UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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

I, The Honorable Edward A. Infante (Ret.), hereby declare as follows:

1. I am the former Chief Magistrate Judge of the United States District Court, Northern District of California. I currently serve as a mediator with JAMS, the nation's largest private provider of alternative dispute resolution services. As a U.S. Magistrate Judge and then as a mediator at JAMS, I have more than 40 years of dispute resolution experience, having conducted more than 3,000 settlement conferences in all types of litigation, including antitrust, consumer, securities fraud and shareholder class actions.

2. The parties originally approached me in early 2008 to mediate settlement negotiations in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, No. 1:05-MD-1720-(JG) (JO) (E.D.N.Y.) ("MDL 1720"), and I agreed.

3. I worked with the parties to mediate this suit during two different time periods. First from 2008-2012 and then again from April 2017 to the present.

4. From 2008 through 2012, I participated in numerous mediation sessions with the parties, including several all-day and multi-day mediation sessions in San Francisco, New York, and Boston. I also participated in numerous meetings with individual parties or their representatives, and numerous conference calls.

5. In mid-2009, Eric D. Green, Professor of Law at Boston University School of Law and principal of Resolutions, LLC, became involved in the mediation with Class Plaintiffs. I understand that, prior to that date, Professor Green was involved in mediation discussions among the defendants and the individual, or "direct action," plaintiffs in MDL 1720.

6. Between May 2008 and December 2011, I participated in mediation discussions among the parties. I attended several in-person meetings in San Francisco and New York, and engaged in dozens of telephonic communications with the parties and with Professor Green. The

parties continued to provide extensive written materials, updating me on the status of the litigation, providing briefing and expert reports, and exchanging detailed offers and demands. As a result, I was thoroughly familiar with the parties' contentions and the procedural history of this litigation.

7. In early December 2011, following oral argument on the parties' cross motions for summary judgment, and the parties' cross motions to exclude expert testimony, the Court conducted a multi-day settlement conference at the federal courthouse in Brooklyn, New York. I participated in that settlement conference, along with Professor Green, Judge Gleeson, Magistrate Judge Orenstein, and counsel for all of the parties. Most parties, including most of the proposed class representatives, participated through inside counsel or principals in addition to outside counsel.

8. Following numerous additional conference calls among the parties, Professor Green and I made a "mediators' proposal" to defendants and Class Plaintiffs on December 22, 2011. On February 10, 2012, the parties held a settlement conference with Judges Gleeson and Orenstein. With the consent of the parties, Professor Green, myself and the Judges met together and separately with representatives from defendants, class and individual plaintiffs. By February 21, 2012, all of the parties, including all the proposed class representatives in the Second Consolidated Amended Class Action Complaint, had agreed "to negotiate towards a final settlement . . . through the process laid out by the mediators and the Court in this matter."

9. Between February and July 2012, I participated in several in-person and telephonic mediation sessions with the parties to mediate the negotiations over a settlement agreement based on the terms set forth in the mediators' proposals. There was also a settlement conference with the Court in June 2012. Because of a pre-existing scheduling conflict, I did not attend that conference, but was apprised of the discussions and results by Professor Green. At the conclusion of the

conference, the parties announced to the Court that they had reached agreement on the principal terms of a settlement agreement.

10. In mid-July 2012, the parties reached a documented agreement. The terms of the final settlement agreement were consistent with the terms of the mediators' proposals.

11. On December 13, 2013, the District Court granted final approval of the settlement. Following appeals, on June 30, 2016, the Second Circuit reversed and remanded the case.

12. In late February 2017, Professor Green and I were contacted by the parties in the (b)(3) class action to restart mediation for the damage claims only. Class counsel in the (b)(3) class action were not involved in any way in the (b)(2) class action.

13. The parties engaged in numerous and lengthy mediation sessions both in person and in telephone conferences from February 2017 until June 2018. Listed below are the mediation sessions the parties engaged in from February 2017 until June 2018. Not specifically detailed are numerous calls and emails Professor Green and I had with the parties.

14. In April 2017 Professor Green and I took part in several calls with the parties to discuss various aspects regarding restarting mediation.

15. On May 1, 2017, the mediators met with the parties in an all-day meeting in San Francisco.

16. On June 16, 2017, the parties took part in a telephone conference.

17. On June 26, 2017, the parties met at a day-long mediation in New York.

18. On August 18, 2017, the parties took part in a day-long mediation in New York.

19. On September 28, 2017, the parties met for another day-long session in Chicago.

20. On November 10, 2017, the parties took part in a mediation in New York.

21. On December 6, 2017, a mediation took place in New York.

22. On February 16, 2018, the parties had a day-long mediation session in Washington, D.C.

23. On March 16, 2018, the parties met in Denver for a lengthy session.

24. On April 6, 2018, the parties met in New York for another mediation session.

25. On May 9, 2018, the parties had another day-long mediation in San Francisco.

26. 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. On June 5, 2018 the mediators received unanimous consent to move forward on the proposal.

27. On June 7, 2018, the parties met in New York to continue work on outstanding issues and to reach agreement on certain matters related to the mediators' proposal.

28. This is a very complex antitrust case, with many novel and challenging legal issues. In every instance the parties' written and oral submissions were extensive and vigorously disputed by the other side. All parties faced significant risks. Plaintiffs faced significant risks that they would not prevail on class, liability or damages. Defendants faced significant risks of a plaintiffs' verdict which could result in ruinous liability.

29. The Second Circuit's reversal of the prior settlement made many of the issues even more challenging, particularly in terms of the negotiated release language as well as changes in the legal landscape since the first settlement.

30. Throughout the second mediation, it was always the position of the (b)(3) class counsel that these negotiations, any settlement, and preliminary or final approval of a (b)(3) settlement had to be independent of and not contingent in any way upon the resolution, by settlement or otherwise, of the (b)(2) class claims or the approval thereof. This term was incorporated into the

Mediators' Proposal and was accepted by all plaintiffs and defendants. Moreover, at no time were counsel for the (b)(2) class action involved in any mediations with the (b)(3) class action.

31. The lawyers on both sides are highly experienced antitrust and class action lawyers who had the benefit of a complete record, including the record on appeal, when they made the decision to settle. At all times these lawyers zealously represented the interests of their clients. There was no collusion among the parties. The settlement negotiations were extended, extraordinarily complicated, and contentious. On several occasions the discussions were on the verge of collapsing. It is my opinion that the settlement negotiations were fair, adversarial, and always conducted at arms-length.

32. In light of the risks, the necessary delay and expense required to litigate the case through trial and appeals, and the advanced stage of the litigation, including the fact that the earlier settlement was reversed on appeal, the lawyers who represent the parties were able to adequately evaluate the risks and benefits of going forward versus the risks and benefits of settling. In my opinion the terms of the settlement are fair, reasonable and adequate to the settling class members.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 27 day of June, 2018, at San Francisco, California.

Edward A. Infante

Honorable Edward A. Infante (Ret.)