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September 22, 2009

VIA ECF AND LEXISNEXIS FILE & SERVE

The Honorable James Orenstein
United States Magistrate Judge
225 Cadman Plaza East
Room 456 North
Brooklyn, NY 11201

**Re: *In re Payment Card Interchange Fee & Merchant Discount Antitrust
Litigation, 1:05-MD-1720-(JG)(JO)***

Dear Judge Orenstein:

Class Plaintiffs respectfully move for an order amending the pending Motion for Class Certification ("Motion") (DE 1141) to include additional claims alleged for the first time in the Second Consolidated Amended Class Action Complaint ("SCACAC") and Second Supplemental Class Action Complaint ("SSCAC"), which were filed on January 29, 2009 (DE 1138 and DE 1139). We understand that Defendants do not object to the amendment of the class motion, but will submit a separate letter. No additional briefing or discovery should be required.

In particular, Class Plaintiffs seek to amend the Motion to request certification of a Damages Class asserting the following additional claims:¹

¹ The class motion already included claims for an ongoing and continuing conspiracy between Visa and its member banks to enforce rules fixing interchange fees but the supplemental complaint challenging Visa's IPO was filed subsequent to the motion, as was the SCACAC containing specific allegations of post-IPO conduct. For clarity, however, in the amended Motion for Class Certification, the Damages Class asserts claims for the post-Visa IPO conspiracy between Visa and its member banks to enforce rules fixing interchange fees for credit card and debit card transactions in violation of section 1 of the Sherman Act (Seventeenth Claim of the SCACAC) and section 16700, *et seq.*, of the Cartwright Act (Nineteenth Claim of the SCACAC) and the Injunctive Relief Class seeks equitable relief for this anticompetitive conduct (Twentieth Claim of the SCACAC).

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- Conspiracy between Visa and its member banks to enforce rules fixing interchange fees for PIN-debit card transactions in violation of section 1 of the Sherman Act (Fourteenth Claim of the SCACAC);
- Conspiracy between Visa and its member banks to enforce rules fixing interchange fees for PIN-debit card transactions in violation of section 16700, *et seq.*, of the Cartwright Act (Fifteenth Claim of the SCACAC);
- Challenging Visa's IPO as a violation of section 7 of the Clayton Act (Twenty-Seventh Claim of the SSCAC); and
- Challenging Visa's IPO as an unreasonable restraint of trade and unlawful combination, in violation of section 1 of the Sherman Act (Twenty-Ninth Claim of the SSCAC);

Plaintiffs also seek to amend the Motion to request certification of an Injunctive Relief Class asserting the following claims:

- Against Visa and its defendant member banks seeking equitable relief for their anticompetitive conduct with respect to PIN-debit cards, as set forth in the Fourteenth and Fifteenth Claims of the SCACAC (Sixteenth Claim of the SCACAC); and
- Against Visa and the banks named as Defendants in the SSCAC, seeking equitable relief as to the illegal conduct alleged in that Complaint.

Visa and its member Bank Defendants will suffer no prejudice by virtue of the Court's considering these claims in the course of deciding the Motion. Class Plaintiffs respectfully submit that the amended price-fixing and injunctive relief claims encompass the same Rule 23 requirements addressed in the parties' existing memoranda of law and supporting evidentiary materials. Class Plaintiffs rely upon the materials previously submitted to the Court in support of the amended Motion for class certification. If your Honor approves, would your Honor please docket a brief order approving class plaintiffs' amendment of the Motion?

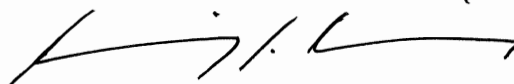
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Plaintiffs' proposed Order certifying the classes (which defendants oppose) will be submitted at or before the hearing, currently scheduled for October 8, 2009.

Respectfully submitted,

BERGER & MONTAGUE, P.C.



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Merrill G. Davidoff
For Co-Lead Class Plaintiffs' Counsel

HLM/MGD/sll

cc: Counsel for All Parties

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