

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In re PAYMENT CARD INTERCHANGE	:	MDL No. 1720(BMC)(JAM)
FEE AND MERCHANT DISCOUNT	:	
ANTITRUST LITIGATION	:	Civil No. 05-5075(BMC)(JAM)
	:	
_____	:	NOTICE OF MOTION IN SUPPORT OF
This Document Relates To:	:	RULE 23(b)(3) CLASS PLAINTIFFS'
	:	MOTION FOR A SECOND, PARTIAL
ALL ACTIONS.	:	DISTRIBUTION OF SETTLEMENT FUNDS
	:	
_____	X	

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on a date to be determined, in the courtroom of the Honorable Brian M. Cogan, Courtroom 10A South, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, Rule 23(b)(3) Class Plaintiffs, by and through their undersigned attorneys, will and hereby do move this Court for an order for a second, partial distribution of settlement funds. This motion is based upon this notice of motion, the memorandum of law in support thereof, the accompanying declaration of Loree Kovach in support thereof, and such other matters and arguments as the Court may consider in the hearing of this motion.

DATED: May 26, 2026

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re PAYMENT CARD INTERCHANGE	:	MDL No. 1720(BMC)(JAM)
FEE AND MERCHANT DISCOUNT	:	
ANTITRUST LITIGATION	:	Civil No. 05-5075(BMC)(JAM)
	:	
	:	CORRECTED MEMORANDUM OF LAW
	:	IN SUPPORT OF RULE 23(b)(3) CLASS
This Document Relates To:	:	PLAINTIFFS' MOTION FOR A SECOND,
	:	PARTIAL DISTRIBUTION OF
ALL ACTIONS.	:	SETTLEMENT FUNDS
	:	

I. INTRODUCTION

On October 30, 2025, the Court approved Rule 23(b)(3) Class Plaintiffs’ (“Plaintiffs”) Motion for Initial, Partial Distribution of Settlement Funds. ECF 9682. That initial, partial distribution is nearly complete. More than 597,900 merchants have been sent settlement benefits – totaling more than \$414 million – as of May 11, 2026.

Plaintiffs now seek approval of a proposed second, partial distribution to two subsets of merchants whose claims now have no outstanding issues. The first subset includes more than 75,000 merchants whose only outstanding issue related to a name variance which has now been cleared. *See* Declaration of Loree Kovach Regarding Second Initial Partial Distribution (“May Kovach Decl.”), ¶¶7-9. As of the date of this filing, these merchants are to receive more than \$125 million. *Id.*, ¶10. The second group includes 8,400 merchants whose claims have been cleared following continued data review and are to receive more than \$56 million. *Id.*, ¶¶5-6, 10.

Plaintiffs respectfully request the Court authorize this proposed second, partial distribution. This proposed second, partial distribution provides partial payment to merchants that accepted Epiq’s estimate of Interchange Fees Paid, whose claims are not subject to appeals, ownership or valuation disputes, takedown-related issues, name variance issues, or future audits and whose partial payment would be at least \$5.00.

Plaintiffs and Epiq are working diligently to develop timelines for future distributions now that the Second Circuit has affirmed this Court’s decisions regarding plaintiff- appellants Payment Facilitators (the “PayFacs”) and Branded Operators (collectively, the “appellants”), although the appellants have sought *en banc* review and may still seek *certiorari* with the U.S. Supreme Court.¹

¹ *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 2026 WL 1210154 (2d Cir. May 4, 2026) (petition for rehearing *en banc* filed May 15, 2026 & May 18, 2026); *Old Jericho Enter., Inc. v. Visa, Inc.*, ___ F.4th ___, 2026 WL 1206146 (2d Cir. May 4, 2026) (petition for rehearing *en banc* filed May 18, 2026). Depending on the timing of resolution of the pending appeals, it may be more cost effective and administratively efficient to include this proposed distribution in a later, large distribution. Epiq and Plaintiffs’ respectfully request flexibility in making the distribution and will update the Court within 90 days following entry of the proposed order.

The proposed second, partial payments to the identified 84,000 plus merchants now ensures that the settlement is proceeding apace.

II. THE CLAIMS ADMINISTRATION PROCESS

Under the approved Plan of Administration and Distribution, merchants that submitted timely claims would receive settlement payments equal to their *pro rata* share of the settlement fund, based on their Interchange Fees Paid relative to Interchange Fees Paid by all valid Claimants.² ECF 7257-2, Appendix I at I-2-I-3. The plan contemplates that a merchant's Interchange Fees Paid are to be calculated primarily based on the interchange fees that the merchant paid on its Visa transactions. *Id.* at I-3. In the event that a merchant is dissatisfied with the data that the Administrator attributed to it, the Administrator may request additional information from the merchant, so as to assist the Administrator in locating the merchant's data in its database. Finally, the plan gives merchants the option to provide their own information to supplement the data that the Administrator was able to locate based on identifying information associated with the merchant. *Id.* at I-5. If the merchant is still dissatisfied with the fees attributed to it, it may appeal the Administrator's determination to the Special Master, and ultimately to this Court. *Id.* at I-9.

On May 4, 2026, the Second Circuit upheld this Court's decisions regarding two disputes that affect the settlement fund here. The first legal dispute involves PayFacs and poses the question of whether PayFacs, such as Square or Intuit, or the merchant that takes payment through them accepted cards and thus is a member of the class. *See* ECF 9314. The second legal dispute poses a similar class-membership question as between upstream oil companies – such as Shell and Texaco – and the fuel retailers (collectively, the “Branded Operators”) that interact with and sell fuel to the end consumer. ECF 9425. While the Second Circuit upheld this Court's determinations

² Unless otherwise noted, all capitalized terms have the meanings given to them in the Superseding and Amended Definitive Class Settlement Agreement of the Rule 23(b)(3) Class Plaintiffs and the Defendants. ECF 7257-2.

regarding class membership, the parties in those actions have sought *en banc* review and may still seek *certiorari* with the Supreme Court. As previously detailed in Plaintiffs' request for an initial, partial distribution, while the ultimate resolution of the two appeals are pending and funds are held back to account for the final outcome, it is in the best interests of the class to make a proposed second, partial distribution to the subset of Claimants whose payment eligibility is now certain. Previously, Plaintiffs proposed to distribute approximately \$426 million to more than 605,000 Claimants, after conducting a quality-control audit.

As of May 22, 2026, that distribution is nearly complete. What remains to be distributed is \$4,085,743.52. May Kovach Decl., ¶4.

III. THE PROPOSED SECOND, PARTIAL DISTRIBUTION

A. 75,000 Merchants Have Had Name Variances Cleared

Approximately 96,000 merchants were not included in the initial, partial distribution because there were variances between the merchant names in the data and the claims submitted. May Kovach Decl., ¶7. Epiq is auditing and reviewing those claims and has been able to clear the variances for more than 75,000 merchants. *Id.*, ¶8. There are no other impediments to providing a partial distribution to these 75,000 merchants. These merchants account for approximately \$10.6 billion in Interchange Fees Paid. The initial payment for this group is estimated at \$125 million. *Id.*, ¶10.

B. 8,400 Merchants Have Cleared Prior Takedown-Related Data Flags

An additional 8,400 merchants have no impediments affecting their claims. *Id.*, ¶6. As detailed in the Initial Distribution Declaration (ECF 9652-3) these claims were previously only excluded from the initial, partial distribution due to potential transactions being associated with Opt-Out or Dismissed Plaintiff transactions, which have since been cleared following additional review by Epiq's data analysts.

Following review as part of the administration process, that flag has been removed as to this set of 8,400 Tax Identification Numbers. This group accounts for \$4,804,558,588.57 (May

Kovach Decl., ¶(6) of Interchange Fees Paid in the data and the initial payments to this group total \$56,213,335. *Id.*, ¶10.

Plaintiffs submit that this proposed second, partial distribution now would accord with the salutary goal of settlements “to get as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible.” 4 Herbert B. Newberg & William B. Rubenstein, *Newberg and Rubenstein on Class Actions* §12:15 (6th ed. 2025). The proposed second, partial distribution is a conservative one, carefully calculated by Epiq to comport with the approved Plan of Administration and Distribution. Plaintiffs note that Epiq is actively working on developing timelines for future, larger distributions, that remain dependent on the conclusion of the appeals process. Depending on timing, Plaintiffs request permission to work with Epiq and potentially hold distributions if it is more efficient to do so. *See supra* at 1 n.1.

IV. CONCLUSION

Because the proposed second, partial distribution is in the best interests of the Claimants, while also protecting those Claimants for whom a distribution is not yet ripe – Plaintiffs respectfully request that the Court grant the motion.

DATED: May 27, 2026

Respectfully submitted,

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

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

No. 05-MD-1720 (BMC) (JAM)

This Document Applies to: All Cases.

**DECLARATION OF LOREE KOVACH REGARDING SECOND INITIAL PARTIAL
DISTRIBUTION**

I, LOREE KOVACH, declare and state as follows:

1. I am a Senior Vice President for Epiq Class Action & Claims Solutions, Inc. (“Epiq”), the Class Administrator in the above-captioned case. In this capacity, I am authorized to make the following Declaration on behalf of Epiq. The following statements are based upon my personal knowledge, information provided to me by associates and staff under common supervision, and upon a review of the business records maintained by Epiq.

2. This Declaration is to provide the Court with information on a proposed additional, partial distribution to a subset of claimants excluded from the initial partial distribution.

3. As outlined in the *Declaration of Loree Kovach Regarding Ongoing Claims Process and Initial Partial Distribution*, dated August 19, 2025, (“Initial Partial Distribution Declaration”), Class Counsel asked Epiq to outline a process by which an initial partial distribution to those claimants that are not potentially impacted by the Branded Operator and Payment Facilitator legal issues, and whose claims are not otherwise still in process, could be paid a portion of their total anticipated award. In Paragraph 16 of the Initial Partial Distribution Declaration, Epiq

DECLARATION OF LOREE KOVACH REGARDING SECOND INITIAL PARTIAL
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identified a population of claims that could be paid and in Paragraph 17 outlined a population that would be excluded from the initial partial distribution.

4. Epiq began disseminating award payments to claimants outlined in the Initial Partial Distribution Declaration following the Court's October 29, 2025 Order. As of May 22, 2026, Epiq has sent settlement benefits totaling over \$414 million to more than 597,900 claimants. As of May 22, 2026, that distribution is nearly complete and what remains to be distributed is \$4,085,743.52.

SECOND INITIAL PARTIAL PAYMENT POPULATION

5. In analyzing claim data to create the initial partial distribution population, Epiq identified a population of claims where one or more transactions associated with the claim appeared to potentially be included in the list of transactions provided by Defendants' expert as those affiliated with Opt Out requests or with Dismissed Plaintiffs. Those transactions were used to calculate the Class Exclusion Takedown Payments, and would not be expected to also be associated with active claims. Accordingly, those claims were excluded from the initial partial distribution population so that more analysis of the transactions in question could be conducted to ensure no claims were paid erroneously.

6. That analysis has since occurred, and there are 8,400 claims, with \$4,804,558,588.57 in associated interchange fees, where the potential link to a transaction also included in the Takedown population has been cleared. For the most part, these transactions were linked because of errors in the data provided to Epiq, and were able to be cleared after further review. These claims otherwise meet the criteria enumerated in the Initial Partial Distribution Declaration for inclusion in the initial distribution, and as such can now be paid.

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7. An additional population of claims that Epiq excluded from the initial partial distribution were claims that otherwise met the criteria for inclusion in that distribution, but the name provided by the merchant as associated to the Taxpayer Identification Number (“TIN”) of the claimant did not match the name associated with the TIN in Epiq’s records. For instance, the merchant name in Epiq’s records for a particular TIN may be “Joe’s Pizza Shop” but the merchant name associated with the TIN in the claim submitted by the merchant was “Suzy’s Hardware Store.” In these instances, where Epiq could not otherwise resolve the discrepancy, Epiq requested that the merchant produce documentation from a Federal or state entity that included both the TIN and the merchant name. Using the above example, the merchant could have submitted an SS-4 from the IRS showing the name “Suzy’s Hardware Store” and the relevant TIN, and Epiq would then update the merchant name in its records. Epiq employed this documentation process to ensure that the merchant had not inadvertently submitted the wrong TIN with their claim, or otherwise was not attempting to file a claim from the wrong Class Member. At the time of the initial, partial distribution the population of merchants with name discrepancies who had produced or needed to produce documentation to validate the merchant name included 96,852 merchants, whose fees amounted to over \$13.2 billion.

8. Epiq has since reviewed and updated the merchant name for 75,774 claims which otherwise meet the criteria to be included in the initial distribution, based on documentation submitted by the merchants. These merchants have a total of \$10,685,792,549.43 in associated interchange fees.

9. Epiq continues to review the remaining claims in the name variance population. Should the Court approve this proposed second initial partial distribution, Epiq will include any

DECLARATION OF LOREE KOVACH REGARDING SECOND INITIAL PARTIAL
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additional claims in that distribution for which it is able to resolve the name discrepancy prior to the date the distribution population needs to be finalized.

10. As of the date of this declaration, the associated interchange fees for these 84,174 claims amount to \$15,490,351,138.00. The total funds to be distributed in this second initial partial distribution will be at least \$182,000,000.00, with merchants in the Takedown population receiving more than \$56 million and those with cleared name discrepancies receiving more than \$125 million.

11. Once the recommended distribution for this additional population is approved by the Court, Epiq will update the Merchant Portal to indicate for registrants whether their claims are included in the additional, partial distribution and the initial partial payment amount for those that are to receive a payment. Epiq will also contact each registrant with a claim or claims in the additional, partial distribution via email, where available, and ask them to visit the Merchant Portal, review their payable claim(s), and then elect how they would like to be paid. The payment-election process will follow the process outlined in the Initial Partial Distribution Declaration. Epiq recommends that any such distribution occur no sooner than 90 days after the Court's approval order, or at such later time as Epiq determines is administratively appropriate.

12. On May 4, 2026, the Second Circuit Court of Appeals upheld this Court's decisions regarding PayFacs and Branded Operators. Although the Second Circuit affirmed the Court's determinations regarding class membership, the *Old Jericho and Lanning* plaintiffs have sought *en banc* review. Should the appeals be denied, Class Counsel and Epiq plan to recommend that a third initial partial distribution be approved by the Court, to payclaims which were excluded from

DECLARATION OF LOREE KOVACH REGARDING SECOND INITIAL PARTIAL
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the initial partial distribution only because they were identified as potentially subject to one or both of those appeals, using the proxy method described in the Initial Partial Distribution Declaration.

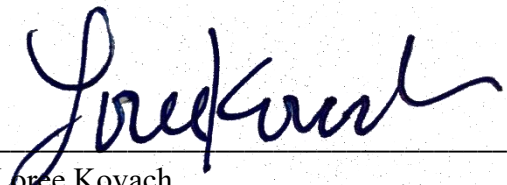
13. Accordingly, Epiq recommends that the second initial partial distribution described herein commence no sooner than 90 days from an Order by this Court approving the distribution, but that Epiq be granted the discretion to delay that distribution should the *Lanning* or *Old Jericho* decisions become final, if it would be more administratively efficient to combine the second initial distribution with the planned third initial distribution to claims excluded because of these appeals.

CONCLUSION

14. The proposed plan described in this Declaration for issuing initial partial payments to the group of at least 84,174 claimants described above will provide a measurable benefit for another population of claimants.

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

Executed on May 26, 2026 at New York City, New York.



Loree Kovach

DECLARATION OF LOREE KOVACH REGARDING SECOND INITIAL PARTIAL
DISTRIBUTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In re PAYMENT CARD INTERCHANGE FEE AND MERCHANT DISCOUNT ANTITRUST LITIGATION	: : : :	MDL No. 1720(BMC)(JAM) Civil No. 05-5075(BMC)(JAM)
This Document Relates To:	: : : : : :	[PROPOSED] ORDER GRANTING RULE 23(b)(3) CLASS PLAINTIFFS' MOTION FOR A SECOND, PARTIAL DISTRIBUTION OF SETTLEMENT FUNDS
ALL ACTIONS.	: : : : : :	
	X	

The Court, having considered Rule 23(b)(3) Class Plaintiffs' Motion for a Second, Partial Distribution of Settlement Funds (the "Motion"), having considered all of the submissions and arguments with respect to the Motion, and having ruled on the Motion, ORDERS as follows: The Net Cash Settlement Fund, shall be distributed to Claimants as detailed in the Motion and accompanying declaration.

IT IS SO ORDERED.

DATED: _____

THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE