

**NOTICE OF CLASS ACTION AUTHORIZED BY THE UNITED STATES  
DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK**

**If you are a merchant who incurred an unreimbursed EMV/chip Fraud Liability Shift chargeback on a Visa, Mastercard, American Express, or Discover credit or debit card transaction that occurred from October 1, 2015, to September 30, 2017, you may be a member of a Certified Class.**

*A court authorized this Notice. This is not a lawyer solicitation. You are not being sued.*

- A class action lawsuit is pending in the U.S. District Court for the Eastern District of New York against Visa, Inc., Mastercard, Incorporated, American Express, Inc., and Discover, Inc., (together the “Defendants”). The case is entitled *B&R Supermarket, Inc., et al. v. Visa, Inc., et al.*, Case No. 17-cv-02738. The lawsuit alleges that Defendants Visa, Mastercard, American Express, and Discover violated antitrust laws by illegally acting in concert in shifting the liability for certain fraudulent charges when a credit or debit card was enabled with EMV/chip technology and the merchant’s terminal was not enabled for EMV/chip technology.
- The Court has decided this case should proceed as a class action lawsuit on behalf of a group of entities that may include you. The Class consists of merchants who incurred an unreimbursed chargeback on a transaction that occurred between October 1, 2015, and September 30, 2017, due to a shift of liability for certain fraud on Visa, Mastercard, American Express, or Discover transactions when the credit or debit card was enabled with EMV/chip technology and the merchant’s terminal was not enabled for EMV/chip technology. Members of the judiciary and government entities and agencies are excluded from being part of the Class.
- The Court has not yet decided who is right. Liability has not yet been determined. No trial date has been set. There is no money available now. There is no guarantee there ever will be. However, your legal rights may be affected, and you must make a choice now.

**WHAT ARE MY RIGHTS AND OPTIONS?**

**1) Do nothing. Stay in this case. Await the outcome. Give up certain rights.**

If you do nothing, you are choosing to stay in the Class and you keep the possibility of getting money or benefits that may be awarded at trial or through a settlement. You will be legally bound by all of the orders the Court issues and Judgments the Court makes in this litigation. However, if you stay in the case, you give up any rights you may have to sue the Defendants separately for any claims based on the facts and conduct raised by the lawsuit. For more information about the lawsuit, you may visit [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com) or call toll-free at 1-855-662-0073.

**2) Exclude yourself. Get out of this case. Get no money from it, if any is recovered in the future. Keep any rights you may have to sue on your own.**

If you ask to be excluded from the Class, you must say in writing that you do not want to be included in this lawsuit and you will not be entitled to any recovery, if any ultimately is awarded. But you, on your own or through an attorney you hire, may be able to sue the Defendants for any claims based on the facts and conduct raised by the lawsuit. You will not be bound by any past or future rulings against the Defendants in this lawsuit. To exclude yourself, you must send a letter, as described below, stating you want to exclude yourself from the Class, to: **FLS Litigation Administrator, P.O. Box 6430, Portland, OR 97228-6430**. Your exclusion request must be postmarked no later than **August 31, 2022**.

**THESE RIGHTS AND OPTIONS—AND THE DEADLINES TO EXERCISE  
THEM—ARE EXPLAINED IN THIS NOTICE.**

**BASIC INFORMATION**

**1. Why Did I Get This Notice?**

You received this Notice because the Court in charge of this lawsuit has certified this case as a class action, and this Notice must be sent to members of the Class. You were identified as a possible member of the Class. The Court in charge of this case is the United States District Court for the Eastern District of New York, and the case is called *B&R Supermarket, Inc., et al. v. Visa, Inc., et al.*, Case No. 17-cv-02738.

The purpose of this Notice is to inform you about this lawsuit, the certification of the case as a class action, and your options of staying in the Class or asking to be excluded from the Class and the case.

## **2. What Is This Lawsuit About?**

The lawsuit is a class action, alleging that Defendants Visa, Mastercard, American Express, and Discover violated antitrust laws by illegally acting in concert in shifting the liability for certain fraudulent charges on their networks to merchants when the card is enabled with EMV/chip technology and the merchant's terminal is not enabled for EMV/chip technology.

Plaintiffs allege that Defendants violated antitrust laws by entering into a conspiracy to (1) adopt the same policy via nearly identical rules for shifting billions of dollars in liability from banks to merchants ("Liability Shift" or "Fraud Liability Shift" or "FLS") for fraudulent charges ("chargebacks"); and (2) make the Liability Shift effective in the same month and in the same manner for all four networks. Defendants have denied the claims in this lawsuit and maintain that, even if Defendants are found liable, Plaintiffs and other members of the Class are not entitled to damages.

The Court has not decided whether Defendants violated any laws. By allowing this case to proceed as a class action and this Notice to be issued, the Court is not suggesting that Plaintiffs will win or lose.

Additional information about the claims and a copy of the Amended Complaint are available at [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com).

## **3. What Is a Class Action?**

In a class action, one or more people called class representatives (in this case, B&R Supermarket, Grove Liquors LLC, Strouk Group LLC, Palero Food Corp., and Cagueyes Food Corp.) sue on behalf of people who have similar claims. If the Court "certifies" the class (i.e., approves the case for class treatment), the Court resolves the issues for all class members except for those who "exclude" themselves from the class (otherwise known as "opting out" of the class and the class action).

## **4. What Has Happened in This Case?**

Plaintiffs filed this action in March of 2016 in the Northern District of California. On July 15, 2016, Plaintiffs filed an Amended Complaint, which Defendants moved to dismiss. On September 30, 2016, the Court in the Northern District of California granted in part and denied in part the motions to dismiss the Amended Complaint. The Court dismissed the claims against all Defendants other than Visa, Mastercard, Discover, and American Express. On May 4, 2017, the Court transferred the case to the federal District Court in the Eastern District of New York, where it is now pending. On August 28, 2020, the Court certified this lawsuit as a class action on behalf of eligible merchants.

The parties have engaged in class-wide fact and expert discovery and recently concluded all discovery. The Court will soon set a schedule for further proceedings in the case, including for summary judgment and other motions, pretrial conference, and trial.

## **5. What Are the Class Representatives Asking For?**

The Class Representatives are asking for money to compensate Class Members for damages they allege were caused by Defendants' conduct, as well as pre-judgment and post-judgment interest and their reasonable attorneys' fees and costs.

## **6. How Do I Know If I Am a Class Member?**

You are a member of the Class if you are a merchant in the United States who incurred a chargeback on a credit or debit card transaction under the so-called EMV/chip technology Fraud Liability Shifts of Visa, Mastercard, Discover, and/or American Express if the original transaction occurred between October 1, 2015 and September 30, 2017 and that chargeback was not reimbursed or absorbed by another entity. Excluded from the Class are members of the judiciary and government entities or agencies.

If you are unsure about whether you are a Class Member, you can get free help by calling, emailing, or writing to the Plaintiffs' lawyers in this case at the phone numbers and addresses listed below.

## **7. What Are My Options as a Class Member?**

You must decide whether to stay in the Class or opt out of the Class.

## 8. What Happens If I Choose to Stay in the Class?

If you stay in the Class, you will be permitted to share in a recovery, if any, that may occur in this lawsuit. But you give up any rights to sue the Defendants separately for any claims based on the facts and conduct raised in this lawsuit. You also will be legally bound by all of the Orders the Court issues and Judgments the Court makes in this class action, even if there is no recovery.

## 9. How Do I Stay in the Class?

You do not have to do anything to stay in the Class.

## 10. What Happens If I Opt Out of the Class?

If you opt out of the Class (by stating in writing that you do not want to be in the Class in this lawsuit), you will give up the right to participate in any recovery that may occur. But you will keep any rights you may currently have to sue the Defendants regarding the legal claims at issue in this lawsuit. You also will not be bound by the Orders the Courts issues and Judgments the Court makes in this case.

## 11. How Do I Opt Out of the Class?

If you are a merchant that does not want to be a member of the Class, you must send a written “Request to Opt Out” to the Notice Administrator so it is received no later than **August 31, 2022**. Your written request must include:

- Your merchant name; address; taxpayer identification number; and telephone number or email address;
- That you are writing about this specific case with the case number, that is, *B&R Supermarket, Inc., et al. v. Visa Inc., et al.*, Case No. 17-cv-02738;
- A simple statement that you want to opt out, or not be a member of the Class;
- The business names, brand names, “doing business as” names, taxpayer identification number(s), and address of any store or sales location associated with the merchant that is opt outing out; and
- Your personal signature along with your printed name and title or position at the merchant that gives you authority to opt out the merchant.

Your request to opt out must be sent to the following address by no later than August 31, 2022:

FLS Litigation, P.O. Box 6430, Portland, OR 97228-6430

If you have any questions, you may call toll-free at 1-855-662-0073. However, optouts or exclusions via telephone or email will not be effective. Opt-outs or exclusions executed by someone besides you or on your behalf will not be effective. You must personally sign the exclusion request.

## 12. What Happens If I Do Not Do Anything?

By doing nothing, you are choosing to stay in the Class. If you stay in the Class and the Class obtains money or benefits, you will be notified about how to apply for a share. Regardless of whether the plaintiffs win or lose at trial or whether they settle, you will not be able to sue, or continue to sue the Defendants—as part of any other lawsuit—for any claims based on the facts and conduct raised by this lawsuit. You will also be legally bound by all of the Orders the Court issues and Judgments the Court makes in this lawsuit.

### THE LAWYERS REPRESENTING YOU

## 13. As a Class Member, Do I Have a Lawyer Representing My Interests in This Class Action?

Yes. The Court has appointed lawyers to represent you and other Class Members. These lawyers are called Class Counsel. The Court has approved and appointed George C. Aguilar, Michael J. Nicoud, and Jacob Ogbozo and the law firm of Robbins LLP as Class Counsel. These lawyers are also assisted by John Devine of Devine Goodman & Rasco, LLP, and by Thomas G. Amon of the Law Offices of Thomas G. Amon.

If you have questions about the lawsuit, you may contact Class Counsel at:

George C. Aguilar  
Michael J. Nicoud  
Jacob Ogbozo  
Robbins LLP  
5040 Shoreham Place  
San Diego, CA 92122  
619-525-3990 (office)  
gaguilar@robbsinllp.com  
mnicoud@robbsinllp.com  
jogbozo@robbsinllp.com

**14. How Will the Lawyers Be Compensated, and Will the Class Representatives Receive Compensation?**

If recovery is obtained for the Class, Class Counsel will request and apply to the Court for an award of attorneys' fees and for the reimbursement of expenses for litigating the case. Class Counsel may also apply to the Court to approve a reasonable amount for the Class Representatives for their services in fulfilling their duties. These applications will be filed with the Court and will be available for review once filed on the Court's docket for public electronic access. If approved, these fees and expenses and representative awards will be paid from the recovery obtained for the Class.

**15. Should I Get My Own Lawyer?**

You do not need to hire your own lawyer because Class Counsel is working for you. You are welcome to hire your own lawyer at your expense. If you hire a lawyer to speak for you or to appear in Court, your lawyer must file a Notice of Appearance.

**WANT MORE INFORMATION?**

If you have any questions or want to review documents that have been filed in this case, you may visit [www.FraudLiabilityShiftLitigation.com](http://www.FraudLiabilityShiftLitigation.com) or call toll-free at 1-855-662-0073.

**Please do not contact the Court. The Court cannot answer any questions or discuss the case.**