

Exhibit C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

**IN RE PAYMENT CARD
INTERCHANGE FEE AND MERCHANT
DISCOUNT ANTITRUST LITIGATION**

No. 05-md-01720 (BMC) (JAM)

This Document Applies to:

Barry's Cut Rate Stores, Inc., et al. v. Visa, Inc., et al., No. 05-md-01720 (E.D.N.Y.) (BMC) (JAM), also now known as *DDMB, Inc., et al. v. Visa, Inc., et al.*, No. 05-md-01720 (E.D.N.Y.) (BMC) (JAM).

**DECLARATION OF LINDA P. NUSSBAUM FILED ON BEHALF OF NUSSBAUM
LAW GROUP, P.C. IN SUPPORT OF EQUITABLE RELIEF CLASS PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES AND EXPENSES**

Linda P. Nussbaum, declares as follows:

1. I am Managing Director of the law firm Nussbaum Law Group, P.C. ("NLG" or the "Firm"). I have been admitted to practice law in the State of New York since 1978 and in the Eastern District of New York since 1979. I am one of the Equitable Relief Class Counsel ("ERCC") in this litigation (the "Action"). See *DDMB, Inc. v. Visa, Inc.*, 2021 WL 6221326 at *37-38 (E.D.N.Y. Sep. 27, 2021) (ECF No. 8647 at 89-90).

2. I have personal, firsthand knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto. I am submitting this declaration in support of the motion for an award of attorneys' fees and expenses in connection with the services rendered by my Firm in the Action.

3. This declaration is intended to assist the Court in assessing the litigation efforts that NLG engaged in that contributed to the outstanding resolution achieved for the Equitable Relief

Class Plaintiffs (“ERCP”), as set forth in the Motion for Preliminary Approval of Amended Settlement Agreement granted by this Court (ECF No. 9884) and the accompanying motion for Final Approval of the Amended Settlement.

4. On November 30, 2016, NLG was appointed as Interim Class Counsel (“Interim ERCC”), along with Hilliard Shadowen LLP, Grant & Eisenhofer P.A., and Justice Jagher London & Millen LLC (f/k/a Freed Kanner London & Millen LLP). *See* ECF No. 6754 at 4-5.

5. On September 27, 2021, the Court (Chief Judge Brodie) certified a Rule 23(b)(2) class consisting of “all persons, businesses and other entities that accept Visa and/or Mastercard credit and/or debit cards in the United States at any time during the period between December 18, 2020 and the date of preliminary settlement approval.” *See DDMB, Inc. v. Visa, Inc.*, 2021 WL 6221326 (E.D.N.Y. Sep. 27, 2021), *amended by In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 2024 WL 3236614, at *35 (E.D.N.Y. Jun. 28, 2024). The Court also appointed NLG as one of the ERCC. *DDMB, Inc.*, 2021 WL 6221326 at *50.

6. NLG represents four businesses which were certified by Judge Brodie as class representatives throughout the course of the litigation: RunCentral, LLC; CMP Consulting Serv., Inc.; Generic Depot 3, Inc. d/b/a Prescription Depot; and PureOne, LLC d/b/a Salon Pure, as well as the certified Class herein.

7. My first involvement in this MDL began at the inception of the proceeding in 2005. At that time, while practicing as a partner at my former law firm, I served as counsel for a group of 20 individual merchants who were among the first plaintiffs to file individual actions against Mastercard and Visa. I maintained a highly active role in the MDL thereafter. The individual merchants’ cases in which I served as counsel fully resolved in or about 2014.

8. Susan Schwaiger of my Firm and my Firm's former Director, Bart Cohen, were also initially counsel in prior proceedings in the MDL.

9. Thus, NLG's collective knowledge regarding the facts, legal issues, parties and counsel involved in this Action has been extensive, and includes unique insight into the perspectives and concerns of both small and large merchants, together with the practical, day-to-day effects of Defendants' violations as experienced by those merchants.

10. From the time NLG first commenced work on behalf of the ERCP matter in August 2016 through June 30, 2026, NLG attorneys and legal staff have spent a substantial portion of their professional time, over 20,000 hours, prosecuting this case, generating a total lodestar of \$20,820,693.50. *See* Exhibit A attached hereto. During that same nearly 10-year period, as reflected in Exhibit B attached hereto, NLG has paid \$1,797,701.15 in unreimbursed costs and expenses relating to, among other things, experts, consultants, electronic discovery, document management, deposition transcripts, legal research, travel, court reporting, and mediations. As discussed more fully below, this enormous investment of both time and money by NLG—with no assurance of compensation for the work performed or reimbursement of the costs and expenses advanced, given the purely contingent nature of this litigation—was necessary due to the magnitude, complexity, and duration of the Action. NLG has not engaged in any litigation financing with respect to this Action or any other matter.

I. History of the MDL Litigation

11. This litigation began more than 20 years ago, when various merchants filed cases against Visa and Mastercard (the "Network Defendants") and certain issuing and acquiring banks (the "Bank Defendants"), which were consolidated into MDL 1720. The merchant plaintiffs alleged that the Network Defendants and Bank Defendants (collectively the "Defendants")

violated the antitrust laws by imposing supracompetitive interchange fees for acceptance of Visa and Mastercard branded credit cards. The cases were consolidated before Judge John Gleeson, and he appointed interim class counsel representing both classes of plaintiffs. *See* ECF No. 279.

12. In April 2006, a single consolidated amended class action complaint was filed on behalf of two classes of merchants: one class seeking monetary damages under Rule 23(b)(3) and the other class seeking equitable relief under Rule 23(b)(2). *See* ECF No. 317.

13. The first phase of this litigation (“Phase I”) settled in 2012 (the “2012 Settlement”). Judge Gleeson approved the 2012 Settlement, which divided merchants into two classes: a Rule 23(b)(3) class, consisting of merchants that accepted Visa and Mastercard from January 1, 2004 to November 27, 2012; and a Rule 23(b)(2) class consisting of merchants that accepted Visa and Mastercard as of November 27, 2012 and into the future. *See* ECF No. 1745 ¶¶ 5-6; ECF No. 6125 at 6 n.3; *In re Payment Card*, 2012 WL 12929536, at *1–2 (E.D.N.Y. Nov. 27, 2012); *In re Payment Card*, 986 F. Supp. 2d at 213 n.3.

14. In 2016, the Second Circuit reversed the district court’s approval of the 2012 Settlement and remanded the case back to the Court, holding, *inter alia*, that the damages and equitable relief classes required separate counsel. *See In re Payment Card*, 827 F.3d 223 (2d Cir. 2016). Following remand, the Court invited the parties to submit proposals for representation of the proposed classes going forward (ECF No. 6654), which NLG, having previously completed all of its prior representations in the MDL, did.

II. NLG’s Appointment as Co-Lead Counsel

15. NLG filed papers seeking to be appointed Interim Co-Lead Counsel for the ERCP in September 2016. On November 30, 2016, the Court appointed NLG as one of four Co-Lead Interim ERCC, stating:

I further conclude that the Nussbaum Group and the Shadowen Group are in the best position to represent the interests of the putative Injunctive Relief Class. The firms in these groups have been steeped in this litigation since its inception, and have demonstrated their ability to work cooperatively with each other, with the court and with numerous non-lead counsel representing plaintiffs with very significant interests in this litigation.

ECF No. 6754 at 6.

16. The Court further noted that having NLG as a part of the leadership team “heightens the likelihood that holders of future claims will have an effective voice in the debates about how best to represent the putative class.” *Id.* at 6.

17. I respectfully assert that the Court’s prediction was accurate, and millions of U.S. merchants have been well-represented by NLG and its Co-Lead Counsel, as evidenced by the extraordinary relief achieved in the Amended Settlement.

III. NLG Attorneys Made Substantial Contributions to the Successful Prosecution of the Rule 23(b)(2) Case

A. Amended Complaint and Bank Defendants’ Motion to Dismiss

18. Once appointed, NLG attorneys hit the track running, and played a major role in drafting the 107-page operative, Amended ERCP Complaint (the “Complaint”) and on February 8, 2017—less than three months after being appointed to represent the ERCP—served the Complaint on Defendants (which was later filed under seal). *See* ECF Nos. 6858 and 6892. The redacted complaint was ultimately filed on the docket on April 10, 2017. *See* ECF No. 6910.

19. The Complaint challenged Defendants’ anti-competitive practices that harm competition and impose supra-competitive prices on merchants in violation of Sections 1 and 2 of the Sherman Act and the California Cartwright Act. *See* ECF Nos. 6892 and 6910. The ERCP brought their claims under Section 16 of the Clayton Act, seeking equitable relief to prevent and restrain violations of the Sherman Act and the California Cartwright Act. *See id.*

20. The Network Defendants answered the Complaint on November 15, 2018. The Bank Defendants served their pre-motion letter stating their intent to file a motion to dismiss on January 16, 2019. ECF Nos. 7293, 7296, and 7356. On April 18, 2019, the Bank Defendants filed their motion to dismiss the Complaint for failure to state a claim and lack of jurisdiction, which the ERCP opposed. *See* ECF Nos. 7399 and 7400; ECF No. 7402 (opposition); ECF No. 7403 (opposition under seal); ECF No. 7408 (opposition); ECF No. 7414 (opposition with redactions).

21. Between February and April 2019, NLG attorneys, along with Co-Lead Counsel, researched, outlined and drafted the ERCP's opposition to the motion. NLG attorneys finalized and filed the opposition with the Court on April 22, 2019. *See* ECF No. 7402.

22. The Court denied the motion to dismiss on November 20, 2019. *See* ECF No. 7790; *Barry's Cut Rate Stores Inc. v. Visa, Inc.*, 2019 WL 7584728, at *34 (E.D.N.Y. Nov. 20, 2019).

B. Depositions and Discovery

23. NLG attorneys actively participated in all aspects of the discovery process, including reviewing and analyzing existing discovery, as well as planning, strategizing, and coordinating the additional discovery necessary to support and prove the ERCP's equitable relief claims. NLG attorneys were instrumental in selecting, scheduling, and taking depositions, drafting offensive discovery requests and responses to discovery requests served on the ERCP, and working extensively with economic and industry testifying and non-testifying experts.

24. NLG attorneys also prepared the ERCP witnesses and defended the depositions of the four class representatives that NLG represented: RunCentral, LLC (Carlos Perez Apr. 12, 2018); CMP Consulting Serv., Inc. (Carlos Perez Apr. 10, 2018); Generic Depot 3, Inc. d/b/a Prescription Depot (Hal Goldman Apr. 4, 2018); and PureOne, LLC d/b/a Salon Pure (Heather Boyd Smith Apr. 30, 2018).

25. Between December 2016 and November 2018, NLG attorneys devoted substantial time and effort to coordinating and working with counsel for the Defendants, the Rule 23(b)(3) plaintiffs, and others on discovery and scheduling. The ERCP sought to prioritize their efforts for depositions focusing upon the network rules at issue in the Action (the “Network Rules”). NLG attorneys participated in the deposition scheduling committee, working alongside representatives from the other plaintiff groups and Defendants. This committee met on a regular basis to propose depositions, arrange schedules, and ensure that the multi-tracked depositions were properly staffed. *See* ECF No. 7257-3 at ¶ 69.

26. Three of NLG’s most senior attorneys participated in dozens of Defendant and third-party depositions, examined various witnesses, and prepared memoranda summarizing the relevant testimony—focusing on the Mastercard and Chase witnesses—for use in the ERCP’s case.

27. In addition to playing a significant role in the taking and defending of depositions throughout 2017 and 2018, NLG attorneys also performed targeted reviews of the millions of pages of documents produced by Defendants and non-parties, worked to marshal the evidence on the Network Rules, the potential relief, and other relevant topics from the Defendant and third-party depositions that had occurred before the appointment of the ERCC. *See* ECF No. 2113-6 at Exhibit 3 and ECF No. 7257-3 at Exhibits 2, 4 and 7.

28. NLG attorneys also worked collaboratively with other plaintiff groups to draft and serve document requests on Defendants, negotiate the parameters of discovery, including search terms, and pursued third party discovery.

29. Defendants produced extensive privilege logs requiring substantial review, analysis, and challenge. NLG attorneys participated in a comprehensive review of those privilege logs, prepared correspondence challenging Defendants’ privilege designations, and participated in

numerous meet-and-confers with Defendants regarding the challenged documents, resulting in the turning over of many significant documents.

30. With an eye toward efficiency, and taking into account the voluminous discovery record, NLG mined the discovery record from the earlier litigation, which included millions of pages of documents from Defendants and third parties and over 400 deposition transcripts, for issues relevant to the ERCP's equitable-relief claims. NLG attorneys played an instrumental role in updating and supplementing the discovery record with respect to specific rules and economic issues, including, but not limited to, Mastercard's and Visa's challenged Rules.

C. Economic Expert Depositions and Reports

31. NLG attorneys worked extensively with experts and played a major role in expert discovery. NLG played a central role in preparing the expert reports of the ERCP experts Dennis Carlton, Joseph E. Stiglitz and Keith B. Leffler. An exceptionally large number of experts testified in this MDL for the various defendants, the Rule 23(b)(3) class plaintiffs, and the multiple Direct Action Plaintiff ("DAP") groups. NLG attorneys analyzed, where relevant, all expert reports and depositions of those experts.

32. NLG attorneys, along with other Co-Lead Counsel, also assisted in preparing for and defending the depositions of the ERCP experts Dennis W. Carlton held on December 10, 2019, Keith B. Leffler held on February 26, 2021, and Joseph E. Stiglitz held on February 20, 2020.

33. I personally devoted a considerable number of full days working with our experts, including with Dr. Stiglitz, in preparation for his report and deposition which was held at NLG's offices in New York City.

D. Plaintiffs' Document Productions

34. In February 2018, NLG attorneys were responsible for overseeing the initial collection, review, and processing for service of documents produced by the four class representatives whom NLG represented.

35. In November 2023, NLG attorneys supervised supplemental document productions relating to the same four class representatives. In addition, NLG attorneys prepared responses and objections to contention interrogatories served on NLG's plaintiffs by the Bank Defendants.

36. In all, Defendants served 87 document requests on the ERCP class representatives. NLG worked with its four class representatives to prepare and serve formal responses and objections, negotiated production parameters and other disputed issues with the Defendants, and collected, reviewed and produced responsive documents.

37. Defendants also served 59 interrogatories and subparts along with contention interrogatories. NLG attorneys worked closely with their clients to serve initial objections to the interrogatories, negotiate the scope of the responses with Defendants, and prepare and serve those responses. These clients were ultimately all certified as class representatives by Judge Brodie.

E. Defendant and Third Party Document Analysis

38. NLG attorneys played a significant role in conducting targeted searches and efficiently managing the review of approximately 66 million pages of documents produced by the various parties in order to efficiently prepare for depositions, summary judgment motions, class certification, and trial. *See* ECF No. 7469-3 at Exhibit 1 at 87-88 of 258 and ECF No. 7257-3 at Exhibit 1 at 72-73 of 96.

39. In November 2021, NLG attorneys drafted requests for specific and updated supplemental discovery and led efforts to secure additional productions from Mastercard and Visa.

40. NLG attorneys then participated in the review of the supplemental records produced by Visa and Mastercard, focusing specifically on issues relevant to the Network Rules, variances of the Network Rules, and possible injunctive relief.

F. Conferring With Non-Testifying Industry Experts

41. Throughout the entirety of this litigation, NLG attorneys worked not only with the testifying economic experts (Joseph E. Stiglitz, Dennis W. Carlton and Keith B. Leffler), but also several additional non-testifying payment industry experts who were highly experienced and knowledgeable on pertinent issues. NLG attorneys spent many hours on conference calls and video conferences with merchant employees, experts and participants in the payments and related fields, and analyzing the prior testimony of merchants and experts on the subject of the Network Rules and appropriate relief.

42. By way of example, from 2017 through 2019, I personally took part in numerous meetings, calls, and exchanges of materials with representatives of large merchants, trade associations, and/or their counsel, which included several lengthy, in-person meetings to discuss the Network Rules and possible resolutions. I participated in dozens of meetings and other consultations with merchants and merchant trade associations, by phone or in-person, devoting many hours to discussing their views on the issues and the relief to be sought in the litigation.

G. Five Summary Judgment Motions

43. In December 2020, the ERCP prepared a motion for partial summary judgment against Defendants, and Defendants filed four motions for summary judgment and/or partial summary judgment against the ERCP. The summary judgment motions were the subject of

extensive briefing by the parties,¹ requiring the investment of substantial attorney time. NLG attorneys were actively involved in the summary judgment process, which largely led to favorable results for the ERCP.

44. Following the completion of discovery, depositions, expert discovery, and the preparation of approximately forty topic, issue, and evidence memos, NLG devoted a substantial portion of its legal personnel to researching and drafting materials related to summary judgment. Throughout much of 2020, NLG attorneys invested significant time researching and drafting the ERCP's affirmative motion for summary judgment as well as preparing portions of the ERCP's oppositions to Defendant's motions, focusing on the post-IPO conspiracy, Mastercard market power, and the proper measure of output with respect to the relevant market definition. These briefs were ultimately filed in December 2020, and those motions are described at length in Class Counsel's declaration submitted in support of its motion for preliminary approval. ECF No. 9170-3 at ¶¶78 to ¶¶101.

H. Class Certification

45. NLG played a significant role in achieving class certification for the ERCP. Preliminarily, NLG attorneys conducted legal research, assessed the applicable case law, and drafted memoranda evaluating various questions related to certification of a non-opt-out equitable relief class.

46. NLG attorneys then began drafting the motion for class certification in February 2020, which was ultimately finalized and filed on December 18, 2020. ECF Nos. 8444, 8446 (redacted), 8447 (sealed).

¹ See, e.g., ECF Nos. 8067 through 8069; 8071; 8073; 8088; 8089; 8091; 8103; 8106; 8111; 8150; 8152 through 8157; 8167 through 8172; 8174; 8175; 8206; 8208.

47. After analyzing the oppositions to class certification filed by various other merchants and trade groups, NLG attorneys played a significant role in preparing and serving responsive briefs addressing the arguments raised in those oppositions on April 30, 2021, May 4, 2021, and August 27, 2021. *See* ECF Nos. 8439 (letter); 8444 (motion, proposed order); 8446 (memo of law redacted); 8447 (under seal); 8448 (declaration); 8457 (reply memo of law); 8458 (reply declaration under seal); 8459 (exhibits); 8470 (opposition to motions to intervene); 8474 (service of hard drive).

48. Between May and August 2021, individual merchants and trade groups filed additional papers opposing class certification. NLG attorneys filed, analyzed, and/or responded to numerous legal briefs and other filings related to class certification. NLG attorneys and Co-Lead Counsel successfully defeated the strenuous legal and factual objections and a non-opt-out equitable relief class was certified by Judge Brodie. *See* ECF No. 8647; *DDMB, Inc. v. Visa, Inc.*, 2021 WL 6221326 (E.D.N.Y. Sep. 27, 2021). The Court appointed NLG, Hilliard & Shadowen LLP, Grant & Eisenhofer, P.A., and Justice Jagher London & Millen LLC (f/k/a Freed Kanner London & Millen LLP) as ERCC and all of NLG's clients as class representatives. *Id.*

I. Multiple *Daubert* Motions

49. NLG attorneys played a critical role in successfully opposing Defendants' *Daubert* motions. Specifically, Defendants sought to exclude Professor Carlton's opinion that "Visa and Mastercard's prices for network services are elevated as a result of the Network Restrictions" and related testimony. *See* ECF Nos. 8087, 8727 and 8730; *In re Payment Card*, 2022 WL 15053250 (E.D.N.Y. Oct. 7, 2022); *In re Payment Card*, 2022 WL 15044626 (E.D.N.Y. Oct. 8, 2022). In defeating that motion, NLG's work included, *inter alia*, assessing Defendants' arguments, conducting legal research, and briefing the issues.

50. NLG attorneys also successfully opposed Defendants' motion to exclude Dr. Stiglitz's opinions on mature markets, supracompetitive pricing, and certain measures of output beyond the alleged credit card market. *See* ECF Nos. 8076, 8727 and 8730; *In re Payment Card*, 2022 WL 15053250 (E.D.N.Y. Oct. 7, 2022); *In re Payment Card*, 2022 WL 15044626 (E.D.N.Y. Oct. 8, 2022). The Firm's contributions included researching applicable case law, analyzing the legal arguments, evaluating economic issues, preparing outlines, and drafting a memorandum of law.

51. Those motions are described at length in Class Counsel's declaration submitted in support of the motion for preliminary approval. ECF No. 9170-3 at ¶74 to ¶77.

J. Mediations, Proposed Settlement, and Denial of Preliminary Approval of the 2024 Proposed Settlement

52. While aggressively litigating this matter, NLG attorneys simultaneously participated in numerous mediation sessions over a period of many years with the Defendants to explore the possibility of resolving the equitable relief claims, initially with the assistance of Professor Eric D. Green and then, after preliminary approval of the 2024 Proposed Settlement was denied by Judge Brodie, with the assistance and guidance of Hon. James Orenstein. I personally attended all mediation sessions and played a significant role in all negotiations.

53. NLG first met with the Defendants and Professor Green in February 2017. NLG attorneys participated in more than two dozen mediation and negotiation sessions with Professor Green and the Defendants prior to reaching the initial settlement of this Action.

54. Prior to and throughout that negotiation process, NLG attorneys continued to consult with payments and other industry experts. *See* ECF No. 9179-3.

55. On March 26, 2024, the ERCP filed a motion for preliminary approval of the 2024 Proposed Settlement with supporting papers, including among other things, a memorandum of law

and a proposed notice plan with draft notice forms. ECF Nos. 9178, 9179, 9179-1 through 8, and 9180.

56. The Court held a preliminary approval hearing on June 13, 2024 and the Court entered its Memorandum and Order denying the ERCP's motion for preliminary approval on June 28, 2024. ECF Nos. 9333 and 9342; 2024 WL 3236614 (E.D.N.Y. Jun. 28, 2024).

K. Trial Preparation

57. After the Court denied the ERCP's motion for preliminary approval of the 2024 Proposed Settlement, NLG attorneys began to prepare for trial in earnest. Among other things, NLG attorneys reviewed the voluminous factual record of the case and updated its discovery and factual research where necessary. NLG attorneys also consulted with potential fact and expert witnesses and worked to formulate an appropriate trial strategy and draft the requisite pre-trial submissions, including the identification of potential trial exhibits and deposition designations.

58. Specifically, the work performed by NLG attorneys in preparation for trial included, but was not limited to: (i) developing and updating key factual and expert research concerning liability; (ii) supplementing formal discovery, including negotiating with Defendants regarding supplemental data productions; (iii) updating legal research, including Supreme Court and Second Circuit case law, as well as monitoring the unconstitutionality of state no-surcharge statutes; (iv) monitoring U.S. and foreign governmental regulatory developments impacting merchant interchange fees; (v) monitoring the status of the DAPs' actions and settlement of their damages claims with Defendants; (vi) extensively reviewing the record, including analyzing all class certification, summary judgment, and *Daubert* materials to develop exhibit lists and potential witnesses; and (vii) preparing trial materials, including drafting a potential stipulation of undisputed facts, order of proof and various trial outlines for the planned logistical sequence of

presenting evidence at trial.

59. NLG attorneys performed the following additional work in preparation for trial: (i) met with economic experts and payment industry experts and consultants regarding the selection of potential trial witnesses; (ii) worked with our retained expert economists to update data and analyses regarding current total prices and other network and bank data; (iii) worked with economists to develop a model of the effect of discounting and surcharging; (iv) analyzed large merchant acceptance agreements and rate negotiations with the networks; (v) analyzed Defendants' prior statements regarding their expectations of and acceptance of the effects of the rule changes; (vi) analyzed studies regarding recent empirical evidence of merchant pass-through of interchange costs, relevant to merchant pass-through of interchange rate cap savings; (vii) analyzed the Department of Justice's complaint regarding Visa debit card monopolization; (viii) analyzed developments in the Durbin Amendment provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, codified in various titles of the U.S. Code, regulating merchant debit interchange rates by the Federal Reserve System; and (ix) analyzed DAPs' actions and settlements of their Rule 23(b)(3) claims with Defendants.

60. NLG attorneys were intimately involved in all aspects of the above-listed trial preparation projects.

61. On July 26, 2024, ERCC wrote a letter to the Court requesting that the trial of the equitable relief claims be set for April-May of 2025. ERCC further requested a trial of four to six weeks, whereas Defendants believed a total of eight weeks would be necessary. The parties agreed to meet and confer on interim deadlines for the trial. *See* ECF No. 9362.

L. Mediation with the Hon. James Orenstein and the Amended Settlement

62. In July 2024, while ERCC were preparing for trial, the parties discussed the

possibility of exploring a new settlement that addressed the concerns expressed by Judge Brodie in her order denying preliminary approval of the 2024 Proposed Settlement. The parties approached the Honorable James Orenstein (Ret.) (“Judge Orenstein”) at JAMS to see if he would mediate the parties’ renewed settlement efforts, which he agreed to do. ECF No. 9692-6 at 1.

63. In connection with the Amended Settlement now before this Court, between July 2024 and October 2025, NLG attorneys engaged in continuous and, ultimately, productive negotiations with the Defendants, with the assistance of Judge Orenstein. These negotiations included numerous in-person meetings and video conferences, as well as multiple exchanges of detailed materials and analysis, preparation of proposed term sheets, and expert consultations.

64. I personally participated in preparing for each mediation session and in the mediation sessions themselves, during which substantive and technical issues were addressed and the terms of a potential resolution were negotiated.

65. As part of the negotiation process, NLG attorneys consulted with the ERCP’s economic experts and other industry experts, as well as merchants in order to ascertain their positions and suggestions regarding the new and expanded relief contemplated by the Amended Settlement. *See* ECF No. 9692-10.

66. In all, I participated in five all-day, in-person mediation sessions and seven video or telephonic mediation sessions. Judge Orenstein conducted more than 30 *ex parte* calls and video conferences in support of the parties’ good-faith efforts to consider each other’s positions and achieve a fair, reasonable, and adequate settlement.

67. Once a proposed settlement was achieved and a term sheet executed, NLG attorneys played a substantial role in drafting the Amended Settlement and supporting papers for preliminary approval of the Amended Settlement, which NLG filed on November 10, 2025. In particular, NLG

attorneys significantly participated in the research and drafting of the Equitable Relief Class Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Approval of Amended Settlement (ECF No. 9693), Declaration of Equitable Relief Class Counsel in Support of Motion for Preliminary Approval of Amended Settlement (ECF No. 9692-2), and Notice of Motion and Equitable Relief Class Plaintiffs' Motion for Preliminary Approval of Amended Settlement (ECF No. 9690), among others.

68. Similarly, NLG attorneys played a significant role in reviewing and responding to objections to the Amended Settlement. Specifically, NLG attorneys prepared a substantial amount of work product, including charts and outlines evaluating and rebutting the objections by topic and objector. In addition, NLG attorneys played a substantial role in drafting the Equitable Relief Class Plaintiffs' Reply Memorandum of Law in Support of Motion for Preliminary Approval of the Amended Settlement (ECF No. 9774-1).

69. NLG attorneys also vigorously prepared for and attended the hearing on preliminary approval on April 27, 2026. Since then, NLG attorneys have been working on developing the Merchant Education Program, including, *inter alia*, drafting a request for proposal to potential operators of the program and researching, interviewing, and liaising with multiple potential vendors of the program.

IV. Contemporaneous Records Were Carefully Reviewed for Errors

70. The information in this declaration regarding the Firm's time, fees, and expenses is based upon contemporaneously prepared time and expense reports and supporting documentation prepared and/or maintained by the Firm in the ordinary course of business.

71. The fees and expenses pertaining to this case are reflected in the books and records of this Firm. These books and records are prepared from receipts, expense vouchers, check records,

individual attorney time sheets, and other documents and are an accurate record of the Firm's fees and expenses.

72. Although NLG had a team of attorneys assigned to this matter, I am the partner who oversaw and/or conducted the day-to-day activities of the Firm. During the pendency of the Action, I reviewed the detailed time entries of every timekeeper on a monthly basis for purposes of ensuring accuracy and reasonableness.

73. I conducted an additional review of the time and expense reports (and back-up documentation where necessary or appropriate) in connection with the preparation of this declaration. I also worked with others at the Firm to review the time, fees, and expenses submitted herein. The purpose of this review was to confirm both the accuracy of the entries as well as the necessity for, and reasonableness of, the time and expenses. As a result of this review and the ongoing monthly reviews, reductions were made in the exercise of billing judgment.

74. Based on this review, I am confident that the time reflected in the Firm's lodestar calculation and the fees and expenses for which reimbursement is sought herein are reasonable, and were necessary for the effective and efficient prosecution and resolution of the Action.

V. Reasonable Rates Were Applied

75. I applied current rates to all currently employed timekeepers, and for any individuals who left the Firm during the lengthy pendency of the litigation, those individuals' rates are their rates at the time of their departure from the Firm. The Firm's hourly rates are consistent with hourly rates submitted by the Firm to, and accepted by, federal courts in other class action litigations. The Firm's rates are based, among other factors, on periodic analysis of rates charged by firms performing comparable work both on the plaintiff and defense side, years of practice and experience, and the expense of running a New York City law firm.

76. Different timekeepers within the same employment category (e.g., counsel, associates, paralegals, etc.) may have different rates based on a variety of factors, including, but not limited to, years of practice and expertise.

VI. NLG's Uniquely Experienced Antitrust Attorneys

77. This case was staffed by highly seasoned antitrust litigators. I provide here some details regarding the extensive litigation experience of the primary lawyers who worked on the case.

78. I have been appointed co-lead or lead counsel in numerous other major class actions, cases that have resulted in recoveries totaling in the billions, some of which were by themselves in the hundreds of millions of dollars, and I have extensive experience representing both class plaintiffs and individual large corporate clients in high-stakes direct actions. *See, e.g., KPH Healthcare Servs., Inc. v. Mylan N.V., et al.*, No. 20-cv-02065 (D. Kan.) (“EpiPen”) (Co-Lead Counsel); *In re Foreign Exchange Antitrust Litig.*, No. 13-cv-7789 (S.D.N.Y.) (Allocation Counsel); *In re Relafen Antitrust Litig.*, No. 01-cv-12239 (D. Mass.) (Co-Lead Counsel); *In re Methionine Antitrust Litig.*, No. 00-md-01311 (N.D. Cal.) (Co-Lead Counsel); and *In re Morgan Stanley Data Security Litig.*, No. 20-cv-5914 (S.D.N.Y.) (Co-Lead Counsel).

79. I am currently serving as court-appointed co-lead class counsel in *In re Fragrance Direct Purchaser Antitrust Litig.*, No. 23-cv-02175 (D.N.J.) and *In re Actos Direct Purchaser Antitrust Litig.*, No. 15-cv-03278 (S.D.N.Y.), among other cases.

80. I represented Kaiser Foundation Health Plan (“Kaiser”) as an individual plaintiff through a five-week trial and the appeal of a landmark RICO verdict involving the prescription drug Neurontin. *See In re Neurontin Marketing and Sales Practices Litig.*, No. 04-cv-10981 (D. Mass.). After many years of litigation, the court held a jury trial, which concluded with a RICO

verdict for Kaiser for over \$47 million, which was statutorily trebled to over \$142 million. Following the trial, Judge Patti Saris commented that “[this was] a fabulous trial[.] [I]t’s the kind of thing that you become a judge to sit on.” For my lead trial work on that case, I was recognized as “Litigator of the Week” by the AmLaw Litigation Daily and named as a Finalist for the Public Justice Foundation’s Trial Lawyer of the Year Award.

81. Ms. Schwaiger, who began her career at Shearman & Sterling where she was employed for 12 years before joining me at my former firm, has litigated matters across a broad range of industries, including banking and financial services, pharmaceuticals, and chemicals, and brought more than 30 years of experience to her practice. Over the course of her career, she has played a significant role in major antitrust class actions in which I was lead counsel, including *In re Lorazepam & Clorazepate Antitrust Litig.*, No. 99-ms-00276 (D.D.C.); *In re Microcrystalline Cellulose Antitrust Litig.*, MDL No. 1402, 01-cv-0111 (E.D. Pa.); *In re Plastics Additives Antitrust Litig.*, MDL No. 1684, 03-cv-02038 (E.D. Pa.); *In re Foundry Resins Antitrust Litig.*, No. 04-md-01638 (S.D. Ohio); *In re Rubber Chemicals Antitrust Litig.*, No. 04-md-01648 (N.D. Cal.).

82. Similarly, Mr. Cohen, a former Director of the Firm, had over 35 years of experience in class and other complex litigation. Prior to joining NLG, Mr. Cohen had been a shareholder of Berger & Montague and had worked on MDL 1720.

83. The *Interchange* litigation was a primary focus of the Firm since it was founded by me eleven years ago. Its most senior members, Nussbaum, Cohen and Schwaiger, have spent a substantial portion of their professional lives litigating this MDL.

VII. Total Lodestar Cross-Check

84. After following all of the above steps, the Firm’s lodestar for purposes of this Motion is 20,033.3 hours, representing \$20,820,693.50. The Firm has not been paid or reimbursed

for any of its time, which has been incurred on an entirely contingent basis. I have provided timekeeper charts showing the hours incurred, the employment category, and the rates charged for each professional as Exhibit A.

VIII. Total Expenses

85. I have also engaged in a review of the expenses incurred by the Firm in connection with this Motion.

86. The expenses, including litigation fund contributions, that were paid were necessary for the prosecution of this Action, presently total \$1,797,701.15 as of June 30, 2026. All of these expenses were actually incurred and paid, and have been entirely unreimbursed. I have provided a chart of the expenses paid and the categories for such expenses as Exhibit B.

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

Executed on July 10, 2026
New York, New York


Linda P. Nussbaum (#LN-9336)
NUSSBAUM LAW GROUP, P.C.
1225 Franklin Ave.
Garden City, NY 11530
(917) 438-9189
lnussbaum@nussbaumpc.com

Equitable Relief Class Counsel

EXHIBIT A

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation
Case No. 05-MD-1720 (BMC)(JAM)

Nussbaum Law Group, P.C.

Time Report at Current Rates – August 1, 2016 through June 30, 2026

Name	Position	Hours	Rate	Lodestar
Linda Nussbaum	Managing Director	6,874.1	\$1,450	\$9,967,445.00
Bart Cohen	Director	3,525.4	\$925	\$3,260,995.00
Bradley Demuth	Director	44.5	\$850	\$37,825.00
Hugh Sandler	Director	367.4	\$825	\$303,105.00
Susan Schwaiger	Of Counsel	3,160.1	\$1,100	\$3,476,110.00
Peter Moran	Of Counsel	74.7	\$1,100	\$82,170.00
Jonathan Ross	Of Counsel	405.0	\$1,100	\$445,500.00
Robert Axelrod	Of Counsel	236.4	\$925	\$218,670.00
Fred Isquith, Jr.	Of Counsel	137.3	\$750	\$102,975.00
Christopher Sanchez	Of Counsel	185.0	\$750	\$138,750.00
Meghan Talbot	Senior Associate	28.8	\$1,050	\$30,240.00
Tanya Korkhov	Senior Associate	39.2	\$1,100	\$43,120.00
Rita Wang	Senior Associate	81.2	\$750	\$60,900.00
Lauren Kostman	Associate	635.0	\$850	\$539,750.00
James Perelman	Associate	274.9	\$700	\$192,430.00
Brett Leopold	Associate	290.2	\$750	\$217,650.00
Marc Foto	Associate	920.3	\$595	\$547,578.50
Hoyoung Yang	Associate	166.7	\$450	\$75,015.00
Josh Zuckerman	Associate	325.8	\$550	\$179,190
Sara Wigmore	Associate	359.9	\$550	\$197,945.00
Jill Richburg	Contract Attorney	225.6	\$625	\$141,000.00
Joshua Alpert	Contract Attorney	74.5	\$550	\$40,975.00
Michael Spyropolous	Contract Attorney	214.5	\$400	\$85,800.00
Brian Wright	Summer Associate	10.7	\$375	\$4,012.50
Cameron Brody	Summer Associate	24.0	\$375	\$9,000.00
Donald Roper	Summer Associate	215.7	\$325	\$70,102.50
Zachary Shutran	Law Clerk	122.8	\$425	\$52,190.00
Molly Goldberg	Paralegal	142.9	\$350	\$50,015.00
Tyler Tishman	Paralegal	68.5	\$350	\$23,975.00
Omri Gildor	Paralegal	25.2	\$175	\$4,410.00
Yahui Zhao	Paralegal	109.0	\$350	\$38,150.00
Vivan Lee	Paralegal	668.0	\$275	\$183,700.00
TOTAL		20,033.3		\$20,820,693.50

EXHIBIT B

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation
Case No. 05-MD-1720 (BMC) (JAM)

Nussbaum Law Group, P.C.
Expenses – August 1, 2016 through June 30, 2026

Category	Amount
Assessment Payment to Plaintiffs' Common Fund	\$1,751,100.00
Computer Research	\$11,676.76
Court Fees (filing fees, etc.)	\$5,062.20
Court Reports/Transcripts	\$1,932.00
Internal Reproduction/Copies	\$10,430.50
Postage/Express/Delivery/Messenger	\$206.21
Travel (air/ground transportation, meals, lodging, etc.)	\$17,293.48
TOTAL	\$1,797,701.15