

No. _____

**IN THE
Supreme Court of the United States**

JACK RABBIT, LLC,

Petitioner,

v.

VISA INC. and MASTERCARD INCORPORATED,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for The Second Circuit

**CORRECTED APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, petitioner Jack Rabbit, LLC ("Jack Rabbit") states that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Second Circuit:

1. Pursuant to Supreme Court Rule 13.5, Petitioner Jack Rabbit respectfully requests a thirty (30) day extension of time, to and including October 22, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for The Second Circuit in Case No. 24-1653.
2. This Court has jurisdiction under 28 U.S.C. § 1254. The Supreme Court may review cases in the courts of appeals “By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree”. 28 U.S.C. § 1254(1).
3. This case arises from a civil action filed in the Eastern District of New York, Case No. 1:05-md-01720. The district court granted Defendants' motion to enforce the Settlement Agreement and found that Square's merchant-customers and Intuit's merchant-customers "accepted" payment cards and are therefore members of the Rule 23(b)(3) Class, denied the Lanning Plaintiffs' cross-motion for summary judgment, and denied Intuit's cross-motion for summary judgment. Petitioner timely appealed to the Second Circuit, Case No. 24-1653. On May 4, 2026, the Second Circuit affirmed the judgment below and issued its Summary Order. Petitioner timely filed a Petition for Panel Rehearing and Rehearing En Banc. The Second Circuit denied that motion on June 24, 2026. [Copies of the Second Circuit's Summary Order and the Order denying rehearing are attached as Attachments A and B.]

4. Petitioner now requests a 30 day extension, to and including October 22, 2026, to file its petition for writ of certiorari pursuant to Rule 13.5. Absent an extension, the petition would be due on September 22, 2026. The original application was filed more than ten days before that deadline, as required by Rules 13.5 and 30.2.
5. Petitioner worked diligently to meet its September 22nd, 2026, deadline; however, due to unavoidable circumstances Petitioner will likely be unable to meet its current deadline. The Jewish high holidays will unfortunately preclude Petitioner from adequately preparing its Petition for the Court's review, as Rosh Hashanah begins on the evening of September 11, 2026, and Yom Kippur begins the evening of September 21, 2026. Therefore, Petitioner respectfully requests an extension of time of 30 days in order to sufficiently and thoroughly prepare its petition.
6. Further Good cause exists for the requested extension. This case presents a complex and disputed questions of federal antitrust law and Article III standing doctrine: whether a federal court can enforce a Rule 23(b)(3) damages settlement against, and distribute a common fund to, class members who lack any Article III injury. Sound development of the petition requires careful analysis of the breath of federal appellate and Supreme Court antitrust and Article III jurisprudence.
7. The additional time requested is necessary for undersigned counsel to research these issues thoroughly, review the record, and prepare a petition that will be

of maximum assistance to the Court. This application is made in good faith and not for purposes of delay, and the requested extension will not prejudice Respondents.

For the foregoing reasons, Petitioner respectfully requests that the time within which to file a petition for a writ of certiorari be extended thirty (30) days, to and including October 22, 2026.

Respectfully submitted,

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Counsel for Petitioner

Dated: September 16, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 2026, a copy of the foregoing Corrected Application for an Extension of Time Within Which to File a Petition for a Writ of Certiorari was served, as required by Supreme Court Rules 22.2 and 29, via email, on counsel of record for Respondents:

/s/ N. Albert Bacharach, Jr.
N. Albert Bacharach, Jr.

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Attachment A

24-1653(L)

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT’S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION “SUMMARY ORDER”). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of May, two thousand twenty-six.

PRESENT:

DENNIS JACOBS,
PIERRE N. LEVAL,
MICHAEL H. PARK,
Circuit Judges.

*In re Payment Card Interchange Fee and Merchant
Discount Antitrust Litigation*

24-1653(L);
24-1808(CON).

803 KAVA LLC, CRYOSERVICES, INC. D/B/A
ANDERSON CRYOTHERAPY D/B/A ATHLETIC
RECOVERY CENTER; DELL FOX JEWELRY LLC;
MAUREEN ROXBERRY; HAYLEY LANNING;
SBG DESIGNS, LLC D/B/A GOLDFINE JEWELRY;
SHEN SHU ACUPUNCTURE, PLLC;
CAMP GROUNDS COFFEE, LLC,

Plaintiffs-Appellants,

v.

JACK RABBIT, LLC,

Objector-Appellant,

v.

VISA, INC., MASTERCARD INCORPORATED,

*Defendants-Appellees.**

FOR PLAINTIFFS-APPELLANTS

MARK C. RIFKIN (Thomas H. Burt *on the brief*), Wolf Haldenstein Adler Freeman & Herz LLP, New York, NY.

FOR OBJECTOR-APPELLANT

N. ALBERT BACHARACH, JR., N. Albert Bacharach, Jr., P.A., Gainesville, FL; Paul S. Rothstein, Attorney Paul S. Rothstein, P.A., Gainesville, FL.

FOR DEFENDANT-APPELLEE VISA, INC.

ROSEMARY SZANYI (Matthew A. Eisenstein, R. Stanton Jones *on the brief*), Arnold & Porter Kaye Scholer LLP, Washington, DC; Michael S. Shuster, Demian A. Ordway, Jayme Jonat, Holwell Shuster & Goldberg LLP, New York, NY.

FOR DEFENDANT-APPELLEE MASTERCARD INCORPORATED

Kenneth A. Gallo, Paul, Weiss, Rifkind, Wharton & Garrison, LLP, Washington, DC; Brette Tannenbaum, Nina Kovalenko, Gary Carney, Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, NY.

FOR AMICI CURIAE INTUIT INC.; INTUIT PAYMENT SOLUTIONS, LLC; BLOCK, INC. F/K/A SQUARE, INC.; AND ACI PAYMENTS, INC., IN SUPPORT OF PLAINTIFFS-APPELLANTS

Marc L. Greenwald, Steig D. Olson, Manisha M. Sheth, David M. Cooper, Quinn Emanuel Urquhart & Sullivan, LLP, New York, NY; Adam B. Wolfson, Quinn Emanuel Urquhart & Sullivan, LLP, Los Angeles, CA; Justin T. Reinheimer, Quinn Emanuel Urquhart & Sullivan, LLP, San Francisco, CA.

Appeal from a memorandum and order of the United States District Court for the Eastern District of New York (Brodie, *C.J.*).

* The Clerk of Court is respectfully directed to amend the caption accordingly.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

In 2019, Defendants settled a federal antitrust class action with a class of merchants that accepted their credit cards during the class period. The Settlement Agreement defines the class, in relevant part, as “all persons, businesses, and other entities that have accepted any Visa-Branded Cards and/or Mastercard-Branded Cards in the United States at any time from January 1, 2004 to the Settlement Preliminary Approval Date.” App’x at 7577. Amici Intuit Inc., Intuit Payment Solutions, LLC (together, “Intuit”); Block, Inc. f/k/a Square (“Square”); and ACI Payments, Inc. provide payment facilitation services to customers. Intuit and Square opted out of the class action settlement and filed their own complaints asserting antitrust claims against Defendants.

Plaintiffs-Appellants (together, the “Square Sellers”) are merchants and customers of Square that use Square’s payment card facilitation services to process credit card purchases. They did not opt out of the Settlement Agreement, but in 2021, they filed a putative antitrust class action complaint against Defendants. The Square Sellers appeal from a memorandum and order granting Defendants’ motion to enforce the Settlement Agreement and finding that the Square Sellers are members of the settlement class. We assume the parties’ familiarity with the facts and the issues on appeal, which are discussed at greater length in our opinion in the tandem case of *Old Jericho v. Visa*, No. 24-2678, filed simultaneously with this summary order.

First, the Square Sellers argue that the district court erred in concluding that they are members of the settlement class because they are neither direct purchasers nor direct payors of the challenged fees. For substantially the reasons stated in *Old Jericho v. Visa*, No. 24-2678, we reject the Square Sellers’ argument that the district court must resolve disputes over class membership by identifying the party that *directly paid* Defendants for payment card processing

services. Instead, the district court’s task is to construe the Settlement Agreement “in accord with the parties’ intent.” *Revitalizing Auto Cmtys. Env’t Response Tr. v. Nat’l Grid USA*, 92 F.4th 415, 441 (2d Cir. 2024) (quotation marks omitted). If the class definition is ambiguous as to potential class members, the district court can consider “extrinsic evidence of the parties’ intent” on a developed factual record to resolve that ambiguity. *Id.* at 442.

The district court did so here. It first concluded that the word “accepted” in the Settlement Agreement is ambiguous as applied to the Square Sellers and Square, which can both “credibly claim to have ‘accepted’ payment cards.” *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 735 F. Supp. 3d 249, 262 (E.D.N.Y. 2024). Next, the district court concluded that the parties intended that “as between competing claimants, only one entity is entitled to make a claim of the settlement fund.” *Id.* at 264. None of the parties in this appeal contests this characterization of the settling parties’ intent.¹ The district court then found that the Square Sellers “accepted” payment cards for each transaction and were thus members of the settlement class. It based this finding on (1) Square’s merchant agreement, which states that Square allows merchants “to *accept* Cards from customers,” *id.*; (2) Square’s Complaint, which alleges that Square “helps Sellers (merchants who utilize Square to *accept* payment cards . . .) start, run, and grow their businesses, including by enabling Sellers to *accept* card payments,” *id.*; (3) Visa’s rules, which distinguish between a “Payment Facilitator” and a “Merchant” and provide that an entity cannot simultaneously act as both a payment facilitator and a merchant, *id.* at 265; (4) Mastercard’s rules, under which Sellers “accept” payment cards while payment facilitators facilitate the

¹ Although the parties do not dispute this contention, in *Fikes* we explained that we “accept that interpretation of federal antitrust law for the purposes of this appeal, without opining on its soundness.” *Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704, 716 n.5 (2d Cir. 2023); *see generally id.* at 730-32 (Leval, J., concurring). We accept this interpretation of the Settlement Agreement, but we again do not opine on the soundness of this interpretation as a matter of federal antitrust law.

acquiring of transactions, *id.* at 266; (5) the Square Sellers’ own declarations, which describe themselves as businesses that *accept* credit and debit cards, *id.*; (6) the “way real-world transactions are conducted” in which the “cardholder hands her card to a Seller, who ‘accepts’ it for payment at the point of sale,” *id.* at 264; and (7) the incongruence of interpreting the word “accepted” to mean that Square “‘accepts’ a payment card, but the [Square] Seller ‘accepts’ cash, for two otherwise identical transactions,” *id.* at 265.

We decline the invitation of the Square Sellers and amici to second-guess the district court’s finding that the settling parties intended to include the Square Sellers, rather than Square, in the settlement class. “Few persons are in a better position to understand the meaning of a settlement than the district judge who oversaw and approved it,” and a “trial court’s findings regarding the parties’ intentions will be respected on appeal unless they are clearly erroneous.” *W. Alton Jones Found. v. Chevron U.S.A., Inc.*, 97 F.3d 29, 33 (2d Cir. 1996) (cleaned up). The district court carefully reviewed the record and considered evidence about how payment facilitators function, as well as how the parties themselves characterized who “accepts” credit cards in a given transaction. Based on this record, the district court’s findings as to the settling parties’ intent regarding which entities should be deemed part of the settlement class were not clearly erroneous.

For substantially the reasons stated in *Old Jericho v. Visa*, 24-2678, we also reject the Square Sellers’ argument that the district court’s order impermissibly created an intra-class conflict by placing direct and indirect purchasers in the same settlement class. As explained in that opinion, the parties settled partly to avoid resolving Defendants’ indirect purchaser defense. The Square Sellers’ argument that the district court was required to avoid “including both direct and indirect purchasers in the settlement class,” Square Sellers’ Br. at 43, thus rests on an assumption

about which entities are indirect purchasers. This interpretation relying on such an assumption would undermine the purpose of the Settlement Agreement by requiring a final resolution of the very issue the parties sought to avoid.

Finally, the Square Sellers argue that the Settlement Agreement violates due process because they did not receive individual notice of it. When approving a 23(b)(3) class action settlement, the district court “must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Under this rule, “[i]ndividual notice must be sent to all class members whose names and addresses may be ascertained through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974).

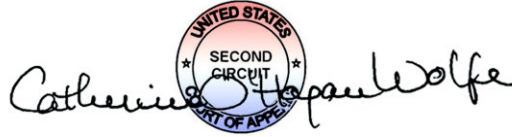
Whether class members can be identified through reasonable effort “is a finding of fact, and must be accepted unless clearly erroneous.” *In re Agent Orange Prod. Liab. Litig. MDL No. 381*, 818 F.2d 145, 169 (2d Cir. 1987). The district court expressly recognized its obligation to direct “individual notice to all members who can be identified through reasonable effort” when approving the notice plan. *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 58 (E.D.N.Y. 2019). We identify no clear error in the district court’s finding that the notice plan was reasonable under the circumstances. *See id.* at 59 (finding “reasonable the manner in which the notices will be provided” in the settlement); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05MD1720MKBJO, 2019 WL 6875472, at *36 (E.D.N.Y. Dec. 16, 2019) (“[T]he Court finally approved the Superseding Settlement Agreement as fair, reasonable and adequate, including the Notice Plan, Class Notices, and Plan of Administration and Distribution.”).

* * *

We have considered the Square Sellers' remaining arguments and find them to be without merit. For the foregoing reasons, the order of the district court is **AFFIRMED**.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

The image shows a handwritten signature in black ink that reads "Catherine O'Hagan Wolfe". The signature is written over a circular official seal. The seal has a red outer ring with the words "UNITED STATES" at the top and "COURT OF APPEALS" at the bottom. Inside the ring, the words "SECOND CIRCUIT" are written in black, flanked by two small stars on each side.

Attachment B

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of June, two thousand twenty-six.

In Re: Payment Card Interchange Fee and Merchant
Discount Antitrust Litigation.

ORDER

Docket Nos: 24-1653 (Lead)
24-1808 (Con)

Objector-Appellant, Jack Rabbit LLC, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

A circular official seal of the United States Court of Appeals for the Second Circuit is stamped over the signature. The seal features the text "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom, with stars on either side of the center text.