

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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In re PAYMENT CARD INTERCHANGE	:	MDL No. 1720(MKB)(JO)
FEE AND MERCHANT DISCOUNT	:	
ANTITRUST LITIGATION	:	Civil No. 05-5075(MKB)(JO)
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This Document Relates To:	:	DECLARATION OF ERIC GREEN
	:	IN SUPPORT OF RULE 23(b)(3)
ALL ACTIONS.	:	CLASS PLAINTIFFS' MOTION FOR
	:	PRELIMINARY APPROVAL OF
	:	SETTLEMENT
_____	x	

1. I am a full time mediator with Resolutions, LLC, an ADR firm located in Boston, Massachusetts. I retired as a Professor at the Boston University School of Law in 2007 after thirty years teaching negotiation, mediation, complex ADR processes, resolution of mass torts, constitutional law and evidence, I have subsequently taught Evidence at Harvard Law School as a Lecturer in Law. I was a co-founder of JAMS/EnDispute, the largest private ADR provider in the United States and I am a co-founder and principal of Resolutions, LLC. I was a member of the Center for Public Resources International Institute of Dispute Resolution virtually since its inception, over 40 years ago, and have served on many of its panels and committees and spoken at numerous of its conferences and programs on mediation and ADR. I am now a member of its Board of Directors. I was a co-author with Professors Frank Sander and Stephen Goldberg of the first edition of Dispute Resolution, the first law school textbook on ADR, and have written numerous books and articles on dispute resolution and evidence. I maintain an active ADR/mediation practice for complex, legally-intensive disputes.

2. I have successfully mediated many high stakes cases, including the United States v. Microsoft antitrust case, various Mastercard/Visa merchants' class action antitrust cases, portions of the Enron Securities class action cases, the LCD, CRT, LIB, vitamin, polyurethane antitrust cases, the Monsanto PCB cases in Alabama, the childhood and adult cancer cases in Toms River, New Jersey, numerous large construction cases, including most of the disputes arising out of the design and construction of major league baseball and football stadiums, insurance coverage, intellectual property, international disputes, ERISA cases, and consumer cases. I have mediated many complex, multi-party class action cases involving horizontal and vertical price-fixing anti-trust claims, mergers and acquisitions, contract disputes, patent disputes, securities fraud, shareholder derivative claims, accounting problems, mass torts, employment and consumer claims.

I have mediated dozens if not hundreds of anti-trust class actions. In the past few years, I have also mediated many large cases arising out of the 2007-2008 financial crisis, including class actions involving all aspects of mortgage-based securities, CDO's, auction-rate securities, private equity, and various types of financial fraud. Many of the cases I have mediated have involved the federal government, state governments, or regulatory agencies. I have also served as court-appointed Special Master, the Legal Representative for Future Claimants, Mediator and Guardian Ad Litem in class or mass claimant matters in the Northern District of Ohio, Southern District of New York, District of Massachusetts, Eastern District of Texas, and Eastern District of Michigan. Currently I am serving as the Special Master and Trustee for all Takata airbag personal injury and wrongful death claims.

3. I am a 1968 Honors graduate of Brown University and graduated in 1972 from Harvard Law School, magna cum laude, where I was Executive Editor of the Harvard Law Review. I am a member of the bars of the states of California (inactive) and Massachusetts, the United States District Courts for the Northern and Central Districts of California and the District of Massachusetts, several Courts of Appeal, and the Supreme Court of the United States. Prior to teaching at Boston University School of Law, I clerked for the Hon. Benjamin Kaplan, Supreme Court of Massachusetts and then was an associate and partner at Munger Tolles & Olson in Los Angeles.

4. I have delivered hundreds of lectures, panel discussions and training sessions on ADR and taught or supervised more than a thousand students in ADR while mediating more than a hundred cases a year for over 40 years. In 2001, I was awarded a Lifetime Achievement Award from the American College of Civil Trial Mediators. I was voted Boston's Lawyer of the Year for Alternative Dispute Resolution for 2011 based on my "particularly high level of peer recognition."

In 2011, I received the James F. Henry Award for Outstanding Contributions to the field of ADR from The International Institute for Conflict Prevention & Resolution.

5. I was originally retained in 2009 by certain of the parties in the above-referenced matter (the “Interchange Litigation”), to serve, along with Hon. Edward J. Infante, as private mediators to facilitate potential settlement discussions.

6. Initially I was asked to mediate the claims of the “Individual Plaintiffs” against Visa and Mastercard in light of an impasse that was occurring in settlement discussions between Class Plaintiffs and Defendants. The first mediation session in which I was involved took place on April 30, 2009 in New York.

7. Since the time I first became involved with the Interchange Litigation, including during the period leading up to the initial settlements of which the Court was informed in June 2012, and then once again during the period following reversal of the initial class settlement by the United States Court of Appeals for the Second Circuit to the present, I conducted numerous mediation sessions and had dozens of separate meetings with counsel and representatives for the various Parties. I worked extensively and in close coordination with the Judge Infante as co-mediator throughout this process.

8. This case has been extensively and vigorously litigated for years. After almost a decade of litigation, on December 13, 2013, the District Court granted final approval of the original settlement. However, following appeals, on June 30, 2016, the Second Circuit reversed and remanded the case.

9. After more litigation and the appointment of separate counsel for the Rule 23(b)(2) and (b)(3) classes, mediation was recommenced in early 2017. The Rule 23(b)(3) Class Plaintiffs and the defendants engaged in numerous and lengthy mediation sessions both in person and

telephone conferences from February 2017 until June 2018. These Parties engaged in more than 10 in-person mediations supervised by the co-Mediators and many phone conversations during this period.


10. At these sessions and meetings, the parties were represented by a multitude of lawyers and client representatives. Based on my observations and first-hand experience, counsel involved in these mediation sessions are among the most knowledgeable, sophisticated and accomplished attorneys in the fields of antitrust, class actions, and complex litigation. The level of advocacy for all parties throughout this process was exceptionally informed, vigorous, engaged, ethical and effective.

11. When the mediation parties appeared to have exhausted their negotiation capacities and reached an impasse on several difficult issues, the mediators issued a Mediators' Proposal on June 2, 2018, with instructions to the parties that they were required to respond by June 5, 2018, in an effort to resolve the litigation. On June 5, 2018 the mediators received unanimous consent to move forward on the proposal. On June 7, 2018, the parties met again in New York to continue work on outstanding issues and to reach agreement on certain matters related to the Mediators' Proposal.

12. Throughout the recommenced or second mediation, it was always the firm position of the Rule 23(b)(3) class counsel that these negotiations, any settlement, and preliminary or final approval of a Rule 23(b)(3) settlement had to be independent of and not contingent in any way on the resolution, by settlement or otherwise, of the Rule 23(b)(2) class claims. This term was incorporated into the Mediators' Proposal and was accepted by all (b)(3) class plaintiffs and defendants. Moreover, at no time were counsel for the (b)(2) class action involved in any mediations or negotiation of the Rule 23(b)(3) class action claims.

13. Throughout the mediation process, the parties engaged in extensive adversarial negotiations over virtually every issue in the case. The facilitated negotiations were lengthy, principled, exhaustive, informed, and sometimes difficult and contentious. The negotiations involved many very qualified attorneys with extensive experience and knowledge in antitrust and class action law, and with the guidance and involvement of their clients. In my opinion, the outcome of these mediated negotiations is the result of a fair, thorough, and fully-informed arms-length process between highly capable, experienced and informed parties and counsel. The final settlement represents the parties' and counsels' best professional effort and judgment about a fair, reasonable and adequate settlement after thoroughly investigating and litigating the case for years, taking into account the risks, strengths and weaknesses of their respective positions on the substantive issues of the case, the risks and costs of continued litigation, and the best interests of their clients.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 10<sup>th</sup> day of September, 2018 at Boston, Massachusetts.

  
Eric D. Green