

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