticated clients use. These clients do this even in the most enormous cases, where we would expect the lawyers to benefit from economies of scale.

What does this mean for judges in class action cases? I think it means that judges have two options. If judges believe they are better at monitoring class counsel's lodestar than they are at monitoring against premature settlement, then they could try to use the contingent-lodestar-plus-percentage method. But to use this method, judges must have some way to determine the right percentage. In the absence of any data from the marketplace—as I said, this method is not used in the marketplace—the only way for judges to do that is to hold an auction for class counsel. But that introduces a host of other problems that I will discuss. If judges do not believe they can make auctions work, or, like sophisticated clients, they believe they are better at monitoring against premature settlement, then judges should probably pay class counsel a fixed percentage of one-third of the recovery or percentages that escalate

even higher as litigation matures. These conclusions call into question several fee practices commonly used by judges today: (1) presuming that class counsel should earn only 25 percent of any recovery, (2) reducing that percentage further if class counsel recovers more than \$100 million, and (3) reducing that percentage even further if it exceeds class counsel's lodestar by some multiple.

### I. JUDGES AS FIDUCIARIES

What does it mean to say that judges act as fiduciaries for absent class members? If we want to take this claim seriously, it means that judges are acting as agents for absent class members.<sup>11</sup> Like any other agent, that means a judge should do what absent class members would have done if they had been able to interact with class counsel directly.<sup>12</sup>

The Restatement (Third) of the Law of Agency says that agents should do what their principals would "reasonably" want them to do unless they receive explicit instructions otherwise.<sup>13</sup> This means that when acting on behalf of absent class members, judges should assume that such members would be *rational* when interacting with class counsel. We are all familiar with the findings from behavioral economics showing that we are often systematically irrational.<sup>14</sup> But judges should ignore these findings; by definition, absent class members are not in a position to give judges explicit instructions to follow irrational practices. Thus, judges should assume that absent class members would interact with class counsel as their best, most rational selves.

My focus in this Essay is on attorneys' fees. Judges almost always set attorneys' fees in class actions after the cases are over and class counsel has already won recovery for class members.<sup>15</sup> At that moment, the rational thing for absent class members to want is to keep all the recovery for

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11. See RESTATEMENT (THIRD) OF THE L. OF AGENCY § 1.01 (AM. L. INST. 2006) ("Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf.").

12. See *id.* § 8.01 ("An agent has a fiduciary duty to act loyally for the principal's benefit in all matters connected with the agency relationship.").

13. *Id.* § 8.10 ("An agent has a duty, within the scope of the agency relationship, to act reasonably and to refrain from conduct that is likely to damage the principal's enterprise."); *id.* § 2.02 cmt. f ("The agent's fiduciary duty to the principal obliges the agent to interpret the principal's manifestations so as to infer, in a reasonable manner, what the principal desires to be done in light of facts of which the agent has notice at the time of acting."); *id.* cmt. h ("[I]f it is normally not reasonable to believe that the principal will benefit from an act, a reasonable agent should not infer that the principal wishes the agent to do the act and therefore should not commit the act unless the principal communicates specifically that the principal wishes the act to be done.").

14. See FITZPATRICK, *supra* note 7, at 104 (noting that "people, it turns out, are not very rational," briefly discussing the wealth of literature "showing how all of us make the same types of mistakes over and over again when we try to process information," and citing sources).

15. See *id.* at 91 ("[J]udges almost always set the fee award at the end of the case."); *id.* at 87 ("[M]any courts wait to see how many class members apply for money before awarding fees.").

themselves and give none of it to class counsel.<sup>16</sup> But, of course, if that is what judges did, then lawyers would never take on class action cases because they would know that they would get stiffed at the end. Absent class members would obviously not want that in the long run. Thus, when it comes to attorneys' fees, absent class members acting as their best, most rational selves would want to pay class counsel at the end of the case the amount they would have paid class counsel to take the case to begin with—what we often call “ex ante.” As good fiduciaries, then, that is exactly what judges should do as well.

## II. HOW WOULD RATIONAL CLASS MEMBERS PAY THEIR LAWYERS EX ANTE?

The lawyers who take on class action cases are usually paid only from the class's recovery.<sup>17</sup> This means they are lawyers who work on contingency: if they recover nothing, they get paid nothing; even if they recover something, their fees will be limited by the size of the recovery.<sup>18</sup> How would rational absent class members want to pay lawyers, ex ante, who work on contingency like this? There are two sources of insight we can call on to answer this question: economic models of rational actors and data from the marketplace where clients exhibit their actual preferences. I will draw on these sources in turn below, but it is important to note that they both come with limitations. First, economic models are purely theoretical and one always worries theoretical models are incomplete. Second, most of the data comes from the marketplace for representation of unsophisticated clients. One might worry that the findings from behavioral economics mentioned above taint this data. Moreover, this data comes from cases involving individual representation, not class cases. This is because, other than auctions for class counsel (which I will address below), there is no market in class cases. Fees are set by judges, not by clients. This is important because some think that lawyers who take class cases benefit from economies of scale compared to individual cases; therefore, the individual-case market may not be very probative of what absent class members would need to pay a lawyer to take a class action.<sup>19</sup> One possible way to overcome both of these

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16. *See id.* at 91 (noting that the short-term rational decision for a class member paying his lawyer at the end of the case is to “give him as little as possible so I can keep as much as possible for myself”).

17. *See* Fitzpatrick, *supra* note 10, at 2051 (“In most cases, . . . fee awards come from proceeds that would otherwise go to class members.”). An interesting example to the contrary is *Hyland v. Navient Corp.*, No. 18-CV-9031, 2019 WL 2918238 (S.D.N.Y. Oct. 9, 2020), which describes a class counsel who was paid noncontingent fees by the American Federation of Teachers.

18. *See* Alon Klement & Zvika Neeman, *Incentive Structures for Class Action Lawyers*, 20 J.L. ECON. & ORG. 102, 108–09 (2004) (noting that “[a]ny noncontingent fee [is] infeasible in this context” and “the attorney can never collect a fee higher than the actual amount recovered”).

19. *See* Fitzpatrick, *supra* note 10, at 2063 (“[A]ggregate litigation permits plaintiffs to reap the benefits of economies of scale in litigation, and, in a competitive marketplace, one might expect those economies to be passed on to clients in the form of lower attorneys’ fees.”).

limitations is to focus on data from sophisticated corporate clients who hire lawyers in high-stakes cases—i.e., clients for whom the behavioral findings are less relevant<sup>20</sup> and cases that might offer their own economies of scale. This will be my strategy below.

#### A. *Economic Models*

How do the economic models suggest rational class members should pay lawyers who work on contingency, like class counsel? Most of the literature compares two formulas: the lodestar method and the percentage method.<sup>21</sup> The lodestar method pays the lawyer a fee equal to the number of hours the lawyer worked multiplied by the lawyer's normal hourly rate. The percentage method pays the lawyer a fee equal to some percentage of the amount recovered for the client. But most of the literature compares the percentage method to the *non-contingent-lodestar* method.<sup>22</sup> The *contingent-lodestar* method that must be considered here is typically assessed only in the literature on class actions,<sup>23</sup> statutory fee shifting,<sup>24</sup> and the English civil justice system (where the percentage method is forbidden and contingent agreements can only use the lodestar method).<sup>25</sup> The contingent-lodestar method differs from the noncontingent method not only because payment is guaranteed only in the latter but because the former permits enhancement of the lodestar by a discretionary number (the multiplier) to compensate for that risk of nonpayment.<sup>26</sup>

If clients could perfectly monitor their lawyers and thereby eliminate agency costs—that is, if clients could ensure their lawyers would do exactly what they wanted them to do every time—it would not matter which of these arrangements was employed. Indeed, clients could even pay their lawyers fixed fees. In all these arrangements, the outcome for the clients would be exactly the same. Clients would presumably want the arrangement that

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20. See FITZPATRICK, *supra* note 7, at 104 (noting that behavioral law and economics does not suggest that “the teams of people who run corporations are systematically irrational in the same way the rest of us are”).

21. See, e.g., Lynn Baker, Comment, *Facts About Fees: Lessons for Legal Ethics*, 80 TEX. L. REV. 1985, 1986 (2002).

22. See, e.g., *id.*; Daniel L. Rubinfeld & Suzanne Scotchmer, *Contingent Fees*, in 1 THE NEW PALGRAVE DICTIONARY OF ECONOMICS AND THE LAW 415, 416 (Peter Newman ed., 2002) (“It is common to compare a contingency fee arrangement with the alternative in which an attorney is paid an hourly wage.”).

23. See, e.g., FITZPATRICK, *supra* note 7, at 85–98 (explaining the pros and cons of the contingent-lodestar method and the percentage method); Klement & Neeman, *supra* note 18, at 108–110; William Lynk, *The Courts and the Plaintiffs’ Bar: Awarding the Attorney’s Fee in Class-Action Litigation*, 23 J. LEGAL STUD. 185, 191–95 (1994).

24. See, e.g., Maureen Carroll, *Fee-Shifting Statutes and Compensation for Risk*, 95 IND. L.J. 1021, 1048–61 (2020) (discussing different fee arrangements, including statutory fee shifting); Martha Pacold, Comment, *Attorneys’ Fees in Class Actions Governed by Fee-Shifting Statutes*, 68 U. CHI. L. REV. 1007 (2001).

25. See, e.g., Winand Emons & Nuno Garoupa, *US-Style Contingent Fees and UK-Style Conditional Fees: Agency Problems and the Supply of Legal Services*, 27 MANAGERIAL & DECISIONS ECON. 379 (2006).

26. See, e.g., Fitzpatrick, *supra* note 10, at 2051.

would be cheapest in a given case, but depending on the relative risk aversion of client and lawyer, we could imagine them agreeing to any arrangement.

We can quickly put aside the model where clients can perfectly monitor their lawyers. I doubt any client can do that—this is why there is an entire field of economics that studies agency costs—but it is certainly not possible in class action cases. The clients—class members—are, by definition, absent.<sup>27</sup> Moreover, their monitor—the judge acting as their fiduciary—is an imperfect monitor at best. As scholars have long noted, judges do not exercise day-to-day, week-to-week, month-to-month, or sometimes even year-to-year oversight of class counsel.<sup>28</sup> They are passive monitors until a milestone like settlement presents itself in the litigation.<sup>29</sup> Asking a judge to enter the litigation at a milestone and understand the intricacies of what has transpired is a tall order.<sup>30</sup> It is an even taller order in light of the docket pressure that incentivizes judges to rubber-stamp whatever class counsel and the defendant have agreed to.<sup>31</sup> For class actions, we need a model that assumes clients cannot monitor their lawyers perfectly—or even well.

What do models like this tell us? I will assume that client and attorney have the same information about the merits of the case for simplicity.<sup>32</sup> Moreover, I will assume that any recovery will come in cash; the client's options become much narrower if the recovery is injunctive or declaratory. Even with these assumptions, there is no formula that frees clients entirely from monitoring.<sup>33</sup> The contingent-fee method is perhaps worst of all

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27. I am ignoring the possibility that monitoring will take place by the class representative. Outside of securities fraud class actions, most class representatives are unsophisticated figureheads. See Jonathan R. Macey & Geoffrey P. Miller, *The Plaintiffs' Attorney's Role in Class Action and Derivative Litigation: Economic Analysis and Recommendations for Reform*, 58 U. CHI. L. REV. 1, 5 (1991) (“The named plaintiff does little—indeed, usually does nothing—to monitor the attorney in order to ensure that representation is competent and zealous, or to align the interests of the attorney with those of the class or corporation.”).

28. See, e.g., Alon Klement, *Who Should Guard the Guardians?: A New Approach for Monitoring Class Action Lawyers*, 21 REV. LITIG. 25, 45 (2002) (“[C]ommon law courts are institutionally incapable of obtaining information unless presented to them by the litigants.”).

29. See *id.* at 45–46 (“[T]he paradigmatic common law court is passive and relies solely on the adversary process for its education about the case.”).

30. See *id.* at 45 (“Constrained by the institutional requirements of neutrality and passivity set by the adversary system . . . courts have been left, by and large, uninformed about the parameters necessary to effectively regulate class attorneys.”).

31. See *id.* at 47 (“On top of these institutional barriers, courts are also constrained by their limited resources. Dockets are full, and support personnel are scarce. Conducting meaningful investigations without the necessary means is often unworkable. Moreover, in the specific context of attorney fee applications, courts are expected to apply restraint and limit the extent of factual investigations. They are urged not to allow protracted satellite litigation and to control and expedite fee award determinations.” (footnote omitted)).

32. For models that relax that assumption, see, for example, James Dana & Kathryn Spier, *Expertise and Contingent Fees: The Role of Asymmetric Information in Attorney Compensation*, 9 J.L. ECON. ORG. 349 (1993); Klement & Neeman, *supra* note 18; see also Rubinfeld & Scotchmer, *supra* note 22, at 417–18 (summarizing these models).

33. The only thing that frees clients from monitoring is the outright sale of their claims to their lawyers. See Macey & Miller, *supra* note 27, at 108 (proposing an auction approach where “[t]he winning bidder becomes the owner of the claim, and therefore acts as its own agent”).

because it renders the lawyer completely indifferent to the magnitude of recovery and adverse to the client on the speed with which it comes about; the client would have to monitor to ensure the lawyer does not prolong the case or recommend an inadequate settlement.<sup>34</sup> It is true that the lawyer might feel constrained by professional or ethical norms, but those, too, are hard to monitor. The percentage method is better because the lawyer is not indifferent to the size or speed of recovery; like the client, the lawyer wants a big recovery and the lawyer wants it quickly.<sup>35</sup> But the percentage causes the lawyer to want to settle *too* quickly: if the fee percentage is less than 100 percent, then the lawyer must bear all the effort of going forward with the litigation while collecting only a fraction of the return on the effort. This incentivizes the lawyer to want to settle prematurely, even if it means a smaller recovery, so the client must monitor to ensure that does not happen.<sup>36</sup> The lower the percentage, the greater the divergence between the interests of client and lawyer. The optimal fixed percentage therefore depends on how well the client can monitor against premature settlement.<sup>37</sup> The danger of premature settlement can be mitigated if the fee percentage escalates as the recovery increases or the litigation matures, but it cannot be eliminated.<sup>38</sup>

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34. See Emons & Garoupa, *supra* note 25, at 380 (“[C]ontingent fees are more efficient than conditional fees.”); Fitzpatrick, *supra* note 10, at 2051–52 (“Under the lodestar method, class counsel’s compensation increased the longer the litigation wore on; class members, by contrast, prefer cases to end as quickly as possible so they can receive their compensation as quickly as possible. Moreover, class counsel were compensated irrespective of how much they recovered for the class; class members, by contrast, prefer to receive as much as possible.”); Klement & Neeman, *supra* note 18, at 108–10; Lynk, *supra* note 23, at 191–95.

35. See Emons & Garoupa, *supra* note 25, at 380; Fitzpatrick, *supra* note 10, at 2052 (“To better align the interests of class counsel and the class, judges began compensating class counsel by awarding them a percentage of the class’s recovery. This way, the more the class recovers, the more class counsel are paid, and class counsel have no incentive to drag cases on unnecessarily.”).

36. See, e.g., STEVEN SHAVELL, FOUNDATIONS OF ECONOMIC ANALYSIS OF LAW 435 (2009) (“Under contingency fee arrangements . . . the lawyer . . . press[es] for settlement more often than when the settlement offer exceeds the expected judgment net of litigation costs because the lawyer bears all the litigation costs but obtains only a percentage of the settlement.”); Lynk, *supra* note 23, at 194; Murray Schwartz & Daniel Mitchell, *An Economic Analysis of the Contingent Fee in Personal-Injury Litigation*, 22 STAN. L. REV. 1125 (1970). But see Mitchell Polinsky & Daniel Rubinfeld, *A Note on Settlements Under the Contingent Fee Method of Compensating Lawyers*, 22 INT’L REV. L. & ECON. 217, 217 (2002) (“[T]he lawyer could have an insufficient motive to settle, the opposite of what is usually believed.”).

37. See Bruce L. Hay, *Contingent Fees and Agency Costs*, 25 J. LEGAL STUD. 503, 508–11 (1996) (noting that the optimal fee minimizes the agency costs generated from a lawyer’s underinvestment in the claim and rent-seeking behavior).

38. See John C. Coffee Jr., *Understanding the Plaintiff’s Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions*, 86 COLUM. L. REV. 669, 697 (1986) (“[T]he most logical answer to this problem of premature settlement would be to base fees on a graduated, increasing percentage of the recovery formula—one that operates, much like the Internal Revenue Code, to award the plaintiff’s attorney a marginally greater percentage of each defined increment of the recovery. While this approach cannot be said to eliminate the inevitable tension between the interests of plaintiff’s attorneys and their clients in class actions, it can at least partially counteract the tendency for premature settlements.”); Jill E. Fisch, *Lawyers on the Chopping Block: Evaluating the Selection of Class Counsel by Auction*, 102 COLUM. L. REV. 650, 679 (2002) (“By increasing the reward to counsel, increasing percentage bids reduce the incentive for

The closest we can come to eliminating the danger of premature settlement is to use the formula devised many years ago by Kevin Clermont and John Currivan: contingent lodestar plus percentage.<sup>39</sup> Here, the client pays the lawyer an hourly rate, only if there is some recovery, plus a percentage of that recovery.<sup>40</sup> This formula pits the contingent-lodestar and percentage methods against one another to improve on them both: the percentage component of the formula incentivizes the lawyer to care about the magnitude and speed of the recovery, while the lodestar component mitigates the incentive to settle prematurely. But even this formula does not entirely eliminate the problem of premature settlement.<sup>41</sup> Moreover, it introduces a new monitoring need: the client needs to verify that the lawyer's lodestar is not inflated.

The economic models are therefore indeterminate. It is possible the contingent-lodestar-plus-percentage formula is what a rational absent class member would want, but it is also possible that a rational absent class member would want the percentage method. It depends on whether it would be easier to monitor against premature settlement or monitor the lodestar. It is possible a rational absent class member would want to pay a low fixed percentage, a high fixed percentage, or a marginally escalating percentage. It depends on how easy it is to monitor against premature settlement.

#### B. Data from Sophisticated Clients

The data on the contingent-fee arrangements clients choose in the marketplace strongly suggests that clients prefer to monitor against premature settlement than to monitor the lawyer's lodestar. The most famous

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cheap settlements and motivate counsel to pursue high levels of recovery.”); Bruce L. Hay, *Optimal Contingent Fees in a World of Settlement*, 26 J. LEGAL STUD. 259, 260 (1997) (“[T]he bifurcated fee structure is preferable to the unitary structure . . . . The optimal bifurcated fee often couples a relatively high trial percentage for the lawyer (one that would be excessive if the case were actually going to trial) with a relatively low settlement percentage. The rationale of the large trial percentage is that it generates a large settlement; the rationale of the small settlement percentage is that it avoids paying the lawyer for (trial) work he does not perform.”).

39. See Kevin M. Clermont & John D. Currivan, *Improving on the Contingent Fee*, 63 CORNELL L. REV. 529, 530 (1978).

40. See *id.* at 581 (“The contingent hourly-percentage fee is payable only in the event of recovery and equals the sum of two components: (1) the lawyer’s time charge for the hours devoted to the case; and (2) a percentage ( $x$ ) of the amount by which the recovery ( $s$ ) exceeds that time charge.” (footnotes omitted)).

41. See A. Mitchell Polinsky & Daniel Rubinfeld, *Aligning the Interests of Lawyers and Clients*, 5 AM. L. & ECON. REV. 165, 182 n.30 (2003) (“This payment scheme is only fully successful, however, if the plaintiff is certain to obtain a settlement or a trial victory.”). Although there are ways to perfect the formula, they are complex and involve third parties; as such I am not sure how realistic the perfections are. See *id.* at 166–69 (proposing a variation in which a third-party administrator “will contract with the lawyer and agree to pay him for the appropriate fraction of his time”); Alon Klement et al, *Auctioning Class Action Representation 4* (Sept. 8, 2020) (unpublished manuscript) (on file with the *Fordham Law Review*) (“The proposed auction is divided into two stages. In the first stage, risk neutral insurers bid the highest percentage they are willing to pay the representing lawyer, over the hours she invests in the case.”).

studies come from Herbert Kritzer, who surveyed lawyers who work on contingency in Wisconsin.<sup>42</sup> Ninety-five percent of clients chose the percentage method.<sup>43</sup> Most of the time, the agreements employed fixed percentages (most often one-third but occasionally one-fourth), but sometimes the agreements employed percentages that escalated as the litigation matured.<sup>44</sup> None of the percentages escalated or deescalated with the size of the recovery except percentages that escalated for clients who already had a settlement offer when they hired the lawyer.<sup>45</sup> The other 5 percent was split among a variety of methods with a contingent component, but none of them appeared to be contingent lodestar plus percentage.<sup>46</sup>

The Kritzer studies are largely based on fee agreements with unsophisticated clients.<sup>47</sup> For the reasons I noted above, I doubt whether such agreements reflect our best, most rational selves. As I said, I prefer to examine fee agreements with sophisticated clients like large corporations.

Unfortunately, it is difficult to find systematic data from large corporations. Most of the time, of course, they do not hire lawyers on contingency at all; rather, they pay them by the hour with a non-contingent-lodestar method. But there are two areas of litigation where this is not true: patent cases and, of all things, class action cases—in particular, the small number of class action cases comprised of corporate class members. Although there is not much systematic data on the fee agreements sophisticated clients use in these areas, the data that exists all points to the same conclusion: sophisticated clients are just like unsophisticated ones. That is, they use the percentage method, either with fixed percentages or escalating percentages as litigation matures. Moreover, despite the enormous stakes in some of these cases, the percentages are the same ones that unsophisticated clients with smaller cases choose. The contingent-lodestar-plus-percentage formula is nowhere to be found.

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42. See HERBERT M. KRITZER, RISKS, REPUTATIONS, AND REWARDS 19 (2004) (“[T]he geographical focus of my research is the state of Wisconsin . . . . My initial data collection was a survey of Wisconsin contingency fee practitioners . . . .”). Eric Helland and Seth Seabury have surveyed the other studies and found that they all “are quite consistent in their findings. Fees are typically 33 percent.” Eric Helland & Seth A. Seabury, *Contingent-Fee Contracts in Litigation: A Survey and Assessment*, in RESEARCH HANDBOOK ON THE ECONOMICS OF TORTS 383, 385 (Jennifer Arlen ed., 2013).

43. KRITZER, *supra* note 42, at 39.

44. *See id.* at 39–40.

45. *See id.* at 40.

46. *See id.* Although some of these methods combined lodestar and percentage components, none of the lodestar components were contingent. *See id.* The only examples of the contingent lodestar plus percentage I have seen are in cases where there could be fee shifting: the lawyer might be able to receive a lodestar-based fee-shifting award as well as a percentage of the recovery. *See* 1 ROBERT L. ROSSI, ATTORNEY’S FEES § 10.6 (3d. ed. 2020) (“[Some] courts have held or indicated that an attorney may retain both the fee award and the contingent fee where the fee agreement provides for such a result.”).

47. KRITZER, *supra* note 42, at 35 (noting that “personal injury was the dominant type of case” handled by the lawyers who responded to the survey).

Let me begin with patent litigation. The best study here comes from Professor David Schwartz.<sup>48</sup> Professor Schwartz interviewed patent lawyers and their clients in 2010 and 2011 and obtained copies of their contingent-fee agreements.<sup>49</sup> Many of these cases presented enormous potential damages.<sup>50</sup> Nonetheless, he found that corporations that hire patent litigators on contingency use the same two types of fee agreements that unsophisticated clients do. Those two types were fixed percentages (he found a mean of 38.6 percent) or escalating percentages as the litigation matured (he found a mean upon filing of 28 percent and, through appeal, of 40.2 percent), with more clients choosing the latter over the former.<sup>51</sup> No one escalated or deescalated based on recovery size.

Now consider corporate class action litigation. One place to find data here is in the antitrust cases in the pharmaceutical industry where large corporations sue each other.<sup>52</sup> With a research assistant, I recently collected systematic data in these cases. The cases pitted a class of approximately twenty drug wholesalers—many of which are Fortune 500 companies, some at the very top of that list—against drug manufacturers accused of exploiting their monopolies to inflate drug prices. The potential damages in many of these cases were enormous. The first case in the series settled in April 2003, and, although the cases continue, I stopped collecting them for this Essay in April 2020. During those seventeen years, there have been thirty-three cases; in the Appendix, I set forth the following details about them: how much each case resolved for, how much was sought by class counsel in fees, what the retainer agreements between class counsel and the corporate class representative said, and any positive or negative reaction to the fee requests from the corporate class members. Although the fee requests ranged from a fixed percentage of 27.5 percent to a fixed percentage of one-third, one-third *heavily* dominated: the average was 32.85 percent. (The requests in the Appendix that were near one-third were one-third requests inclusive of

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48. See David L. Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation*, 64 ALA. L. REV. 335, 356–57 (2012).

49. See *id.* at 356–57.

50. See *id.* at 363 (“[The most elite contingent-fee patent litigators] select cases that they perceive to be strong on the merits, and importantly, to have extremely high potential damages. For example, one lawyer in this category explained: ‘\$25 million expected value against one infringer. That’s the general rule.’ Others had similar high cut points, saying things like ‘we’d like to be at \$100 million on our cases. Those are good cases. The very least, I don’t take a case unless we think we could pull in well into 8 figures.’” (footnote omitted)).

51. See *id.* at 360.

52. Securities fraud class actions are another area of potential data because large sophisticated institutions serve at least as the representative class members. But efforts to systematically collect retainer agreements here have thus far failed because the agreements are rarely publicly disclosed. See Lynn A. Baker et al., *Is the Price Right?: An Empirical Study of Fee-Setting in Securities Class Actions*, 115 COLUM. L. REV. 1371, 1389–91 (2015) (“The study’s analysis began by looking for cases in which proposed lead plaintiffs offered the court proof of the ex ante fee agreements they had negotiated. Although Congress and the drafters of the lead plaintiff mechanism seemed to anticipate that such agreements would be the norm, there is little evidence that they play a significant role in a court’s selection of the lead plaintiff. There were very few cases—just 11.29%—in which the lead plaintiff candidate or the court discussed an ex ante agreement during the appointment process.”).

litigation expenses.) Moreover, although I was able to find retainer agreements in only three of the cases, in all of them, the agreement called for a fixed percentage of one-third. Finally, in the vast majority of cases, one or more of these corporate class members—often the biggest class members—came forward to voice affirmative support for the fee requests, and not a single one of these corporate class members objected to the fee request in any of the thirty-three cases. Although this support among class members for class counsel’s fee requests is not formally *ex ante* market data—the support came at the end of the cases—because it was the same class of corporations in case after case and often the same counsel in case after case, class members could have tried to alter this pattern at any time. But they did not; they have gone along with it for seventeen years. In other words, the corporations in these cases appear perfectly happy with the percentage method and perfectly happy with the same fixed percentage of one-third that most unsophisticated clients also choose.

Although we obviously need more corporate data to draw any firm conclusions, the data we do have forces us to ask why even sophisticated clients eschew the elegance of the contingent-lodestar-plus-percentage formula. One possibility is that the economic modeling is simply missing something. As I noted at the outset, this is one of the limitations of using economic models that are unconfirmed by empirical investigation. Another possibility is path dependence: contingency agreements have been using the percentage method with a one-third percentage for a very long time; maybe inertia explains why that has not changed.<sup>53</sup> On the other hand, the Clermont-Currihan paper has been around for decades and corporate clients are experimenting with many other fee arrangements; why not with this one too? The best answer in my view is something I mentioned above: monitoring preference. Sophisticated clients may find it easier to monitor against premature settlement than they do their lawyers’ lodestars. Hence, they choose the percentage method over the contingent lodestar plus percentage. Indeed, dissatisfaction with the lodestar is what has driven them to consider alternative fee arrangements in the first place.<sup>54</sup>

Why these sophisticated clients did not negotiate lower fee percentages than those unsophisticated clients pay is a more difficult question. The sizes of the cases discussed above are large enough that one would think they would present similar economies of scale to the largest class actions;<sup>55</sup> indeed, some of the cases *were* the largest class actions.<sup>56</sup> It may be that it is

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53. Cf. Peter B. Rutledge & Christopher R. Drahozal, “Sticky” Arbitration Clauses?: *The Use of Arbitration Clauses After Concepcion and Amex*, 67 VAND. L. REV. 955, 959 (2014) (“[C]ontracts . . . may be ‘sticky’ and resistant to change.”).

54. See generally JOHN K. VILLA, CORPORATE COUNSEL GUIDELINES § 4:7 (2020).

55. See *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 959 (7th Cir. 2013) (“Many costs of litigation do not depend on the outcome; it is almost as expensive to conduct discovery in a \$100 million case as in a \$200 million case . . . . There may be some marginal costs of bumping the recovery from \$100 million to \$200 million, but as a percentage of the incremental recovery these costs are bound to be low.”).

56. See Appendix.

expensive to negotiate away from the default one-third arrangement; there are not only transaction costs but strategic uncertainties to consider if the parties have asymmetric information about the merits (something I assumed away when discussing the economic models).<sup>57</sup> A further explanation is that the investment needed to win the cases examined above may have correlated with the stakes of the cases. If this was so, the optimal fixed percentage would remain constant even as the stakes increased.<sup>58</sup> A final explanation is simply that they do not want to exacerbate agency costs and thereby increase the burden of monitoring against premature settlement that comes along with lower percentages.<sup>59</sup>

In any event, although more data is certainly needed, the data we have from sophisticated clients shows that they prefer the same arrangements that unsophisticated clients do: the percentage method with fixed percentages of one-third or escalating percentages as the litigation matures.

### III. WHAT SHOULD JUDGES DO IN CLASS ACTIONS?

The previous part showed that economic modeling is indeterminate on how rational absent class members would want to pay class counsel. If it is easier to verify class counsel's lodestar than it is to monitor against premature settlement, then the models suggest the contingent-lodestar-plus-percentage method is ideal. But if it is easier to monitor against premature settlement, the percentage method is better. Whether the percentage should be fixed or escalating and what the percentage should be depends on how well the client can monitor against premature settlement. The (albeit limited) data from sophisticated clients in the market suggests that they believe it is easier to monitor against premature settlement, because they uniformly select the percentage method. The data is mixed between fixed and escalating percentages, but all of the escalation comes from litigation maturity, not recovery size.

Where does that leave our judges overseeing class actions? Although more data is needed to draw firm conclusions, based on what we know, I think judges acting as good fiduciaries could responsibly discharge their duties with either the percentage method or the contingent-lodestar-plus-percentage method. But, for the reasons I explain now, I think judges should usually choose the percentage method. I also think this percentage should either be fixed or escalate with litigation maturity.

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57. See *supra* note 32 and accompanying text. Another explanation comes from Eyal Zamir et al., *Who Benefits from the Uniformity of Contingent Fee Rates?*, 9 REV. L. & ECON. 357, 359 (2013) (“The non-negotiability of the . . . rate precludes lawyers from exploiting their private information about the expected value of the lawsuit and the amount of work it might entail. Clients with a good sense of the ranking of lawyers are able to hire the best lawyer among the ones who are willing to handle the case. The uniformity also enables the clients to retain the transaction’s entire surplus.”).

58. See Hay, *supra* note 37, at 519 (“[C]ases in which the ceiling is high but in which it is costly for the lawyer to move upward should involve the same fee as cases in which the ceiling is low but in which it is easy for the lawyer to move upward.” (emphasis omitted)).

59. See *id.* at 511.

### A. *Best Practices*

First, for the same reason sophisticated corporations seem to opt for the percentage method, so should judges: it will usually be easier for judges to monitor against premature settlement than to verify the lodestar. It is true that judges have experience verifying lodestars; they do it frequently in fee-shifting and bankruptcy cases.<sup>60</sup> But that was true of our corporate clients as well; they pay lawyers noncontingent lodestars all the time. Even still, corporate clients apparently believe it is easier to guard against premature settlement when they hire on contingency. I think the same is probably true for judges. They should be able to look at a case and assess what it is worth in light of the various legal and factual risks more easily than they can assess how many hours it should take to litigate it. Many judges are long out of practice or never practiced in class actions at all. Yet, they observe the outcomes in a variety of cases every single day.

Second, the contingent-lodestar-plus-percentage method comes with an added challenge: it is more difficult to choose the percentage. As I noted above, although the economic models are indeterminate on the right percentage for the percentage method, we at least have data on what even sophisticated clients in enormous cases choose when they use this method. We can use this data to set percentages in class action cases if we use the percentage method. But we do not have such data for the contingent-lodestar-plus-percentage formula because no one uses it. That means judges will have to figure out what the “market” percentage is in this formula through other means.

One way to do this is to create market-like competition by holding an auction for class counsel. Judges could ask lawyers to compete for the right to represent the class by bidding on the smallest percentage they would be willing to accept in the contingent-lodestar-plus-percentage formula. In theory, the lowest bid would represent the market price for a class action lawyer in that particular case. Auctions have great theoretical appeal<sup>61</sup> and judges have even tried them a handful of times in class action cases.<sup>62</sup> But judges and scholars have soured on auctions for a variety of reasons I address below. Although judges and scholars have not considered auctions using the contingent-lodestar-plus-percentage formula, I am not sure the reasons they have soured on them can be overcome by it.

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60. See *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 551 (2010) (“[T]he ‘lodestar’ figure has . . . become the guiding light of our fee-shifting jurisprudence.”); 1 JOAN N. FEENEY ET AL., *BANKRUPTCY LAW MANUAL* § 4:38 (5th ed. 2020) (“Courts use a lodestar calculation to determine reasonableness of any fee application.”).

61. See FITZPATRICK, *supra* note 7, at 98 (noting that an auction would in theory “drive down the winning fee percentage to the lowest possible price”); Macey & Miller, *supra* note 27, at 108–10 (noting that an auction could reduce agency costs and transaction costs).

62. For a detailed review of litigation where the presiding judge used an auction to select class counsel, see LAURAL L. HOOPER & MARIE LEARY, FED. JUD. CTR., *AUCTIONING THE ROLE OF CLASS COUNSEL IN CLASS ACTION CASES: A DESCRIPTIVE STUDY* (2001), <https://www.fjc.gov/sites/default/files/2012/auctioning.pdf> [<https://perma.cc/7QJR-F54H>].

Perhaps the most serious concern with fee auctions is that judges have difficulty picking the winning bid. Part of this concern stems from the fact that the judges who tried auctions permitted lawyers to submit bids that were so complex—the lawyers often did not bid fixed percentages—that it was difficult to figure out which bid was the lowest one.<sup>63</sup> I think this concern is easy to overcome by using the contingent-fee-plus-percentage formula: judges could allow the lawyers to bid only on the percentage component and only a fixed percentage. But part of the concern stems from the fact that the lowest bidder may not be the best lawyer and it is difficult for judges to trade quality for price.<sup>64</sup> This concern is not so easy to overcome. In public contracting, this trade-off is made either by restricting bidders to those that are well qualified for the job or by using a scoring system that tries to assign points for price along with other considerations.<sup>65</sup> I could imagine using the former approach in auctions for class counsel—for example, the judge could limit bidders to the ten or twenty most experienced class action firms. However, that would lock incumbents into class counsel positions and make it difficult for new firms to enter the market. That is good neither for competition nor for furthering the desire many have to diversify the profession.<sup>66</sup> The latter approach strikes me as hopelessly subjective and

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63. Fisch, *supra* note 38, at 674–82 (discussing the difficulty of selecting the lowest bidder in auctions for class counsel); *see also* THIRD CIR. TASK FORCE ON THE SELECTION OF CLASS COUNS., FINAL REPORT 49–51 (2002), <https://www.ca3.uscourts.gov/sites/ca3/files/final%20report%20of%20third%20circuit%20task%20force.pdf> [https://perma.cc/7G8Y-Q7ZF] (same).

64. *See* Fisch, *supra* note 38, at 683–90 (noting that “a lead counsel auction cannot select among competing bids solely on the basis of price” and discussing the difficulties posed by incorporating an analysis of firm quality into the auction process).

65. 48 C.F.R. § 9.201 (2020) (“Qualified bidders list (QBL) means a list of bidders who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product or have otherwise satisfied all applicable qualification requirements. Qualified manufacturers list (QML) means a list of manufacturers who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product.”); *id.* § 15.305 (“Proposal evaluation is an assessment of the proposal and the offeror’s ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings.”); 1 STEVEN FELDMAN, GOVERNMENT CONTRACT AWARDS: NEGOTIATION AND SEALED BIDDING § 10:20 (2020) (providing an example of a scoring system).

66. *See* Ralph Chapoco, *Calls for Lawyer Diversity Spread to Complex Class Litigation*, BLOOMBERG L. (July 30, 2020, 4:45 AM) <https://news.bloomberglaw.com/social-justice/calls-for-lawyer-diversity-spread-to-complex-class-litigation> [https://perma.cc/CQZ6-KSGH] (“Judge James Donato of the U.S. District Court for the Northern District of California declined to certify two firms . . . as interim co-lead class counsel in a securities action . . . . In a July 14 order, Donato cited ‘a lack of diversity in the proposed lead counsel,’ noting that all four lead counsel were male, and [had] been lead counsel in other cases, what legal experts refer to as ‘repeat players.’” (quoting Order Re: Consolidation & Interim Class Counsel, *In re* Robinhood Outage Litig., No. 20-cv-01626, 2020 WL 6130884 (N.D. Cal. July 14, 2020))); *see also* Michael H. Hurwitz, *Judge Harold Baer’s Quixotic Crusade for Class Counsel Diversity*, 17 CARDOZO J.L. & GENDER 321, 324–27 (2011) (discussing Judge Harold Baer’s orders imposing a diversity requirement on class counsel).

therefore unlikely to inspire much more confidence in fee auctions than we have today.<sup>67</sup>

Another concern with auctions is that they can exacerbate agency costs.<sup>68</sup> For example, in auctions that use the percentage method, the lawyer winning the auction with the lowest bid will also have the strongest incentive to settle the case too early for too little. If the judge cannot monitor the lawyer well enough, then this could end up making absent class members worse off rather than better: they will end up paying a smaller fee percentage but on an even smaller recovery. The contingent-lodestar-plus-percentage formula solves this monitoring problem, but as I noted, it introduces another monitoring problem and, if I am correct above, a worse one: verifying the lodestar component. In short, contingent-lodestar-plus-percentage auctions are no more promising than the percentage auctions that have largely failed. Better, then, to stick to the percentage method where we have preexisting data to draw on.

Third, when judges use the percentage method, the percentages should be fixed or escalate with litigation maturity. Although it is not unheard of to use deescalating or escalating percentages based on recovery size, I believe they were not found in the data discussed above because it is too difficult to set the cut points *ex ante*.<sup>69</sup> Before discovery and the like, it is difficult to know how good or bad the case is and where to start escalating or deescalating. The cut points for litigation maturity are well known (even if imperfect<sup>70</sup>): trials, appeals, and maybe a few others.

### B. Current Practices Revisited

The conclusions in the previous section affirm some of what judges do now to award fees in class actions, but they call into question some of what they do, too.

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67. See 2 FELDMAN, *supra* note 65, § 12:2 (“[C]ontracting officials usually have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results [to award a contract].”); THIRD CIR. TASK FORCE ON THE SELECTION OF CLASS COUNS., *supra* note 63, at 51 (“The courts that have conducted auctions have recognized that price cannot be the sole factor in awarding class counsel; there must be some quality control as well. Yet if the court takes into account anything other than price to choose among competing bids, it enters into the same kind of subjective determinations as occur under the traditional method of appointing class counsel.”).

68. See Fisch, *supra* note 38; see also THIRD CIR. TASK FORCE ON THE SELECTION OF CLASS COUNS., *supra* note 63, at 45 (“The auction method could encourage firms to submit unduly low bids in order to win the position of class counsel. Underbidding can result in lawyers cutting corners or settling too early in order to maintain a profit margin.”).

69. See Fisch, *supra* note 38, at 674–78 (discussing the difficulty of evaluating bids with changing percentages).

70. See Geoffrey P. Miller, *Some Agency Problems in Settlement*, 16 J. LEGAL STUD. 189, 201 (1987) (“It is at best a rough corrective . . . because it substitutes a small number of discrete increments for what is in fact a continuous process—the reduction in the attorney’s expected future costs as the case progresses.”).

Let me begin with the good: judges often use the percentage method to award fees in class actions.<sup>71</sup> This was not always the case, and much to the credit of our judges, they have been persuaded by economic models and market data to replace the lodestar method with the percentage method in large numbers.<sup>72</sup> But now the bad.

First, many judges do not use a “pure” percentage method but instead something called the “percentage method with a lodestar cross-check.” This is something of the opposite of the Clermont-Currivan formula. Rather than contingent lodestar *plus* a percentage of the recovery, this method awards a contingent percentage *capped* at some multiple of the lodestar. What multiple is used in the cap? It is up to the discretion of judges, and they seem most interested in preventing the appearance of a “windfall” to the lawyer.<sup>73</sup> I have never seen the lodestar cross-check formally modeled, but it would seem this method would behave like the percentage method when the lodestar is high but like the contingent-lodestar method when the lodestar is low. Because it will not be known at the outset whether a case will be a high or low lodestar endeavor, for all the same reasons rational clients who could not monitor well would reject the lodestar method, they would reject this method too.<sup>74</sup> Indeed, I have never seen this method used in the market for contingency representation, whether among sophisticated or unsophisticated clients. If judges want to do what rational absent class members would want to do, then they should not do this.

Second, judges that use the percentage method presume that the fee percentage in class actions should be lower than one-third. I and others have found that the average fee percentage is only 25 percent,<sup>75</sup> and some circuits even go so far as to explicitly require district courts to presume that 25 percent is the right number.<sup>76</sup> But, if the data discussed above is

71. See Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD. 811, 832 (2010) (finding that courts use the percentage method 69 percent of the time, more often than not without the lodestar cross-check); see also Theodore Eisenberg et al., *Attorneys' Fees in Class Actions: 2009–2013*, 92 N.Y.U. L. REV. 937, 945 (2017) (finding the percentage method with lodestar cross-check was used approximately 38 percent of the time versus approximately 54 percent for the percent method without lodestar cross-check).

72. See Fitzpatrick, *supra* note 10, at 2052.

73. 5 RUBENSTEIN, *supra* note 8, § 15:85 (“[M]any courts also undertake a lodestar cross-check as a means of ensuring that the percentage award is not a windfall.”).

74. See FITZPATRICK, *supra* note 7, at 92 (explaining that the lodestar cross-check is “the same thing as the lodestar method, just dressed up in nicer clothing”); see also *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011) (“The . . . argument . . . that any percentage fee award exceeding a certain lodestar multiplier is excessive . . . echoes the ‘megafund’ cap we rejected in *Synthroid*.”).

75. See Fitzpatrick, *supra* note 71, at 833 (finding that “[t]he average award [under the percentage method] was 25.4 percent and the median was 25 percent”); see also Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. EMPIRICAL LEGAL STUD., 241, 260 (2010) (finding that “[t]he median and mean fee to recovery ratios were 0.24 and 0.25, respectively” in percentage method cases).

76. Fitzpatrick, *supra* note 71, at 833 (“[T]he Ninth Circuit has adopted a presumption that 25 percent is the proper fee award percentage in class action cases.”); see also Eisenberg & Miller, *supra* note 75, at 259 (“The Ninth Circuit has a 25 percent benchmark fee in common

representative, 25 percent is lower than the fixed percentages that even sophisticated clients pay in the market for contingency representation.

The lower percentage could be justified for class settlements if judges awarded higher percentages after class trials. This would be consistent with the models that recommend escalating percentages as the litigation matures as well as the market data that often shows escalating fees in patent cases (where average percentages began at 28 percent and rose to over 40 percent if an appeal was taken). But because trials are so rare in class actions, there are no published studies that demonstrate that is what judges are in fact doing.<sup>77</sup>

Rather, the lower percentage in class actions has been justified on account of the economies of scale that come from class versus individual representation. The notion here is that it is not one thousand times harder to represent a class of one thousand than it is a class of one, and a competitive market would bring marginal price down to marginal cost.<sup>78</sup> It is true that the economic models show that the optimal percentage is lower in higher stakes cases if the investment required to win the cases does not go up as quickly.<sup>79</sup> But the data discussed above suggests that sophisticated clients do not negotiate lower percentages in bigger cases where we would expect the same economies: it is not one thousand times harder to win a \$10 billion patent case than it is a \$10 million one.<sup>80</sup> As I noted, I am not sure why sophisticated clients do not negotiate lower percentages in their biggest contingency cases despite the economies of scale. It could simply be a function of the limited data, but the best explanations I can think of are that bringing marginal price down to marginal cost is not free (it increases the burden of monitoring against premature settlement) and negotiation introduces transaction costs and strategic uncertainty. If corporate clients do not think they can discharge these burdens, should judges think they can? I don't think so; as I noted above, it is doubtful that judges are better lawyer monitors than sophisticated corporations. Moreover, we have no way of knowing how great the economies of scale are in any given case and, therefore, no way of knowing what the marginal price should be—unless we hold an auction and take on the difficulties with that, as discussed above. All of this argues against deviating from the data from sophisticated clients in the market for large-case contingency representation. If judges want to be good fiduciaries for absent class members, then they should probably presume that one-third is the correct fixed percentage, not one-fourth.

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fund cases but allows departures based on individual case factors, and the Eleventh Circuit has indicated that its district courts view 25 percent as a benchmark.”).

77. Professor Bill Rubenstein, however, has proprietary data suggesting judges do this. See Expert Declaration of William B. Rubenstein in Support of the Plaintiffs’ Motion for Attorney’s Fees & Expenses at 12, *Hale v. State Farm Mut. Ins. Co.*, No. 12-cv-00660 (S.D. Ill. Oct. 16, 2018), ECF No. 954-3.

78. Fitzpatrick, *supra* note 10, at 2063 (“[A]ggregate litigation permits plaintiffs to reap the benefits of economies of scale in litigation, and, in a competitive marketplace, one might expect those economies to be passed on to clients in the form of lower attorneys’ fees.”).

79. See Hay, *supra* note 37, at 517–23.

80. See *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 959 (7th Cir. 2013).

Third, many judges choose percentages even below 25 percent when class counsel recovers more than \$100 million simply because the recovery is so large. As I and others have found, the average percentages judges choose are lower in recoveries over \$100 million, and they get even lower until they reach around 10 percent in billion dollar recoveries.<sup>81</sup> This is even worse than the practice I described above that presumes lawyers should get less than one-third in a class action because the case is a class action. Rather, here, courts are paying the lawyer a different percentage at the end of the very same case depending on whether the lawyer recovered a lot or a little; the more the lawyer recovered, the lower the fixed percentage awarded at the end. This sort of arrangement would obviously fare terribly in economic models because it dramatically exacerbates agency costs: now the lawyer can be made better off by settling cases for smaller recoveries than larger recoveries, even if lawyer effort is kept constant.<sup>82</sup> That only happens with fixed percentages that do not vary with recovery size if lawyers can save effort.<sup>83</sup> For this reason, varying a fixed percentage on recovery size like this is unheard of in the marketplace.<sup>84</sup>

In the Seventh Circuit, courts sometimes decrease percentages *marginally* with recovery size—for example, paying the lawyer one-third of the first \$100 million of a recovery and 25 percent of the next \$100 million.<sup>85</sup> As I noted above, the economic models prefer fixed or marginally increasing percentages; marginally decreasing percentages exacerbate rather than mitigate agency costs.<sup>86</sup> Although the data from sophisticated clients that I

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81. Fitzpatrick, *supra* note 71, at 838 (“[I]t appears that fee percentages tended to drift lower at a fairly slow pace until a settlement size of \$100 million was reached, at which point the fee percentages plunged well below 20 percent, and by the time \$500 million was reached, they plunged well below 15 percent, with most awards at that level under even 10 percent.”); *see also* Eisenberg & Miller, *supra* note 75, at 265 (reporting a mean fee of 12.0 percent and a median fee of 10.2 percent for recoveries over \$175.5 million).

82. *See In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) (noting that “[u]nder the district court’s approach” of capping attorneys’ fees at 10 percent of recovery for settlements over \$75 million, “no sane lawyer would negotiate a settlement of more than \$74 million and less than \$225 million; even the higher figure would make sense only if it were no more costly to obtain \$225 million for the class than to garner \$74 million”); FITZPATRICK, *supra* note 7, at 93–94 (providing an example and explaining “if you pay the lawyer a bigger percentage of smaller sums, he or she is better off sometimes resolving cases for smaller sums”).

83. *See supra* note 36 and accompanying text.

84. *In re Synthroid*, 264 F.3d at 718 (“[C]ounsel for the consumer class could have received \$22 million in fees had they settled for \$74 million but were limited to \$8.2 million in fees because they obtained an extra \$14 million for their clients (the consumer fund, recall, is \$88 million). Why there should be such a notch is a mystery. Markets would not tolerate that effect; the district court’s approach compels it.”).

85. *Id.* (“A notch could be avoided if the 10% cap in ‘megafund’ cases were applied only to the *portion* of the recovery that exceeded \$74 million, but that is not what the district court did; it capped fees at 10% of the whole fund.”).

86. *See* Fisch, *supra* note 38, at 678 (“Because it fails to align counsel’s interests with those of the plaintiff class at high levels of recovery, a declining percentage of recovery fee structure is especially likely to create a significant moral hazard problem.”); *see also In re Synthroid*, 264 F.3d at 721 (“[D]eclining marginal percentages . . . create declining marginal

discussed did not find any marginally decreasing rates, such rates are at least not unheard of in the marketplace.<sup>87</sup> Nonetheless, given that they increase agency costs and even sophisticated clients apparently do not use them often (as I said, I suspect because it is so difficult to set the cut points *ex ante*),<sup>88</sup> judges should not use them either, unless judges believe they can monitor and set cut points better than even large corporations believe they can—something, I have said, that I find implausible. Rather, judges should either stick with fixed percentages that do not vary with recovery or use percentages that escalate with litigation maturity, like sophisticated clients usually do. (Although escalating percentages based on recovery size are, too, not unheard of,<sup>89</sup> they introduce the same cut-point problem discussed above.)

#### CONCLUSION

If judges want to act as fiduciaries for absent class members like they say they do, then they should award attorneys' fees in class actions the way that rational class members who cannot monitor their lawyers well would do so at the outset of the case. Economic models suggest two ways to do this: (1) pay class counsel a fixed or escalating percentage of the recovery or (2) pay class counsel a percentage of the recovery plus a contingent lodestar. Which method is better depends on whether it is easier to verify class counsel's lodestar (which favors the contingent-lodestar-plus-percentage method) or to monitor against premature settlement (which favors the percentage method) as well as whether it is possible to run an auction to determine the market percentage for the contingent-lodestar-plus-percentage method. The (albeit limited) data from sophisticated clients who hire lawyers on contingency shows that such clients overwhelmingly prefer to monitor against premature settlement, since they always choose the percentage method. Whether the percentage should be fixed or escalating depends on how well clients can do this monitoring. Data from sophisticated clients shows both that they choose to pay fixed one-third percentages or even higher escalating percentages based on litigation maturity just like unsophisticated clients do, and they do so even in the most enormous cases. Unless judges believe they can monitor

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returns to legal work . . . . This feature exacerbates the agency costs inherent in any percentage-of-recovery system.”)

87. See *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 959 (7th Cir. 2013) (“Awarding counsel a decreasing percentage of the higher tiers of recovery enables them to recover the principal costs of litigation from the first bands of the award, while allowing the clients to reap more of the benefit at the margin (yet still preserving some incentive for lawyers to strive for these higher awards.”); *In re Synthroid*, 264 F.3d at 721 (noting that “negotiations and auctions often produce diminishing marginal fees when the recovery will not necessarily increase in proportion to the number of hours devoted to the case”).

88. Daniel Rubinfeld and Suzanne Scotchmer have reported that such arrangements are “quite common,” but they did not cite anything for that assertion. See Rubinfeld & Scotchmer, *supra* note 22, at 415.

89. See, e.g., *In re AT&T Corp.*, 455 F.3d 160, 163 (3d Cir. 2006). This case described the following fee agreement between class counsel and “the lead plaintiff New Hampshire Retirement Systems”: “The formula provided attorneys’ fees would equal 15% of any settlement amount up to \$25 million, 20% of any settlement amount between \$25 million and \$50 million, and 25% of any settlement amount over \$50 million.”

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differently than sophisticated corporate clients can, judges acting as good fiduciaries should follow these practices as well. This conclusion calls into question several fee practices commonly used by judges today: (1) presuming that class counsel should earn only 25 percent of any recovery, (2) reducing that percentage further if class counsel recovers more than \$100 million, and (3) reducing that percentage even further if it exceeds class counsel's lodestar by some multiple.

## APPENDIX

*Direct Purchaser Pharmaceutical Antitrust Settlements, April 2003–April 2020*

Date	Case Name	Settlement Amount	Fee Percentage Requested	Retainer Agreement	Class Member Objections	Class Member Support
November 9, 2018	Hartig Drug Co. v. Senju Pharmaceutical Co. <sup>90</sup>	\$9,000,000	33.33%	N/A	None	No
October 24, 2018	<i>In re</i> Blood Reagents Antitrust Litigation <sup>91</sup>	\$41,500,000	33.33%	N/A	None	No
September 20, 2018	<i>In re</i> Lidoderm Antitrust Litigation <sup>92</sup>	\$166,000,000	27.11%	33.33%	None	Yes
July 18, 2018	<i>In re</i> Solodyn (Minocycline Hydrochloride) Antitrust Litigation <sup>93</sup>	\$76,846,250	31.45%	N/A	None	No
April 18, 2018	American Sales Co. v. Pfizer, Inc. <sup>94</sup>	\$94,000,000	32.69%	33.33%	None	Yes

90. Settlement Agreement Between Plaintiff Hartig Drug Co. Inc. & Defendants Senju Pharmaceutical Co. Ltd., Kyorin Pharmaceutical Co., Ltd. & Allergan, Inc., *Hartig Drug Co. v. Senju Pharm. Co.*, No. 14-00719 (D. Del. Feb. 16, 2018).

91. Order Granting Plaintiffs' Motion for (1) an Award of Attorneys' Fees, (2) Reimbursement of Litigation Expenses & (3) Service Awards for the Class Representatives, *In re* Blood Reagents Antitrust Litig., MDL No. 09-2081 (E.D. Pa. Oct. 24, 2018).

92. Order Granting Final Approval of Settlement with Direct Purchaser Class & Entering Final Judgment of Dismissal with Prejudice, *In re* Lidoderm Antitrust Litig., No. 14-md-02521 (N.D. Cal. Sept. 20, 2018).

93. Settlement Agreement Between Implax Laboratories, Inc. & the Direct Purchaser Class, *In re* Solodyn (Minocycline Hydrochloride) Antitrust Litig., MDL No. 14-md-2503 (D. Mass. Mar. 10, 2018).

94. Order Granting Direct Purchaser Class Plaintiffs' Unopposed Motion for Final Approval of Settlement & Distribution Plan, Attorneys' Fees, Reimbursement of Expenses, Service Awards to the Class Representative Plaintiffs & Entry of Final Judgment & Order of Dismissal, *Am. Sales Co. v. Pfizer, Inc.*, No. 14-cv-00361 (E.D. Va. Apr. 18, 2018).

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Date	Case Name	Settlement Amount	Fee Percentage Requested	Retainer Agreement	Class Member Objections	Class Member Support
December 19, 2017	<i>In re Aggrenox Antitrust Litigation</i> <sup>95</sup>	\$146,000,000	33.33%	33.33%	None	Yes
December 7, 2017	<i>In re Asacol Antitrust Litigation</i> <sup>96</sup>	\$15,000,000	33.33%	N/A	None	Yes
October 23, 2017	Castro v. Sanofi Pasteur, Inc. <sup>97</sup>	\$61,500,000	33.33%	N/A	None	Yes
October 5, 2017	<i>In re K-Dur Antitrust Litigation</i> <sup>98</sup>	\$60,200,000	33.33%	N/A	None	Yes
October 15, 2015	King Drug Co. of Florence v. Cephalon, Inc. <sup>99</sup>	\$512,000,000	27.50%	N/A	None	Yes
May 20, 2015	<i>In re Prograf Antitrust Litigation</i> <sup>100</sup>	\$98,000,000	33.33%	N/A	None	Yes

95. Final Judgment & Order of Dismissal, *In re Aggrenox Antitrust Litig.*, No. 14-md-02516 (D. Conn. Dec. 19, 2017).

96. Order & Final Judgment Finding Notice to Satisfy Due Process, Approving Settlement, Awarding Attorneys' Fees & Expenses, Approving Service Awards to Representative Plaintiffs & Ordering Dismissal with Prejudice, *In re Asacol Antitrust Litig.*, No. 15-cv-12730 (D. Mass. Dec. 7, 2017).

97. Order for an Award of Attorneys' Fees, Reimbursement of Expenses & Payment of Service Awards to the Class Representatives, *Castro v. Sanofi Pasteur, Inc.*, No. 11-cv-7178 (D.N.J. Oct. 23, 2017).

98. Order Granting Final Judgment & Order of Dismissal Approving Direct Purchaser Class Settlement & Dismissing Direct Purchaser Class Claims Against Defendants, *In re K-Dur Antitrust Litig.*, MDL No. 1419, No. 01-cv-01652 (D.N.J. Oct. 5, 2017).

99. Order Granting Final Judgment & Order of Dismissal Approving Direct Purchaser Class Settlement & Dismissing Direct Purchaser Class Claims Against the Cephalon Defendants, *King Drug Co. of Florence v. Cephalon, Inc.*, No. 06-cv-01797 (E.D. Pa. Oct. 15, 2015).

100. Order & Final Judgment Approving Settlement, Awarding Attorneys' Fees & Expenses, Awarding Representative Plaintiff Incentive Awards, Approving Plan of Allocation & Ordering Dismissal with Prejudice, *In re Prograf Antitrust Litig.*, MDL No. 2242 (D. Mass. May 20, 2015).

Date	Case Name	Settlement Amount	Fee Percentage Requested	Retainer Agreement	Class Member Objections	Class Member Support
January 20, 2015	<i>In re</i> Prandin Direct Purchaser Antitrust Litigation <sup>101</sup>	\$19,000,000	33.33%	N/A	None	Yes
September 15, 2014	Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Ltd. Co. <sup>102</sup>	\$15,000,000	33.33%	N/A	None	No
August 6, 2014	Louisiana Wholesale Drug Co. v. Pfizer, Inc. <sup>103</sup>	\$190,416,438	33.33%	N/A	None	Yes
June 30, 2014	<i>In re</i> Skelaxin (Metaxalone) Antitrust Litigation <sup>104</sup>	\$73,000,000	33.33%	N/A	None	Yes
April 16, 2014	<i>In re</i> Plasma-Derivative Protein Therapies Antitrust Litigation <sup>105</sup>	\$64,000,000	33.33%	N/A	None	No

101. Order & Final Judgment Approving Class Action Settlement, *In re* Prandin Direct Purchaser Antitrust Litig., No. 10-cv-12141 (E.D. Mich. Jan. 20, 2015).

102. Order, Mylan Pharms., Inc. v. Warner Chilcott Pub. Ltd. Co., No. Civ. 12-3824 (E.D. Pa. Sept. 15, 2015).

103. Final Judgment & Order of Dismissal Approving Proposed Class Settlement & Dismissing Actions, La. Wholesale Drug Co. v. Pfizer, Inc., Nos. 02-1830 & 02-2731 (D.N.J. Aug. 6, 2014).

104. Order Granting Class Counsel's Motion for Attorney Fees, Reimbursement of Expenses & Awards for the Named Plaintiffs, *In re* Skelaxin (Metaxalone) Antitrust Litig., MDL No. 2343, No. 12-cv-83 (E.D. Tenn. June 30, 2014).

105. Corrected Order & Judgment Approving Settlement & Dismissing with Prejudice Baxter International, Inc. & Baxter Healthcare Corporation, *In re* Plasma-Derivative Protein Therapies Antitrust Litig., MDL No. 2109, No. 09 C 7666 (N.D. Ill. Apr. 16, 2014).

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## A FIDUCIARY'S GUIDE TO AWARDING FEES

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Date	Case Name	Settlement Amount	Fee Percentage Requested	Retainer Agreement	Class Member Objections	Class Member Support
June 14, 2013	American Sales Co. v. Smithkline Beecham Corp. <sup>106</sup>	\$150,000,000	33.33%	N/A	None	Yes
April 10, 2013	Louisiana Wholesale Drug Co. v. Becton Dickinson & Co. <sup>107</sup>	\$45,000,000	33.33%	N/A	None	Yes
November 7, 2012	<i>In re</i> Wellbutrin XL Antitrust Litigation <sup>108</sup>	\$37,500,000	33.33%	N/A	None	Yes
May 31, 2012	Rochester Drug Co-Operative, Inc., v. Braintree Laboratories Inc. <sup>109</sup>	\$17,250,000	33.33%	N/A	None	Yes
January 12, 2012	<i>In re</i> Metoprolol Succinate Antitrust Litigation <sup>110</sup>	\$20,000,000	33.33%	N/A	None	Yes

106. Final Order & Judgment Approving Settlement, Am. Sales Co. v. Smithkline Beecham Corp., No. 08-cv-3149 (E.D. Pa. June 14, 2013).

107. Order & Final Judgment Approving Direct Purchaser Class Settlement, Awarding Attorneys' Fees & Expenses, Awarding Incentive Awards to Class Representatives, Approving Plan of Allocation & Dismissing Claims Against Defendant, La. Wholesale Drug Co. v. Becton Dickinson & Co., MDL No. 1730, No. 05-cv-1602 (D.N.J. Apr. 10, 2013).

108. Final Order & Judgment Approving Settlement, *In re* Wellbutrin XL Antitrust Litig., No. 08-cv-2431 (E.D. Pa. Nov. 7, 2012).

109. Order & Final Judgment Approving Settlement, Awarding Attorneys' Fees & Expenses, Awarding Representative Plaintiff Incentive Awards, Approving Plan of Allocation & Ordering Dismissal as to the Defendant, Rochester Drug Co-Operative, Inc., v. Braintree Lab's, Inc., No. 07-142 (D. Del. May 31, 2012).

110. Order & Final Judgment Approving Settlement, Awarding Attorneys' Fees & Expenses, Awarding Representative Plaintiffs Incentive Awards, Approving Plan of Allocation & Ordering Dismissal as to All Defendants, *In re* Metoprolol Succinate Antitrust Litig., No. Civ 06-52 (D. Del. Jan. 12, 2012).

Date	Case Name	Settlement Amount	Fee Percentage Requested	Retainer Agreement	Class Member Objections	Class Member Support
November 28, 2011	<i>In re</i> DDAVP Direct Purchaser Antitrust Litigation <sup>111</sup>	\$20,250,000	33.33%	N/A	None	Yes
November 21, 2011	<i>In re</i> Wellbutrin SR Antitrust Litigation <sup>112</sup>	\$49,000,000	33.33%	N/A	None	Yes
August 11, 2011	Meijer, Inc. v. Abbott Laboratories <sup>113</sup>	\$52,000,000	33.33%	N/A	None	Yes
January 31, 2011	<i>In re</i> Nifedipine Antitrust Litigation <sup>114</sup>	\$35,000,000	33.33%	N/A	None	Yes
January 25, 2011	<i>In re</i> Oxycontin Antitrust Litigation <sup>115</sup>	\$16,000,000	33.33%	N/A	None	Yes
April 23, 2009	<i>In re</i> Tricor Direct Purchaser Litigation <sup>116</sup>	\$250,000,000	33.33%	N/A	None	Yes

111. Order & Final Judgment Approving Settlement Between Purchaser Class Plaintiffs & Defendants Ferring B.V., Ferring Pharmaceuticals, Inc. & Aventis Pharmaceuticals, Inc., *In re* DDAVP Direct Purchaser Antitrust Litig., No. 05 Civ. 2237 (S.D.N.Y. Nov. 28, 2011).

112. Order & Final Judgment Approving Direct Purchaser Class Settlement & Awarding Attorneys' Fees, Reimbursement of Costs & Class Representative Awards, *In re* Wellbutrin SR Antitrust Litig., No. Civ. 04-5525 (E.D. Pa. Nov. 21, 2011).

113. Order Granting Final Approval of Settlement & Entering Final Judgment of Dismissal with Prejudice, *Meijer, Inc. v. Abbott Lab's*, No. C. 07-5985 (N.D. Cal. Aug. 11, 2011).

114. Order Granting Class Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Additional Expenses & Awards to Certified Class Representatives, *In re* Nifedipine Antitrust Litig., MDL No. 1515, No. 03-MC-223 (D.D.C. Jan. 31, 2011).

115. Order & Final Judgment Approving Settlement Between Direct Purchaser Class Plaintiffs & Defendants Purdue Pharma L.P., Purdue Frederick Co., P.F. Laboratories, Inc., Purdue Pharmaceuticals L.P. & Purdue Pharma Inc., Awarding Attorneys' Fees & Expenses, Awarding Representative Plaintiff Incentive Awards, Approving Plan of Allocation & Ordering Dismissal as to All Defendants, *In re* Oxycontin Antitrust Litig., No. 04-md-1603 (Jan. 25, 2011 S.D.N.Y.).

116. Order & Final Judgment Approving Settlement, Awarding Attorneys' Fees & Expenses, Awarding Representative Plaintiff Incentive Awards, Approving Plan of Allocation & Ordering Dismissal as to All Defendants, *In re* Tricor Direct Purchaser Litig., No. 05-340 (D. Del. Apr. 23, 2009).

# Fitzpatrick Decl. Exhibit 4

Documents reviewed:

- Discover Financial Services Form 10-Q (June 30, 2023)
- Class Action Complaint (CAPP document 1, filed 7/19/23)
- First Amended Class Action Complaint (CAPP document 13, filed 8/11/23)
- Plaintiffs' Unopposed Motion and Memorandum for Preliminary Approval of Class Action Settlement (CAPP document 59, filed 8/27/24) and the exhibits thereto
- Plaintiffs' Unopposed Motion and Memorandum for Preliminary Approval of Modified Class Action Settlement (CAPP document 65, filed 1/22/25) and the exhibits thereto, including Class Action Settlement Agreement and Release ("Settlement Agreement")
- Order Granting Preliminary Approval of Modified Class Action Settlement (CAPP document 68, filed 7/30/25)

# **EXHIBIT 7**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**CAPP, INC., YOUNG PEOPLES DAY  
CAMPS INC., KMJA DAY CAMPS,  
INC., AND PRAYUS GROUP LLC**, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, AND DISCOVER BANK,**

Defendants.

Case No. 1:23-cv-04676

---

**LEMMO’S PIZZERIA, LLC**, individually  
and on behalf of all others similarly situated,

Plaintiff,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1–100,**

Defendants.

Case No. 1:23-cv-14250

---

**SUPPORT ANIMAL HOLDINGS, LLC, and  
LENNYS CASITA, LLC**, individually, and on  
behalf of all other similarly situated,

Plaintiffs,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1–100,**

Defendants.

Case No. 1:23-cv-15297

**DECLARATION OF D. MONTGOMERY CAPLAN ON BEHALF OF  
CAPP, INC. IN SUPPORT OF MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT AND MOTION FOR AN  
AWARD OF ATTORNEYS' FEES, COSTS AND SERVICE AWARDS**

I, D. Montgomery Caplan, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration on behalf of CAPP, Inc. (“CAPP”), a named plaintiff in *CAPP, Inc., et al. v. Discover Financial Services*, No. 1:23-cv-04676-SCS (the “CAPP Action”) and one of the Court-appointed Settlement Class Representatives in this Settlement of the CAPP Action and other related actions (collectively, the “Actions”). I submit this declaration on behalf of CAPP in support of (I) Plaintiffs’ Motion for Final Approval of the Proposed Class Settlement (the “Settlement”), and (II) Plaintiffs’ Motion for an Award of Attorneys’ Fees, Costs and Service Awards.

2. I have personal knowledge of the matters set forth herein, and, if called upon, I could and would competently testify thereto.

3. As the Chief Executive Officer and co-owner of CAPP, I have the authority to submit this declaration on behalf of CAPP.

4. CAPP is a Pennsylvania corporation with its principal place of business in Clifton Heights, Pennsylvania. CAPP was founded in 1950 and is a leading distributor of HVAC, electrical, industrial automation, instrumentation, plumbing, and mechanical products.

5. In the CAPP Action, we alleged that Discover misclassified certain consumer credit card accounts as commercial and, as a result, each time a misclassified Discover credit card was used for payment in a transaction, Discover charged interchange fees that were generally higher than what would have been charged had these credit cards been classified correctly.

6. CAPP accepted Discover credit cards from its customers in payment for goods throughout the class period of January 1, 2007 through December 31, 2023, and was charged interchange fees on every Discover credit card transaction processed by its credit card processors.

7. As a Settlement Class Representative, I am aware of and understand the requirements and responsibilities of a class representative, including the duty to act in the best interests of absent class members.

8. I was involved from the initial meeting with *CAPP* Counsel during which I authorized CAPP's participation in the pre-litigation investigation. And throughout my participation, I have monitored the litigation and was involved and/or kept apprised of all material aspects of the investigation, discovery, mediation, and settlement of the Actions through periodic status reports from my counsel on case developments.

9. CAPP actively participated in the Actions and contributed to the success of this lawsuit as follows:

- (a) My employees and I searched for and compiled business records relating to Discover credit card transactions, credit card processing statements and merchant acquirer credit card processing agreements dating back to January 1, 2007;
- (b) I reviewed the original and amended complaint filed in the *CAPP* Action on behalf of CAPP and the other named plaintiffs;
- (c) I participated in discussions with *CAPP* Counsel concerning the prosecution of the Action, and the strengths of and risks of the claims and defenses;
- (d) I reviewed and approved CAPP's objections and responses to Discover's Requests for Documents and Interrogatories;
- (e) I consulted with my counsel during the mediation process and settlement negotiations, and reviewed and signed both the original and modified Settlement Agreements;
- (f) throughout my participation in this Action, my counsel kept me apprised of all material aspects of the investigation, discovery, mediation, and settlement of the Actions through periodic status reports; and

(g) I ensured that counsel received documents, data and information upon request and on a timely basis.

10. I estimate that my employees and I spent at least 75 hours on all of these activities which spanned approximately two years.

11. Based on my participation, I was able to oversee the active investigation of the *CAPP* Action, the litigation, the mediation, as well as the ultimate settlement of the Actions. I was able to observe the substantial efforts undertaken by *CAPP* Counsel to obtain an excellent proposed recovery for the Settlement Class, notwithstanding the risks involved.

12. Given my background, involvement in the Action and knowledge of the allegations and claims made in the *CAPP* Action, and risks involved with any litigation, I believe that the proposed Settlement is fair, reasonable, and adequate.

13. While I understand that the ultimate determination of Settlement Class Counsel's request for attorneys' fees and costs rests with the Court, I believe that the request for an award of \$25 million in fees and costs is reasonable in light of the result achieved in the Action, the risks undertaken, and the quality of the work performed.

14. Finally, neither I, nor *CAPP*, was offered or promised anything to become a class representative. However, I understand that a service award in the amount of \$7,500 has been requested for *CAPP*'s time and commitment expended on behalf of the Settlement Class.

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

11/22/2025

Executed on November \_\_\_\_, 2025.

Signed by:



19786747AC53479...  
D. Montgomery Caplan  
Chief Executive Officer and Co-owner of *CAPP*,  
Inc.

# **EXHIBIT 8**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**CAPP, INC., YOUNG PEOPLES DAY  
CAMPS INC., KMJA DAY CAMPS,  
INC., AND PRAYUS GROUP LLC**, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, AND DISCOVER BANK,**

Defendants.

Case No. 1:23-cv-04676

---

**LEMMO'S PIZZERIA, LLC**, individually  
and on behalf of all others similarly situated,

Plaintiff,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1-100,**

Defendants.

Case No. 1:23-cv-14250

---

**SUPPORT ANIMAL HOLDINGS, LLC, and  
LENNYS CASITA, LLC**, individually, and on  
behalf of all other similarly situated,

Plaintiffs,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1-100,**

Defendants.

Case No. 1:23-cv-15297

**DECLARATION OF KEITH GLAUBER ON BEHALF OF  
YPDC IN SUPPORT OF MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT AND MOTION FOR AN  
AWARD OF ATTORNEYS' FEES, COSTS AND SERVICE AWARDS**

I, Keith Glauber, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration on behalf of Young Peoples Day Camps Inc. (“YPDC”), a named plaintiff in *CAPP, Inc., et al. v. Discover Financial Services*, No. 1:23-cv-04676-SCS (the “*CAPP* Action”) and one of the Court-appointed Settlement Class Representatives in this Settlement of the *CAPP* Action and other related actions (collectively, the “Actions”). I submit this declaration on behalf of CAPP in support of Plaintiffs’ (I) Motion for Final Approval of the Proposed Class Settlement (the “Settlement”), and (II) Motion for an Award of Attorneys’ Fees, Costs and Service Awards.

2. I have personal knowledge of the matters set forth herein, and, if called upon, I could and would competently testify thereto.

3. I am the President and owner of YPDC and as such have the authority to submit this declaration on YPDC’s behalf.

4. YPDC is a New York corporation with its principal place of business in New Jersey. YPDC operates day camps in various locations in New York and New Jersey.

5. In the *CAPP* Action, we alleged that Discover misclassified certain consumer credit card accounts as commercial and, as a result, each time a misclassified Discover credit card was used for payment in a transaction, Discover charged interchange fees that were generally higher than what would have been charged had these credit cards been classified correctly.

6. During the relevant period, YPDC accepted Discover credit cards in payment for services and was charged interchange fees on every Discover credit card transaction processed by its credit card processor.

7. As a Settlement Class Representative, I understand the requirements and responsibilities of a class representative, including YPDC's duty to act in the best interests of absent class members.

8. YPDC has actively participated in the Actions and contributed to the success of this lawsuit as follows:

- (a) throughout the *CAPP* Action, and during the pre-litigation investigation, my employees and I compiled business records relating to Discover credit card transactions, credit card processing statements and agreements;
- (b) I reviewed the original and amended complaint filed in the *CAPP* Action on behalf of YPDC and the other named *CAPP* plaintiffs;
- (c) I participated in discussions with my counsel concerning the prosecution of the Action, and the strengths of and risks of the claims and defenses;
- (d) I reviewed and approved YPDC's objections and responses to Discover's Requests for Documents and Interrogatories;
- (e) I consulted with my counsel during the mediation process and settlement negotiations, and reviewed and signed both the original and modified Settlement Agreements; and
- (f) throughout my participation in this Action, *CAPP* Counsel kept me apprised of all material aspects of the investigation, discovery, mediation, and settlement of the Actions through periodic status reports.

9. I estimate that my employees and I spent at least 40 hours on these activities.

10. Based on the experience of YPDC with Discover's interchange fees and my involvement in this lawsuit, I believe the Settlement to be fair, reasonable, and adequate.

11. While I understand that the ultimate determination of Settlement Class Counsel's request for attorneys' fees and costs rests with the Court, I believe that the request for an award of \$25 million in fees and costs is reasonable in light of the result achieved in the Action, the risks undertaken, and the quality of the work performed.

12. I further believe that Settlement Class Counsel’s request for an award of \$25 million in fees is reasonable in light of the result achieved in the Action, the risks undertaken, and the quality of the work performed.

13. Neither I, nor YPDC, was offered or promised anything to become a class representative. I understand, however, that a service award in the amount of \$7,500 has been requested for YPDC’s time and commitment expended on behalf of the Settlement Class.

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

Executed on November 22, 2025.

DocuSigned by:  
*Keith Glauber*  
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Keith Glauber  
President and Owner of Young People’s Day  
Camps, Inc.

# **EXHIBIT 9**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**CAPP, INC., YOUNG PEOPLES DAY  
CAMPS INC., KMJA DAY CAMPS,  
INC., AND PRAYUS GROUP LLC**, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, AND DISCOVER BANK,**

Defendants.

Case No. 1:23-cv-04676

---

**LEMMO'S PIZZERIA, LLC**, individually  
and on behalf of all others similarly situated,

Plaintiff,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1-100,**

Defendants.

Case No. 1:23-cv-14250

---

**SUPPORT ANIMAL HOLDINGS, LLC, and  
LENNYS CASITA, LLC**, individually, and on  
behalf of all other similarly situated,

Plaintiffs,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1-100,**

Defendants.

Case No. 1:23-cv-15297

**DECLARATION OF KATAN K. PATEL ON BEHALF OF PRAYUS  
GROUP LLC IN SUPPORT OF MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT AND MOTION FOR AN  
AWARD OF ATTORNEYS' FEES, COSTS AND SERVICE AWARDS**

I, Katan K. Patel, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration on behalf of Prayus Group LLC (“Prayus”), a named plaintiff in *CAPP, Inc., et al. v. Discover Financial Services*, No. 1:23-cv-04676-SCS (the “*CAPP* Action”) and one of the Court-appointed Settlement Class Representatives in this Settlement of the *CAPP* Action and other related actions (collectively, the “Actions”). I submit this declaration in support of Plaintiffs’ (I) Motion for Final Approval of the Proposed Class Settlement (the “Settlement”) and (II) Motion for an Award of Attorneys’ Fees, Costs, and Service Awards.

2. I have personal knowledge of the matters set forth herein, and, if called upon, I could and would competently testify thereto.

3. I am the President and co-owner of Prayus and have been authorized to submit this declaration on its behalf.

4. Prayus is a Florida limited liability company with its principal place of business located in Naples, Florida. Prayus owns and operates wellness centers and spas in Connecticut, Massachusetts, and New York.

5. In the *CAPP* Action, we alleged that Discover misclassified certain consumer credit card accounts as commercial and, as a result, each time a misclassified Discover credit card was used for payment in a transaction, Discover charged interchange fees that were higher than what would have been charged had these credit cards been classified correctly.

6. During the relevant period, Prayus accepted Discover credit cards as payment for services and was charged interchange fees on every Discover credit card transaction processed by its credit card processor, including misclassified commercial interchange fees.

7. As a Settlement Class Representative in this matter, I understand the requirements and responsibilities of a class representative, including Prayus's duty to act in the best interests of absent class members.

8. Prayus has actively participated in the Actions and has contributed to the success of this lawsuit as follows:

- (a) in July 2023, Prayus collected and provided documents relevant to the allegations in the *CAPP* Action;
- (b) throughout the *CAPP* Action, I conducted a search for and located all available business records relating to Discover credit card transactions, credit card processing statements and merchant acquirer credit card processing agreements;
- (c) I reviewed the Amended Complaint filed in the *CAPP* Action on behalf of Prayus and the other named *CAPP* plaintiffs;
- (d) I participated in discussions with my counsel concerning the prosecution of the Actions, and the strengths of and risks of the claims and defenses;
- (e) I reviewed and approved Prayus's objections and responses to Discover's Requests for Documents and Interrogatories;
- (f) I consulted with my counsel during the mediation process and settlement negotiations, and reviewed and signed both the original and modified Settlement Agreements; and
- (g) throughout my participation in this Action, my counsel kept me apprised of all material aspects of the investigation, discovery, mediation, and settlement of the Actions through periodic status reports.

9. I estimate that my partner, employees, and I spent at least 65 hours on these activities.

10. Based on the experience of Prayus with Discover's interchange fees and my involvement in the Actions, I believe the Settlement to be fair, reasonable, and adequate.

11. I further believe that Settlement Class Counsel’s request for an award of \$25 million in fees is reasonable in light of the result achieved in the Actions, the risks undertaken, and the quality of the work performed.

12. Neither I, nor Prayus, was offered or promised anything to become a class representative. I understand, however, that a service award in the amount of \$7,500 has been requested for Prayus’s time and commitment expended on behalf of the Settlement Class.

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

Executed on November 26, 2025.

Signed by:



23F4C748BCEA49D...

Katan K. Patel

President and Co-Owner of Prayus Group LLC

# **EXHIBIT 10**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**CAPP, INC., YOUNG PEOPLES DAY  
CAMPS INC., KMJA DAY CAMPS,  
INC., AND PRAYUS GROUP LLC**, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, AND DISCOVER BANK,**

Defendants.

Case No. 1:23-cv-04676

---

**LEMMO’S PIZZERIA, LLC**, individually  
and on behalf of all others similarly situated,

Plaintiff,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1–100,**

Defendants.

Case No. 1:23-cv-14250

---

**SUPPORT ANIMAL HOLDINGS, LLC, and  
LENNYS CASITA, LLC**, individually, and on  
behalf of all other similarly situated,

Plaintiffs,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1–100,**

Defendants.

Case No. 1:23-cv-15297

**DECLARATION OF HARRISON JACOB LEMMO ON BEHALF OF LEMMO’S  
PIZZERIA, LLC IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND MOTION FOR AN AWARD OF ATTORNEYS’ FEES,  
COSTS, AND SERVICE AWARDS**

I, Harrison Jacob Lemmo, pursuant to 28 U.S.C. § 1746, declare as follows:

1. Lemmo’s Pizzeria, LLC (“Lemmo’s”) is a named plaintiff in *Lemmo’s Pizzeria, LLC v. Discover Financial Services, et al.*, No. 1:23-cv-14250 (the “*Lemmo’s* Action”) and one of the Court-appointed Settlement Class Representatives in this Settlement of the *Lemmo’s* Action and other related actions. I submit this declaration on behalf of Lemmo’s in support of (I) Plaintiffs’ Motion for Final Approval of Class Action Settlement (the “Settlement”), and (II) Plaintiffs’ Motion for An Award of Attorneys’ Fees, Costs, and Service Awards.

2. I have personal knowledge of the matters set forth herein, and, if called upon, I could and would competently testify thereto.

3. I am one of the owners of Lemmo’s and am authorized to submit this declaration on the company’s behalf.

4. Lemmo’s is a Limited Liability Company with its principal place of business in Moorpark, California, where it operates a pizza restaurant. Lemmo’s has accepted Discover cards from its customers since at least September 26, 2019 and has paid interchange fees associated with Discover card transactions.

5. I understand that this case challenges Discover’s alleged assessment of improper interchange fees resulting from a card misclassification practice. As a proposed class representative in this matter, I understand that Lemmo’s owes duties toward the absent class members, including to look out for their best interests.

6. Lemmo’s has actively participated in this case. Regarding the contributions of Lemmo’s to the success of this lawsuit, before the case was filed, I and other Lemmo’s personnel collected documents relevant to the allegations and provided them to our attorneys, conferred


extensively with our attorneys regarding the case, and made ourselves available for interviews. I remained in contact with our attorneys and performed tasks on behalf of the class for the duration of the litigation, including by reviewing filings and other documents provided to me by our attorneys and providing them with additional information upon request. I conferred with our attorneys regarding the initial Settlement Agreement, the Modified Settlement Agreement, and settlement approval process, and reviewed and signed both the original Settlement Agreement and the Modified Settlement Agreement. I would estimate that Lemmo’s has spent 20 to 30 hours on these activities.

7. Based on the experience of Lemmo’s with Discover’s interchange fees and my involvement in this lawsuit, I believe the Settlement to be fair, reasonable, and adequate.

8. Neither I nor Lemmo’s was ever offered or promised anything to become a class representative. I understand, however, that a service award in the amount of \$7,500 has been requested for Lemmo’s for its time and commitment expended on behalf of the Settlement Class.

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

Executed on 11/18/2025, in Moorpark, California.

Signed by:   
1EB2CEC2A1E2481.....  
Harrison Jacob Lemmo  
On Behalf of Lemmo’s Pizzeria, LLC

# **EXHIBIT 11**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

**CAPP, INC., YOUNG PEOPLES DAY  
CAMPS INC., KMJA DAY CAMPS,  
INC., AND PRAYUS GROUP LLC**, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, AND DISCOVER BANK,**

Defendants.

Case No. 1:23-cv-04676-SCS

**DECLARATION OF LENNY  
NOURAFCHAN IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENTS AND REQUEST FOR  
SERVICE AWARDS**

---

**LEMMO’S PIZZERIA, LLC**, individually  
and on behalf of all others similarly situated,

Plaintiff,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1–100,**

Defendants.

Case No. 1:23-CV-14250-SCS

---

**LENNYS CASITA, LLC**, individually, and on  
behalf of all other similarly situated,

Plaintiffs,

v.

**DISCOVER FINANCIAL SERVICES, DFS  
SERVICES, LLC, DISCOVER BANK, AND  
DOES 1–100,**

Case No. 1:23-CV-15297-SCS

Defendants.

**DECLARATION OF LENNY NOURAFCHAN IN SUPPORT OF PLAINTIFFS’  
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS AND  
REQUEST FOR SERVICE AWARDS**

I, Lenny Nourafchan declare as follows:

1. I am the managing member of Lenny’s Casita, LLC, one of the named plaintiffs and class representatives in the above-captioned litigation. I submit this declaration in support of Plaintiffs’ motion for final approval of class action settlements and in support of the request for service awards. The facts set forth herein are true and based on my own personal knowledge, except where based upon a review of the relevant pleadings and records. If called as a witness, I could and would competently testify thereto.

2. Lenny’s Casita, LLC operates a restaurant in Los Angeles, California under the name “Lenny’s Casita.” Lenny’s Casita, LLC accepted Discover credit cards as a form of payment, and incurred fees from such transactions, from approximately May 2020 to the present.


3. As a plaintiff and class representative in this case, I voluntarily undertook to commence a lawsuit to correct what I viewed as a wrong, and undertook the burdens and risks associated with litigation.

4. Pursuant to my duties as a plaintiff and class representative, I have been actively engaged in this case. Among other things, I gathered and provided information for my attorneys, reviewed the allegations in the complaint and other pleadings, consulted extensively with my attorneys so that I could stay updated about the status of the case and settlement. I also reviewed the settlement agreement and discussed the same multiple times with my attorneys before signing. In total, although I have not maintained records of the time I spent participating in this case, I estimate that I spent approximately 40-50 hours working on this case.

5. I reviewed the settlement agreement and discussed the same with my attorney. I believe that the settlement is fair, reasonable, adequate, and in the best interests of the class members (including Lenny's Casita, LLC).

6. Neither I nor Lenny's Casita, LLC have been promised any compensation for performing duties as a plaintiff and class representative. I understand, however, that a request will be made for a \$7,500 service award to be granted to Lenny's Casita, LLC. I believe that amount reflects my efforts in commencing and assisting with the prosecution of this matter, and should the Court agree, I will be grateful. I also support Class Counsel's requests for attorney's fees and costs. I have been impressed by the representation in this action. The communication was professional and I remained informed throughout the litigation. I am very appreciative of the results their efforts achieved.

I declare under threat of perjury that the foregoing is true and correct. Executed on  
11/11/2025, in Los Angeles County, California.

DocuSigned by:  
  
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Lenny Nourafchan