

# EXHIBIT 3

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

_____	X	
In re PAYMENT CARD INTERCHANGE	:	MDL No. 1720(JG)(JO)
FEE AND MERCHANT DISCOUNT	:	
ANTITRUST LITIGATION	:	Civil No. 05-5075(JG)(JO)
_____	:	
This Document Relates To:	:	DECLARATION OF BONNY E. SWEENEY
	:	IN SUPPORT OF CLASS PLAINTIFFS’
ALL ACTIONS.	:	JOINT MOTION FOR AWARD OF
	:	ATTORNEYS’ FEES, EXPENSES AND
_____	:	CLASS PLAINTIFFS’ AWARDS
	X	
	Judge:	The Honorable John Gleeson
	Date:	September 12, 2013
	Time:	10:00 a.m.
	Courtroom:	6C

I, Bonny E. Sweeney, hereby declare as follows:

1. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP (“Robbins Geller”), one of the three law firms appointed by the Court as interim co-lead counsel in MDL No. 1720 (Dkt. No. 278, Memorandum and Order) and as Class Counsel to represent the settlement classes in November 2012 (Dkt. No. 1745, Class Settlement Preliminary Approval Order). I submit this Declaration in Support of Class Plaintiffs’ Joint Motion for Award of Attorneys’ Fees, Expenses and Class Plaintiffs’ Awards (“Joint Motion”).

2. Over the past eight years, Robbins Geller’s lawyers, paralegals and other professional staff have devoted more than 80,000 hours to this case. Attached as Exhibits A and B are charts showing the number of hours billed by each of the Robbins Geller’s professionals, at historical rates (*i.e.*, the rate applicable at the time the task was performed) and current rates, respectively. As Robbins Geller’s senior antitrust lawyer and the person in charge of this case on a day-to-day basis since its filing, I have the most hours billed to the case. Other senior-level lawyers who have worked extensively on the case are Patrick J. Coughlin, former named partner (now *Of Counsel*), who was the lead lawyer in *In re Enron Corp. Sec. Derivative & “ERISA” Litig.*, No. H-01-3624 (S.D. Tex), which settled for approximately \$7.3 billion (the then-largest-ever class action settlement); Alexandra S. Bernay, who was also part of the *Enron* litigation team from that case’s inception, a partner who took many depositions, wrote many of the briefs, and supervised the Robbins Geller lawyers who reviewed documents; David W. Mitchell, who took many of the depositions and shared responsibility for experts regarding MasterCard and discovery of MasterCard; and former partner Christopher M. Burke, who helped develop the case and shared responsibility for MasterCard. A senior associate, Carmen A. Medici, worked on the case almost from its inception and, in addition to reviewing documents, taking depositions, researching legal issues, and writing briefs, was one of the

lawyers charged with the responsibility for supervising the document review and Casemap work conducted by the many Class Supporting Counsel that assisted in the discovery effort. The bulk of document review and Casemap work by Robbins Geller lawyers was conducted by more junior associates and by project attorneys, who bill their time at a lower hourly rate. The case was also supported by Robbins Geller's non-lawyer professionals, who are essential to a discovery and motion practice intensive case like this one but bill at lower hourly rates, including paralegals, document clerks, information technology specialists, and litigation support staff. *Id.*

3. As explained in the Declaration of Thomas J. Undlin in Support of Class Plaintiffs' Joint Motion for Award of Attorneys' Fees, Expenses and Class Plaintiffs' Awards, Class Counsel, together with the Co-Chairs of the executive committee, developed a set of criteria for evaluating the appropriateness of every time and expense entry before submission to the Court. In order to ensure the accuracy of Robbins Geller's time and expense application and to ensure that it satisfied the criteria established by the leadership group, Robbins Geller conducted a detailed review of Robbins Geller's time and expense records for this matter. I personally reviewed every entry for time billed to the case from inception through the end of November 2012. In addition, my partner, Ms. Bernay, reviewed the time entries for the document reviewers who worked directly under her supervision, in addition to the time entries recorded by paralegals, document clerks, information technology specialists, and litigation support staff. With assistance from our accounting staff, Ms. Bernay and I also reviewed all of the expenses, including the detailed back-up, recorded to the case. Upon completion of our review, the results (reductions to both time and expenses) were then submitted to Mr. Undlin, who included that information in his declaration and supporting exhibits.

4. We reviewed every time entry to ensure that the amount of time spent on the work was reasonable, that the rate billed for the work was reasonable given both the nature of the work being performed and the seniority level of the attorney or other professional doing the work, that the amount of detail provided in support of the time entry was sufficient, and that the work being done was in furtherance of the classes' interests. We eliminated or reduced time entries that did not comply with these criteria. In addition, we eliminated time entries that should have been billed to another matter, time entries related to our application for fees and expenses, and time spent reviewing time and expenses detail submitted by other firms. We removed all entries by timekeepers with fewer than 10 hours total; removed all time entries by summer associates, summer interns and summer document clerks; eliminated all time entries for travel where there was no record of substantive work being performed during the travel, and reduced other entries that included travel as well as substantive work but where it seemed likely (from the number of hours, for example) that some time was not devoted to working on the case. We reduced all but a handful of time entries in excess of 15 hours in a single day (for any level of timekeeper) and scrutinized closely any time entry between 9 and 15 hours for appropriateness. For time devoted solely to document review, we reduced any entry in excess of 10 hours in a single day.

5. The initial detailed billing report of Robbins Geller for time spent prosecuting this case and the resulting lodestar, from inception through November 30, 2012, and before any adjustments based on the reviews described above, shows a total of 84,417.25 hours and a total lodestar in the amount of \$32,399,916.75, based on historical rates, and a total lodestar of \$37,199,354.50 based on current rates. After making the adjustments based on the detailed review described in ¶4 above, the total number of hours decreased to 80,370.50. This represents a reduction of 4,046.74 hours, or approximately 4.79% of the initial total. As a result, the total Robbins Geller

lodestar, at historical rates, was reduced from \$32,399,916.75 to \$31,021,205.50. Ex. A. This represents a lodestar reduction of \$1,378,711.25, or approximately 4.26% of the initial lodestar total. Using current rates, the lodestar was reduced from \$37,199,354.50 to \$35,749,514.50, for a total reduction of \$1,499,840.00, or 3.90%. Ex. B.

6. Attached as Exhibits A and B are summaries of the total number of hours worked by each billing timekeeper and resulting lodestar, after the review and reductions described above, at both the Robbins Geller historical rates and at current rates. As shown in Exhibit B, if current rates were applied to the time worked (after adjustment) the total lodestar for Robbins Geller would be \$35,749,514.50. The total also does not include any time that has been undertaken by me or other Robbins Geller personnel to prepare the Joint Motion to collect, review and analyze any of the other law firms' billing reports submitted in support of the Joint Motion.

7. Together with Ms. Bernay, and with the assistance of our accounting staff, we also conducted a detailed review of every expense item billed to the case from inception through the end of November 2012. In accordance with the criteria established by Class Counsel, we reduced any first class travel to a coach fare equivalent, where known, and by 30% where the coach fare equivalent was not available. We reduced any meal expense for a single person to \$75.00 (our firm policy has a \$75.00 per person limit for dinner with lower limits for lunch and breakfast). After reducing any over-\$75.00 meal expense to \$75.00, we also removed any alcohol expense where it could readily be identified. Where not easily identifiable but it is believed that alcohol was consumed, the meal expense was reduced by an appropriate amount. We eliminated miscellaneous personal expenses such as mini bar, laundry service, fitness center charges and the like.

8. Attached as Exhibit C to this declaration is a detailed breakdown, by category, of the costs and expenses paid by Robbins Geller for this case from inception through November 30, 2012, totaling \$6,052,723.47. These out-of-pocket costs include expenditures for contributions to the common litigation fund as assessed by Class Counsel, direct payments to experts and consultants beyond the common fund, and direct disbursements for travel, computer assisted research, photocopies and the like. We also incurred out-of-pocket expenses for retaining contract attorneys during a brief but intensive review period in 2008, when Robbins Geller assisted in the review of the Payless production for privilege. (the time spent by these contract attorneys was not included in our time billing records and is not part of our lodestar). This expense total has been reduced from the sum of \$6,565,234.69, initially reported in November 2012, after adjustments based on our detailed review and application of objective criteria described above. The total amount of the reduction is \$512,511.22, or 7.81% of the initial total.

9. Robbins Geller specializes in complex class action litigation. With more than 180 attorneys in nine offices nationwide, Robbins Geller is probably the largest such law firm in the United States. The firm's attorneys have a long history of prosecuting large and complex class actions against some of the nation's largest and most prominent businesses. The firm has served in leadership positions in numerous significant federal antitrust and other class actions, and has achieved some of the largest recoveries on behalf of plaintiff classes. For example, together with co-lead counsel Berger & Montague, P.C. ("B&M"), Robbins Geller lawyers represented a class of consumers who alleged that the collective setting of foreign currency transaction fees violated federal antitrust laws in *In re Currency Conversion Fee Antitrust Litig.*, MDL No. 1409 (S.D.N.Y.). That case, brought against Visa, MasterCard and many of the banks that are Defendants in this action, settled for \$336 million. The firm was co-lead counsel in *In re NASDAQ Market-Makers*

*Antitrust Litig.*, MDL No. 1023 (S.D.N.Y.), which settled for \$1.027 billion; lead counsel in *Enron*, which settled for approximately \$7.3 billion; and lead counsel for a class of investors in *Jaffe v. Household Int'l Inc.*, No. 02-C-05893 (N.D. Ill.) which was tried to a jury verdict, resulting in excess of \$1 billion in claims; and more. See [www.rgrdlaw.com/firm-cases.html](http://www.rgrdlaw.com/firm-cases.html). Robbins Geller has brought its extensive expertise litigating large class actions, together with its resources, to bear in this litigation.

10. Robbins Geller has extensive experience litigating class actions against banks and credit card networks, including the *Enron* case and the *Currency Conversion Fee* litigation described above, in which our firm was co-lead counsel with B&M. In that case, as in this one, plaintiffs alleged that the joint venture structure of the Visa and MasterCard networks violated §1 of the Sherman Act.

11. Beginning in the spring of 2005, Robbins Geller lawyers began meeting with merchants, economists and other lawyers in an investigation of the acceptance rules imposed upon merchants that accept Visa and MasterCard payment cards. After extensive discussions, Dennis Stewart (Hulett Harper Stewart LLP), Joseph Goldberg (Freedman Boyd Daniels Hollander & Goldberg P.A.), and Robbins Geller filed a class action complaint on behalf of NuCity Publications, Inc. *NuCity Publications, Inc. v. Visa U.S.A., Inc.*, No. 05-CV-5991 (S.D.N.Y.). Robbins Geller subsequently filed class action complaints on behalf of two additional businesses that accepted Visa and MasterCard payment cards, Leeber Cohen, M.D. and LDC, Inc. *Leeber Cohen M.D. v. Visa U.S.A., Inc.*, No. 05-CV-7317 (S.D.N.Y.); *LDC, Inc. v. Visa U.S.A., Inc.*, No. 05-CV-7316 (S.D.N.Y.).

12. Before the cases were consolidated and transferred, Robbins Geller, Dennis Stewart and Joseph Goldberg began working together with Robins, Kaplan, Miller & Ciresi L.L.P.



(“RKMC”) and B&M. After the transfer was complete, RKMC, Robbins Geller and B&M moved for appointment as interim co-lead counsel. After that motion was granted, Joseph Goldberg and Dennis Stewart were appointed as Co-Chairs of the executive committee and became part of the leadership group for the class action cases. On November 28, 2012, upon preliminary approval of the settlement, the Court appointed RKMC, B&M and Robbins Geller “to serve as Class Counsel.” (Dkt. No. 1745.)

13. As one of the three interim co-lead counsel and then Class Counsel, Robbins Geller participated in every aspect of this litigation. Robbins Geller was involved in all of the strategy decisions, decisions regarding assignments, briefing and arguing of the many motions, discovery, trial preparation, and settlement and mediation negotiations. Class Counsel and the leadership group have been in constant communication throughout the eight years of this case, and have worked as a group to endeavor to create the most complete record, make the best arguments, and advocate for Class Plaintiffs and the plaintiff classes in the most effective way, with an eye toward efficiency and avoiding duplication of effort.

14. While the leadership group worked closely together, particular firms assumed primary responsibility for certain projects. Robbins Geller, for example, was principally responsible for discovery and expert reports relating to MasterCard and Citigroup, certain topics for purposes of briefing and argument (such as *Illinois Brick*), assigning, supervising and quality-checking document review and Casemap work, trial preparation, and documentation of the Class Settlement Agreement. Since the First Consolidated Amended Class Action Complaint was filed (Dkt. No. 317), Robbins Geller has also been the principal liaison with Class Plaintiffs that are not clients of RKMC, and has worked closely with those plaintiffs on discovery matters and has kept them apprised of the status of the litigation and settlement negotiations throughout the litigation. Since the settlement, Robbins

Geller has been the key firm handling all aspects of the notice program and has worked as the primary liaison with the Class Administrator for all purposes.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 11th day of April, 2013, at Washington, D.C.

s/ Bonny E. Sweeney  
BONNY E. SWEENEY

# EXHIBIT A

**VISA INTERCHANGE**

**Robbins Geller Rudman & Dowd LLP**

**Historical** Time Report from Inception through November 30, 2012

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Bernay, Alexandra	(P)	5,194.40	460-610	2,729,107.75
Burke, Christopher	(P)	2,559.75	390-575	1,273,408.75
Daley, Joseph	(P)	91.75	625-650	59,587.50
Dowd, Michael	(P)	11.50	700-830	9,008.75
George, David	(P)	16.00	450-475	7,443.75
Green, Kevin K.	(P)	31.00	585-660	20,292.50
Howes, G. Paul	(P)	698.75	650	454,187.50
Hurst, Leslie E.	(P)	56.75	350-375	20,575.00
Light, Jeffrey D.	(P)	11.00	640-715	7,715.00
Mitchell, David W.	(P)	2,415.75	315-605	1,331,052.50
Park, Keith F.	(P)	49.50	775-805	39,420.00
Rothman, Robert	(P)	26.75	390-425	11,237.50
Sweeney, Bonny E.	(P)	7,187.75	500-745	4,790,055.00
Anderson, Kristen	(A)	1,907.75	280-330	570,607.50
Burroughs, Amelia F.	(A)	420.75	315-420	137,051.25
Calkins, Mary Lynne	(A)	596.50	345-530	233,955.00
Conn, Susannah	(A)	290.00	325	94,250.00
Haeggquist, Alreen	(A)	110.50	315-420	40,477.50
Malcolm, Kate	(A)	5,080.35	280-380	1,696,760.25
Medici, Carmen	(A)	7,076.00	280-415	2,405,431.25
Miller, Coty	(A)	178.00	380-410	68,037.50
O'Reardon, Thomas	(A)	57.50	245-280	14,393.75
Smith, Samantha	(A)	167.00	295-385	60,065.00
Wilhelm, Thomas	(A)	241.50	245-270	63,473.75
Baker, D. Cameron	(OC)	770.00	485-535	384,631.25
Bowman, Elisabeth A.	(OC)	13.00	475-500	6,237.50
Coughlin, Patrick J.	(OC)	1,156.25	725-855	961,721.25
Mikolajczyk, Eugene	(OC)	1,255.75	575-625	758,400.00
Cho, Grace	(PA)	5,494.50	280-380	1,771,678.75
Dighe, Natasha	(PA)	2,866.75	260-320	818,862.50
Gerber, Jonathan	(PA)	631.00	260-285	173,460.00
Halpern, Susan	(PA)	821.75	350	287,612.50
Hardaway, Jerrilyn	(PA)	1,023.75	425-475	436,893.75
Hines, Nicole	(PA)	2,100.50	305-350	645,700.00

Hurst, Lamonika	(PA)	615.25	295	181,498.75
Ibironke, Caroline	(PA)	602.25	275	165,618.75
Johnson, Eric	(PA)	300.50	350	105,175.00
Ledyard, Nathan	(PA)	4,956.00	305-355	1,591,928.75
Lewis, M. Colby	(PA)	403.50	275	110,962.50
Mannan, Jennifer	(PA)	2,677.25	260-335	763,747.50
Merkel, Joshua	(PA)	725.75	280-305	214,547.50
Merrill, Christopher	(PA)	265.75	285	75,738.75
Miller, Shawn	(PA)	2,051.25	280-315	616,866.25
Morsek, Leslie	(PA)	248.75	300-330	76,080.00
O'Donoghue, Nicola	(PA)	1,083.00	325-350	361,131.25
Serra, Vincent M.	(PA)	1,220.75	245-360	348,737.50
Summers, Christopher	(PA)	2,608.50	280-325	803,988.75
Summers, Jennifer	(PA)	2,928.50	280-325	907,010.00
Winkler, Josef	(PA)	2,778.25	260-300	793,281.25
Harris, Desiree L.	(IT)	43.00	215-295	10,925.00
Brandon, Kelley	(I)	35.00	310-420	13,970.00
Goodwin, Danielle	(LS)	416.00	220-250	94,135.00
Milliron, Christine	(LS)	148.25	225-275	37,375.00
Wells, Adam	(LS)	83.50	265-285	22,617.50
Paralegals		2,431.50	190-295	651,855.00
Class Member Relations		16.50	60	990.00
Document Clerks		3,121.75	115 -150	690,233.75
<b>TOTAL</b>		<b>80,370.50</b>		<b>\$ 31,021,205.50</b>

- (P) Partner
- (A) Associate
- (OC) Of Counsel
- (PA) Project Attorney
- (IT) Information Technology
- (I) Investigator
- (LS) Litigation Support

# EXHIBIT B

**VISA INTERCHANGE**

**Robbins Geller Rudman & Dowd LLP**

**Current** Time Report from Inception through November 30, 2012

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Bernay, Alexandra	(P)	5,194.40	635	3,298,444.00
Burke, Christopher	(P)	2,559.75	575	1,471,856.25
Daley, Joseph	(P)	91.75	675	61,931.25
Dowd, Michael	(P)	11.50	865	9,947.50
George, David	(P)	16.00	745	11,920.00
Green, Kevin K.	(P)	31.00	685	21,235.00
Howes, G. Paul	(P)	698.75	720	503,100.00
Hurst, Leslie E.	(P)	56.75	585	33,198.75
Light, Jeffrey D.	(P)	11.00	745	8,195.00
Mitchell, David W.	(P)	2,415.75	655	1,582,316.25
Park, Keith F.	(P)	49.50	840	41,580.00
Rothman, Robert	(P)	26.75	715	19,126.25
Sweeney, Bonny E.	(P)	7,187.75	775	5,570,506.25
Anderson, Kristen	(A)	1,907.75	330	629,557.50
Burroughs, Amelia F.	(A)	420.75	420	176,715.00
Calkins, Mary Lynne	(A)	596.50	550	328,075.00
Conn, Susannah	(A)	290.00	600	174,000.00
Haeggquist, Alreen	(A)	110.50	420	46,410.00
Malcolm, Kate	(A)	5,080.35	380	1,930,533.00
Medici, Carmen	(A)	7,076.00	430	3,042,680.00
Miller, Coty	(A)	178.00	410	72,980.00
O'Reardon, Thomas	(A)	57.50	345	19,837.50
Smith, Samantha	(A)	167.00	445	74,315.00
Wilhelm, Thomas	(A)	241.50	360	86,940.00
Baker, D. Cameron	(OC)	770.00	535	411,950.00
Bowman, Elisabeth A.	(OC)	13.00	570	7,410.00
Coughlin, Patrick J.	(OC)	1,156.25	880	1,017,500.00
Mikolajczyk, Eugene	(OC)	1,255.75	695	872,746.25
Cho, Grace	(PA)	5,494.50	390	2,142,855.00
Dighe, Natasha	(PA)	2,866.75	320	917,360.00
Gerber, Jonathan	(PA)	631.00	285	179,835.00
Halpern, Susan	(PA)	821.75	350	287,612.50
Hardaway, Jerrilyn	(PA)	1,023.75	475	486,281.25
Hines, Nicole	(PA)	2,100.50	350	735,175.00

Hurst, Lamonika	(PA)	615.25	295	181,498.75
Ibironke, Caroline	(PA)	602.25	275	165,618.75
Johnson, Eric	(PA)	300.50	350	105,175.00
Ledyard, Nathan	(PA)	4,956.00	385	1,908,060.00
Lewis, M. Colby	(PA)	403.50	300	121,050.00
Mannan, Jennifer	(PA)	2,677.25	335	896,878.75
Merkel, Joshua	(PA)	725.75	305	221,353.75
Merrill, Christopher	(PA)	265.75	285	75,738.75
Miller, Shawn	(PA)	2,051.25	315	646,143.75
Morsek, Leslie	(PA)	248.75	330	82,087.50
O'Donoghue, Nicola	(PA)	1,083.00	350	379,050.00
Serra, Vincent M.	(PA)	1,220.75	390	476,092.50
Summers, Christopher	(PA)	2,608.50	345	899,932.50
Summers, Jennifer	(PA)	2,928.50	390	1,142,115.00
Winkler, Josef	(PA)	2,778.25	300	833,475.00
Harris, Desiree L.	(IT)	43.00	295	12,685.00
Brandon, Kelley	(I)	35.00	230	8,050.00
Goodwin, Danielle	(LS)	416.00	270	112,320.00
Milliron, Christine	(LS)	148.25	335	49,663.75
Wells, Adam	(LS)	83.50	305	25,467.50
Paralegals		2,431.50	295	717,292.50
Class Member Relations		16.50	60	990.00
Document Clerks		3,121.75	115 -150	414,651.25
<b>TOTAL</b>		<b>80,370.50</b>		<b>\$ 35,749,514.50</b>

- (P) Partner
- (A) Associate
- (OC) Of Counsel
- (PA) Project Attorney
- (IT) Information Technology
- (I) Investigator
- (LS) Litigation Support



# EXHIBIT C

**VISA INTERCHANGE**

**Robbins Geller Rudman & Dowd LLP**

Expense Report from Inception through November 30, 2012

<i>Expense Category</i>		<i>Total</i>
Meals, Hotel & Transportation		890,065.12
Photocopies		299,392.07
<i>Outside:</i>	70,832.82	
<i>In-House: (899,540 copies at \$0.25 per page)</i>	224,885.00	
<i>In-House Imaging / Scanning / Printing:</i>	3,674.25	
Postage		1,306.43
Telephone, Facsimile		19,288.00
Messenger, Overnight Delivery		41,369.66
Filing, Witness & Other Fees		10,924.43
Court Reporters		1,947.59
Lexis, Westlaw, Online Library Research		165,333.33
Experts/Consultants/Investigators		1,823,883.42
<i>Alan J. Frankel dba Coherent Economics LLC</i>	982,321.34	
<i>Charles W. Wolfram</i>	17,125.00	
<i>Compass Lexecon LLC</i>	383,787.88	
<i>Federal Arbitration, Inc.</i>	50,000.00	
<i>Johathan Macey</i>	48,825.00	
<i>Litinomics Inc.</i>	31,852.50	
<i>N &amp; A Consulting LLC</i>	32,486.58	
<i>Transcend</i>	6,288.75	
<i>Tsongas Litigation Consulting, Inc.</i>	13,000.00	
<i>UHY Mann Advisors FLVS Inc.</i>	258,196.37	
Assessments		2,740,000.00
Outside Non-Legal Support Staff		52,376.75
Offsite Client Document Storage		6,392.06
Publications/Subscriptions		93.31
Miscellaneous (Phonoscope Ltd., Houston Cable)		351.30
<b>TOTAL:</b>		<b>\$6,052,723.47</b>