

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE PAYMENT CARD INTERCHANGE FEE
AND MERCHANT DISCOUNT ANTITRUST
LITIGATION

MDL No. 1720
Case No. 1:05-md-1720-MKB-JO

This document refers to:
All Rule 23(b)(3) Class Actions

STIPULATION AND [PROPOSED] ORDER

IT IS HEREBY STIPULATED AND AGREED by and among, on the one hand, non-party movants Friedman Law Group LLP and Gary B. Friedman, as well as non-party Tracey Kitzman (together, “FLG”) and, on the other, the Rule 23(b)(3) Co-Lead Counsel (“Co-Lead Counsel”), as follows:

WHEREAS, Co-Lead Counsel is concerned that Friedman may have violated certain duties and therefore does not wish to endorse Friedman’s application for fees; and

WHEREAS, Co-Lead Counsel for that reason excluded FLG from the fee petition that it filed in this case; and

WHEREAS, Friedman and FLG then sought leave to intervene and file a complaint against Co-Lead Counsel; and

WHEREAS, a hearing on FLG’s motion to intervene was held before the Honorable Magistrate Judge James Orenstein on September 5, 2019, after which time the parties undertook to meet and confer on FLG’s motion to intervene and on Co-Lead Counsel’s fee application; and

WHEREAS, Co-Lead Counsel agrees, as set forth below, to include FLG's time in the petition but should not be understood to endorse Friedman's application; and

WHEREAS, the parties recognize the jurisdiction of the Court to approve applications for attorneys' fees and, in appropriate circumstances and with appropriate process, sanction lawyers who appear before it; and

WHEREAS, the compensability of the FLG time is within the Court's discretion; and

WHEREAS, in Co-Lead Counsel's view, the relevant facts concerning the compensability of the FLG time are before the Court; and

WHEREAS, Friedman asserts that he has never had a full opportunity to address the relevant facts and to respond to various allegations, and that he would be entitled to an evidentiary hearing were the Court to address these issues,

NOW, THEREFORE, it is stipulated and agreed, subject to the approval of the Court, as follows:

1. Rule 23(b)(3) Co-Lead Counsel will supplement their Fee Petition by submitting a supplemental declaration that sets forth the total lodestar and expenses for the FLG for Periods One and Two, in the form annexed to this Stipulation.
2. Upon distribution of attorneys' fees to any counsel in this action, Co-Lead Counsel will distribute to the NSR Group the portion of any fee awarded by the Court consistent with the November 29, 2005 letter agreement with the NSR Group based upon the total class counsel lodestar as approved by the Court and in accordance with any other order or directive the Court issues regarding attorneys' fees.

3. Specifically, “the NSR Group will, as a group, receive a percentage of all attorneys’ fees in this action that is equal to the percentage of the approved lodestar that the NSR Group accounts for.” November 29, 2005 Letter from K. Craig Wildfang to Gary B. Friedman (annexed to the Friedman and FLG Memorandum as Exhibit 1, filed June 7, 2019) (Doc. 7404-1). “The NSR Group will receive a lump sum payment of attorneys’ fees that is proportionate to [the NSR Group’s] court approved lodestar divided into the total lodestar allowed by the Court.” Letter from Mark Reinhardt and Gary B. Friedman, dated December 6, 2005 (annexed to the Friedman and FLG Memorandum as Exhibit 3, filed June 7, 2019) (Doc. 7404-1). For purposes of the calculation, both the total class counsel lodestar and the total NSR Group lodestar will be based on the lodestar as approved by the Court.

4. All monies owed under the agreement to the NSR Group will be paid to Mark Reinhardt of the Reinhardt, Wendorf & Blanchfield firm for distribution to the members of the NSR Group.

5. Gary Friedman and FLG will withdraw their motion to intervene to pursue legal claims against Co-Lead Counsel and, subject to further inquiry from the Court, the matter is deemed submitted.

6. This Stipulation will have no effect until and unless “so ordered” by the Court.

Dated: Sept. 16, 2019

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Dated: Sept. 16, 2019

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Dated: Sept. 16, 2019

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Co-Lead Counsel for Rule 23(b)(3) Class Plaintiffs

Dated: Sept. 16, 2019

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Dated: Sept. 16, 2019

GARY B. FRIEDMAN

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Dated: Sept. 16, 2019

TRACEY KITZMAN

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Non-party Movants

Dated: Sept. ____, 2019

SO ORDERED:

U.S. Magistrate Judge James Orenstein

ATTACHMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE PAYMENT CARD
INTERCHANGE FEE AND MERCHANT
DISCOUNT ANTITRUST LITIGATION

This document refers to: All Rule 23(b)(3)
Class Actions

MDL No. 1720
Case No. 1:05-md-1720 (MKB)(JO)

**SUPPLEMENTAL DECLARATION OF THOMAS J. UNDLIN IN SUPPORT OF
CLASS PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES**

I, Thomas J. Undlin, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am a partner of the law firm of Robins Kaplan LLP ("Robins Kaplan"), Co-Lead Counsel for the Rule 23(b)(3) Class Plaintiffs in the above-captioned class action. I submit this Supplemental Declaration in response to objections and in further support of the Rule 23(b)(3) Class Plaintiffs' Motion for Award of Attorneys' Fees and Reimbursement of Expenses ("Joint Motion") submitted by Rule 23(b)(3) Class Counsel on June 7, 2019 (ECF No. 7471). To the extent relevant, I incorporate by reference my prior declarations on these subjects as noted below.

2. In my original June 7, 2019 Declaration (ECF No. 7471-2), I explained that Co-Lead Counsel excluded the time and expenses of Friedman Law Group ("FLG") because of concern we had regarding Gary Friedman's conduct relating to

communications with Keila Ravelo. In response to objections from the FLG and based on the Court's observations during the status conference on September 5, 2019, Co-Lead Counsel wish to now submit the FLG time and expenses for both Period One and Period Two of the litigation for the Court's consideration. In addition, this Declaration makes some corrections and clarifications to my prior Declaration.

FLG Time and Expenses in Period One

3. Summaries of the FLG lodestar and expenses for Period One of the litigation (inception through November 30, 2012) were previously submitted in 2013 in support of Class Counsel's fee and expense petition following the 2012 Settlement. This information appears at Exhibit 2, sub-Exhibit A, of my June 7, 2019 Declaration.¹ The final tabulation reflects that FLG had lodestar totaling \$9,594,806.15 and out-of-pocket expenses of \$892,044.20 in Period One.

4. For the Court's convenience, we have examined the detailed billing records of FLG for Period One to create a breakdown of the hours and resulting lodestar of each FLG timekeeper who worked on the matter during Period One. Table 1 reflects this information:

Table 1²

| Name (Status) | Period One Hours | Period One Lodestar |
|----------------------|-------------------------|----------------------------|
| G. Friedman (P) | 5474.9 | \$3,369,435.50 |
| T. Kitzman (P) | 2138.7 | \$1,051,853.00 |
| N. Shube (C) | 919.9 | \$346,526.75 |

¹ Exhibit 2 is my Supplemental Declaration filed on August 16, 2013 (ECF No. 5940-1) and sub-Exhibit A thereto is the report of the CLA auditing firm summarizing all class firms' lodestars and expenses, post audit.

² For the status designations, "(P)" refers to partner, "(A)" refers to associate, "(C)" refers to "of counsel" and "(Admin.)" refers to administrative assistant.

| Name (Status) | Period One Hours | Period One Lodestar |
|------------------|------------------|-----------------------|
| A. Patton (A) | 1596.95 | \$609,482.50 |
| W. Parrino (A) | 2826.95 | \$749,714.35 |
| R. Thompson (A) | 3314.8 | \$849,196.50 |
| J. Hudson (A) | 3075.8 | \$849,823.75 |
| T. Tidwell (A) | 2355.7 | \$577,146.50 |
| S. Field (Adm) | 247.3 | \$29,684.10 |
| D. Solomon (A) | 1287.8 | \$507,323.00 |
| J. Applebaum (A) | 2732.5 | \$704,976.50 |
| K. Neuwelt (C) | 15.8 | \$8,583.00 |
| R. Quinn (A) | 55.5 | \$13,597.50 |
| TOTALS | 26042.6 | \$9,667,342.95 |

Table 1 reflects the FLG timekeepers' contributions prior to the review process. The total lodestar shown in Table 1 is higher than the total reported to the Court because it is based on the hours and lodestar reported by FLG prior to the review by Co-Lead Counsel and forensic data analysis by the CLA accounting firm conducted in 2013. As a result of the review process, the FLG lodestar was adjusted downward in 2013 by \$72,536.80 to the total of \$9,594,806.15.

5. The total FLG expenses for Period One, broken out by category of expense consistent with Co-Lead Counsel's overall reporting is shown in Table 2:

Table 2

| DESCRIPTION | CUMULATIVE EXPENSES |
|------------------------------------|---------------------|
| Litigation Fund | \$805,000.00 |
| Commercial Copies (outside source) | \$3,810.58 |
| Internal Reproduction (Copies) | \$0.00 |
| Court Fees (Filing costs, etc.) | \$0.00 |
| Court Reporters and Transcripts | \$0.00 |
| Computer Research (Lexis/Westlaw) | \$0.00 |
| Lexis/Nexis Courtlink & Pacer | \$2,913.23 |
| Telephone/Fax | \$0.00 |

| DESCRIPTION | CUMULATIVE EXPENSES |
|--|---------------------|
| Long Distance Telephone/Mobile Phone | \$0.00 |
| Postage/Express Delivery/Messenger | \$2,891.06 |
| Professional Fees (expert, investigator, accountant, etc.) | \$0.00 |
| Witness/Service Fees | \$0.00 |
| Travel (Air Transportation, Ground Travel, Meals, Lodging, Remote internet access, etc.) | \$76,829.33 |
| Miscellaneous/Other (Describe) - Legislative History Research and Copies | \$600.00 |
| TOTAL EXPENSES | \$892,044.20 |

FLG Time and Expenses in Period Two

6. In addition to the Period One work, FLG also performed some work in Period Two (December 2012 through January 2019), primarily devoted to countering efforts to enact new anti-surcharge legislation in a variety of states following the approval of the 2012 Settlement and also to challenge state legislative surcharge bans that were already in place in New York, Florida, Texas and California. The FLG work in Period Two spans from December 2012 through October 2014, before Co-Lead Counsel learned of Gary Friedman’s communications with Keila Ravelo and advised Mr. Friedman in March 2015 to cease work on the matter.

7. Summarized, and according to billing records submitted by FLG to Co-Lead Counsel, FLG spent 2747.9 working hours during Period Two, resulting in a lodestar of \$1,452,855. In addition, FLG reported additional out-of-pocket expenses of \$37,894.40. Based on this information, we have prepared the following breakdown of

each FLG timekeeper's hours and lodestar for work performed during Period Two.

Table 3 below reflects this information:

Table 3

| Name (Status) | Period Two Hours | Period Two Lodestar |
|----------------------|-------------------------|----------------------------|
| G. Friedman (P) | 1022.9 | \$750,270.00 |
| T. Kitzman (P) | 473.2 | \$295,750.00 |
| N. Shube (C) | 0 | \$0.00 |
| R. Thompson (A) | 326.5 | \$94,685.00 |
| R. Quinn (A) | 583.5 | \$158,340.00 |
| K. Neuwelt (C) | 0 | \$0.00 |
| S. Levy (A) | 341.8 | \$153,810.00 |
| Totals | 2747.9 | \$1,452,855.00 |

Co-Lead Counsel has not performed a detailed review of FLG's Period Two lodestar and expense reporting.

8. The total FLG expenses for Period Two, broken out by category of expense consistent with Co-Lead Counsel's overall reporting is shown in Table 4:

Table 4

| DESCRIPTION | Cumulative Expenses |
|--|----------------------------|
| Litigation Fund | \$ - |
| Commercial Copies (outside source) | \$ - |
| Internal Reproduction (Copies) | \$ - |
| Court Fees (Filing costs, etc) | \$ 2,382.12 |
| Court Reporters and Transcripts | \$ 275.31 |
| Computer Research (Lexis/Westlaw) | \$ - |
| Lexis/Nexis Courtlink & Pacer | \$ 1,128.65 |
| Telephone/Fax | \$ - |
| Long Distance Telephone/Mobile Phone | \$ - |
| Postage/Express Delivery/Messenger | \$ 372.92 |
| Professional Fees (expert, investigator, accountant, etc.) | \$ 15,000.00 |

| DESCRIPTION | Cumulative Expenses |
|--|----------------------------|
| Witness/Service Fees | \$ 40.00 |
| Travel (Air Transportation, Ground Travel, Meals, Lodging, Remote internet access, etc.) | \$ 17,672.93 |
| Miscellaneous/Other (Describe) - Legislative History Research and Copies | \$ 759.82 |
| Miscellaneous/Other (Describe) - Website Design | \$ 262.65 |
| TOTAL EXPENSES | \$ 37,894.40 |

Other Corrections and Clarifications

9. At the time of my original June 7, 2019 Declaration, Co-Lead Counsel had been advised by the Reinhardt, Wendorf & Blanchfield firm that certain firms who had worked on challenges to the state legislative surcharge bans in New York, Florida, Texas and California, had been paid sums from the State of Florida under a fee-shifting statute resulting from a successful challenge in that State. We chose to deduct from those firms' respective lodestars the amount of such payments so the effort would not be double counted as a part of the overall fee petition. As a result, the reported lodestars for the Gupta Wessler firm was reduced by \$187,400. FLG also participated in the Florida challenge and, likewise, was paid \$42,000 by the state of Florida. A fair accounting based on the same approach would result in a deduction to the Period Two FLG lodestar described above of \$42,000.

10. In addition, we have been advised both by FLG and the Reinhardt, Wendorf & Blanchfield firm, that the State of California recently authorized a payment

of \$293,000.00 for another successful challenge to a legislative surcharge ban in that state. This amount, expected in the near future, should also be deducted from the overall lodestar reported in this matter. We have been advised that the payment from California will be split among class firms as follows:

| | |
|--------------------|---------------------|
| Friedman Law Group | \$68,998.19 |
| Gupta Wessler | \$178,666.31 |
| Markun, Zusman | \$34,482.81 |
| Reinhardt, Wendorf | \$10,852.69 |
| Total | \$293,000.00 |

11. In addition, I have been advised by FLG that the following class firms expect to receive fees from the State of Texas based on a third successful challenge relating to that state's legislative surcharge ban, which should also be deducted from the overall lodestar in this matter:

| | |
|--------------------|---------------------|
| Friedman Law Group | \$35,253.00 |
| Gupta Wessler | \$205,907.00 |
| Reinhardt, Wendorf | \$8,838.00 |
| Total | \$249,998.00 |

12. Finally, footnote 4 of my original June 7, 2019 Declaration included a list of the NSR Group firms (described therein as the "ASR firms") that was inaccurate. The NSR Group firms include: Friedman Law Group LLP; Reinhardt, Wendorf &

Blanchfield; Murray, Frank & Sailer LLP; Chitwood Harley Harnes LLP; Chestnut
Cambronne PA; Goldman Scarlato & Karon PC; Starr Gern Davison & Rubin PC;
Richard L. Jaspersen PA; and Markun Zusman Freniere & Compton LLP.

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

September 13, 2019
Minneapolis, Minnesota



Thomas J. Undlin