

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

IN RE PAYMENT CARD INTERCHANGE
FEE AND MERCHANT DISCOUNT
ANTITRUST LITIGATION

This document refers to: All Actions

MDL No. 1720
Case No. 1:05-md-1720-JG-JO

DECLARATION OF RYAN W. MARTH
IN SUPPORT OF RULE 23(b)(3) CLASS
PLAINTIFFS' REPLY MEMORANDUM IN
FURTHER SUPPORT OF SETTLEMENT
FINAL APPROVAL

I, RYAN W. MARTH, declare as follows:

1. I am an attorney in the law firm of Robins Kaplan LLP, counsel for the Rule 23(b)(3) Class Plaintiffs in the above-captioned action.

2. I submit this Declaration in Support of Rule 23(b)(3) Class Plaintiffs' Reply Memorandum of Law in Further Support of Settlement Final Approval.

3. Attached hereto as Exhibit 1 is a true and correct copy of a letter from Jeffrey Shinder to Judge Gleeson dated November 17, 2005, *In re Visa Check/MasterMoney Antitrust Litig.*, No. 96 CV 5238(JG), ECF No. 1220.

4. Attached hereto as Exhibit 2 is a true and correct copy of an order dated December 20, 2005, filed January 19, 2006 from Judge Gleeson, *In re Visa Check/MasterMoney Antitrust Litig.*, No. 96 CV 5238(JG), ECF No. 1244.

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

Dated: August 30, 2019

Respectfully submitted,

ROBINS KAPLAN LLP



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EXHIBIT 1

Jeffrey I. Shinder
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NEW YORK | WASHINGTON

November 17, 2005

BY FACSIMILE & ECF

The Honorable John Gleeson
United States District Court Judge
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Visa Check/MasterMoney Antitrust Litigation (CV-96-5238)(JG)(RLM)

Dear Judge Gleeson:

We write to obtain direction from the Court regarding the appropriate procedures for handling challenges or disputes between Class Members.

At this relatively early juncture in the distribution process, we are starting to encounter several distinct types of challenges or disputes between Class Members that may require different procedures. First, there are instances in which Class Members believe that the purchase volumes derived or estimated from the Visa Transactional Database are lower than the purchase volumes the Class Member actually received. These situations clearly fall within the category of challenges that the Plan of Allocation (the "Plan") was designed to accommodate. Under Section 7 of the Plan, the Claims Administrator and Lead Counsel shall determine such challenges, and Class Members can elect to appeal those determinations to the Court.

However, we are also encountering other types of disputes that may necessitate different procedures. For example, we have encountered several instances in which Class Members that bought or sold stores, divisions, or whole businesses are contesting the allocation associated with those stores, divisions, or businesses for a portion of the Class Period. In those instances, both the purchaser and the seller are claiming the money in question. (The most recent example involves a named class representative represented by this firm. To avoid any appearance of impropriety, we respectfully suggest that, irrespective of the procedures the Court ultimately adopts for these types of disputes, this particular dispute should be resolved by the Court (or the Special Master) in the first instance.) Based on the examples that have surfaced to date, such disputes typically will require a legal determination based on the relevant contract of sale.

Other types of disputes have arisen in the petroleum industry where certain oil companies are claiming entitlement to the allocation for each of the independent franchisees that license and

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operate under their brands, whereas the franchisees are coming forward to claim the money for their stores. These emerging disputes likely will require a detailed inquiry into and determination based upon the processing and franchise relationships that vary across the petroleum industry. Given the size and complexity of the Class, we anticipate other examples of industry-specific disputes that will require specialized determinations.

Lead Counsel and the Claims Administrator can attempt to resolve these disputes in the first instance. However, because the Plan does not directly address these types of disputes between Class Members, we would appreciate the Court's guidance before proceeding in this manner. Given that these disputes may require determinations of fact and law, an alternative way to proceed would be to have these disputes referred directly to the Court (or Special Master). Under that approach, when such disputes materialize, Lead Counsel or the Claims Administrator shall inform the Class Members in question to make their submissions directly to the Court (or the Special Master) in whatever form the Court desires. As we intend to do with all disputes, the contested funds would be held by the Claims Administrator pending the Court's ruling. Should the Court desire Lead Counsel's assistance, we could submit our views for the Court's review once the Class Members have made their submissions.

Alternatively, Lead Counsel and the Claims Administrator could treat these disputes as challenges under Section 7 of the Plan, which we shall determine in the first instance. Such decisions would be in writing to provide the Court (or the Special Master) and the affected Class Members with a record setting forth the rationale for the decision. In accordance with the Plan, Class Members could appeal such determinations to the Court.

In our view, either approach would provide Class Members with an adequate opportunity to petition the Court to resolve their disputes. Please let us know which approach would best assist the Court (or the Special Master) in managing and determining these disputes as they inevitably arise, and in what form these submissions should take.

Should the Court elect that Lead Counsel treat these disputes between Class Members as challenges under Section 7 of the Plan, our suggested approach is that Class Members be required to set forth their dispute in writing directly to Lead Counsel (rather than to the Claims Administrator as the Plan sets forth in the case of challenges regarding a Class Member's Estimated Cash Payment), who will prepare a letter of determination. Class Members can then elect to appeal to the Court by letter, with service on the opposing Class Member, Lead Counsel and the Claims Administrator. Alternatively, should the Court order that these disputes be submitted directly to the Court (or the Special Master), we suggest that Class Members be required to do so by letter, with service on the opposing Class Member, Lead Counsel and the Claims Administrator, and that the Court require that Lead Counsel prepare an advisory determination (within a reasonable timeframe) for the Court's review either (1) in all instances, or (2) only upon the Court's request.

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If the Court desires that Lead Counsel appear by teleconference or in person to discuss these issues, we will make ourselves available at the Court's earliest convenience. As always, we appreciate the Court's supervision of this process.

Respectfully submitted,



Jeffrey I. Shinder

cc: Special Master Robin Wilcox (by fax)

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
IN RE VISA CHECK/MASTERMONEY
ANTITRUST LITIGATION
-----X

ORDER
CV-96-5238 (JG)

JOHN GLEESON, United States District Judge:

In a letter dated November 17, 2005, Lead Counsel Constantine Cannon requested guidance from the Court on how to proceed with claims that do not fit within the category of challenges contemplated by the Settlement Agreement and Plan of Allocation (“Plan”).¹ The Plan governs the distribution of settlement funds in this case, and it sets forth a mechanism for the resolution of disputes by class members about the calculations of their claims by the Claims Administrator.²

According to Lead Counsel, two types of challenges have arisen that do not fit within the Plan’s dispute-resolution mechanism: (1) situations in which Class Members have sold or purchased stores, divisions, or business and are contesting the allocation of Class funds between the purchaser and seller; and (2) disputes between franchisors and franchisees regarding the allocation of Class funds between them.

My intent is to have Special Master Robin Wilcox resolve such disputes, as well as other disputes that may arise outside the rubric of the Plan’s dispute-settlement mechanism, in

¹ As indicated in Lead Counsel’s letter, instances in which Class Members assert that the purchase volumes estimated based on the Visa Transactional Database are lower than the purchase volumes actually received “clearly fall within the category of challenges that the Plan of Allocation ... was designed to accommodate.” (Nov. 17, 2005 letter from Lead Counsel). Disputes of this nature are properly directed to the Claims Administrator under the Plan of Allocation § 7.

² Class members who disagree with the Claims Administrator’s calculations must dispute the accuracy of the calculation in writing. They must also state affirmatively, and provide supporting documentation for, what they believe their claims should be. (*Id.* at § 7.1). When such a challenge is made, the Claims Administrator will review the challenge and issue a determination letter. (*Id.* at § 7.2). This letter will include, in addition to the Claims Administrator’s findings, a notice of the right to appeal the determination, first by petitioning lead counsel and then by petitioning the Court. (*Id.* at § 7.2-7.4).

the first instance. Thereafter, to the extent that disputes of the same nature arise again, Special Master Wilcox's decisions will be applied as precedent by Lead Counsel and the Claims Administrator. This approach will be refined as made necessary by the number and type of disputes that arise as the claims process continues. Lead Counsel's input as to the necessity and appropriateness of any such refinements will be welcome.

Lead Counsel is directed to select one or more disputes that are representative of the two categories of disputes described in the second paragraph of this Order and present them to Special Master Wilcox on or before January 6, 2006 for a report and recommendation.

So Ordered.

JOHN GLEESON, U.S.D.J.

Dated: December 20, 2005
Brooklyn, New York