

Exhibit E

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

IN RE PAYMENT CARD INTERCHANGE
FEE AND MERCHANT DISCOUNT
ANTITRUST LITIGATION

MDL No. 1720
No. 05-md-01720 (BMC) (JAM)

This Document Relates To:

BARRY'S CUT RATE STORES INC.;
DDMB, INC. d/b/a EMPORIUM ARCADE
BAR; DDMB 2, LLC d/b/a EMPORIUM
LOGAN SQUARE; BOSS DENTAL CARE;
RUNCENTRAL, LLC; CMP CONSULTING
SERV., INC.; TOWN KITCHEN, LLC d/b/a
TOWN KITCHEN & BAR; GENERIC
DEPOT 3, INC. d/b/a PRESCRIPTION
DEPOT; and PUREONE, LLC d/b/a SALON
PURE,

Plaintiffs,

v.

VISA, INC.; MASTERCARD
INCORPORATED; MASTERCARD
INTERNATIONAL INCORPORATED;
BANK OF AMERICA, N.A.; BA
MERCHANT SERVICES LLC (f/k/a
DEFENDANT NATIONAL PROCESSING,
INC.); BANK OF AMERICA
CORPORATION; BARCLAYS BANK PLC;
BARCLAYS BANK DELAWARE;
BARCLAYS FINANCIAL CORP.;
CAPITAL ONE BANK, (USA), N.A.;
CAPITAL ONE F.S.B.; CAPITAL ONE
FINANCIAL CORPORATION; CHASE
BANK USA, N.A.; CHASE MANHATTAN
BANK USA, N.A.; CHASE PAYMENTECH
SOLUTIONS, LLC; JPMORGAN CHASE
BANK, N.A.; JPMORGAN CHASE & CO.;
CITIBANK (SOUTH DAKOTA), N.A.;
CITIBANK N.A.; CITIGROUP, INC.;
CITICORP; and WELLS FARGO &
COMPANY,

Defendants.

**DECLARATION OF CO-LEAD
COUNSEL ROBERT G. EISLER IN
SUPPORT OF EQUITABLE RELIEF
CLASS PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, EXPENSES,
AND SERVICE AWARDS**

**DECLARATION OF CO-LEAD COUNSEL ROBERT G. EISLER IN SUPPORT OF
EQUITABLE RELIEF CLASS PLAINTIFFS' MOTION FOR AN AWARD OF
ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

I, Robert G. Eisler, declare and state as follows:

1. I am a Principal of the law firm of Grant & Eisenhofer P.A. ("G&E" or the "Firm") and the leader of the firm's antitrust practice group. I submit this Declaration in support of Equitable Relief Class Plaintiffs' ("ERCs") Motion for Attorneys' Fees, Expenses, and Service Awards, and to describe the services rendered and expenses incurred by G&E in connection with this litigation. An abbreviated copy of the Firm biography, focused on the relevant experience of the senior attorneys who have devoted significant time to this matter is attached as Ex. A.

2. In summary, and as described below, from the time G&E first became involved in this litigation through June 30, 2026, as reflected in Exhibit A attached hereto, G&E has devoted 29,356.2 hours to prosecuting this case, generating a total lodestar of \$27,260,409.50. During that same period, as reflected in Exhibit B attached hereto, G&E paid or incurred \$2,451,904.40 in unreimbursed costs and expenses relating to, among other things, experts and consultants, electronic discovery and document management, depositions and transcripts, legal research, travel, court-reporting, and mediations. G&E's substantial investment of both time and money, with no guarantee of compensation for the work performed or reimbursement of the costs and expenses advanced given the purely contingent nature of this litigation, was required by the magnitude and complexity of the case.

I. Commencement Of Litigation

3. This litigation began more than 20 years ago, in June 2005, 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 Network Defendants and Bank Defendants (collectively the “Defendants”) violated the antitrust laws by imposing supracompetitive interchange for acceptance of Visa and Mastercard branded payment cards. The cases were consolidated before Judge John Gleeson, and he appointed interim co-lead counsel to represent the class plaintiffs. *See* ECF No. 279.

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

5. The first phase of this litigation (“Phase I”) culminated in a settlement in 2012 (the “2012 Settlement Agreement”). Former District Judge Gleeson approved the 2012 Settlement Agreement, 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; *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. Both classes continued to be represented by a single set of counsel.

6. In 2016, the Second Circuit reversed the district court’s approval of the 2012 Settlement Agreement and remanded, 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. Multiple groups of attorneys moved for appointment as lead counsel for either the Rule 23(b)(2) or Rule 23(b)(3) putative classes. G&E, along with the other ERCC firms—Hilliard Shadowen LLP, Nussbaum Law Group, P.C., and Freed Kanner London & Millen

LLC, now known as Justice Jagher London & Millen LLC—sought appointment to represent the putative Rule 23(b)(2) class. ECF Nos. 6669-1, 6673

7. On November 30, 2016, the Court appointed ERCC as Interim Class Counsel. *See* ECF No. 6754 at 4–5. In making the appointment, the Court found that the four ERCC firms had “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.” *See* ECF No. 6754 at 6; *In re Payment Card*, 2016 WL 8138988, at *3.

II. ERCC Immediately Mastered the Existing Record and Advanced the Equitable Relief Claims

8. Having been appointed approximately twelve years into the MDL, G&E was required to immediately master an extensive factual and procedural record while simultaneously advancing the claims of the Rule 12(b)(2) plaintiffs. G&E and all ERCC therefore hit the ground running. At the outset, ERCC faced two immediate and substantial tasks: first, investigation and preparing a complaint specifically focused on the equitable relief claims of the Rule 23(b)(2) plaintiffs; and second, rapidly becoming familiar with the enormous discovery record developed during the first twelve years of the litigation while simultaneously participating in ongoing discovery. Because G&E was appointed as ERCC, in part, due to its extensive human and economic resources, G&E took an extremely active role in both efforts.

A. Preparation of ERCP Class Action Complaint and Briefing on Motion to Dismiss

11. Following ERCC’s appointment, G&E attorneys, together with their ERCC colleagues, immediately undertook factual and legal research concerning the equitable relief claims available to the Rule 23(b)(2) plaintiffs. The work required ERCC to evaluate the extensive history of the litigation and Defendants’ challenged practices through a different lens—focusing not on retrospective monetary damages, but on the ongoing competitive effects of Defendants’

conduct and the injunctive relief necessary to prevent and restrain future violations. G&E attorneys participated in researching the factual and legal basis for those claims and in drafting the proposed complaint against Defendants.

12. On February 8, 2017, less than three months after ERCC was appointed to represent the ERCPs, ERCC served a Proposed Equitable Relief Class Action Complaint (the “Complaint”) on Defendants, which was later filed under seal. ECF Nos. 6858 and 6892. 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 No. 6858. ERCPs 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.*

13. The Network Defendants answered the Complaint on November 15, 2018. ECF Nos. 7293, 7296, and 7356. On April 18, 2019, Bank Defendants filed a motion to dismiss the Complaint for failure to state a claim and lack of jurisdiction, which ERCPs opposed. *See* ECF No. 7399 and 7400 (reply); ECF No. 7402 (opposition); ECF No. 7403; ECF No. 7408 (opposition); ECF No. 7414 (opposition with redactions).

14. G&E attorneys actively participated in the preparation and strategy underlying the ERCPs’ opposition to the Bank Defendants’ motion to dismiss, including analyzing the Bank Defendants’ arguments, conducting legal research, and briefing. On November, 20, 2019, the Court denied the Bank Defendants’ motion to dismiss. *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. ERCC Immediately Joined the Discovery Process

15. ERCC's appointment also required us to immediately enter a discovery process that had been underway for more than a decade. ERCC therefore faced the substantial task of mastering an already voluminous discovery record, while, at the same time, participating in ongoing discovery and identifying the additional evidence necessary to prove ERCs' distinct equitable-relief claims. Along with the other ERCC firms, G&E attorneys actively participated in all aspects of this effort, including reviewing and analyzing prior discovery; planning, strategizing, and coordinating future discovery; scheduling, preparing for, and taking depositions; drafting offensive discovery requests; responding to discovery served on the ERCs; and working extensively with the ERCs' economic experts to develop discovery focused on potential modifications to Defendants' network rules.

16. One of ERCC's first discovery tasks was to supplement the extensive factual record developed during Phase I of the litigation. Between the Second Circuit's July 2016 decision and ERCC's appointment in November 2016, Defendants and the Direct Action Plaintiffs ("DAPs") had negotiated various agreements and schedules governing the next phase of discovery. During this same period, Defendants and DAPs had produced more than one hundred million pages of documents in the MDL, not including native files, and counsel for the DAPs and the Rule 23(b)(3) class—both of whom had been involved in the MDL for years—were preparing to commence deposition discovery. Indeed, the deposition discovery now referred to as Phase II began the day after ERCC was appointed to represent the ERCs.

17. ERCC thus entered the litigation at a particularly demanding point in the discovery process. There was no meaningful transition period. G&E attorneys immediately became involved in coordinating the scheduling and coverage of relevant depositions, obtaining access to the

extensive document repositories maintained in the MDL, reviewing and analyzing the existing record, and preparing for and attending depositions. This work required G&E attorneys to quickly develop familiarity not only with the history of the litigation, but also with the complex structure of the payment-card industry, Defendants' network rules, and the factual issues uniquely relevant to prospective equitable relief.

18. G&E attorneys also worked with the other plaintiff groups to develop and pursue additional discovery. Among other things, G&E participated in drafting and serving document requests, negotiating the parameters of discovery—including the development and negotiation of search terms—and serving subpoenas on third parties. Coordination among the various plaintiff groups was particularly important given the scope of the litigation and the need to avoid unnecessary duplication while ensuring that discovery relevant to the ERCPs' equitable-relief claims was fully developed.

19. G&E attorneys also coordinated with the other plaintiff groups in motion practice concerning the scope of Defendants' supplementation of prior discovery responses, privilege log concerns, the allotted time and permissible scope of Defendant depositions, and the de-designation of certain Defendant documents as privileged.

20. ERCC approached this already enormous and growing discovery record strategically and with an eye toward efficiency. Rather than simply attempting to recreate more than a decade of prior discovery, ERCC mined the Phase I record—which included approximately 60 million pages of documents produced by Defendants and third parties and more than 400 deposition transcripts—to identify evidence relevant to the ERCPs' equitable-relief claims. G&E attorneys were actively involved in reviewing this existing record, identifying gaps relating to evidence involving particular network rules and merchant restraints, and determining where the

record needed to be updated or supplemented in order to best pursue ERCP's claims. G&E attorneys also assisted in preparing for depositions focused specifically on particular network rules and practices, including assisting other ERCC with the back up documentation and preparation for their depositions.

22. G&E attorneys also participated in depositions of witnesses likely to possess information important to proving the equitable-relief class claims and monitored or reviewed the transcripts of other depositions. Preparing for these depositions required substantial factual work. G&E attorneys reviewed and analyzed extensive document productions, identified key documents and testimony relevant to the ERCPs' claims, prepared deposition outlines, and coordinated with other plaintiffs' counsel regarding examination topics and the allocation of deposition time.

23. G&E similarly participated in third-party discovery and depositions. These depositions required the same rigorous preparation that was devoted to Defendant witnesses and were important to understanding the operation of the payment-card industry and the practical effects of Defendants' challenged rules on merchants and other industry participants. G&E attorneys reviewed third-party document productions, coordinated with the DAPs and Rule 23(b)(3) Class Counsel regarding the allocation of time and subject matter, and reviewed and prepared summaries of prior testimony. ERCC also prepared for and defended the depositions of the ERCPs' economic experts.

24. Expert discovery was another substantial component of ERCC's work. The ERCPs retained and worked extensively with world-renowned economic experts Professor Dennis W. Carlton ("Prof. Carlton") and Dr. Joseph E. Stiglitz ("Dr. Stiglitz"). G&E attorneys worked primarily with Prof. Carlton in connection with his analysis of the payment-card industry, including the extent to which Visa and Mastercard exercise market power in the relevant economic

markets and the role and competitive impact of network anti-steering rules and other merchant restraints in insulating prices from competition.

25. In connection with class certification, Prof. Carlton and Dr. Stiglitz each submitted opening and rebuttal expert reports. G&E attorneys participated extensively in the process of developing and preparing those reports, including working with the experts and ERCC colleagues concerning the relevant factual record, documents, data, and economic issues. G&E attorneys also assisted in preparing the experts for their depositions and defended Professor Carlton's Deposition.

26. The ERCPs separately retained Dr. Keith B. Leffler ("Dr. Leffler"), Emeritus Associate Professor of Economics at the University of Washington, to address issues concerning certification of a mandatory Rule 23(b)(2) class. G&E attorneys were involved in the preparation of Dr. Leffler's report and assisted in preparing him for his deposition.

27. While the ERCPs relied on three experts in support of their motion for class certification, Defendants and the DAPs retained a total of nine experts in 2019. The number and breadth of those expert submissions required ERCC to devote substantial time to analyzing expert reports, coordinating deposition strategy, identifying issues relevant to the ERCPs' equitable-relief claims, and preparing for the experts' depositions. G&E attorneys participated in the process of preparing ERCC attorneys to depose those experts, including reviewing reports and supporting materials and assisting in identifying documents, testimony, and issues for examination.

28. Discovery continued as the litigation progressed. On November 12, 2021, the ERCPs served supplemental discovery requests on Defendants because the ERCPs and their experts required updated data and documents concerning the challenged network restraints and associated rules, including evidence of their continuing effects. The supplemental discovery was also necessary to permit the ERCPs' experts to continue analyzing developments in the payment-

card industry and to prepare the equitable-relief claims for trial. Defendants likewise sought supplemental discovery from the ERCPs.

29. Over the next two years, the ERCPs, Defendants, and DAPs negotiated the scope of the supplemental productions and exchanged responsive documents. G&E attorneys were actively involved throughout this process, including in discovery strategy, negotiations, and the review and analysis of the more than 575,000 documents Defendants produced in response to the ERCPs' supplemental discovery requests. Through these efforts, G&E and its ERCC colleagues continued to update the factual and expert record and ensure that the ERCPs' claims were based on current evidence concerning Defendants' network rules, the payment-card industry, and the competitive effects of the challenged restraints.

III. Class Certification

30. On December 18, 2020, the ERCPs moved for certification of a nationwide class pursuant to Rule 23(b)(2). ECF Nos. 8444, 8447. In support of the motion, the ERCPs submitted the liability expert reports of Professor Dennis W. Carlton and Dr. Joseph E. Stiglitz, as well as the class-certification report of Dr. Keith B. Leffler. G&E attorneys devoted substantial time and resources to the class-certification effort and were actively involved in developing and preparing the motion and supporting papers. G&E attorneys also worked with the other ERCC firms and the ERCPs' experts in connection with the preparation, analysis, and presentation of the expert opinions supporting certification.

31. Although Defendants did not oppose certification of a mandatory Rule 23(b)(2) class, certification was vigorously contested by various DAPs, merchant groups, and trade associations. Those parties argued, among other things, that members of the proposed class should be afforded opt-out rights and that purported conflicts among different categories of merchants

defeated adequacy and otherwise precluded certification of a mandatory class. *See*, e.g., ECF Nos. 8411-8413. Additional merchant groups sought leave to intervene for the purpose of advancing similar challenges to certification. *See* ECF No. 8454 (Merchant Trade Groups); ECF Nos. 8464—8465 (Walmart).

32. ERCC vigorously litigated class certification over the course of many months. The certification proceedings required multiple rounds of briefing addressing, among other issues, the requirements of Rule 23(b)(2), the propriety of a mandatory non-opt-out class, asserted constitutional and due-process concerns, challenges to the adequacy of the ERCPs and ERCC, and alleged conflicts among different segments of a class consisting of millions of merchants with varying business models and interests. *See* ECF Nos. 8457, 8470, 8631. In total, ERCC filed, analyzed, and/or responded to more than 70 briefs and other filings relating to certification of the Rule 23(b)(2) Class. G&E attorneys played a substantial role in this effort. Among other things, G&E attorneys analyzed the numerous objections and intervention requests, participated in developing the legal strategy for responding to the challenges to certification, researched the complex Rule 23 and constitutional issues raised by the objectors, and drafted and revised significant portions of ERCC's briefing. The class-certification proceedings required extensive coordination among the ERCC firms, and G&E attorneys remained actively engaged throughout the process.

33. On September 27, 2021, the Court certified a nationwide Rule 23(b)(2) Class consisting of more than 12 million merchants and declined requests to permit class members to opt out. ECF No. 8467. Certification of a mandatory nationwide class of this size and scope was a significant achievement for the ERCPs and ERCC and permitted the ERCPs to continue pursuing industry-wide injunctive relief on behalf of millions of merchants.

IV. Defendants' *Daubert* Motions

34. Defendants filed multiple motions pursuant to *Daubert* seeking to exclude significant expert opinions and testimony offered by Professor Carlton and Dr. Stiglitz. *See* ECF Nos. 8074, 8076 (Stiglitz); ECF Nos. 8086, 8087 (Carlton). The motions challenged expert opinions supporting important aspects of the ERCPs' theories of anticompetitive conduct, competitive harm, and the effects of Defendants' challenged practices. G&E attorneys devoted substantial time to analyzing Defendants' expert challenges and the extensive expert record and were actively involved in developing and preparing the ERCPs' opposition briefs. *See* ECF Nos. 8727, 8730.

35. ERCPs achieved substantial success in defending their experts. With the exception of one of the many opinions offered by Professor Carlton and one of the many opinions offered by Dr. Stiglitz, the Court denied Defendants' *Daubert* motions. *See In re Payment Card Interchange Fee & Merch. Discount Antitrust Litig.*, 2022 WL 15053250 (E.D.N.Y. Oct. 7, 2022); *In re Payment Card Interchange Fee & Merc. Discount Antitrust Litig.*, 2022 WL 15044626 (E.D.N.Y. Oct. 8, 2022). These rulings preserved the overwhelming majority of the expert opinions developed and presented by ERCPs and allowed that substantial expert record to remain available in support of their claims.

V. The Parties' Summary Judgment Motions

36. In December 2020, ERCPs moved for partial summary judgment against Defendants. Defendants, in turn, filed motions for summary judgment and/or partial summary judgment directed at the ERCPs' claims. The parties' cross-motions presented numerous complex factual and legal issues concerning Defendants' challenged practices and the ERCPs' antitrust claims and were supported by an extensive evidentiary record developed over years of discovery.

37. The summary judgment proceedings required an extraordinary investment of attorney time and resources. ERCC attorneys were required to analyze the voluminous discovery and expert record, research complex and evolving antitrust issues, develop and coordinate arguments across multiple overlapping motions, and prepare extensive briefing and supporting materials. G&E attorneys played an active and substantive role throughout this process. G&E attorneys reviewed and analyzed the factual and expert record, participated in developing ERCPs' summary judgment strategy and arguments, and were heavily involved in drafting, reviewing, and revising the extensive briefing submitted on behalf of the ERCPs.

38. The summary judgment proceedings resulted in largely favorable rulings for the ERCPs and preserved their principal claims and theories in the litigation. The results of that extensive motion practice strengthened the ERCPs' litigation position and positioned the Rule 23(b)(2) Class to continue prosecuting its claims toward trial while ERCC simultaneously explored the possibility of achieving meaningful injunctive relief through a negotiated resolution.

VI. 2023-2024 Mediation, Settlement Negotiations, and Preliminary Approval

39. While aggressively litigating the summary judgment and *Daubert* motions, ERCC simultaneously continued efforts to determine whether the ERCPs' claims could be resolved through settlement. The parties initially met with Professor Eric D. Green ("Professor Green"), a nationally renowned mediator, in 2017. ECF No. 9179-7. The mediation process that followed was unusually extensive and continued over a period of years. *Id.* Since the initial mediation, the parties participated in more than two dozen in-person and remote mediation and settlement negotiation sessions. In addition, Professor Green conducted hundreds of telephone calls and ex-parte zoom, telephone, or in-person conversations with the parties and counsel. *Id.* at 4.

40. I was personally and extensively involved in the mediation and settlement process on behalf of G&E and the ERCPs. Over the course of the negotiations, I participated in mediation sessions and numerous discussions concerning the structure, scope, and practical operation of potential injunctive relief, as well as other material settlement terms. The negotiations required sustained engagement with Professor Green, Defendants, economic and industry experts, and the other ERCC firms and involved repeated analysis and revision of potential settlement structures and terms. After years of negotiations, the parties signed a non-binding memorandum of understanding in January 2024 and, following further intensive negotiations and drafting, executed a settlement agreement on March 25, 2024 (the “2024 Proposed Settlement”).

41. On March 26, 2024, the ERCPs moved for preliminary approval of the 2024 Proposed Settlement. The motion was supported by extensive papers, including a memorandum of law and a proposed notice plan with draft forms of notice. ECF Nos. 9178, 9179, 9179-1 through 9179-8, 9180. G&E attorneys devoted substantial time to the preliminary approval process and participated in preparing, reviewing, and revising the preliminary approval papers and supporting materials submitted to the Court.

42. On April 1, 2024, the Court entered a Scheduling Order setting a preliminary approval hearing for June 13, 2024, directing interested parties to file objections to preliminary approval by April 26, 2024, and setting May 13, 2024, as the deadline for replies. *See* Docket Entry dated April 1, 2024. More than 60 objections to the 2024 Proposed Settlement were thereafter filed by merchants, trade associations, and other interested parties. *See* intermittent ECF Nos. 9204 through 9282, 9301-9304, 9311.

43. The number, breadth, and complexity of the objections generated another intensive phase of litigation. ERCC were required to review and analyze dozens of filings, identify

overlapping and distinct arguments advanced by numerous objectors, evaluate the factual and legal bases for those challenges, and prepare comprehensive briefing defending the proposed settlement and the relief it provided. ERCPs filed papers responding to the objections at ECF Nos. 9289, 9295 (under seal), and 9297 (redacted version). G&E attorneys were deeply involved in this effort. Among other things, G&E attorneys reviewed and analyzed the objections, participated in developing ERCC's strategy for responding to the principal challenges to the settlement, and drafted, reviewed, and revised the extensive papers submitted in support of preliminary approval.

44. The Court held a preliminary approval fairness hearing on June 13, 2024. On June 25, 2024, the Court entered a Memorandum and Order denying the ERCPs' motion for preliminary approval (the "Preliminary Approval Opinion"). Although the Court declined to approve the 2024 Proposed Settlement, the years of mediation and negotiation, and the extensive preliminary approval proceedings that followed, provided an important foundation for the parties' subsequent negotiations. ERCC and G&E drew upon the issues identified through that process in continuing their efforts to negotiate meaningful and durable injunctive relief for the Rule 23(b)(2) Class.

VII. Trial Preparation

45. After the Court denied the ERCPs' motion for preliminary approval of the 2024 Proposed Settlement, ERCC promptly shifted our focus toward preparing the ERCPs' equitable relief claims for trial. Given the complexity and scope of the Action, the preparation required substantial additional factual, expert, economic, and legal work to update the extensive record developed over years of litigation and prepare the case for presentation at a multi-week trial.

46. In addition to the work described above relating to discovery, class certification, summary judgment, and *Daubert*, G&E attorneys did the following to prepare for trial:

- Developed and updated key factual and expert research relevant to proving liability:
 - Met with economic experts and payment industry experts and consultants regarding the selection of potential trial witnesses;
 - Worked with our retained expert economists to update data and analyses regarding current total prices and other network and bank data;
 - Worked with economists to develop a model of the effect of discounting and surcharging;
 - Studied potentially analogous price-obscuring practices;
 - Studied ways of calculating total price and their basic convergence;
 - Analyzed large merchant acceptance agreements and rate negotiations with the networks;
 - Analyzed Defendants' prior statements regarding their expectations of the effects of the rule changes;
 - Analyzed studies regarding recent empirical evidence of merchant pass-through of interchange costs, relevant to merchant pass-through of interchange rate cap savings.
- Supplemented formal discovery, including negotiation with Bank Defendants and networks regarding supplemental data productions, and the review and analysis of Defendants' supplemental data and document productions.
- Updated legal research regarding Supreme Court and Second Circuit case law and Analyzed the unconstitutionality of state no-surcharge statutes.

- Analyzed the Department of Justice’s complaint regarding Visa debit card monopolization.
- 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.
- Monitored the status of the Direct Action Plaintiff actions and settlements of their Rule 23(b)(3) claims with Defendants.
- Reviewed the evidentiary record for the purpose of preparing exhibit and witness lists, analyzing potential deposition designations, and considered a potential stipulation of undisputed facts.

48. On July 26, 2024, ERCC submitted a letter requesting that the Court schedule trial of the ERCPs’ equitable relief claims for April or May 2025. ECF No. 9362. ERCC advised the Court that it anticipated a four-to-six-week trial, while Defendants estimated that approximately eight weeks would be required. The parties agreed to meet and confer concerning interim pretrial deadlines. *Id.* ERCC’s request for a firm trial date reflected the substantial trial preparation already underway and our readiness to proceed toward a lengthy trial of the ERCPs’ equitable relief claims.

VIII. Renewed Settlement Discussions

49. In July 2024, while ERCC were actively preparing this Action for trial, the parties began discussing whether it might be possible to pursue renewed settlement negotiations that would address the concerns identified by the Court in its order denying preliminary approval of the prior settlement. These discussions required the parties to consider whether a substantially revised settlement structure and expanded package of equitable relief could be developed that

would respond to the Court's concerns while providing meaningful and durable benefits to the Equitable Relief Class.

50. To facilitate these renewed efforts, the parties approached the Honorable James Orenstein (Ret.) ("Judge Orenstein") of JAMS to determine whether he would be willing to mediate the parties' negotiations. After confirming that the Court had no objection to his participation, Judge Orenstein informed the parties on July 24, 2024, that he would serve as mediator. ECF No. 9692-6 at 1.

51. What followed was an extensive and demanding negotiation process spanning more than fifteen months. Between July 2024 and October 2025, the parties engaged in continuous and intensive settlement negotiations involving numerous all-day and hours-long in-person and virtual meetings; multiple exchanges of detailed financial data, documents, and other information; extensive economic analysis of the information exchanged; and the negotiation, drafting, revision, and consideration of multiple proposed term sheets and settlement structures. *Id.* at 4.

52. In total, Judge Orenstein conducted five all-day, in-person mediation sessions and seven virtual discussions involving counsel for all parties. *Id.* In addition to these joint sessions, Judge Orenstein conducted more than 30 ex parte telephone calls and Zoom conferences with counsel in furtherance of the parties' good-faith efforts to understand and evaluate their respective positions, narrow areas of disagreement, and ultimately achieve a fair, reasonable, and adequate settlement. *Id.* The mediation process was iterative and required the parties repeatedly to evaluate and respond to new proposals, analyze revised settlement terms, and consider potential modifications to the scope and operation of the proposed equitable relief.

53. Throughout this extended mediation process, ERCC worked closely with their economists to evaluate the potential economic and marketplace effects of Defendants' settlement

proposals and to analyze possible modifications and alternative forms of relief. This work required counsel to review and understand complex industry and financial information, coordinate with economic experts, and assess the practical consequences of proposed settlement provisions for a diverse class of merchants.

54. As part of the negotiation process, ERCC consulted with Class members, industry experts, and merchant associations to understand their positions, concerns, and recommendations regarding the new and expanded relief contemplated by the proposed amended settlement. The information obtained through these consultations informed ERCC's negotiating positions and their evaluation of whether the proposed relief would provide meaningful benefits to the Class.

55. The renewed negotiations ultimately culminated in the execution, on November 9, 2025, of the 2025 Superseding and Amended Class Settlement Agreement by and between the Equitable Relief Class Plaintiffs and Defendants (the "Amended Settlement"). The Amended Settlement was the product of more than a year of intensive, mediator-assisted negotiations and substantial legal, economic, and industry analysis.

56. G&E attorneys were integrally involved in all aspects of these renewed settlement efforts. Among other things, I was involved in every mediation session and conference; engaged in extensive discussions with ERCC and other counsel concerning settlement strategy and proposed relief; reviewed and analyzed settlement proposals and revised terms; consulted concerning the economic and practical implications of proposed relief; participated in the drafting and revision of settlement terms and related documents; and worked to address the numerous complex issues that arose during the negotiations. G&E's sustained involvement and commitment of attorney time and resources contributed materially to the negotiations that ultimately resulted in the execution of the Amended Settlement.

IX. Preliminary Approval of the Amended Settlement

57. On November 10, 2025, ERCPs filed their motion for preliminary approval of the Amended Settlement, together with extensive supporting papers, including, among other things, a memorandum of law and a proposed notice plan with draft forms of Class notice. ECF Nos. 9690, 9692 (redacted), 9693 (memorandum), 9694 (sealed).

58. The preliminary approval process itself was extensive and contested. On November 13, 2025, the Court entered an order providing certain objectors until December 12, 2025, to file oppositions to ERCPs' motion for preliminary approval. The Court subsequently extended the same opportunity to additional objectors who requested permission to be heard.

59. Beginning on December 9, 2025, numerous entities and individuals filed objections and other submissions opposing or raising concerns regarding preliminary approval of the Amended Settlement. *See* ECF Nos. 9714, 9719-20, 9722, 9725-26, 9727-9729, 9733-9736, 9740-45, 9749-9764, 9771, 9778. These submissions raised numerous legal, economic, procedural, and industry-specific issues that required careful review, analysis, and response by ERCC.

60. In response, ERCC undertook substantial additional work to analyze the objections, coordinate among counsel and experts, develop appropriate responses to the issues raised, and prepare comprehensive papers in further support of preliminary approval and G&E attorneys were heavily involved in all of those efforts. On January 14, 2026, ERCPs filed their reply memorandum of law in support of their motion for preliminary approval of the Amended Settlement, together with exhibits and other supporting materials. ECF Nos. 9774 (motion for leave to file under seal), 9775 (redacted).

61. The Court held a preliminary approval hearing on April 27, 2026. ERCC prepared extensively for that hearing, including by addressing the issues raised in the objectors' submissions

and responding to the Court's questions and concerns regarding the structure, operation, and benefits of the Amended Settlement.

62. On June 9, 2026, the Court entered its Memorandum and Order granting ERCPs' motion for preliminary approval of the Amended Settlement, authorizing dissemination of notice to the Class, and scheduling the Fairness Hearing for November 16, 2026. ECF Nos. 9884 and 9887.

63. G&E attorneys were extensively involved in all aspects of the preliminary approval process. This work included reviewing and analyzing objections and other submissions; participating in strategy discussions with ERCC and other counsel; assisting in the preparation and revision of briefing and supporting materials; preparing for the preliminary approval hearing; and addressing the numerous substantive and procedural issues presented during the preliminary approval proceedings.

64. Following preliminary approval, G&E, together with the other ERCC firms, has continued to devote substantial time and resources to implementation of the Court-approved notice program and the final approval process. This work has required continued coordination among ERCC, Defendants, the notice administrator, experts, Class members, as well as substantial legal analysis and preparation in advance of the final Fairness Hearing.

X. G&E's Time and Expenses

65. The information set forth in this Declaration concerning G&E's time, lodestar, costs, and expenses is based upon contemporaneously prepared time records, fee reports, expense records, and supporting documentation prepared and/or maintained by G&E in the ordinary course of its business.

66. In connection with the preparation of this Declaration, I reviewed the Firm's time, fee, and expense reports and, where necessary or appropriate, the underlying supporting documentation. The purpose of this review was to confirm the accuracy of the time and expense entries and to assess the necessity and reasonableness of the professional time, fees, costs, and expenses devoted to this Action.

67. As part of this review, I considered whether the work reflected in the Firm's time records was reasonably necessary to the effective prosecution and resolution of this Action. I also reviewed the Firm's records to identify time that may have been duplicative, administrative, unnecessary, or otherwise inappropriate for inclusion in the Firm's lodestar submission. Based upon this review, I am confident that the time included in G&E's lodestar calculation, and the costs and expenses for which reimbursement is sought, are reasonable and were necessarily incurred in connection with the effective and efficient prosecution and resolution of this Action.

68. In calculating G&E's lodestar, I applied current hourly rates to all timekeepers who presently work at the Firm. For timekeepers who performed work on this Action but are no longer employed by the Firm, I applied the hourly rate in effect for that timekeeper at the time he or she left the Firm.

69. The hourly rates applied to the professionals identified in Exhibit A are the Firm's current rates for contingent litigation matters. G&E's regular hourly rates are consistent with rates the Firm has submitted to, and that have been accepted by, federal courts in other complex and class action litigation. The Firm establishes and periodically reviews its hourly rates based, among other things, on its analysis of rates charged by law firms performing comparable complex litigation work on both the plaintiff and defense sides.

70. Hourly rates may differ among timekeepers within the same general employment category, including partners, associates, and paralegals. Those differences reflect a variety of factors, including the timekeeper's years of practice, experience, expertise, responsibilities, and the rates charged by similarly experienced professionals at G&E and other firms performing comparable work.

71. From the inception of this Action through June 30, 2026, G&E attorneys and other professionals devoted a total of 29,356.2 hours to the prosecution and resolution of this litigation. The resulting total lodestar for G&E is \$27,260,409.50.

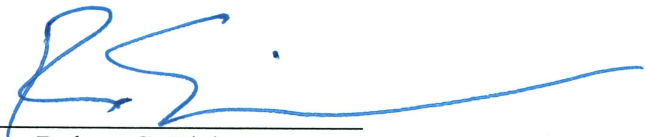
72. G&E has not received payment for this professional time. Rather, the Firm has prosecuted this Action on an entirely contingent basis and has borne the risk that it would receive no compensation for the substantial attorney and professional time devoted to the litigation. Attached as Attachment A is a chart identifying, for each G&E timekeeper included in the lodestar calculation, the timekeeper's position, total hours, applicable hourly rate, and resulting lodestar.

73. As detailed in Attachment B, G&E has also incurred a total of \$2,451,904.40 in unreimbursed costs and expenses in connection with the prosecution and resolution of this Action. These costs and expenses were advanced by the Firm without any guarantee of reimbursement.

74. The costs and expenses reflected in Exhibit B are recorded in the books and records of G&E, which are maintained in the ordinary course of the Firm's business. Those records are prepared from expense vouchers, invoices, check records, and other source materials and accurately reflect the costs and expenses incurred by G&E in connection with this Action. Based upon my review, I believe that the costs and expenses for which reimbursement is sought were reasonable and necessarily incurred in the prosecution and resolution of this litigation.

75. 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 15, 2026
Wilmington, Delaware



Robert G. Eisler

Attachment A

Timekeeper	Position	Total Hours	Rate	Total Lodestar
Beal, Valisity	Paralegal	24.4	400.00	9,760.00
Bell, Michael	Associate	210.5	675.00	142,087.50
Berger, Daniel L.	Partner	12.0	1,600.00	19,200.00
Braxton, Simone	Paralegal	106.0	400.00	42,448.00
Brown, Iris	Paralegal	12.0	385.00	4,620.00
Cavanaugh, James	Associate	615.4	460.00	283,084.00
Comer, Kennedy	Associate	112.4	350.00	39,340.00
DiGuglielmo, Keith	Paralegal	5.2	365.00	1,898.00
Eisler, Robert	Partner	6,268.7	1,850.00	11,647,120.00
Elman, Deborah	Partner	2,464.5	800.00	1,971,600.00
Henderson, Wayne	Paralegal	8.8	350.00	3,062.50
Holtzman, Chad	Senior Counsel	4,647.6	1,200.00	5,574,507.50
Kapsack, Joanne	Associate	1,257.2	625.00	785,750.00
Kempner, Lawrence	Associate	200.0	600.00	120,000.00
Kwon, Steve	Associate	3,001.3	440.00	1,320,572.00
Lawlor, Jonathan	Associate	86.0	690.00	59,340.00
Layfield, Jay	Paralegal	129.9	220.00	28,578.00
Lilly, Edward	Associate	537.0	720.00	386,640.00
McCowan, Allison J.	Associate	1,003.0	475.00	476,425.00
Nadolny, Kevin	Associate	54.9	690.00	37,881.00
Nevers,Carolynn A.	Paralegal	31.0	400.00	12,400.00

Noll, Timothy	Associate	3,559.6	415.00	1,477,234.00
Park, Jonathan	Associate	37.2	550.00	20,460.00
Pfannes, Zachary	Paralegal	5.5	400.00	2,200.00
Ramos, Sadie	Paralegal	16.8	400.00	6,720.00
Reeder, Nathan	Associate	747.6	690.00	515,844.00
Saviano, Toby	Paralegal	50.9	220.00	11,198.00
Wardlaw, Cheron	Associate	3,677.7	575.00	2,114,677.50
Welch, James	Associate	137.1	475.00	65,122.50
Wittman, Ronald E.	Paralegal	336.0	240.00	80,640.00
Grand Total		29,356.2		27,260,409.50

Attachment B

Interchange Firm Expense Category	
Assessment Payment to Plaintiff's Common Fund	\$1,767,120.00
Commercial Copies	-
Computer Research	\$29,226.83
Court Fees (filing fees, etc.)	\$2,460.00
Court Reports/Transcripts	\$887.46
Internal Reproduction/Copies	\$56,778.39
Postage/Express/Delivery/Messenger	\$5,886.75
Professional Fees (expert, investigator, accountant, etc.)	-
Telephone/Fax	-
Travel (air/ground transportation, meals, lodging, etc.)	\$123,146.10
Witness/Service Fees	\$50.67
E-Discovery Data Hosting & Processing	\$466,348.20
Total	\$2,451,904.40