

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. 1:05-md-1720-JG-JO

This document refers to: All Actions

DECLARATION OF MALCOLM MCDONALD

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

1. My name is Malcolm McDonald. I am Principal Legal Counsel at Class Plaintiff CHS Inc. ("CHS"). From May 1, 2001 through the present, I have served as in-house counsel for CHS.

2. CHS—a Fortune 100 company—is a leading global agribusiness owned by farmers, ranchers and 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. 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 Court for the District of Connecticut.

4. Among other things, CHS has a significant presence in the retail segment. It owns nearly six-dozen service centers in fifteen states, which serve more than 50,000 producer-owners by providing them with the products and services that farmers and ranchers rely upon. In addition, it provides business services to thousands of independent retailers, mostly in the fuel-

retail and convenience-store segments. These services include financing, sales training, and providing payment-card processing for these retailers.

5. CHS began processing payment-card transactions over 40 years ago. It pioneered the automated fuel pump and developed the first credit card that could be used to pay at the pump. Currently, CHS offers a wide range of payment-card-related services to company stores and independent retailers. For example, CHS offers a service called Express Pay, which expedites payment-card deposits to merchants and provides improved detail reporting. CHS also offers services that allow merchant-users to view details of the payment-card transactions that it accepts.

6. Pertinent to this case, CHS processes payment-card transactions for its company-owned stores and the independent retailers it serves. CHS's processing activities result in approximately 73 million payment-card transactions annually. Because of the volume of transactions that CHS processes and its long experience in the payment-card market, it has a deep understanding of the payment-card-related difficulties that face merchants.

7. CHS is familiar with the terms of the settlement in MDL 1720 and believes that it provides a fair and reasonable resolution of this litigation, in light of the risks of continued litigation. In addition to providing significant financial compensation for merchants, the settlement provides merchants with useful tools to place a competitive check on interchange fees in the future.

8. CHS understands that the right to surcharge provided for in the settlement has never been granted to U.S. merchants before now but has helped to push down interchange fees and merchant-discount fees in countries where it has been allowed. CHS believes that the right for merchants to provide differential discounts to consumers based on the brand or form of

payment used will also assist merchants, especially in states where the right to surcharge is restricted by law.

9. CHS understands that, for the first time ever, the settlement allows groups of merchants to collectively negotiate with Visa, MasterCard, and their member banks over interchange fees and other terms of acceptance. This provision may have significant value for CHS, which currently processes payment-card transactions for thousands of merchants, most of whom are in the fuel-retailing and convenience-store segments. Gaining the ability to negotiate on behalf of these merchants and potentially others could help CHS expand its processing business by offering reduced interchange fees as part of its value proposition to small and mid-size merchants.

10. In 2005, CHS made the decision to participate in this litigation as a class representative. CHS made that decision because, after working closely with the lawyers and businesspeople involved in CHS's retail and payment-card operations, CHS understood the impact that payment-card interchange fees had on the bottom lines of CHS's company-operated stores and the stores that obtained payment-card processing through CHS. CHS also felt that the previous merchant settlement in *In re Visa Check/MasterMoney Antitrust Litigation* did not provide merchants with sufficient tools to combat the anticompetitive practices of Visa, MasterCard, and their member banks.

11. CHS actively participated in this action as a class representative. I frequently discussed the status of the litigation and settlement discussions with lead counsel, K. Craig Wildfang, and provided CHS's opinions on the terms of the settlement as they were materializing.

12. Because of the complexity and size of CHS's organization, we undertook significant efforts to respond to Defendants' discovery requests. Before discovery began, paralegal Karen Hansen and attorneys in the CHS Legal Department worked with attorneys at Robins, Kaplan, Miller & Ciresi L.L.P. ("RKM&C") to identify custodians and documents that were likely to be responsive to Defendants' document requests and interrogatories. When we received Defendants' discovery requests, Karen Hanson and I worked with RKM&C attorneys and paralegals to produce responsive documents in the proper format. CHS's document collection was especially challenging because CHS has a broad geographical footprint and therefore had custodians with responsive documents in hundreds of different offices. In addition, Defendants requested—and CHS produced—relevant data for the stores for which CHS processes payment-card transactions.

13. During the course of this litigation, CHS produced over 98,000 documents, totaling nearly half a million pages.


14. CHS employees also expended significant time and effort in connection with deposition discovery. CHS produced 13 witnesses for depositions—more than any other Class or Individual Plaintiff. Each of these depositions required the deponent to provide a day's worth of testimony and generally also to prepare for a full day.

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.

Date: _____

4/8/13



Malcolm McDonald