

EXHIBIT 5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE PAYMENT CARD
INTERCHANGE FEE AND
MERCHANT DISCOUNT
ANTITRUST LITIGATION

MDL No. 1720
Case No. I :05-md-1720-JG-JO

[REDACTED]

DECLARATION OF MALCOLM MCDONALD OF CHS INC.

I, Malcolm McDonald, being of full age, do hereby declare and say:

1. I am Vice President and Deputy General Counsel at Class Plaintiff CHS Inc. ("CHS"). From May 1, 2001 through the present, I have served as in-house counsel for CHS. This Declaration supplements, and does not supersede or otherwise replace, the Declaration of Malcolm McDonald previously filed in this matter. I submit this declaration in support of Class Plaintiffs' petition for service awards in connection with the above-captioned action.

2. CHS is a leading global agribusiness owned by thousands of individual producers, including farmers and ranchers, and hundreds of local cooperatives across the United States. Diversified in energy, grains and foods, CHS is committed to helping its customers, farmer-owners and other stakeholders grow their businesses through its domestic and global operations.

3. Many of CHS's member cooperatives own and operate fuel retailers/convenience stores whose card processing services are provided by their fuel supplier. Thus, those CHS member cooperatives are in the same situation vis-à-vis card payments as are the "Branded Operators."

4. CHS was one of the original named class representatives in *Photos Etc. v. Visa U.S.A., Inc. et al.*, the first of the cases challenging the fixing of interchange fees to be consolidated into MDL 1720, which was filed on June 22, 2005 in the United States District Court for the District of Connecticut.

5. CHS actively participated in this action as a class representative from the beginning through the pendency of the appeal in the Second Circuit, the remand back to the District Court and every step since, including participating in extensive discovery efforts.

6. I frequently discussed the status of the litigation and CHS's discovery efforts with K. Craig Wildfang, Ryan Marth, and other attorneys and staff from Robins Kaplan.

7. Following the remand from the Second Circuit, Defendants served supplemental discovery requests on all the class plaintiffs. On October 20, 2017, the Defendants served their Second Set of Interrogatories on each of the named plaintiffs. Thirty-five interrogatories, several of which were multi-part, called for detailed review and analysis by CHS. The interrogatories called for years' worth of information regarding every aspect of CHS's acceptance of payment cards and its other payments-related business activities. The interrogatories requested details of every program considered to enhance customer loyalty, all fees incurred, all plans or considerations regarding surcharges, discounts, the total costs incurred related to every type and brand of payment accepted and other similarly detailed requests. CHS undertook significant efforts to provide detailed answers to these interrogatories. On December 4, 2017, CHS provided its responses.

8. On September 11, 2017, the Defendants served their Second Set of Requests for Production and Inspection of Documents to Each of the Putative Rule 23(b)(3) Class Plaintiffs. This set included 110 individual requests, each of which sought information going back to at least 2006, while a significant portion of the requests sought information extending back to 2000. Responding to these requests was very challenging. It took CHS significant time and effort to respond to these requests.

9. Wynne Turner (a paralegal in the CHS Legal Department) and Mark Jundt (an attorney, formerly in the CHS Legal Department) worked with attorneys at Robins Kaplan to identify custodians and documents that were likely to be responsive to Defendants' document requests and interrogatories.

10. CHS spent considerable time and effort gathering materials responsive to the Defendants' document requests. CHS searched through its electronic files and email systems using key words and also conducted a review of hard copy documents, which resulted in a large production of additional documents. In this second round of discovery, CHS produced 45,813 documents.

11. Taking just the value of CHS employees' time, I estimate that CHS expended ██████ in employee time serving as a class representative in addition to the employee time that is summarized in my previously-filed Declarations this matter.

12. For document production, Wynne Turner, the main paralegal assigned to this matter, spent approximately ██████ collecting, reviewing and producing documents, and responding to attorney inquiries. The value of her time is ██████ based on her salary during the discovery period for a total amount of ██████ of her time.


13. Mark Jundt, the main attorney assigned to this matter, spent approximately ██████ collecting, reviewing and producing documents, and responding to attorney inquiries. The value of his time was ██████ based on his salary during the discovery period for a total amount of ██████ of his time.

14. For my own time, I estimate that I spent approximately [REDACTED] on tasks relating to discovery in this case. The value of my time is [REDACTED] based on my salary during the discovery period for a total amount of [REDACTED] of my time.

15. CHS is not seeking reimbursement for its out-of-pocket expenses.

I swear under penalty of perjury that the foregoing is true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 3 day of June, 2019, at Inver Grover Heights, Minnesota.


Malcolm McDonald