

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ANDREW MACKMIN, *et al.*,

*Plaintiffs,*

v.

VISA INC., *et al.*,

*Defendants.*

Civil Action No. 1:11-cv-1831-RJL  
Assign Date: 8/4/2015  
Description: Antitrust – Class Action

**NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL  
OF SETTLEMENT WITH VISA AND MASTERCARD DEFENDANTS AND TO  
DIRECT NOTICE TO THE SETTLEMENT CLASS**

Pursuant to Fed. R. Civ. P. 23, on a date to be determined by the Court, at the E. Barrett Prettyman Courthouse, 333 Constitution Avenue NW, Washington, D.C. 20001, the *Mackmin* Plaintiffs will and hereby do move this Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order:

- (1) preliminarily approving the proposed class action settlement with Visa Inc.; Visa U.S.A. Inc.; Visa International Service Association; Plus System, Inc.; Mastercard Incorporated and Mastercard International Incorporated;
- (2) provisionally certifying the proposed Settlement Class;
- (3) directing notice to the proposed Settlement Class in connection with the class action settlement, and approving the proposed forms and manner of notice;
- (4) appointing plaintiffs Andrew Mackmin and Sam Osborn as representatives for the proposed Settlement Class for the purposes of disseminating notice;
- (5) appointing Hagens Berman Sobol Shapiro LLP, Quinn Emanuel Urquhart & Sullivan, LLP, and Mehri & Skalet, PLLC as Settlement Class Counsel;
- (6) authorizing retention of A.B. Data, Ltd. as Settlement Administrator; and
- (7) scheduling a hearing to determine whether the proposed settlement is fair, reasonable, and adequate under Rule 23(e)(2) and whether the proposed Settlement Class should be certified.

The motion is based upon this notice, the attached memorandum of points and authorities and the exhibits attached thereto, the accompanying declarations of Steve W. Berman and Eric Schachter, the pleadings and other papers on file in this action, such matters over which the Court may take judicial notice, and such arguments that may be presented at or before the hearing.

DATED this 28th day of May, 2024.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL  
OF SETTLEMENT WITH VISA AND MASTERCARD DEFENDANTS AND TO  
DIRECT NOTICE TO THE SETTLEMENT CLASS**

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## I. INTRODUCTION

Plaintiffs Andrew Mackmin and Sam Osborn (“Plaintiffs”), on their own behalf and on behalf of all others similarly situated, respectfully submit this memorandum in support of their Motion for preliminary approval of a settlement (“Settlement”) reached with the Visa and Mastercard Defendants (collectively, the “Network Defendants”).<sup>1</sup> As part of the proposed Settlement, the Network Defendants have collectively agreed to provide \$197.5 million in cash payments to the proposed Settlement Class, which, coupled with the \$66.74 million Plaintiffs secured under previously approved settlements with the Bank Defendants (namely Chase, Wells Fargo and Bank of America), will result in a total recovery of \$264.24 million. The proposed Settlement, if finally approved, will resolve all of Plaintiffs’ claims against the Network Defendants and will bring this longstanding and hard-fought case to a close.

The Settlement, negotiated at arms-length before one of the nation’s preeminent mediators (Hon. Layn Phillips), is an excellent result for the Settlement Class. Depending on which of Plaintiffs’ different damages scenarios one applies, the \$197.5 million in cash payments from only the Network Defendants represents between 17.3 and 28.5 percent of the single damages the Settlement Class could secure if it prevailed at trial. And the Settlement Class’s total recovery (including the Bank Defendant settlements) of \$264.24 million represents between 23.1 and 38.2 percent of single damages. This is an exceptional rate of recovery, particularly for antitrust class actions, falling comfortably “within the range of reasonableness”<sup>2</sup> warranting preliminary approval. Were this case to proceed to trial, the Settlement Class could receive

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<sup>1</sup> The Visa Defendants are Visa Inc.; Visa U.S.A. Inc.; Visa International Service Association; and Plus System, Inc. The Mastercard Defendants are Mastercard Incorporated and Mastercard International Incorporated. The Settlement Agreement is attached as Ex. A to the Declaration of Steve W. Berman (“Berman Decl.”).

<sup>2</sup> *Vista Healthplan, Inc. v. Bristol-Myers Squibb Co.*, 266 F. Supp. 2d 44, 44 (D.D.C. 2003).

substantially less, or even nothing, despite more than a decade of litigation. The Settlement, by contrast, will deliver immediate and assured relief.

Plaintiffs also propose a comprehensive notice program designed by experienced Settlement Administrator A.B. Data, Ltd. *See* Declaration of Eric Schachter (“Schachter Decl.”) & attached exhibits, concurrently submitted herewith. The proposed notice program tracks the comprehensive program A.B. Data developed, and the Court approved, for the previous Bank Defendant settlements. Direct notice will include individual email notice to more than 100 million potential Settlement Class Members. The Settlement Administrator will also deliver a state-of-the-art publication notice program, including notice via digital and social media, national print media, and earned media. There will be a case-specific toll-free telephone number, and the Settlement Administrator will maintain the same case-specific website used for the Bank Defendant settlements to provide access to additional information about the Settlement and notice program, and to provide a mechanism for members of the proposed Settlement Class to make claims online. The class notice forms are plain and easy to understand, and contain all of the information required by Rule 23(c)(2)(B). The notice program is the best practicable in the circumstances, and experience from the notice program used for the Bank Defendant settlements demonstrates that it can be successfully implemented.

For these reasons, Plaintiffs respectfully request an order: (1) preliminarily approving the Settlement; (2) provisionally certifying the proposed Settlement Class; (3) appointing Hagens Berman Sobol Shapiro LLP, Quinn Emanuel Urquhart & Sullivan, LLP, and Mehri & Skalet, PLLC ( collectively “Co-Lead Class Counsel”<sup>3</sup>) as Settlement Class Counsel; (4) directing notice

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<sup>3</sup> This Court appointed these firms as Co-Lead Class Counsel for the litigation class on September 7, 2021. Dkt. No. 238.

to the proposed Settlement Class and approving the proposed manner and form of notice; (5) appointing Andrew Mackmin and Sam Osborn (the “Class Representatives”) as representatives for the proposed Settlement Class for the purposes of disseminating notice; (6) authorizing retention of A.B. Data, Ltd. as Settlement Administrator; and (7) scheduling a hearing to determine whether the Settlement is fair, reasonable, and adequate under Rule 23(e)(2) and whether the proposed Settlement Class should be certified (the “Final Fairness Hearing”).

## II. BACKGROUND

### A. Procedural History

In October 2011, Plaintiffs filed this action on behalf of themselves and a putative class of consumers who overpaid for surcharges levied on “off-us” transactions throughout the nation at bank ATMs. *See* Dkt. No. 1. The Network Defendants and Bank Defendants moved to dismiss the case, which Co-Lead Class Counsel, on Plaintiffs’ behalf, briefed and argued. The judge previously assigned to this case granted that motion (Dkt. No. 55) and denied Plaintiffs’ subsequent motion to amend their complaint (Dkt. No. 71). Co-Lead Class Counsel appealed that order and both briefed and argued the issue to the D.C. Circuit Court of Appeals. Those efforts resulted in a complete reversal, and findings that Plaintiffs plausibly stated all elements of their antitrust claims against Defendants. *See Osborn v. Visa Inc.*, 797 F.3d 1057 (D.C. Cir. 2015). Defendants then petitioned for and obtained *certiorari* to the Supreme Court. However, in merits briefing, Co-Lead Class Counsel explained that, “[a]fter having persuaded [the Supreme Court] to grant *certiorari*” on a specific issue, Defendants chose instead “to rely on a different argument” in the merits briefing. The Supreme Court agreed, subsequently dismissing the case on the basis that the writ of *certiorari* had been improvidently granted. *See Visa Inc. v. Osborn*, 580 U.S. 993 (2016) (Mem.).

Upon remand to this Court, Plaintiffs, via Co-Lead Class Counsel, aggressively pursued Plaintiffs' claims. Discovery was extensive. To lay the groundwork, Counsel negotiated several discovery and other related protocols, served extensive document requests and interrogatories, and negotiated the scope of Defendants' productions via numerous in-person, telephonic, and written communications. Berman Decl., ¶ 4. These initial efforts lasted several months and further efforts to obtain full productions from the Defendants continued for years far into discovery. Co-Lead Class Counsel attended not only multiple meet and confers with Defendants' counsel, but also regularly traveled to and presented Plaintiffs' positions at this Court's "Gang of 8" discovery conferences. *Id.*

As a result of these efforts, Defendants and 19 subpoenaed third parties collectively produced over 800,000 documents. Plaintiffs also received over three terabytes of transactional data, the full extent of which took years to obtain. *Id.*, ¶ 5. Plaintiffs filed four motions to compel productions from three third parties and, after extensive briefing and argument, three of those motions were transferred to this Court pursuant to Rule 45(f) and granted. *Id.* Plaintiffs withdrew their fourth motion to compel after the subpoenaed party agreed to produce requested materials. *Id.* Co-Lead Class Counsel extensively reviewed documents produced by parties and third parties, and analyzed the transactional data with the help of their experts, a process that took years and cost millions of dollars. *Id.* Co-Lead Class Counsel also took and participated in over 35 depositions. *Id.*

After completing substantial discovery, Plaintiffs moved on September 20, 2019 for class certification. During the pendency of briefing on that motion, Plaintiffs agreed to settlement terms with each of the Bank Defendants. *See* Dkt. No. 202. Approval and administration of the Bank Defendant settlements progressed in tandem with class certification proceedings as to the

Network Defendants, which included extensive class certification expert discovery and multiple rounds of briefing (including a sur-reply and sur-reply opposition). *See* Dkt. Nos. 220 & 221.

On August 4, 2021, this Court issued an Order and Memorandum Opinion granting Plaintiffs' motion for class certification, as well as granting the class certification motions of the two related putative classes with claims against Visa and Mastercard. Dkt. Nos. 234, 235.<sup>4</sup> On October 1, 2021, the D.C. Circuit Court of Appeals granted Visa and Mastercard's petition for permission to file an interlocutory appeal from the class certification orders pursuant to Fed. R. Civ. P. 23(f). Dkt. No. 245. The D.C. Circuit affirmed class certification by Judgment dated July 25, 2023. Dkt. No. 269. The Network Defendants petitioned the Supreme Court for certiorari, which was denied on April 15, 2024. Meanwhile, in early 2024, the Network Defendants supplemented their data productions. This allowed Plaintiffs to update their damages estimates, which included three different analyses: a low, mid-range, and high estimate of single damages. *See* Berman Decl. ¶ 10. In addition to incorporating additional data, Plaintiffs' updated calculations included certain corrections in response to arguments the Network Defendants and their economic expert had made during the class certification process. The updated calculations increased the amount of the "low" damages model (due to the extra years of damages included in the supplemental productions), modestly reduced the "mid-range" estimate, and incrementally raised the "high" estimate. *See id.*

The Bank Defendant settlements were preliminarily approved on November 12, 2021 and, following notice to the Settlement Class, finally approved by Order dated August 8, 2022. Dkt. No. 261. In approving the Bank Defendant settlements, the Court found the settlement relief

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<sup>4</sup> The Court subsequently issued an Amended Order granting class certification that superseded its prior certification order. Dkt. No. 238. The Amended Order also appointed Co-Lead Class Counsel and Class Representatives for the litigation class. *Id.*



“fair, reasonable, and adequate to the Settlement Class” and that the Settlement Administrator had delivered the “best notice practicable.” *Id.* at 3. There was only one objection to the Bank Defendant settlements, which the Court concluded was “without merit.” *Id.*

**B. Settlement Negotiations with the Network Defendants and Summary of the Settlement Terms**

**1. Settlement Negotiations**

Co-Lead Class Counsel and counsel for the Network Defendants first discussed potential settlement in December 2017 (involving all then-Defendants), then again in May 2020, after the Bank Defendants settlement had been announced, in mediations before the Hon. Layn Phillips (Ret.), one of the nation’s foremost mediators. At those sessions, the parties were unable to reach resolution. Berman Decl., ¶ 8. Then, in early 2024, at a point when class certification had been granted and the Network Defendants’ petition for *certiorari* was pending before the Supreme Court, Plaintiffs and the Network Defendants began to discuss settlement again. *Id.* This culminated in a full-day mediation with Judge Phillips in March 2024. Throughout, the Network Defendants’ counsel, who are highly experienced and capable, vigorously advocated their clients’ positions. *Id.* Co-Lead Class Counsel, who were well-informed of the facts and issues concerning liability and damages and the relative strengths and weaknesses of each side’s litigation position, vigorously advocated Plaintiffs’ positions. *Id.* The mediation session resulted in a term sheet. *Id.* Plaintiffs and the Network Defendants proceeded to negotiate a long-form Settlement Agreement, which was executed on May 2, 2024 and is presented here for preliminary approval. *Id.*, Ex. A.

## 2. The Settlement Consideration and Release of Claims

Pursuant to the Settlement Agreement, the Network Defendants will collectively make cash payments of \$197.5 million. The Network Defendants will also assist the settlement administration process, including by:

- Working in good faith to provide information reasonably available to them to help Co-Lead Class Counsel identify potential members of the proposed Settlement Class for purposes of delivering notice of the Settlement;
- Making reasonable and good faith efforts to cooperate with Plaintiffs' claims administrator and other third-party service providers with respect to notice, claims processing, and claims distribution by providing information concerning their capacity to facilitate those third-party service providers' efforts to provide notice.

*Id.*, Ex. A at § 10(a). In addition, the Network Defendants have stipulated to certification of the Settlement Class, which is substantively identical to the litigation class definition approved by the Court, and affirmed by the D.C. Circuit Court of Appeals. *Compare id.* at § 3(a) with Dkt.

No. 238. Specifically, the Settlement Class is defined as:

All individuals and entities that paid an unreimbursed ATM Access Fee directly to any Bank Defendant or Alleged Bank Co-Conspirator for a Foreign ATM Transaction using an ATM card issued by a financial institution in the United States to withdraw cash at an ATM located in the United States at any time from October 1, 2007 to the date of the Preliminary Approval Order.

Berman Decl., Ex. A at § 3(a).<sup>5</sup>

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<sup>5</sup> Specifically excluded from the Settlement Class are Defendants; Released Parties; the officers, directors, or employees of any Defendant or Released Party; any entity in which any Defendant or Released Party has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or Released Party and any person acting on their behalf. Also excluded from the Settlement Class are any federal, state, or local governmental entities, Class Lead Counsel, and any judicial officer presiding over the Action and the members of his/her immediate family and judicial staff. *See id.*

In exchange for the consideration described above, members of the proposed Settlement Class will release the Network Defendants from any and all claims that were or could have been alleged in this Action. *Id.* at § 2(hh).

**C. Notice and Implementation of the Settlement**

Plaintiffs have attached hereto a declaration from the proposed Settlement Administrator, A.B. Data, Ltd., which sets forth a comprehensive notice program along with proposed class notices and a sample claim form. *See* Schachter Decl., ¶¶ 6-25, Exs. B (Short-Form Notice), C (Long-Form Notice), D (Digital Ads), and E (Claim Form). The notice program A.B. Data has proposed for this Settlement closely tracks the notice program A.B. Data successfully implemented, with Court approval, for the prior Bank Defendant settlements. A.B. Data’s proposed program will again provide notice by a combination of direct email notice, digital media, social media, and national print and earned media to efficiently reach members of the proposed Settlement Class, which is estimated to have at least 175 and 215 million members. *Id.* ¶¶ 6-25; Berman Decl., ¶ 9.

For direct notice, A.B. Data will prepare and send notice via email to more than 100 million potential members of the Settlement Class, whose information, including email addresses, has been provided by Bank Defendants. Schachter Decl., ¶¶ 6-9. The content of the direct notice emails will be the Short-Form Notice attached to the Schachter Declaration. *See* Schachter Decl., ¶ 7, Ex. B. The more detailed long-form notice will be available for download on the case-specific website (“Long-Form Notice”). *Id.*, ¶ 7, Ex. C.

The notice campaign will also include targeted digital banner and newsfeed ads to be placed on websites and applications across multiple devices, including desktop, tablet, and mobile devices. The Settlement Administrator explains that the digital and social media campaign will use a variety of campaign optimization techniques to reach potential members of

the proposed Settlement Class, including banner ads in Spanish on websites specifically serving Spanish speakers. *Id.*, ¶¶ 10-16. An example of the digital ads that will be used to target members of the Settlement Class are attached to the Settlement Administrator's declaration. *See id.*, ¶ 11, Ex. D. The digital and social media ad campaign, including utilization of a multitude of digital networks and social media, will run for 60 days to ensure ample time to deliver the targeted impressions and drive potential members of the proposed Settlement Class to the case website. *Id.*, ¶ 16. Digital advertising will allow the viewer to click on a banner or newsfeed advertisement and instantly be directed to the website. *Id.*, ¶ 11.

To reach older members of the proposed Settlement Class, as well as those who may be infrequent users of digital and social media, the Short-Form Notice, formatted as a 1/3-page ad, will be published in *People* magazine. *Id.*, ¶ 17. A.B. Data also will disseminate a news release via *PR Newswire*'s US1 Newswire distribution list to announce the Settlement. The news release will be translated and published to *PR Newswire*'s U.S. Hispanic media contacts and Hispanic news websites. News about the Settlement will also be sent via Twitter to the followers of *PR Newswire* and A.B. Data. *Id.*, ¶¶ 18-19.

A.B. Data will establish a case-specific toll-free telephone number and will use the same case-specific website that was used for the Bank Defendant settlements. *Id.*, ¶¶ 20-21. Both will be used to communicate with potential members of the proposed Settlement Class and assist them in understanding the terms of the Settlement and their rights. The case website will serve particularly important purposes. The Long-Form Notice, which contains a detailed summary of the terms of the Settlement, will be posted prominently. The website will also provide, among other things, a summary of the case, all relevant documents, important dates, and any pertinent updates concerning the litigation or the settlement process. *Id.*, ¶ 21.

As explained in the notice documents, members of the proposed Settlement Class will be able to submit their claims on the case website, which, as with the Bank Defendant settlements, we expect will be the primary way claims are made. *Id.*, ¶¶ 23-25. The proposed Claim Form is attached as Ex. E to the Settlement Administrator’s declaration. *Id.*, ¶ 24. The Network Defendants will permit use of a portion of the settlement funds toward notice and administration costs. Berman Decl., Ex. A § 12(e)(ii).

As with the Bank Defendant settlements, settlement funds will be distributed *pro rata* based on the number of claims submitted. Schachter Decl., ¶ 24. Plaintiffs also propose providing claimants with digital payment options such as PayPal or a virtual debit card, which will provide Settlement Class Members with convenient access to their settlement funds while greatly reducing the transaction costs associated with mailing paper checks to millions of claimants. *Id.*, ¶¶ 7, 25. However, claimants also will have the option to request and receive a paper check. *Id.*, ¶ 25.

### III. LEGAL STANDARD

“Review of a proposed class action settlement generally involves two hearings. First, counsel submit the proposed terms of the settlement and the judge makes a preliminary fairness evaluation.” MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.632, at 414 (1st ed. 2004) (“Manual”). At the second stage of the approval process, the court conducts a formal fairness hearing at which “the proponents of the settlement must show that the proposed settlement is ‘fair, reasonable and adequate.’” *Id.* § 21.634, at 414; *see also In re Vitamins Antitrust Class Actions*, 215 F.3d 26, 30 (D.C. Cir. 2000); *Pigford v. Glickford*, 206 F.3d 1212, 1215 (D.C. Cir. 2000); *United States v. Dist. of Columbia*, 933 F. Supp. 42, 47 (D.D.C. 1996).

Under these standards, the court reviews the proposed settlement at the preliminary approval stage to determine whether it is “sufficiently within the range of reasonableness so that

notice of the propose[d] settlements should be given.” *Vista Healthplan, Inc.*, 266 F. Supp. 2d at 44; *see also Meijer, Inc. v. Warner Chilcott Holdings Co. III, Ltd.*, No. 05 Civ. 2195, Dkt. No. 172 at 1 (D.D.C. Jan. 2, 2008) (granting preliminary approval of class settlement because it was “sufficiently fair, reasonable and adequate to authorize dissemination of notice to the class”); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 496 (D.D.C. 1981); Manual at § 30.41.

Courts “will generally grant preliminary approval of a class action settlement if it appears to fall ‘within the range of possible approval’ and ‘does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys.’” *Richardson v. L’Oréal USA, Inc.*, 951 F. Supp. 2d 104, 106 (D.D.C. 2013); *accord In re Vitamins Antitrust Litig.*, 2001 WL 856292, at \*4 (D.D.C. July 25, 2001) (same); Manual at § 21.632; 4 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 13.13 (6th ed. 2023) (observing that preliminary approval may be granted “so long as the moving parties demonstrate that the court will ‘likely be able to’ grant final approval of the settlement).

In addition, “[a] presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s length negotiations between experienced, capable counsel after meaningful discovery.” *In re Vitamins Antitrust Litig.*, 305 F. Supp. 2d 100, 104 (D.D.C. 2004) (“*Vitamins II*”) (citing Manual at § 30.42). “Thus the function of the reviewing court is not to substitute its judgment for that of the parties to the decree, but to assure itself that the terms of the decree are fair and adequate and are not unlawful, unreasonable, or against public policy.” *Dist. of Columbia*, 933 F. Supp. at 46-47.

While the court has discretion to decide whether to approve or reject a proposed settlement, *see Mayfield v. Barr*, 985 F.2d 1090, 1092 (D.C. Cir. 1993), the court’s decision “is

constrained by the ‘principle of preference’ favoring and encouraging settlement in appropriate cases.” *Vitamins II*, 305 F. Supp. 2d at 103. This preferential treatment is a matter of public policy in this Circuit, which strongly favors and encourages settlements, particularly in class actions and other complex matters, to avoid the inherent costs, delays, and risks of continued litigation. As a court in this District stated in an opinion granting preliminary approval of a class settlement, “[t]here is a longstanding judicial attitude favoring class action settlements.” *Prince v. Aramark Corp.*, No. 16-cv-1477, Dkt. No. 33 at 9 (D.D.C. Mar. 14, 2017); *see also Meijer, Inc. v. Warner Chilcott Holdings Co. III, Ltd.*, 565 F. Supp. 2d 49, 54 (D.D.C. 2008); *Mayfield*, 985 F.2d at 1092; *United States v. MTU Am. Inc.*, 105 F. Supp. 3d 60, 63 (D.D.C. 2015) (“Settlement is highly favored, as ‘[n]ot only the parties, but the general public as well, benefit from the saving of time and money that results from the voluntary settlement of litigation.”) (quoting *Citizens for a Better Environ. v. Gorsuch*, 718 F.2d 1117, 1126 (D.C. Cir. 1983)); *Freeport Partners, L.L.C. v. Allbritton*, 2006 WL 627140, at \*8 (D.D.C. Mar. 13, 2006) (“Public policy in this Circuit favors settlement of class actions.”).

#### **IV. THE COURT SHOULD APPROVE THE NETWORK DEFENDANT SETTLEMENT**

The determination of a settlement’s fairness “calls for a comparative analysis of the treatment of the class members vis-a-vis each other and vis-a-vis similar individuals with similar claims who are not in the class.” Manual at § 21.62. This inquiry should “avoid protracted examination of the parties’ legal rights,” and instead focus on the settlement’s “overall fairness to beneficiaries and consistency with the public interest.” *Dist. of Columbia*, 933 F. Supp. at 46-47 (citing *Gorsuch*, 718 F.2d at 1126).

In evaluating the fairness of a proposed class settlement, courts within this Circuit consider a range of factors, including: “[1] whether the settlement is the result of arms-length

negotiations; [2] the terms of the settlement in relation to the strength of the case; [3] the stage of the litigation proceedings at the time of settlement; [4] the reaction of the class; and [5] the opinion of experienced counsel.” *Abraha v. Colonial Parking, Inc.*, 2020 WL 4432250, at \*7 (D.D.C. July 31, 2020); *accord Radosti v. Envision EMI, LLC*, 717 F. Supp. 2d 37, 54 (D.D.C. 2010) (citing *Vitamins II*, 305 F. Supp. 2d at 104); *In re Baan Co. Secs. Litig.*, 284 F. Supp. 2d 62, 64-67 (D.D.C. 2003). Evaluations of the fairness of settlements should consider the risks and what was known to the settling parties at the time settlement was reached, not after settlement. *See Trombley v. Nat’l City Bank*, 826 F. Supp. 2d 179, 203 (D.D.C. 2011).

The proposed Settlement satisfies each of these settlement fairness factors.<sup>6</sup>

**A. Factors #1 and #5—the Proposed Settlement Was the Result of Arm’s-Length Negotiations Conducted by Experienced Counsel and Aided by An Experienced Mediator**

The parties’ negotiations were hard-fought via protracted negotiations that occurred at multiple mediations over several years. Berman Decl., ¶ 8. Network Defendants’ counsel, who are highly experienced and capable, vigorously advocated their client’s positions in the settlement negotiations. *Id.* Co-Lead Class Counsel were well-informed of the facts and issues concerning liability and damages and the relative strengths and weaknesses of each side’s litigation position. *Id.* Co-Lead Class Counsel have decades of experience litigating complex antitrust cases and have negotiated settlements in a wide range of cases, including the prior Bank Defendant settlements in this case. *See* Dkt. No. 96-1, at 8-18. Co-Lead Class Counsel used their specific case knowledge and experience to negotiate the Network Defendant Settlement, which will (if approved) fully resolve this complex and challenging case.

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<sup>6</sup> The reaction of the class cannot be evaluated yet, which is factor 4 in the list provided in the text. Plaintiffs will report on that factor in their motion for final approval, which they will file after notice to the Settlement Class. *See Abraha*, 2020 WL 4432250, at \*9 (agreeing that this is the correct approach at preliminary approval).



In granting approval to another class settlement, this Court stated that “[a] presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s length negotiations between experienced, capable counsel after meaningful discovery.” *In re Fed. Nat’l Mortg. Assoc. Secs., Derivative, & “ERISA” Litig.*, 4 F. Supp. 3d 94, 102 (D.D.C. 2013) (Leon, J.). The Court further stated that “[t]he opinion of experienced counsel should be afforded substantial consideration by a court in evaluating the reasonableness of a proposed settlement.” *Id.* at 107 (internal quotation marks and citation omitted); *accord Vitamins II*, 305 F. Supp. 2d at 104; *Radosti*, 717 F. Supp. 2d at 56; *Meijer*, 565 F. Supp. 2d at 55; *Cohen v. Warner Chilcott Pub. Ltd. Co.*, 522 F. Supp. 2d 105, 121 (D.D.C. 2007). That the Settlement in this case was reached after multiple mediation sessions over the span of several years further supports preliminary approval. *See In re Zynga Inc. Secs. Litig.*, 2015 WL 6471171, at \*9 (N.D. Cal. Oct. 27, 2015) (use of mediator “support[ed] the conclusion that the Plaintiff was appropriately informed in negotiating a settlement”).

Co-Lead Class Counsel respectfully submit that the arms’-length manner in which they reached the Settlement with the aid of one of the nation’s top mediators, as well as their informed opinion that the Settlement is in the best interests of the members of the proposed Settlement Class, strongly support preliminary approval.

**B. Factors #2 and #3—the Proposed Settlement Provides Substantial Value to the Settlement Class**

Plaintiffs have a strong case and the Settlement value reflects that. Plaintiffs’ damages expert, Professor Dennis Carlton, presented at class certification three potential measures of single damages. *See* Dkt. No. 222-2 at ¶ 15. In the lead up to the mediation, Plaintiffs disclosed to the Network Defendants that Professor Carlton had revised those numbers based on more recent data and analyses. Professor Carlton’s updated damages calculations increased the “low”

estimate, slightly reduced the “middle-range” estimate, and only incrementally increased the “high” estimate. Specifically, as updated, Professor Carlton’s three potential measures of damages were \$691.9 million, \$858.8 million, and \$1.142.0 billion. *See* Berman Decl., ¶ 10.

The \$197.5 million in cash payments provided by the Network Defendant Settlement represents 28.5 percent of that lower bound, and 17.3 percent of the upper of these revised damages estimates. *See id.* ¶ 11. And the Settlement does not represent the Settlement Class’s entire recovery, which also includes the \$66.74 recovered under the Bank Defendant settlements. Combined, the Network and Bank Defendant Settlements deliver \$264.24 million in cash payments to the Settlement Class. That represents 38.2 percent of the minimum damages figure Professor Carlton estimated, and 23.1 percent of the maximum. *See id.*<sup>7</sup> This percentage is well within, and compared to some cases considerably above, percentage ranges approved in prior class action settlements. *See, e.g., In re: Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 3648478, at \*7 (N.D. Cal. July 7, 2016) (approving of settlements equaling 20% of single damages, and citing survey of 71 settled cartel cases which showed that the weighted mean—weighting settlements according to their sales—was 19% of possible single damages recovery); *In re Lithium Ion Batteries Antitrust Litig.*, 2020 WL 7264559, at \*20 (N.D. Cal. Dec. 10, 2020) (describing recovery of “11.7 percent of the single damages” as an “excellent” result for an antitrust class action); *Glaberson v. Comcast Corp.*, 2015 WL 5582251, at \*8 (E.D. Pa. Sept. 22, 2015) (observing that recovery of 25% of single damages in antitrust litigation is “eminently

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<sup>7</sup> Notably, only the lowest of Professor Carlton’s three damages estimates is limited to fees paid to the settling Network Defendants. *See id.* ¶ 11 & n.3. Professor Carlton’s other damages estimates are higher because they encompass fees paid to non-settling participants in ATM transactions, including (a) network fees paid to other ATM networks (middle range estimate) and (b) diminution in interchange fees paid by card issuing banks to bank ATM operators (highest estimate).

reasonable” and supported settlement approval); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 324 (3d Cir. 2011) (affirming approval of antitrust settlement providing recovery of 12.5% of single damages for one settlement class and 22.5% for another); *In re Med. X-Ray Film Antitrust Litig.*, 1998 WL 661515, at \*6 (E.D.N.Y. Aug. 7, 1998) (finally approving settlements that equaled 17% of “best possible recovery” and citing prior decision approving settlements of 6.4-11% out of potential recovery).

Obtaining \$197.5 million from the Network Defendants, and \$264.24 million overall, is particularly noteworthy given the attendant risks of continued litigation. While Plaintiffs believe their case is strong, “complex antitrust litigation is rife with uncertainties, risks, and delays.” *See Meijer*, 565 F. Supp. 2d at 55; *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at \*4 (E.D.N.Y. Oct. 23, 2012) (“Federal antitrust cases are complicated, lengthy, and bitterly fought, as well as costly.” (internal quotation marks and citation omitted)).<sup>8</sup> There were also many hurdles left to overcome in this case just to reach a jury. Plaintiffs’ claims had yet to be tested at summary judgment, and many of Defendants’ merits defenses (first raised on motions to dismiss) were deferred for adjudication at the summary judgment phase of proceedings. Even if Plaintiffs were to reach trial and prevail, including through subsequent appeals, it could be years before the Settlement Class received any relief.

Relatively prompt payment in light of the challenges inherent in litigating class actions, particularly in antitrust cases, also weighs in favor of approving this Settlement. *See, e.g.*,

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<sup>8</sup> Other courts have similarly recognized that the “antitrust class action is arguably the most complex action to prosecute.” *See In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at \*10 (E.D. Pa. June 2, 2004) (quoting *In re Motorsports Merch. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1337 (N.D. Ga. 2000)) (internal quotation marks omitted); *see also In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 341 (E.D. Pa. 2007) (the “antitrust class action is arguably the most complex action to prosecute[;] [t]he legal and factual issues involved are always numerous and uncertain in outcome”) (internal quotation marks and citation omitted).

*Stephens v. US Airways Grp., Inc.*, 102 F. Supp. 3d 222, 227 (D.D.C. 2015) (“[T]he delay in providing relief to the class if this case were to be litigated is a factor strongly supporting the compromise reached by the parties.”) (quoting *Luevano v. Campbell*, 93 F.R.D. 68, 89 (D.D.C. 1981)); *Trombley*, 826 F. Supp. 2d at 195 (same); *In re Shopping Carts Antitrust Litig.*, 1983 U.S. Dist. LEXIS 11555 (S.D.N.Y. Nov. 18, 1983) (recognizing that compromise is particularly favored in antitrust litigation, which is notoriously difficult and unpredictable).

**C. All Other Factors Identified in Rule 23(e)(2) Are Met**

In 2018, Rule 23 of the Federal Rule of Civil Procedures was amended to, among other things, provide a list of factors in Rule 23(e)(2) to “focus” the determination of whether a proposed settlement is fair, reasonable, and adequate on “the primary considerations that should always matter to the decision whether to approve the proposal.” *See* Fed. R. Civ. P. 23(e)(2) & 2018 advisory committee notes. These factors are whether (A) “the class representatives and class counsel have adequately represented the class”; (B) “the proposal was negotiated at arm’s length”; (C) “the relief provided for the class is adequate”; and (D) “the proposal treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2).

Amended Rule 23(e)(1)(B) indicates that preliminary approval should be granted, and thus notice directed to a settlement class, if the court concludes that the moving parties “likely will be able to” satisfy the Rule 23(e)(2) factors at final approval. Many of these amended Rule 23(e)(2) factors have significant overlap with the traditional five factors considered in this District. In fact, the five-factor test, *alone*, has been applied in preliminary approval orders post-2018. *See, e.g., Abraha*, 2020 WL 4432250, at \*7. In an abundance of caution, however, Plaintiffs explain in this subsection why the new Rule 23(e)(2) factors are met here.

**1. Rule 23(e)(2)(A) & (B)—the Proposed Settlement Class Has Been Adequately Represented and the Settlement Was Negotiated at Arm’s Length**

As explained above, counsel and the class representatives have vigorously advocated for the putative class and negotiated the Settlement arm’s length (including with the aid of one of the country’s top mediators), showing that Rule 23(e)(2)’s subsections (A) & (B) will likely be satisfied at final approval.

**2. Rule 23(e)(2)(C)—the Relief Provided for the Class Is Adequate**

Rule 23(e)(2)(C) asks the Court to consider whether the relief provided for in the proposed Settlement Class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).

Fed. R. Civ. P. 23(e)(2)(C)(i-iv). Consideration of these factors support preliminary approval of the Settlement.

*The costs, risks, and delay of trial and appeal.* Plaintiffs discussed the Rule 23(e)(2)(C)(i) factors in Section IV.B, *infra*. The \$197.5 million in cash payments from the Settlement, and \$264.24 million overall represents a strong recovery, taking into account the already-incurred and potential costs, risk, and delay of further litigation.

*The effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.* To facilitate the filing of legitimate claims and the efficient processing of those claims, claimants will be able to make claims on the settlement website, and potential members of the proposed Settlement Class will also have the opportunity to fill out and mail paper claim forms. The claim form itself is straightforward, asking potential members of the proposed Settlement Class to provide their names and contact information, as

well as information in response to a targeted list of questions related to their ATM transactions. Schachter Decl., ¶ 24, Ex. E. Plaintiffs propose providing members of the Settlement Class with 180 days to submit claims, to provide sufficient time to members of the Settlement Class. *See* Section VIII, *infra*.

As with the Bank Defendant settlements, Plaintiffs propose to distribute the settlement funds to claimants *pro rata* based on the number of approved claims submitted. *See* Schachter Decl., ¶ 24. Plaintiffs also propose providing claimants with digital payment options such as PayPal, or a virtual debit card, which will provide Settlement Class Members with settlements funds in an easy-to-use format that will greatly reduce the transaction costs associated with printing and mailing paper checks to potentially millions of claimants. *Id.*, ¶ 25. Courts have recognized that digital payment options are a cost-effective means of distributing funds to class members. *See, e.g., Edwards v. Nat'l Milk Producers*, 2017 WL 3623734, at \*2 (N.D. Cal. June 26, 2017) (granting final approval of class action settlement where cash claimants would “receive an electronic notification via email that will permit them to choose an online account, *e.g.*, an Amazon, PayPal, or Google Wallet account, into which money can be distributed,” “in order to maximize the settlement funds going to class members, and minimize administrative expenses and uncashed checks”). However, claimants also will have the option to request and receive a paper check, if that is what they prefer. Schachter Decl., ¶ 25. Under no circumstances, will settlement funds revert to the Network Defendants after distribution to members of the proposed Settlement Class. Berman Decl., Ex. A at § 13(e).

***Attorney’s fees.*** The proposed Short-Form Notice and Long-Form Notice informs Settlement Class Members that counsel will make a request for attorneys’ fees of up to 33% of the common settlement fund, as well as reimbursement of certain costs counsel has advanced.

Schachter Decl., Exs. B & C. An attorneys' fee award of 33%—which is the maximum amount that will be requested—would be reasonable in comparison to other fees awarded in this District and elsewhere in settlements in complex class actions. *See, e.g., In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at \*9 (D.D.C. July 16, 2001) (in antitrust class action, awarding attorneys' fees equal to 33.7% of settlement fund); *Bynum v. Dist. of Columbia*, 412 F. Supp. 2d 73, 81 (D.D.C. 2006) (awarding 1/3 (33.3%) of settlement funds in attorneys' fees to class counsel); *see also In re Urethane Antitrust Litig.*, 2016 WL 4060156, at \*6-8 (D. Kan. July 29, 2016) (awarding 33.33% fee from common fund). Co-Lead Class Counsel will file a motion for attorneys' fees, costs, and service awards, specifying the amount requested, which will be posted on the case website, so that members of the proposed Settlement Class can review and respond if they wish to do so.

***Any agreement required to be identified under Rule 23(e)(3).*** There are no other agreements to disclose under Rule 23(e)(3).

**3. Rule 23(e)(2)(D)—the Proposal Treats Members of the Proposed Class Equitably**

The Settlement Agreement and proposal presented by Plaintiffs in this motion treat class members equitably relative to one another. As explained above, Plaintiffs propose to distribute the settlement funds to claimants *pro rata* based on the number of approved claims submitted. “*Pro rata*” distribution plans have “been used in many antitrust cases.” *See In re TFL-LCD (Flat Panel) Antitrust Litig.*, 2011 WL 7575004, at \*4 (N.D. Cal. Dec. 27, 2011) (approving a *pro rata* plan and citing several cases for this holding, including *In re Vitamins Antitrust Litig.*, 2000 WL 1737867, at \*6 (D.D.C. Mar. 31, 2000)).

Plaintiffs plan to request, subject to this Court's approval, service awards for the class representatives up to \$10,000 per award. Such a request and award would be in recognition of

the service the class representatives have provided to the proposed Settlement Class in this long-running case, and in this District, “Courts routinely compensate named plaintiffs for the services provided and the risks incurred during class action litigation.” *See Little v. Wash. Metro. Area Transit Auth.*, 313 F. Supp. 3d 27, 39 (D.D.C. 2018). Plaintiffs’ request for service awards will be included in a motion for attorneys’ fees, costs, and service awards, which members of the proposed Settlement Class may object to if they oppose the requested award.

#### **V. THE PROPOSED SETTLEMENT CLASS SATISFIES RULE 23**

After determining whether to approve a settlement, at the preliminary approval stage, the Court must determine whether it is likely to certify the settlement class for purposes of judgment on the proposal. *See Fed. R. Civ. P. 23(e)(1)(B)(ii)*; *see also Thomas v. Albright*, 139 F.3d 227, 234 (D.C. Cir. 1998) (“A ‘settlement-only class certification’ does . . . depend upon compliance with all of the requirements of Rule 23(a) and (b).”). The proposed settlement class must satisfy the Rule 23(a) requirements referred to as “numerosity, commonality, typicality, and adequacy of representation.” *Cohen*, 522 F. Supp. 2d at 113. Additionally, the proposed class must meet one of the Rule 23(b) requirements. Here, Plaintiffs seek certification of the proposed Settlement Class pursuant to Rule 23(b)(3) and 23(b)(2). The Court has already certified a litigation class under both provisions. *See Dkt. No. 238*.

As a general matter, the Court need not apply the Rule 23 requirements to the proposed Settlement Class as stringently as it would in reviewing an opposed class certification motion. “[I]f the case is surely going to be settled, then the ‘district court need not inquire whether the case, if tried, would present intractable management problems.’” *Thomas*, 139 F.3d at 234 (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)); *see also Stewart v. Rubin*, 948 F. Supp. 1077, 1091 (D.D.C. 1996) (recognizing that “manageability and efficiency of a class action settlement is quite different than that in a litigated case”). Indeed, courts have



recognized that certain classes certified for settlement purposes might not be appropriate to certify as litigation classes in light of predominance or other management problems that arise in litigation. *See, e.g., In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 558 (9th Cir. 2019) (“A class that is certifiable for settlement may not be certifiable for litigation if the settlement obviates the need to litigate individualized issues that would make a trial unmanageable.”); *see also* 2 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 4:63 (6th ed. 2023) (“Courts . . . regularly certify settlement classes that might not have been certifiable for trial purposes because of manageability concerns.”).<sup>9</sup> In fact, courts have certified settlement classes after declining to certify the same class for litigation purposes. *See, e.g., Ramirez v. DeCoster*, 142 F. Supp. 2d 104, 111 n.9 (D. Me. 2001) (reaching that conclusion because “the difficulties of managing the resulting jury trial . . . are not presented in a settlement”).

But, here, there is absolutely no question the proposed Settlement Class satisfies the relaxed Rule 23 standard, given the Settlement Class is defined the same as the Settlement Class the Court certified for purposes of the Bank Defendant settlements, as well as the same as the litigation class the Court certified on full class certification briefing (and the D.C. Circuit Court of Appeals subsequently affirmed).<sup>10</sup> As was the case for the Bank Defendant settlements and the litigation class, each of Rule 23’s requirements is satisfied here.

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<sup>9</sup> *See also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 537 (3d Cir. 2004) (“Although Appellants’ concerns about the manageability of a multistate class of consumers and TPPs . . . did not pose a problem for the certification of a settlement class, there is a significant risk that such a class would create intractable management problems if it were to become a litigation class, and therefore be decertified.”).

<sup>10</sup> The only difference in settlement class composition is that the proposed Settlement Class here would include consumers who made their first qualifying class transaction after preliminary approval of the Bank Defendant settlements.

**A. The Proposed Settlement Class Satisfies the Requirements of Rule 23(a)**

Federal Rule of Civil Procedure 23(a) provides that a class may be certified when “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). The Settlement Class satisfies each of these requirements.

**1. Numerosity**

Courts in this District “have generally found that the numerosity requirement is satisfied and that joinder is impracticable where a proposed class has at least forty members.” *Cohen*, 522 F. Supp. 2d at 114 (citing cases); *see also Thorpe v. Dist. of Columbia*, 303 F.R.D. 120, 144 (D.D.C. 2014). The Settlement Class easily meets this standard, as it is estimated that at least 175 to 215 million individuals fall within the class definition. Berman Decl., ¶ 9. Therefore, the proposed Settlement Class is sufficiently numerous to satisfy Rule 23(a).

**2. Commonality**

Rule 23(a) next requires that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). This requirement is satisfied where ““there is at least one issue, the resolution of which will affect all or a significant number of the putative class members.”” *Cohen*, 522 F. Supp. 2d at 114 (quoting *In re Lorazepam & Clorazepate Antitrust Litig.*, 202 F.R.D. 12, 26 (D.D.C. 2001)). The Rule does not require commonality of all issues; rather, “even a single common question will do.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (internal quotation marks and alterations omitted); *see also Bynum v. Dist. of Columbia*, 214 F.R.D. 27, 33 (D.D.C. 2003) (“[F]actual variations among the class members will not defeat the commonality requirement, so long as a single aspect or feature of the claim is common to all

proposed class members.”). Furthermore, “a single factual dissimilarity does not suffice to defeat the commonality requirement.” *Id.* at 33. Commonality is readily satisfied when “the most crucial issues . . . are common to every member of the proposed class.” *See Lindsay v. Gov’t. Emps. Ins. Co.*, 251 F.R.D. 51, 55 (D.D.C. 2008).

There are a significant number of common legal and factual questions for the members of the proposed Settlement Class, including:

- Whether Defendants engaged in a combination or conspiracy with their co-conspirators to fix, raise, maintain, and/or stabilize the prices for surcharges levied on off-us transactions at bank-operated ATMs;
- Whether the purpose and/or effect of the acts and omissions alleged was to restrain trade, or to affect, fix, control, and/or maintain the prices for surcharges at bank-operated ATMs;
- The existence and duration of the agreements alleged to fix, raise, maintain, and/or stabilize the surcharges levied on off-us transactions at bank-operated ATMs;
- Whether Defendants violated Section 1 of the Sherman Act (15 U.S.C. § 1); and
- Whether, and to what extent, the conduct of Defendants caused injury to Plaintiffs and members of the proposed Settlement Class, and, if so, the appropriate measure of damages.

These legal and factual questions are common to each member of the proposed Settlement Class.

This easily satisfies the requirements of Rule 23(a)(2).

### **3. Typicality**

Rule 23(a) also mandates that claims of the class representatives be typical of those of the class. Fed. R. Civ. P. 23(a)(3). “The typicality requirement is satisfied ‘if each class member’s claim arises from the same course of events that led to the claims of the representative parties and each class member makes similar legal arguments to prove the defendant’s liability.’”

*Cohen*, 522 F. Supp. 2d at 115 (quoting *Lorazepam*, 202 F.R.D. at 27); *see also Johnson v. Dist. of Columbia*, 248 F.R.D. 46, 53 (D.D.C. 2008). The typicality requirement “has been liberally

construed by courts.” *Bynum*, 214 F.R.D. at 34. “[T]ypicality is not destroyed merely by factual variations.” *Wagner v. Taylor*, 836 F.2d 578, 591 (D.C. Cir. 1987); *see also Bynum*, 214 F.R.D. at 34 (“[F]actual variations between the claims of class representatives and the claims of other class members . . . do not negate typicality.”). Instead, typicality “refers to the nature of the claims of the representative, not the individual characteristics of the plaintiff” and “is satisfied if each class member’s claim arises from the same course of events that led to the claims of the representative parties and each class member makes similar legal arguments to prove the defendant’s liability.” *Lightfoot v. Dist. of Columbia*, 246 F.R.D. 326, 338 (D.D.C. 2007) (internal quotation marks omitted).

Typicality is satisfied here. The claims of the Class Representatives—Andrew Mackmin and Sam Osborn—arise out of the same course of conduct as the claims of the members of the proposed Settlement Class: the payment or surcharges on off-us transactions at bank-operated ATMs. *See* Dkt. 177-1 at 21. Furthermore, the claims of the Class Representatives’ and members of the proposed Settlement Class are premised on the same legal theories. The claims of the Class Representatives are therefore typical of the claims of the members of the proposed Settlement Class they represent.

#### **4. Adequacy of Representation**

Finally, Rule 23(a) requires that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Courts generally recognize two criteria for determining adequacy: “(1) the named representative must not have antagonistic or competing interests with the unnamed members of the class, and (2) the representative must appear able to vigorously prosecute the interests of the class through qualified counsel.” *Cohen*, 522 F. Supp. 2d at 115 (quoting *Twelve John Does v. Dist. of Columbia*, 117 F.3d 571, 575 (D.C. Cir. 1997)).

As addressed above, the claims of the Class Representatives are consistent with those of other class members. There are no conflicts between the Class Representatives and the proposed Settlement Class as a whole, meaning the representatives provide adequate representation of the Class as a whole.

Additionally, the Class Representatives have vigorously prosecuted this action, including by retaining Co-Lead Class Counsel. Counsel are well-qualified to represent the interests of the Settlement Class and conducted a thorough review of the case against the Network Defendants before engaging in settlement negotiations. Berman Decl., ¶¶ 3-8; Dkt. No. 96-1. Co-Lead Class Counsel—Hagens Berman Sobol Shapiro LLP, Quinn Emanuel Urquhart & Sullivan, LLP, and Mehri & Skalet, PLLC—have extensive experience in antitrust cases. *See* Dkt. No. 96-1, at 8-18. Co-Lead Class Counsel litigated this case through initial motions to dismiss, appellate review of the decisions on the early dispositive motion practice up to the Supreme Court and back, fact discovery (including the review of hundreds of thousands of documents and dozens of depositions), and multiple rounds of class certification briefing (including on a Rule 23(f) appeal and a subsequent petition for a writ of *certiorari*), all before negotiating this Settlement. Through this vigorous litigation and negotiation, Co-Lead Class Counsel have established that they are focused on pursuing the best interests of the proposed Settlement Class. Adequacy of representation is therefore satisfied.

**B. The Proposed Settlement Class Satisfies the Requirements of Rule 23(b)(3)**

Plaintiffs move to certify the proposed Settlement Class under Rule 23(b)(3), which allows for certification if “the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the

controversy.” Fed. R. Civ. P. 23(b)(3). The requirements of predominance and superiority are both satisfied here.

### 1. Predominance

“[I]n general, predominance is met ‘when there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class members’ individual position.’” *Cohen*, 522 F. Supp. 2d at 116 (quoting *In re Vitamins Antitrust Litig.*, 209 F.R.D. 251, 262 (D.D.C. 2002)). The court’s analysis “turns on whether there is sufficient common evidence of a resulting injury and the amount of that injury.” *In re Nifedipine Antitrust Litig.*, 246 F.R.D. 365, 369 (D.D.C. 2007). However, the predominance requirement does not simply require a mathematical accounting of whether common or individualized questions are more numerous. Instead, it requires a qualitative assessment. It is not bean counting. If the most substantial issues in controversy will be resolved by reliance primarily upon common proof, class certification will generally achieve the economies of litigation that Rule 23(b)(3) envisions. *In re Air Cargo Shipping Servs. Antitrust Litig.*, 2014 WL 7882100, at \*35 (E.D.N.Y. Oct. 15, 2014). In other words, even a single issue “of central importance to the case and common to all class member claims ... can cause class litigation to be appropriate.” *Connor v. Automated Accounts, Inc.*, 202 F.R.D. 265, 271 (E.D. Wash. 2001) (citing *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1231-32 (9th Cir. 1996)). Moreover, “in settlement class actions, because manageability need not be a concern, predominance—the main focus of manageability—recedes in importance as well.” 2 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 4:63 (6th ed. 2023); see, e.g., *In re APA Assessment Fee Litig.*, 311 F.R.D. 8, 18 (D.D.C. 2015) (certifying class for settlement and explaining that “even if [an element of the claim] could not be shown through class-wide proof—the predominance requirement” was nevertheless satisfied for settlement purposes).

Furthermore, “[p]redominance is a test readily met in certain cases alleging . . . violations of the antitrust laws.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *see also In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 518 (S.D.N.Y. 1996) (“the existence of a conspiracy is the predominant issue in price fixing cases”); *In re Vitamin C Antitrust Litig.*, 279 F.R.D. 90, 109 (E.D.N.Y. 2012) (“[C]ourts have frequently held that the predominance requirement is satisfied [in price-fixing cases] because the existence and effect of the conspiracy are the prime issues in the case and are common across the class.” (citing cases)).

Here, common issues predominate. Determining liability requires a common inquiry into Defendants’ adoption of the pricing restraints that are the subject of this case—the so-called “NDRs”—and, if the Court rules those restraints are subject to the rule of reason, what effect they had on competition. *See* Dkt. No. 177-1 at 25-27. The classwide impact of the NDRs also will be established with common proof, including Defendants’ own admissions and expert analysis based on a common methodology using the documents and data produced in this case. *See id.* at 29-51. The Court need not consider manageability issues as part of the predominance inquiry for purposes of a settlement class, *Thomas*, 139 F.3d at 234, and there are no significant manageability issues in this case anyway. *Accord Radosti*, 717 F. Supp. 2d at 54 (“Because the class is being certified for purposes of settlement only, the Court need not consider whether the case, if tried, would present intractable management problems.”).

## **2. Superiority**

The superiority question requires the court to ask whether a “class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). The court’s determination should focus on whether the settlement will “achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons

similarly situated without sacrificing procedural fairness or bringing about other undesirable results.” *Amchem*, 521 U.S. at 615.

Here, it would be inefficient to litigate the predominating common issues in countless individual proceedings, rather than on a class basis. *See In re High-Tech Emp. Antitrust Litig.*, 985 F. Supp. 2d 1167, 1228-29 (N.D. Cal. 2013) (“[T]he nature of Defendants’ alleged overarching conspiracy and the desirability of concentrating the litigation in one proceeding weigh heavily in favor of finding that class treatment is superior. . . .”). Additionally, a class action is also superior because “[i]n antitrust cases such as this, the damages of individual direct purchasers are likely to be too small to justify litigation, but a class action would offer those with small claims the opportunity for meaningful redress.” *In re Static Random Access (SRAM) Antitrust Litig.*, 2008 WL 4447592, at \*7 (N. D. Cal. Sept. 29, 2008); *In re Aftermarket Auto. Lighting Prods. Antitrust Litig.*, 276 F.R.D. 364, 375 (C.D. Cal. 2011). This action provides a single forum to adjudicate the rights of millions of ATM consumers, and thus affords an efficient resolution of this controversy.

### **C. The Proposed Settlement Class Satisfies the Requirements of Rule 23(b)(2)**

Plaintiffs also move to certify the proposed Settlement Class under Rule 23(b)(2), which permits class certification where “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). The NDRs at issue apply generally to all ATMs participating in the Visa and Mastercard networks, and the Settlement Class consists of consumers who transacted at those ATMs. This Court previously certified a litigation class under Rule 23(b)(2), observing that the NDRs “govern each and every class transaction.” Dkt. No. 234 at 8-9. The same logic supports certifying the Settlement Class under Rule 23(b)(2).



**VI. THE COURT SHOULD APPOINT CO-LEAD CLASS COUNSEL AS SETTLEMENT CLASS COUNSEL**

Rule 23(c)(1)(B) states that “[a]n order that certifies a class action . . . must appoint class counsel under Rule 23(g).” Rule 23(g)(1)(A) states that “[i]n appointing class counsel, the court (i) must consider: [1] the work counsel has done in identifying or investigating potential claims in the action; [2] counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; [3] counsel’s knowledge of the applicable law; and [4] the resources that counsel will commit to representing the class.”

This Court held that Rules 23(c)(1)(B) and 23(g) were satisfied in appointing Hagens Berman Sobol Shapiro LLP, Quinn Emanuel Urquhart & Sullivan, LLP, and Mehri & Skalet, PLLC as Co-Lead Class Counsel for the litigation class. Dkt. No. 238. The Court made the same appointments for the Bank Defendant settlements. Dkt. No. 261. All factors similarly weigh in favor of appointing the same firms as Settlement Class Counsel for this Settlement. As noted, the firms have and continue to be willing and able to vigorously prosecute this action and to devote all necessary resources to obtain the best possible result for members of the proposed Settlement Class.

**VII. THE PROPOSED NOTICE PROGRAM SATISFIES RULE 23**

A court approving a class action settlement must “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). For a proposed Rule 23(b)(3) Settlement Class, the court must also “direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).<sup>11</sup> A class notice “is

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<sup>11</sup> See also *In re Domestic Airline Travel Antitrust Litig.*, 322 F. Supp. 3d 64, 68 (D.D.C. 2018) (“The Due Process Clause also gives unnamed class members the right to notice of a class action settlement but does not require actual notice to all class members who may be bound by

adequate and satisfies Rule 23 and due process if it ‘fairly apprise[s] the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.’” *Domestic Airline*, 322 F. Supp. 3d at 68 (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114-15 (2d Cir. 2005)). Plaintiffs propose a state-of-the-art notice program designed by experienced notice and claims administrator, A.B. Data.

**A. The Proposed Notice Plan Is the Best Notice Practicable**

The proposed notice program satisfies Rule 23 and due process because it will reach a broad audience and is the best notice practicable under the circumstances. The notice plan includes several principal components, which are also summarized in Section II.C, *supra*.

*First*, pursuant to requirements in the Settlement Agreements, Plaintiffs have collected email addresses for more than **100 million** potential members of the Settlement Class from settling Bank Defendants. Schachter Decl., ¶ 6; A.B. Data will provide direct email notice to these individuals by sending them the Short-Form Notice. *See* Schachter Decl., ¶¶ 6-9, Ex. B. The Short-Form Notice will also direct members of the proposed Settlement Class to the case website, which will include extensive information about the Settlement, including the more detailed Long-Form notice that will be available for download as well.<sup>12</sup> *Id.*, ¶ 7, Ex. C.

*Second*, plaintiffs propose a robust digital and social media notice campaign, specifically targeted to reach a broad range of audiences most likely to include members of the proposed Settlement Class. *Id.*, ¶¶ 10-16. Digital banner and newsfeed ads will run on websites and applications across multiple devices, including desktop, tablet, and mobile devices. They are

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the litigation. . . . Notice need only be reasonably calculated to reach the class in order to satisfy due process.” (internal citations omitted)).

<sup>12</sup> A.B. Data will implement certain best practices when disseminating the Short-Form Notice, such as not using email attachments and certain trigger words to avoid SPAM and junk filters, to maximize deliverability. Schachter Decl., ¶ 9.

estimated to generate approximately 500 million impressions over a 60-day period to ensure ample time to deliver the targeted impressions and drive potential members of the proposed Settlement Class to the website. *Id.*, ¶ 16.

*Third*, to reach an older audience and potential members of the proposed Settlement Class who only lightly use digital or social media, the Short-Form Notice will be placed in *People* magazine, which reaches over 96 million consumers. *Id.*, ¶ 17. *Fourth*, in the “earned media” portion of the campaign, A.B. Data will disseminate a news release to be distributed via *PR Newswire* to the news desks, including those of print, broadcast, and digital websites in the U.S. *Id.*, ¶ 18.

*Fifth*, Plaintiffs will update the case-specific website (ATMClassAction.com) with information about the Settlement and provide a toll-free phone number for inquiries. *See id.*, ¶¶ 20-21. On the website, members of the proposed Settlement Class will be able to file claims using easy-to-follow steps. They will also see additional, detailed information about the case, including answers to frequently asked questions, important case documents, and contact information for both Settlement Class Counsel and the Settlement Administrator. *Id.*, ¶ 21, Ex. E (Claim Form). Members of the proposed Settlement Class will also be able to have specific questions answered through the toll-free telephone number. *Id.*, ¶ 20. Based on the proposed Notice Plan, A.B. Data estimates that 80% of the Settlement Class will be reached. *Id.*, ¶ 28.

The proposed Notice Plan satisfies the requirements of Rule 23 and due process. As discussed above, at least 100 million potential members of the proposed Settlement Class will receive direct notice by email, which is a most efficient way to directly notice a substantial portion of the Settlement Class. This method is also explicitly endorsed by the 2018 Amendments to Rule 23, which explain that “notice may be by one or more of the following:

United States mail, electronic means, or other appropriate means.” Fed R. Civ. P. 23(c)(2)(B).<sup>13</sup> Indeed, courts in this District reviewing notice programs immediately prior to the changes to Rule 23 recognized that individual notice by email, in combination with robust publication notice, as proposed here, may be the best way to provide notice to large settlement classes. *See Domestic Airline*, 322 F. Supp. 3d at 69-72 (approving of proposed settlement program by publication notice and individual notice by email, even where physical mailing addresses were available).<sup>14</sup> As the court in *Domestic Airline* explained:

No single formula can be derived which will anticipate the myriad of circumstances that may confront class action litigants attempting to identify absentee class members of a 23(b)(3) action and resolve whether the effort is reasonable. . . . Instead, this Court must examine the available information and possible methods of identification before deciding what amounts to reasonable efforts under the circumstances. The Court must balance between protecting class members and making Rule 23 workable, with consideration of the circumstances, size of the class, and cost of providing notice compared to the total settlement fund.

*Id.* at 70-71 (internal citation and quotation marks omitted).

Here, as in *Domestic Airline* and with the prior Bank Defendant settlements, the combination of “e-mail and publication” notice (*id.* at 71), is the best notice practicable. The proposed Settlement Class is estimated to contain at least 175 and 215 million members, larger than the 84-153 million prospective class members in *Domestic Airline*. *Id.* The proposed notice program, which includes providing individual notice by email plus publication notice, is

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<sup>13</sup> *See also* Fed. R. Civ. P. 23, Notes of Advisory Comm., Subdivision (c)(2) (2018) (discussing technological changes that may provide opportunities for better notice).

<sup>14</sup> *See also Domestic Airline*, 322 F. Supp. 3d at 70 (citing, among other cases: *In re Livingsocial Mktg. & Sales Practice Litig.*, 298 F.R.D. 1, 8 (D.D.C. 2013) (involving a class of 10.9 million persons contesting gift certificates sold via the internet, in which notice was given through e-mail); *In re Sony PS3 “Other OS” Litig.*, 2017 WL 5598726 (N.D. Cal. Nov. 21, 2017) (involving breach of contract claims by purchasers of computer entertainment consoles, where dissemination of settlement information was to be completed by giving notice “to Class Members via email for those Class members for whom an email address is available”)).

estimated to cost between \$1 million to \$1.25 million, while adding notice by mail would cost millions more. Schachter Decl., ¶¶ 7, 26. The additional expense to provide individual notice to this large class by mail versus email only would cut into the total settlement value of \$197.5 million, unjustifiably reducing the amounts available to members of the proposed Settlement Class, especially “considering that [as proposed here, like in *Domestic Airline*] the e-email notification will be supplemented by publication through print and media outlets and numerous websites, databases and online services.” *Domestic Airline*, 322 F. Supp. 3d at 72.

In addition to *Domestic Airline* and the cases cited therein, other courts have approved notice programs that do not include direct mailed notice, or even without any direct notice at all, when that is impractical, recognizing that notice plans should be tailored to the facts and designed to reach class members in the best manner practicable under the circumstances. *See, e.g., In re Qualcomm Antitrust Litig.*, 17-MD-02773-LHK, Dkt. No. 815 (N.D. Cal. Dec. 6, 2018) (for nationwide class of 233 million to 260 million members, approving notice plan consisting of publication notice campaign but, unlike as proposed here, ***with no individual notice component***, whether mail or electronic); *see also Lilly v. Jamba Juice Co.*, 308 F.R.D. 231, 238 (N.D. Cal. 2014) (“[O]ur law has long recognized that direct notice to every class member is not always possible. What Rule 23 and the Due Process Clause require is ‘the best notice that is practicable under the circumstances[.]’”); *Ross v. Trex Co., Inc.*, 2013 WL 791229, at \*1 (N.D. Cal. Mar. 4, 2013) (“Courts have consistently recognized that due process does not require that every class member receive actual notice. . . . Due Process does not entitle a class member to ‘actual notice,’ but rather to the best notice practicable, reasonably calculated under the

circumstances to apprise him of the pendency of the class action and give him a chance to be heard.”).<sup>15</sup>

A further indication that the proposed notice plan meets the requirements of Rule 23 and due process is the Settlement Administrator’s estimate that it will reach approximately 80% of potential members of the Settlement Class. This is consistent with the recommendations by the Federal Judicial Center’s Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide, which considers reach exceeding 70% to be reasonable. Schachter Decl., ¶ 28 n.3.

**B. The Proposed Notice Forms Contain the Rule 23 Requirements and are Plain and Easy to Understand**

Rule 23(c)(2)(B) requires that the class notice must include particular content in “plain, easily understood language.” The Short-Form Notice (Schachter Decl., Ex. B) and Long-Form Notice (*id.*, Ex. C) are plain and easy to understand and contain that content, specifically the following information: (1) “the nature of the action” (*id.*, Ex. B at opening paragraph, *id.*, Ex. C at 1, § 2); (2) the definition of the proposed Settlement Class (*id.*, Ex. B at “Am I included,” *id.*, Ex. C, § 6); (3) “the class claims, issues, or defenses” (*id.*, Ex. B at opening paragraph, *id.*, Ex. C at 1, § 2); (4) “that a class member may enter an appearance through an attorney if the member so desires” (*id.*, Ex. B at “What are my rights?”, *id.*, Ex. C, § 20); (5) “that the court will exclude from the class any member who requests exclusion” (*id.*, Ex. B at “What are my rights?”, *id.*, Ex. C, § 22); (6) “the time and manner for requesting exclusion” (*id.*, Ex. B at “What are my

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<sup>15</sup> See also *Bissonette v. Enter. Leasing Companywest*, 2014 U.S. Dist. LEXIS 132634 (D. Nev. Sept. 19, 2014) (“Under this ‘best notice practicable’ standard, courts retain considerable discretion to tailor notice to the relevant circumstances. . . .”); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 177 F.R.D. 216, 231 (D.N.J. 1997) (“Courts have consistently recognized that due process does not require that every class member receive actual notice so long as the court reasonably selected a means likely to apprise interested parties”).

rights?”, *id.*, Ex. C at 1, ¶ 22); and (7) “the binding effect of a class judgment on members under Rule 23(c)(3)” (*id.*, Ex. B at “What are my rights?”, *id.*, Ex. C, ¶ 18). *See* Fed. R. Civ. P. 23(c)(2)(B) (identifying seven requirements).

### VIII. PROPOSED SCHEDULE FOR NOTICE AND FINAL APPROVAL

Finally, Plaintiffs respectfully propose the following schedule for remaining events and submissions related to the Settlement.

Event	Proposed Deadline
Entry of order granting preliminary approval and directing notice to the class regarding the Settlement Agreements	X
Notice campaign to begin, including email, digital and social media, national print and earned media, and case website	X + 28 days
Claims period to begin	X + 28 days
Last day for motion for attorneys’ fees, costs, expenses, and service awards	X + 105 days (14 days before objection deadline)
Last day for objections and requests for exclusion from the Settlement Class	X + 119 days (91 days from notice)
Last day for motions in support of final approval of settlement	X + 133 days (14 days after objection deadline)
Final Approval Hearing	At least X + 168 days (At least 35 days after final approval motion, at convenience of the Court)
Close of claims period	X + 180 days

### IX. CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court grant the attached proposed Order, which (1) preliminarily approves the proposed class action Settlement with the Network Defendants; (2) provisionally certifies the proposed Settlement Class; (3) appoints Hagens Berman Sobol Shapiro LLP, Quinn Emanuel Urquhart & Sullivan, LLP, and Mehri & Skalet, PLLC as Settlement Class Counsel; (4) directs notice to the proposed Settlement Class in

the manner and form of notice proposed by Plaintiffs; (5) appoints Andrew Mackmin and Sam Osborn as representatives for the proposed Settlement Class for the purposes of disseminating notice; (6) authorizes retention of A.B. Data, Ltd. as the Settlement Administrator; and (7) schedules a hearing to determine whether the proposed Settlement is fair, reasonable, and adequate under Rule 23(e)(2) and whether the Settlement Class should be certified.

DATED this 29th day of May, 2024.

Respectfully submitted,

HAGENS BERMAN SOBOL SHAPIRO LLP

By:     /s/ Steve W. Berman    

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*Co-Lead Class Counsel for  
Mackmin Consumer Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ANDREW MACKMIN, *et al.*,

Plaintiffs,

v.

VISA INC., *et al.*

Defendants.

Civil Action No. 1:11-cv-1831-RJL

Assign Date: 8/4/2015

Description: Antitrust – Class Action

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF  
SETTLEMENT WITH VISA AND MASTERCARD DEFENDANTS  
AND DIRECTING NOTICE TO THE CLASS**

This matter comes before the Court on the *Mackmin* Plaintiffs' Motion For Preliminary Approval of Settlement With Visa and Mastercard Defendants and To Direct Notice To The Settlement Class ("Motion").

WHEREAS the *Mackmin* Plaintiffs ("Plaintiffs"), on behalf of themselves and of the proposed stipulated settlement class ("Settlement Class"), and Visa Inc.; Visa U.S.A. Inc.; Visa International Service Association; Plus System, Inc. ("Visa"); Mastercard Incorporated and Mastercard International Incorporated d/b/a Mastercard Worldwide ("Mastercard") have agreed, subject to Court approval following notice to the Settlement Class and a hearing, to settle the above-captioned matter ("Lawsuit") upon the terms set forth in Plaintiffs' settlement agreement with Visa and Mastercard ("Settlement Agreement," attached as **Exhibit A** to this Order).

WHEREAS, this Court has reviewed and considered the Settlement Agreement entered into among the parties, together with all exhibits thereto, the record in this case, and the briefs and arguments of counsel;

WHEREAS, Plaintiffs have applied for an order granting preliminary approval of the settlement set forth in the Settlement Agreement ("Settlement") and directing notice to the Settlement Class (defined in paragraph 2 below) in connection with the Settlement Agreement pursuant to Rule 23(e)(1) of the Federal Rules of Civil Procedure;

WHEREAS, Plaintiffs have presented sufficient information, pursuant to the Federal Rules, to justify directing notice of the Settlement to the Settlement Class;

WHEREAS, this Court finds that it is likely to approve the Settlement as fair, reasonable, and adequate under Rule 23(e)(2), and that it is likely to certify the Settlement Class for purposes of judgment on the Settlement Agreement; and

WHEREAS, all defined terms contained herein shall have the same meanings as set forth in the Settlement Agreement;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court hereby preliminarily approves the Settlement Agreement and the Settlement set forth therein, finding that it is likely to approve the Settlement as fair, reasonable, and adequate pursuant to Rule 23(e)(2), subject to further consideration at a hearing (the “Fairness Hearing”).

2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court finds that it is likely to certify the proposed Settlement Class solely for purposes of judgment on the proposed Settlement Agreement with Visa and Mastercard, and therefore preliminarily certifies, solely for purposes of effectuating this Settlement, the Settlement Class, which is defined as follows:

All individuals and entities that paid an unreimbursed ATM Access Fee directly to any Bank Defendant or Alleged Bank Co-Conspirator for a Foreign ATM Transaction using an ATM card issued by a financial institution in the United States to withdraw cash at an ATM located in the United States at any time from October 1, 2007 to the date of the Preliminary Approval Order.<sup>1</sup>

3. Having found that it will likely approve the Settlement and certify the Settlement Class for purposes of settlement with Visa and Mastercard, the Court hereby directs Plaintiffs to give notice of the Settlement to the Settlement Class.

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<sup>1</sup> Specifically excluded from the Settlement Class are Defendants; Released Parties; the officers, directors, or employees of any Defendant or Released Party; any entity in which any Defendant or Released Party has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or Released Party and any person acting on their behalf. Also excluded from the Settlement Class are any federal, state, or local governmental entities, Class Lead Counsel, and any judicial officer presiding over the Action and the members of his/her immediate family and judicial staff.

4. The Court designates Andrew Mackmin and Sam Osborn as the Class Representatives for the Settlement Class.

5. The Court designates the following as Class Counsel for the Settlement Class: Hagens Berman Sobol Shapiro LLP, Quinn Emanuel Urquhart & Sullivan, LLP, and Mehri & Skalet, PLLC.

6. The Court approves as to form and content the proposed notice forms, including the Short-Form Notice and Long-Form Notice, attached as **Exhibits B** and **C**, respectively, to the Declaration of Eric Schachter in Support of Plaintiffs' Motion. The Court further approves of the digital advertisements, attached as **Exhibit D** to the Schachter Declaration. The Court further approves of the proposed Claim Form, attached as **Exhibit E** to the Schachter Declaration. The Court further finds that the proposed plan of notice, and the proposed contents of these notices, meet the requirements of Rule 23 and due process, and are the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

7. The Court appoints the firm of A.B. Data, Ltd. as the Settlement Administrator. Plaintiffs and their designees, including the Settlement Administrator, are authorized to expend funds from the escrow accounts to pay taxes, tax expenses, notice, and administration costs as set forth in the Settlement Agreement.

8. The Court appoints Huntington National Bank as Escrow Agent to hold the Settlement Fund, pursuant to the Settlement Agreement.

9. The Fairness Hearing shall be held before this Court on [REDACTED], at [REDACTED] to determine whether to approve certification of the proposed Settlement Class for settlement purposes; whether the proposed settlement of the Lawsuit on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class and

should be approved by the Court; whether a final judgment should be entered herein; to determine the amount of fees and expenses that should be awarded to Class Counsel; and to determine the amount of service awards that should be provided to the Class Representatives. The Court may adjourn the Fairness Hearing without further notice to the members of the Settlement Class.

10. The Court appoints the Settlement Administrator to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

a. Beginning no later than 28 days from the entry of this Order, the Settlement Administrator shall provide the Short-Form Notice to potential members of the Settlement Class, substantially in the form attached as **Exhibit B** to the Schachter Declaration, and substantially in the manner described in the Schachter Declaration;

b. Beginning no later than 28 days from the entry of this Order, the Settlement Administrator shall cause the digital advertisements to be published, substantially in the form attached as **Exhibit D** to the Schachter Declaration. The Settlement Administrator may modify the form of the digital advertisements as it deems necessary and appropriate to maximize their impact and reach, as long as those modifications still reflect the substance of the form attached as **Exhibit D** to the Schachter Declaration;

c. During the notice program, the Settlement Administrator shall disseminate a news release, to be distributed over PR Newswire's US1 Newswire and Hispanic Newswire to news desks across the United States. News about the Settlement will also be broadcast to the news media via X (formerly known as Twitter). It will be tweeted from PR Newswire's and A.B. Data's X accounts to thousands of media outlets, journalists, and other followers; and

d. During the notice program, the Short-Form Notice, substantially in the form attached as **Exhibit B** to the Schachter Declaration, shall be formatted as a 1/3-page print advertisement published one time in *People* magazine.

11. No later than 28 days from the entry of this Order, the Settlement Administrator shall provide notice of the Settlement on the case-specific website at: [www.ATMClassAction.com](http://www.ATMClassAction.com). The website shall make available to members of the Settlement Class and the public information about the case and the Settlement, including links to file claims online and to download the Claim Form substantially in the form attached as Exhibit E to the Schachter Declaration. The website also shall contain answers to frequently asked questions, important case documents, and contact information for both Class Counsel and the Settlement Administrator. The Settlement Administrator shall cause the full versions of the Settlement Agreement, this Preliminary Approval Order, and the Long-Form Notice substantially in the form attached as **Exhibit C** to the Schachter Declaration, to be published on the website.

12. The claims period shall commence 28 days from the entry of this Order, and shall continue through and including 180 days from the entry of this Order.

13. All members of the Settlement Class shall be bound by all determinations and judgments in the Lawsuit concerning the Settlement, whether favorable or unfavorable to the Settlement Class.

14. Class Counsel shall file their motion for attorneys' fees, costs, and service awards for the class representatives, and all supporting documentation and papers, by 105 days from the entry of this Order.

15. Any person who desires to request exclusion from the Settlement Class must do so by 119 days from the entry of this Order, and such request for exclusion shall be in the form

of a letter mailed to the Settlement Administrator that includes a statement of that person's decision to request exclusion from the Settlement Class in this Lawsuit and that person's (1) full name, (2) mailing address, (3) telephone number and/or email address, and (4) a handwritten signature by the person requesting exclusion. All persons who submit valid and timely requests for exclusion shall have no rights under the Settlement Agreement, shall not share in the distribution of the settlement funds, and shall not be bound by the final judgments relating to the Visa and Mastercard defendants entered in the Lawsuit.

16. Any member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class, upon final approval of the Settlement, shall be bound by the terms and provisions of the Settlement so approved, including, but not limited to, the releases, waivers, and covenants set forth in the Settlement Agreement, whether or not such person or entity objected to the Settlement Agreement and whether or not such person or entity makes a claim upon the settlement funds. Any persons who excluded themselves from Plaintiffs' prior settlements with Bank of America, Chase, and Wells Fargo, will be bound by this Settlement with Visa and Mastercard unless they submit a valid exclusion request for this Settlement.

17. Any member of the Settlement Class may enter an appearance in the litigation, at his or her own expense, individually or through counsel of his or her own choice. If the member does not enter an appearance, he or she or it will be represented by Class Counsel.

18. Any member of the Settlement Class may appear and show cause, if he or she or it has any reason, why the proposed Settlement should or should not be approved as fair, reasonable, and adequate; why a judgment should or should not be entered thereon; why attorneys' fees and expenses should or should not be awarded to Class Counsel; or why the service awards should or should not be awarded to the class representatives. All written



objections and supporting papers must (a) clearly identify the case name and number (*Andrew Mackmin, et al. v. Visa Inc., et al.*, No. 1:11-cv-01831-RJL), (b) be submitted to the Court either by mailing to the United States District Court for the District of Columbia, 333 Constitution Avenue N.W., Washington D.C. 20001, or by filing them in person at the United States District Court for the District of Columbia, and (c) be filed or postmarked on or before 119 days from the entry of this Order.

19. All papers in support of the final approval of the Settlement and responses by Class Counsel regarding objections and exclusions shall be filed and served by 133 days from the entry of this Order.

20. All reasonable expenses incurred in identifying and notifying members of the Settlement Class, as well as administering the Settlement Fund, shall be paid for as set forth in the Settlement Agreement.

21. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Plaintiffs or Defendants Visa and Mastercard of the truth or falsity of any of the allegations in the Lawsuit, or of any liability, fault, or wrongdoing of any kind, and Defendants Visa and Mastercard deny and continue to deny each and all of the claims made by Plaintiffs in the Lawsuit and of liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Lawsuit.

22. All proceedings in the Lawsuit against Visa and Mastercard are hereby stayed until the Court renders a final decision on approval of the Settlement.

23. If final approval of the Settlement is not obtained, it will become null and void, and Plaintiffs and Defendants Visa and Mastercard will revert to their positions *ex ante* (as of the

execution date of the Settlement Agreement) without prejudice to their rights, claims, or defenses.

24. All members of the Settlement Class are temporarily barred and enjoined from instituting or continuing, either directly, representatively, or in any other capacity, the prosecution in any forum of the claims released in the proposed Settlement, until the Court enters final judgment with respect to the fairness, reasonableness, and adequacy of the Settlement.

SO ORDERED.

DATED: \_\_\_\_\_, 2024

---

HONORABLE RICHARD J. LEON  
UNITED STATES DISTRICT COURT JUDGE

Presented by:

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*Co-Lead Class Counsel  
for Mackmin Consumer Plaintiffs*

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ANDREW MACKMIN, *et al.*,

Plaintiffs,

v.

VISA INC., *et al.*,

Defendants.

Case No. 1:11-cv-01831 (RJL)

**STIPULATION AND AGREEMENT OF SETTLEMENT BETWEEN  
MACKMIN PLAINTIFFS AND VISA AND MASTERCARD DEFENDANTS**

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**1. RECITALS**

This Stipulation and Agreement of Settlement (“Settlement Agreement”) is made and entered into on May 2, 2024 (“Execution Date”), between Class Plaintiffs (as defined herein), for themselves individually and on behalf of each Settlement Class Member in the Action (each, as defined herein), Visa Defendants (as defined herein), and Mastercard Defendants (as defined herein), by and through Class Lead Counsel, Visa Defendants’ Counsel, and Mastercard Defendants’ Counsel (each, as defined herein). This Settlement Agreement is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), with respect to the Released Parties (as defined herein), upon and subject to the terms and conditions herein.

WHEREAS, on November 23, 2015, Class Plaintiffs filed a Second Amended Class Action Complaint (“SAC” or “Complaint”);

WHEREAS, by order of August 4, 2021, as amended by order of September 7, 2021, and on the motion of the Class Plaintiffs, the Court certified a class under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3);

WHEREAS, on August 8, 2022, pursuant to a finally approved class settlement, final judgments of dismissal with prejudice were entered in the Action as to all Bank Defendants (as defined herein);

WHEREAS, Class Plaintiffs are prosecuting the Action on their own behalf and on behalf of a certified Rule 23(b)(2) and Rule 23(b)(3) class against Visa Defendants and Mastercard Defendants;

WHEREAS, Class Plaintiffs have alleged, among other things, that Defendants, including Visa Defendants and Mastercard Defendants, participated in an unlawful conspiracy to restrain

trade, pursuant to which Visa Defendants and Mastercard Defendants and their alleged co-conspirators, including the other Defendants, as well as unnamed co-conspirators, agreed, among other things, to so-called Non-Discrimination Rules that allegedly had the effect of increasing the amount of ATM Access Fees (as defined herein) paid by the Settlement Class (as defined herein), in violation of the Sherman Act, 15 U.S.C. § 1, *et seq.* as well as state antitrust, restraint of trade, consumer protection, and unfair competition laws;

WHEREAS, Class Plaintiffs have contended that they are entitled to actual damages, treble damages, and injunctive relief for loss or damage, and threatened loss or damage, as a result of violations of the laws as alleged in the SAC, arising from Visa Defendants' and Mastercard Defendants' (and the other Defendants') alleged conduct;

WHEREAS, Visa Defendants and Mastercard Defendants have denied and continue to deny each and all of the claims made by Class Plaintiffs in the Action and all liability against them arising out of any of the conduct, statements, acts, or omissions that were alleged, or that could have been alleged, in the Action;

WHEREAS, Class Plaintiffs, for themselves individually and on behalf of each Settlement Class Member, Visa Defendants, and Mastercard Defendants, agree that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Visa Defendants or Mastercard Defendants or of the truth of any of the claims or allegations alleged in the Action;

WHEREAS, Class Plaintiffs, Visa Defendants and Mastercard Defendants have engaged in extensive discovery regarding the facts pertaining to Class Plaintiffs' claims and Visa Defendants' and Mastercard Defendants' defenses;



WHEREAS, Class Lead Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action, the legal and factual defenses thereto, and the applicable law, that: (1) it is in the best interests of the Settlement Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein, including the value of the Settlement Amount (as defined herein) to be paid by Visa Defendants and Mastercard Defendants under this Settlement Agreement, are obtained for the Settlement Class; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate and in the best interests of the Settlement Class;

WHEREAS, Visa Defendants and Mastercard Defendants, while each continuing to deny that they are liable for any of the claims asserted against them in the Action, have nevertheless agreed to enter into this Settlement Agreement to avoid the further risk, expense, inconvenience, and distraction of burdensome and protracted litigation, and thereby to put fully to rest this controversy, to avoid the risks inherent in complex litigation, and to obtain complete dismissal of the SAC as to Visa Defendants and Mastercard Defendants and a release of claims as set forth herein; and

WHEREAS, this Settlement Agreement is the product of arm's-length negotiations between Class Lead Counsel and Visa Defendants' Counsel and Mastercard Defendants' Counsel under the guidance and oversight of former U.S. District Judge Layn Phillips as Mediator, and this Settlement Agreement embodies all of the terms and conditions of the settlement agreed upon between Visa Defendants and Mastercard Defendants and Class Plaintiffs, both for themselves individually and on behalf of the Settlement Class;

NOW, THEREFORE, in consideration of the covenants, terms, and releases in this

Settlement Agreement, it is agreed, by and among Class Plaintiffs (for themselves individually and on behalf of the Settlement Class and each member thereof) and Visa Defendants and Mastercard Defendants, by and through Class Lead Counsel and Visa Defendants' Counsel and Mastercard Defendants' Counsel, that, subject to the approval of the Court (as defined herein), the Action be settled, compromised, and dismissed with prejudice as to Visa Defendants and Mastercard Defendants and the other Released Parties (as defined herein), without costs, except as stated herein, and releases be extended, as set forth in this Settlement Agreement.

## 2. DEFINITIONS

As used in this Settlement Agreement, the following capitalized terms have the meanings specified below:

(a) "Action" means *Mackmin et al. v. Visa Inc. et al.*, Case No. 1:11-cv-01831 (RJL), which is currently pending in the United States District Court for the District of Columbia.

(b) "Alleged Bank Co-Conspirator" has the same definition as "Bank Co-Conspirator" in the SAC.

(c) "ATM" means an automated teller machine, which allows Cardholders to complete an ATM Transaction.

(d) "ATM Access Fee" means the fee assessed by an ATM operator to a Cardholder for completing a Foreign ATM Transaction.

(e) "ATM Card" means an access device, usually a card, enabling the holder, among other things, to conduct an ATM Transaction.

(f) "ATM Transaction" means any actual or attempted use of an ATM, including to withdraw cash, deposit funds, transfer funds, or check account balances.

(g) “Authorized Claimant” means any Settlement Class Member who will be entitled to a distribution from the Net Settlement Fund pursuant to the Plan of Distribution approved by the Court.

(h) “Bank” means any bank, credit union, or other financial institution, including its affiliates, subsidiaries, agents, representatives, employees, officers, and directors.

(i) “Bank Defendants” means JPMorgan Chase & Co.; Chase Bank USA, N.A.; JPMorgan Chase Bank, N.A.; Bank of America, N.A.; NB Holdings Corp.; Bank of America Corp.; Wells Fargo & Co.; and Wells Fargo Bank, N.A.

(j) “Cardholder” means any Person that owns, possesses, or controls an ATM Card.

(k) “Claims Administrator” means the third party to be retained by Class Lead Counsel and approved by the Court to manage and administer the process by which each member of the Settlement Class is notified of the Settlement Agreement and paid from the Net Settlement Fund.

(l) “Class Lead Counsel” means Hagens Berman Sobol Shapiro LLP, Quinn Emanuel Urquhart & Sullivan LLP, and Mehri & Skalet PLLC.

(m) “Class Notice” means the proposed form of, method for, and the date of dissemination of notice of the Settlement Agreement to the Settlement Class.

(n) “Class Plaintiffs” means Andrew Mackmin and Sam Osborn.

(o) “Court” means the United States District Court for the District of Columbia.

(p) “Defendants” means JPMorgan Chase & Co.; Chase Bank USA, N.A.; JPMorgan Chase Bank, N.A.; Visa Inc.; Visa U.S.A. Inc.; Visa International Service Association; Plus System, Inc.; Mastercard Incorporated; Mastercard International Incorporated d/b/a Mastercard Worldwide; Bank of America, N.A.; NB Holdings Corp.; Bank of America Corp.; Wells Fargo &

Co.; and Wells Fargo Bank, N.A.; and any other Person or Persons who are named as defendants in the Action at any time up to and including the date a Preliminary Approval Order is entered.

(q) “Effective Date of Settlement” has the meaning given to it in paragraph 7.

(r) “Escrow Agent” means Huntington National Bank.

(s) “Execution Date” means the date of the execution of this Settlement Agreement by counsel for all Parties thereto.

(t) “Fairness Hearing” means the hearing to be held by the Court to determine whether the settlement set forth in this Settlement Agreement shall receive final approval pursuant to Fed. R. Civ. P. 23.

(u) “Fee and Expense Application” has the meaning given to it in paragraph 11.

(v) “Fee and Expense Award” has the meaning given to it in paragraph 11.

(w) “Final Approval Order” has the meaning given to it in paragraph 5.

(x) “Final Judgment and Order of Dismissal” has the meaning given to it in paragraph 5.

(y) “Foreign ATM Transaction” means an ATM Transaction in which the Cardholder uses an ATM that is owned or operated by an entity different from the entity that issued the ATM Card used for that ATM Transaction.

(z) “Mastercard Defendants” means Mastercard Incorporated and Mastercard International Incorporated d/b/a Mastercard Worldwide.

(aa) “Mastercard Defendants’ Counsel” means Paul, Weiss, Rifkind, Wharton & Garrison LLP.

(bb) “Mediator” means former U.S. District Judge Layn R. Phillips.

(cc) “Net Settlement Fund” has the meaning given to it in paragraph 12.

(dd) “Parties” means, collectively, Class Plaintiffs (on behalf of themselves and the Settlement Class) and Visa Defendants and Mastercard Defendants.

(ee) “Person” means an individual or entity, and his, her, or its spouses, heirs, predecessors, successors, representatives, or assignees.

(ff) “Plan of Distribution” means a plan or formula of allocation of the Net Settlement Fund whereby the Settlement Fund shall be distributed to Settlement Class Members after payment of expenses of notice and administration of the settlement, Taxes, and tax expenses, and such attorneys’ fees, costs, service awards, interest, and other expenses as may be awarded by the Court.

(gg) “Preliminary Approval Order” means an order of the Court that preliminarily approves the settlement set forth in this Settlement Agreement and that approves the form of Class Notice and preliminarily approves a proposed Plan of Distribution.

(hh) “Released Claims” means, in consideration of payment of the Settlement Amount into the Settlement Fund as specified in paragraph 12 of this Settlement Agreement, and for other valuable consideration, any and all manner of claims, causes of action, cross-claims, counterclaims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys’ fees, damages, or other payment of money, or for injunctive, declaratory or other equitable relief, whenever incurred, and liabilities of any nature whatsoever (including joint and several) that have or could have been alleged in the Action by the Releasing Parties against the Released Parties to the fullest extent permitted by law, including all potential, unasserted, and “Unknown Claims,” as defined below, from the beginning of time and continuing into the future without end. It is

expressly agreed for purposes of clarity that any claims arising out of the factual predicates of the Action, including with respect to the rules, fees, and/or conduct at issue, are claims that have or could have been alleged in the Action by the Releasing Parties against the Released Parties.

(ii) “Released Party” or “Released Parties” means Visa Inc.; Visa U.S.A. Inc.; Visa International Service Association; Plus System, Inc.; Mastercard Incorporated; and Mastercard International Incorporated d/b/a Mastercard Worldwide, and each entity’s past, present, and future, direct and indirect parents (including holding companies), subsidiaries, affiliates, associates (all as defined in Securities and Exchange Commission Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934, as amended), divisions, predecessors, successors, assigns, and members (including, without limitation, all past, present, and future financial institutions authorized or licensed to issue or acquire Visa- or Mastercard-branded ATM Cards and transactions), and each of their respective officers, directors, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, members, and assigns.

(jj) “Releasing Parties” means, individually and collectively, Class Plaintiffs and each Settlement Class Member, on behalf of themselves and any of their respective past, present or future officers, directors, stockholders, agents, employees, legal or other representatives, partners, associates, trustees, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns, whether or not they object to the settlement set forth in this Settlement Agreement, and whether or not they make a claim for payment from the Net Settlement Fund.

(kk) “Request for Exclusion” has the meaning given to it in paragraph 6.

(ll) “SAC” or “Complaint” means the Second Amended Class Action Complaint filed with the Court in the Action on November 23, 2015.

(mm) “Settlement Agreement” means this Stipulation and Agreement of Settlement.

(nn) “Settlement Amount” means the sum of One Hundred Ninety-Seven Million Five Hundred Thousand Dollars (\$197,500,000.00), payable in lawful tender of the United States.

(oo) “Settlement Class” has the meaning given to it in paragraph 3(a).

(pp) “Settlement Class Member” means a Person who is a member of the Settlement Class and has not timely and validly excluded himself, herself, or itself in accordance with the procedures to be established by the Court.

(qq) “Settlement Fund” means the escrow account established pursuant to paragraph 12 of this Settlement Agreement, including all monies held therein in accordance with the terms of this Settlement Agreement.

(rr) “Taxes” has the meaning given to it in paragraph 14.

(ss) “Unknown Claims” means any and all Released Claims against the Released Parties that any of the Releasing Parties does not know or suspect to exist in his, her, or its favor as of the Effective Date of Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that by operation of the Final Judgment and Order of Dismissal, upon the Effective Date of Settlement, Releasing Parties shall have expressly waived, and each Settlement Class Member shall be deemed to have waived, and by operation of the Final Judgment and Order of Dismissal shall have expressly waived, the provisions, rights and benefits of Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

and any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542.

Any of the Releasing Parties may hereafter discover facts other than or different from those that he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims. Nevertheless, Class Plaintiffs shall expressly, fully, finally, and forever settle and release, and each Settlement Class Member, upon the Effective Date of Settlement, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal shall have, fully, finally, and forever settled and released, any and all Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Class Plaintiffs acknowledge, and Settlement Class Members shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement Agreement.

(tt) “Visa Defendants” means Visa Inc., Visa U.S.A. Inc., Visa International Service Association, and Plus System, Inc.

(uu) “Visa Defendants’ Counsel” means Arnold & Porter Kaye Scholer LLP.

### **3. SETTLEMENT CLASS CERTIFICATION**

(a) The Parties hereby stipulate solely for settlement purposes that the requirements of Fed. R. Civ. P. 23(a), Fed. R. Civ. P. 23(b)(2), and Fed. R. Civ. P. 23(b)(3) are satisfied and, subject to Court approval, the following Settlement Class shall be certified as to Visa Defendants and Mastercard Defendants solely for settlement purposes: “All individuals and entities that paid an unreimbursed ATM Access Fee directly to any Bank Defendant or Alleged Bank Co-Conspirator for a Foreign ATM Transaction using an ATM card issued by a financial institution in the United



States to withdraw cash at an ATM located in the United States at any time from October 1, 2007 to the date of the Preliminary Approval Order.” Specifically excluded from the Settlement Class are Defendants; Released Parties; the officers, directors, or employees of any Defendant or Released Party; any entity in which any Defendant or Released Party has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or Released Party and any person acting on their behalf. Also excluded from the Settlement Class are any federal, state, or local governmental entities, Class Lead Counsel, and any judicial officer presiding over the Action and the members of his/her immediate family and judicial staff.

(b) The Parties’ agreement as to certification of the Settlement Class is solely for purposes of effectuating a settlement and for no other purpose. Visa Defendants and Mastercard Defendants retain all of their objections, arguments, and defenses with respect to class certification, and reserve all rights to contest class certification, if the settlement set forth in this Settlement Agreement does not receive the Court’s final approval, if the Court’s approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to close. The Parties acknowledge that there has been no stipulation to any class or certification of any class for any purpose other than effectuating the settlement, and that if the settlement set forth in this Settlement Agreement does not receive the Court’s final approval, if the Court’s approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to close, this agreement as to certification of the Settlement Class becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-related statement may not be cited regarding certification of

the Settlement Class, or in support of an argument for certifying a class for any purpose related to this proceeding.

**4. GOOD FAITH EFFORTS TO EFFECTUATE THIS SETTLEMENT AGREEMENT**

The Parties agree to cooperate with one another in good faith to effectuate and implement the terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the terms of this Settlement Agreement. This includes Visa Defendants and Mastercard Defendants serving notice on those entities required to receive notice pursuant to 28 U.S.C. § 1715.

**5. FINAL JUDGMENT AND ORDER OF DISMISSAL AGAINST VISA DEFENDANTS AND MASTERCARD DEFENDANTS**

(a) Class Plaintiffs shall seek a Final Approval Order and a Final Judgment and Order of Dismissal against Visa Defendants and Mastercard Defendants, the proposed text of which Class Plaintiffs and Visa Defendants and Mastercard Defendants shall agree upon. The Final Approval Order and Final Judgment and Order of Dismissal submitted for Court approval will include, at a minimum, terms:

(i) certifying the Settlement Class pursuant to Fed. R. Civ. P. 23(b)(2) and Fed. R. Civ. P. 23(b)(3) solely for the purpose of the settlement;

(ii) as to the Action, approving fully and finally this settlement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms and conditions;

(iii) finding that the notice given to Settlement Class Members constitutes the best notice practicable under the circumstances and complies in all respects with the valid, due, and sufficient notice requirements of Federal Rule of Civil Procedure 23, and meets the requirements of due process;

(iv) as to Released Parties, directing that the Action be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs;

(v) discharging and releasing the Released Parties from the Released Claims, regardless of whether any such Releasing Party executes and delivers a proof of claim, and without respect to any rights afforded under California Civil Code § 1542 and/or any other similar, comparable, or equivalent laws;

(vi) permanently barring and enjoining Class Plaintiffs or any Settlement Class Member from (A) instituting or prosecuting any other action against any of the Released Parties as to any of the Released Claims, or (B) assisting any third party in commencing or maintaining any suit against any Released Party related in any way to any of the Released Claims;

(vii) reserving exclusive jurisdiction over the settlement and this Settlement Agreement, including all future proceedings concerning the administration, interpretation, consummation, and enforcement of this settlement and this Settlement Agreement, to the Court; and

(viii) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to the Released Parties shall be final and entered forthwith.

(b) The Final Judgment and Order of Dismissal shall become final when (i) the Court has entered a final order certifying the Settlement Class for settlement purposes and approving this Settlement Agreement under Federal Rule of Civil Procedure 23(e) and a final judgment dismissing the Action with prejudice as to the Released Parties against all Settlement Class Members and without costs other than those provided for in this Settlement Agreement, and (ii) the time for appeal from the Court's approval of this Settlement Agreement and entry of a final judgment as to the Released Parties described in (i) hereof has expired or, if appealed, approval of this Settlement Agreement and the final judgment as to the Released Parties have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times.

(c) As of the Execution Date, Class Plaintiffs, Settlement Class Members, Visa Defendants, and Mastercard Defendants shall be bound by the Settlement Agreement's terms and this Settlement Agreement shall not be rescinded except in accordance with the terms of this Settlement Agreement.

## **6. PRELIMINARY APPROVAL ORDER, NOTICE, AND FAIRNESS HEARING**

(a) As soon as reasonably possible following the Execution Date, Class Lead Counsel shall submit to the Court, and Visa Defendants and Mastercard Defendants shall support, a motion requesting entry of a Preliminary Approval Order. That motion shall:

(i) seek preliminary certification of the Settlement Class solely for settlement purposes, pursuant to Fed. R. Civ. P. 23(a), Fed. R. Civ. P. 23(b)(2), and Fed. R. Civ. P. 23(b)(3);

(ii) request preliminary approval of the settlement set forth in this Settlement Agreement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23;

(iii) seek the appointment of Class Plaintiffs as representatives of the Settlement Class, and Class Lead Counsel as counsel for the Settlement Class under Fed. R. Civ. P. 23(g);

(iv) request authorization to disseminate notice of the settlement and final judgment contemplated by this Settlement Agreement to all potential Settlement Class Members. The motion shall include: (1) a proposed form of, method for, and date of dissemination of notice; and (2) a proposed Preliminary Approval Order. Notice of the settlement shall be as provided in the motion and as approved by the Court, with all expenses paid from the Settlement Fund, subject to the provisions of this Settlement Agreement. The motion shall recite and ask the Court to find that the method of the notice of settlement to all Settlement Class Members who can be identified upon reasonable effort constitutes valid, due, and sufficient notice to the Settlement Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23 and due process. The Claims Administrator will also establish and maintain a dedicated settlement website, from which each Settlement Class Member can view and download relevant documents;

(v) seek appointment of the Claims Administrator;

(vi) seek appointment of Huntington National Bank as Escrow Agent;

(vii) request that the Court, pending final determination of whether the Settlement Agreement should be approved, stay all proceedings in the Action against Visa

Defendants and Mastercard Defendants until the Court renders a final decision on approval of the settlement set forth in this Settlement Agreement;

(viii) request that the Court, pending final determination of whether the Settlement Agreement should be approved, temporarily enjoin each Class Plaintiff and each Settlement Class Member, either directly, representatively, or in any other capacity, from prosecuting in any forum any Released Claim against any of the Released Parties; and

(ix) attach a proposed form of order, the proposed text of which Class Lead Counsel shall provide to Visa Defendants and Mastercard Defendants at least five (5) business days prior to the submission to the Court of the motion requesting entry of a Preliminary Approval Order. Class Lead Counsel will consider in good faith any suggestions from Visa Defendants and Mastercard Defendants regarding the proposed form of order. The form of order will include such provisions as are typical in such orders, including: (1) setting a date for the Fairness Hearing; (2) a provision indicating that, if final approval of the settlement is not obtained, the settlement is null and void, and the Parties will revert to their positions *ex ante* (as of the Execution Date) without prejudice to their rights, claims, or defenses; (3) stating the substantial litigation risks that the Settlement Class faced in the Action; (4) stating the procedures, which shall be consistent with paragraph 6(d), for Persons falling within the definition of the Settlement Class to exclude themselves from the Settlement Class; (5) requiring that all members of the Settlement Class be bound by all final determinations in the Action concerning the settlement, whether favorable or unfavorable to the members of the Settlement Class; and (6) stating that Visa Defendants and Mastercard Defendants have denied and continue to

deny each and all of the claims made by Class Plaintiffs in the Action and have denied and continue to deny liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action.

(b) Class Notice shall apprise each member of the Settlement Class of his, her, or its right to exclude themselves from, or object to, the settlement.

(c) Visa Defendants and Mastercard Defendants shall be responsible for providing all notices required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

(d) Any Person falling within the definition of the Settlement Class may request to be excluded from the Settlement Class (“Request for Exclusion”) in accordance with procedures approved by the Court (which, at a minimum, will require a signed writing or substantially similar submission from each individual or entity requesting exclusion that clearly states (i) the individual’s or entity’s identity with particularity and (ii) his/her/its decision to request exclusion from the Settlement Class in this Action). Within five (5) business days after the end of the period to request exclusion from the Settlement Class, Class Lead Counsel will cause copies of all Requests for Exclusion from the Settlement Class to be provided to counsel for Visa Defendants and Mastercard Defendants. With respect to any potential Settlement Class Member who requests exclusion from the Settlement Class, Visa Defendants and Mastercard Defendants reserve all of their legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Settlement Class Member is a member of the Settlement Class and/or has standing to bring any claim.

(e) The Parties to this Settlement Agreement contemplate and agree that, prior to final approval of the settlement, Class Plaintiffs will request a Court hearing at which the Court will consider the final approval of this Settlement Agreement.

**7. EFFECTIVE DATE OF SETTLEMENT**

(a) The “Effective Date of Settlement” shall be the date when all of the following events shall have occurred and shall be conditioned on the occurrence of all of the following events:

(i) the Settlement Amount has been contributed to the Settlement Fund pursuant to this Settlement Agreement;

(ii) entry of the Preliminary Approval Order;

(iii) final approval by the Court of the settlement set forth in this Settlement Agreement, following Class Notice and the Fairness Hearing;

(iv) no Party has exercised his, her, or its rights to terminate this Settlement Agreement pursuant to paragraph 15, and all periods for any Party to exercise such rights have expired; and

(v) entry by the Court of a Final Judgment and Order of Dismissal, and the Final Judgment and Order of Dismissal becomes final pursuant to paragraph 5(b).

(b) Notwithstanding any other provision herein, any proceeding or order, or motion for reconsideration, appeal, petition for a writ of certiorari or its equivalent, pertaining solely to the Plan of Distribution or Fee and Expense Application, or both, shall not in any way delay or preclude the Effective Date of Settlement.

**8. CLAIMS ADMINISTRATOR**

(a) Pursuant to the Preliminary Approval Order, and subject to Court approval, Class Lead Counsel shall engage a qualified Claims Administrator. The Claims Administrator will assist with the settlement claims process as set forth herein.



(b) The Claims Administrator shall effectuate the notice plan approved by the Court in the Preliminary Approval Order, shall administer and calculate the claims, and shall oversee distribution of the Net Settlement Fund in accordance with the Plan of Distribution.

(c) The Claims Administrator also shall assist in the development of the Plan of Distribution and the resolution of any disputes that may be raised by Settlement Class Members regarding the amount that they are owed under the Plan of Distribution.

## **9. SCOPE AND EFFECT OF SETTLEMENT**

(a) The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action against Visa Defendants and Mastercard Defendants; and (ii) any and all Released Claims as against all Released Parties.

(b) Upon the Effective Date of Settlement, each of the Releasing Parties: (i) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal, shall have fully, finally, and forever waived, released, relinquished, and discharged (1) all Released Claims against the Released Parties, and (2) any rights to the protections afforded under California Civil Code § 1542 and/or any other similar, comparable, or equivalent laws; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; (iii) agrees and covenants not to sue, either directly, representatively, or in any other capacity, any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any of the Released Parties related in any way to any Released Claims; and (iv) represents and acknowledges that, as of the date of Preliminary Approval, any and all competitive issues that were, or could have been, asserted in this litigation have been addressed.

(c) The releases provided in this Settlement Agreement shall become effective immediately upon occurrence of the Effective Date of Settlement without the need for any further action, notice, condition, or event.

(d) The Parties shall seek entry by the Court of an order, in the Final Judgment and Order of Dismissal or otherwise, to the extent not prohibited by law, barring claims by any Person against the Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise.

(e) In the event that this Settlement Agreement is terminated pursuant to paragraph 15, or any condition for the final approval of this Settlement Agreement is not satisfied, the release and covenant not to sue provisions of this paragraph shall be null and void and unenforceable.

## **10. COOPERATION**

(a) Visa Defendants and Mastercard Defendants will, to the extent permitted by law, work in good faith to furnish information reasonably available to them to assist in the identification of potential Settlement Class Members. Visa Defendants and Mastercard Defendants further agree to employ reasonable and good faith efforts to cooperate with Class Plaintiffs to ensure the timely production of this information, as well as to determine the specific information to be provided and the format of that information. Any confidentiality or security concerns Visa Defendants and Mastercard Defendants may have in connection with providing such information will be addressed by Class Plaintiffs in good faith, including by allowing Visa Defendants and Mastercard Defendants to condition their provision of the information upon their approval of the data security and privacy practices of the Claims Administrator handling their information. In turn, Visa Defendants and Mastercard Defendants will respond in good faith to reasonable inquiries or

requests from the Claims Administrator or Class Plaintiffs that may arise in connection with the notice, claims, or distribution process. Visa Defendants and Mastercard Defendants agree to employ reasonable and good faith efforts to cooperate with the Claims Administrator and other third party service providers with respect to notice, claims processing, and claims distribution by providing information concerning their capacity to facilitate those third party service providers' efforts to provide notice. To the extent any disagreements arise as to the information Visa Defendants and Mastercard Defendants agree to provide under this paragraph, the Parties will first attempt to meet and confer in good faith to reach a resolution. If, following a good faith meet and confer process, the Parties cannot reach a resolution, the Parties agree they will submit the dispute to the Court for resolution in accordance with applicable law. Nothing in this paragraph, identifying cooperation that Visa Defendants and Mastercard Defendants shall provide to the Claims Administrator, is intended to cause Visa Defendants or Mastercard Defendants to assume the role or responsibilities of the Claims Administrator. Similarly, nothing in this paragraph is intended to waive any party's rights to seek to impose or oppose any additional obligations with respect to notice, claims, or distribution of the Settlement Amount.

(b) Except as expressly provided herein, no further discovery shall be allowed to be directed by Class Lead Counsel, Class Plaintiffs, or Settlement Class Members to Visa Defendants or Mastercard Defendants, including any discovery regarding the merits of the Action or in connection with processing claims.

## **11. FEE AND EXPENSE APPLICATION**

(a) Class Lead Counsel may submit an application or applications to the Court (the "Fee and Expense Application") for distribution to them from the Settlement Fund of (1) an award of attorneys' fees; plus (2) reimbursement of expenses paid by Class Lead Counsel in connection

with prosecuting the Action; plus (3) any interest earned in the escrow account on such attorneys' fees and expenses (until paid) at the same rate and for the same periods as earned by the Settlement Fund, as appropriate, and as may be awarded by the Court (the "Fee and Expense Award").

(b) The Fee and Expense Award, as approved by the Court, shall be paid solely from the Settlement Fund to an account designated by Class Lead Counsel within thirty (30) days after the granting of the Fee and Expense Award. The Fee and Expense Award may be disbursed during the pendency of any appeals that may be taken from the Court's judgment approving this Settlement Agreement or the Fee and Expense Award, or both.

(c) Class Lead Counsel shall allocate the attorneys' fees among themselves in a manner that they believe in good faith reflects the respective contributions of such counsel to the prosecution and settlement of this Action.

(d) In the event that the order making the Fee and Expense Award is reversed or modified, then Class Lead Counsel shall, within ten (10) business days from receiving notice from Visa Defendants' or Mastercard Defendants' Counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund the Fee and Expense Award or any portion thereof previously paid to them plus interest thereon at the same rate as earned by the account into which the balance of the Settlement Fund is deposited.

(e) The procedure for, and the allowance or disallowance by the Court of, the application by Class Lead Counsel for attorneys' fees, costs, and expenses to be paid out of the Settlement Fund are not part of this Settlement Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement, and any order or proceeding relating to the Fee and Expense Application, the pendency

of any such application, or any appeal from any such order shall not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality of the judgment approving the settlement.

(f) Class Lead Counsel may request service awards for each of the two Class Plaintiffs, to be drawn exclusively from the Settlement Fund.

## **12. THE SETTLEMENT FUND**

(a) The Settlement Fund shall be established as an escrow account at Huntington National Bank and administered by the Escrow Agent, subject to the continuing jurisdiction of the Court. The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Court's continuing supervision and control. No monies shall be paid from the Settlement Fund without the specific authorization of Class Lead Counsel, based on prior approval by the Court. Class Lead Counsel will form an appropriate escrow agreement in conformance with this Settlement Agreement.

(b) Within twenty-one (21) business days following entry of the Preliminary Approval Order, provided that within two (2) days following entry of the Preliminary Approval Order, Class Lead Counsel shall provide Visa Defendants and Mastercard Defendants with such information as Visa Defendants or Mastercard Defendants may require to complete the necessary wire transfers, Defendants shall cause the payment of \$197,500,000.00 to be wired to the Escrow Agent as follows: (i) the Visa Defendants shall cause the payment of 53% of the Settlement Amount (*i.e.*, \$104,675,000.00) to be transferred to the Escrow Agent, and (ii) the Mastercard Defendants shall cause the payment of 47% of the Settlement Amount (*i.e.*, \$92,825,000.00) to be transferred to the Escrow Agent, in accordance with Visa Defendants' and the Mastercard Defendants' agreement among themselves regarding their respective shares. These funds, together with any interest earned thereon, shall constitute the Settlement Fund. In the event that Class Lead Counsel does

not provide Visa Defendants and Mastercard Defendants with the information required to complete the wire transfer within the prescribed time, Visa Defendants' and Mastercard Defendants' payment obligations under this paragraph shall be deferred by an amount of time equivalent to Class Lead Counsel's delay in providing such information.

(c) In all events, the Released Parties shall have no liability, obligation, or responsibility for the costs or provision of notice, including, but not limited to, the identification of potential members of the Settlement Class, beyond those set forth in paragraphs 10(a) and 12(b) above, and paragraph 12(e)(ii) below; for the solicitation, review, or evaluation of proofs of claim; for the administration of the settlement or disbursement of the Settlement Fund; or for any other costs, including any attorneys' fees and expenses or any taxes or tax-related costs relating to the Action, any Released Claim, or the Settlement Fund. The Settlement Fund shall be invested exclusively in accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a United States Treasury Fund or a bank account that is either: (i) fully insured by the Federal Deposit Insurance Corporation; or (ii) secured by instruments backed by the full faith and credit of the United States Government. The proceeds of these accounts shall be reinvested in similar instruments at their then-current market rates as they mature. Visa and Mastercard Defendants shall have no responsibility or liability for any losses incurred by the Settlement Fund.

(d) All funds held by the Escrow Agent shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Settlement Agreement and the Plan of Distribution approved by the Court.

(e) The Settlement Fund shall be applied as follows:

- (i) to pay the Fee and Expense Award, if and to the extent allowed by the Court;
- (ii) to use, if approved by the Court, up to \$1,500,000.00 of the Settlement Amount for payment of any Court-approved costs and expenses in connection with providing Class Notice and the administration of the settlement, including, without limitation, identifying potential members of the Settlement Class; soliciting, reviewing, and evaluating proofs of claim or release forms, or both; and administering the settlement and disbursing the Settlement Fund. If necessary, additional amounts can be used for notice and administration expenses upon the further written agreement of the Parties and approval by the Court, and Visa Defendants and Mastercard Defendants agree to exercise good faith regarding any additional amounts and not to object to reasonable requests to the Court for such additional amounts; in the event Visa Defendants or Mastercard Defendants decline to agree to a request for additional amounts, Class Plaintiffs shall be permitted to apply directly to the Court for approval without Visa Defendants' or Mastercard Defendants' written agreement to the amounts requested (and Visa Defendants and Mastercard Defendants reserve their rights to oppose such an application);
- (iii) to pay the Taxes and tax expenses described in paragraph 14 herein;
- (iv) to pay any other Court-approved fees and expenses; and
- (v) to distribute the balance of the Settlement Fund (the "Net Settlement Fund") to Settlement Class Members as allowed by the Court.

**13. ADMINISTRATION OF THE SETTLEMENT**

- (a) The Claims Administrator shall process this settlement based upon the orders of the Court and this Settlement Agreement, and, after entry of relevant order(s) of the Court, distribute the Net Settlement Fund in accordance with such order(s) and this Settlement Agreement.

(b) Except for their obligation to fund the settlement or cause it to be funded as detailed in this Settlement Agreement, Visa Defendants and Mastercard Defendants shall have no liability, obligation, or responsibility for the administration of the settlement or disbursement of the Net Settlement Fund.

(c) The Net Settlement Fund shall be distributed by the Claims Administrator to, or for the account of, Settlement Class Member claimants, as the case may be, only after the Effective Date of Settlement.

(d) Class Plaintiffs and Settlement Class Members shall look solely to the Settlement Fund as full, final and complete satisfaction of all Released Claims. Except as set forth in paragraph 12(b), Visa Defendants and Mastercard Defendants shall have no obligation under this Settlement Agreement or the settlement to pay or cause to be paid any amount of money, and Visa Defendants and Mastercard Defendants shall have no obligation to pay or reimburse any fees, expenses, costs, liability, losses, Taxes, or damages whatsoever alleged or incurred by Class Plaintiffs, by any Settlement Class Member, or by any Releasing Parties, including, but not limited to, by their attorneys, experts, advisors, agents, or representatives, with respect to the Action and Released Claims. Class Plaintiffs and Settlement Class Members acknowledge that as of the Effective Date of Settlement, the releases given herein shall become effective immediately by operation of the Final Judgment and Order of Dismissal and shall be permanent, absolute, and unconditional.

(e) Any funds that remain in the Net Settlement Fund after distribution of the Net Settlement Fund in accordance with the Plan of Distribution shall not revert to Visa Defendants or Mastercard Defendants. Class Plaintiffs shall apply directly to the Court authorizing the *cy pres* distribution of those remaining funds.



**14. TAXES**

(a) The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulations § 1.468B-1, and agree not to take any position for tax purposes inconsistent therewith. In addition, Class Lead Counsel shall timely make, or cause to be made, such elections as necessary or advisable to carry out the provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such election shall be made in compliance with the procedures and requirements contained in such regulations. The Settlement Fund, less any amounts incurred for notice, administration, and/or Taxes (as defined below), plus any accrued interest thereon, shall be returned to Visa Defendants and Mastercard Defendants, as provided in paragraph 15, if the settlement does not become effective for any reason, including by reason of a termination of this Settlement Agreement pursuant to paragraph 15.

(b) For the purpose of 26 U.S.C. § 468B and the Treasury regulations thereunder, Class Lead Counsel shall be designated as the “administrator” of the Settlement Fund. Class Lead Counsel shall timely and properly file, or cause to be filed, all income, informational, and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Regulations § 1.468B-2(k)). Such returns shall be consistent with this paragraph 14 and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

(c) All: (i) taxes or other similar imposts or charges (including any estimated taxes, interest, penalties, or additions to tax) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement

Fund does not qualify as a “Qualified Settlement Fund” within the meaning of Treasury Regulations § 1.468B-1 (or any relevant equivalent for state tax purposes); and (ii) other taxes or tax expenses imposed on or in connection with the Settlement Fund (collectively, “Taxes”), shall promptly be paid out of the Settlement Fund by the Escrow Agent without prior order from the Court. The Escrow Agent shall also be obligated to, and shall be responsible for, withholding from distribution to Settlement Class Members any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes. The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph 14.

(d) Neither the Parties nor their counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent, Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement Fund or otherwise; (ii) the Plan of Distribution; (iii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (v) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. The Escrow Agent shall indemnify and hold harmless the Parties, using monies from the Settlement Fund, from and against any claims, liabilities, or losses relating to the matters addressed in the preceding sentence.

## **15. TERMINATION OF SETTLEMENT**

(a) Class Plaintiffs, through Class Lead Counsel, Visa Defendants, through Visa Defendants’ Counsel, and Mastercard Defendants, through Mastercard Defendants’ Counsel, shall, in each of their separate discretions, have the right to terminate the settlement set forth in

this Settlement Agreement by providing written notice of their election to do so to all other Parties hereto within thirty (30) days of the date on which the following occurs: (1) if the Court, in a final order, declines to enter the Preliminary Approval Order, the Final Approval Order, or the Final Judgment and Order of Dismissal (denying it in its entirety or in any material respect), or (2) if the Court enters the Final Approval Order and the Final Judgment and Order of Dismissal and appellate review is sought and, on such review, the Final Approval Order or the Final Judgment and Order of Dismissal is finally vacated, modified, or reversed; provided, however, that the Parties agree to act in good faith to secure final approval of this settlement, and to attempt to address in good faith concerns regarding the settlement identified by the Court or any court of appeal. Notwithstanding this paragraph, the Court's determination as to the Fee and Expense Application or any plan of distribution, or both, or any determination on appeal from any such orders, shall not provide grounds for termination of this Settlement Agreement or settlement.

(b) Visa Defendants or Mastercard Defendants may also terminate this Settlement Agreement if 5,000,000 potential members of the Settlement Class, who but for their exclusion would likely have been eligible to receive a distribution from the Settlement Fund, timely and validly exclude themselves from the Settlement Class pursuant to the procedures approved by the Court. Any application to terminate under this paragraph must be made in writing within ten (10) days following the deadline for Persons to exclude themselves from the Settlement Class.

(c) Except as otherwise provided herein, in the event the Settlement Agreement is terminated in accordance herewith, is vacated, or is not approved, or in the event the Effective Date of Settlement fails to occur for any reason, then the Parties to this Settlement Agreement shall be deemed to have reverted to their respective status in the Action as of the Execution Date, and, except as otherwise expressly provided herein, the Parties shall proceed in all respects as if this

Settlement Agreement and any related orders had not been entered (subject to seeking whatever revisions to the pretrial schedule as may be necessary to protect the rights of the Parties), and any portion of the Settlement Fund previously paid by or on behalf of Visa Defendants or Mastercard Defendants, together with any interest earned thereon (and, if applicable, re-payment of any Fee and Expense Award referred to in paragraph 11 above), less Taxes due, if any, with respect to such income, and less costs of administration and notice actually incurred and paid or payable, shall be returned to the Defendant by or for whom the payment was made within ten (10) business days from the date of the event causing such termination. At the request of Visa Defendants' Counsel or Mastercard Defendants' Counsel, the Escrow Agent shall apply for any tax refund owed on the Settlement Fund and pay the proceeds to Visa Defendants and Mastercard Defendants.

(d) Visa Defendants, Visa Defendants' Counsel, Mastercard Defendants, and Mastercard Defendants' Counsel represent that they will not direct Visa Defendants' employees or agents, Mastercard Defendants' employees or agents, or any other persons, to submit or encourage others to submit requests for exclusion from the Settlement Class.

## **16. MISCELLANEOUS**

(a) The Parties to this Settlement Agreement intend the settlement to be a final and complete resolution of all disputes asserted or that could be asserted by Class Plaintiffs or any Settlement Class Member against the Released Parties with respect to the Action and the Released Claims. Accordingly, Class Plaintiffs and Visa Defendants and Mastercard Defendants agree not to assert in any judicial proceeding that the Action was brought by Class Plaintiffs or defended by Visa Defendants or Mastercard Defendants in bad faith or without a reasonable basis. The Parties further agree not to assert in any judicial proceeding that any Party violated Fed. R. Civ. P. 11. The Parties agree that the amount paid and the other terms of the settlement were negotiated at

arm's-length in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel and the Mediator.

(b) The Settlement Amount to be paid by Visa Defendants and Mastercard Defendants pursuant to this Settlement Agreement shall be treated as strictly confidential until such time as a motion requesting entry of the Preliminary Approval Order has been filed with the Court, unless Visa Defendants or Mastercard Defendants have an independent obligation to disclose the Settlement Amount or disclosure is jointly agreed to by Visa Defendants, Mastercard Defendants, and Class Plaintiffs before filing a motion requesting entry of the Preliminary Approval Order.

(c) The terms and provisions of the Stipulated Protective Order, filed on January 20, 2017, and approved by the Court on January 30, 2017, shall survive and continue in effect through and after any final adjudication of the Action.

(d) Nothing in this Settlement Agreement is intended to waive any right to assert that any information or material is protected from discovery by reason of any individual or common interest privilege, attorney-client privilege, work product protection, or other privilege, protection, or immunity, or is intended to waive any right to contest any such claim of privilege, protection, or immunity.

(e) The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

(f) The administration and consummation of the settlement as embodied in this Settlement Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders relating to the Fee and Expense Application and the Plan of Distribution, and enforcing the terms of this Settlement Agreement.

(g) For the purpose of construing or interpreting this Settlement Agreement, Class Plaintiffs and Visa Defendants and Mastercard Defendants agree that it is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

(h) This Settlement Agreement shall constitute the entire agreement between Class Plaintiffs and Visa Defendants and Mastercard Defendants pertaining to the settlement of the Action against Visa Defendants and Mastercard Defendants and supersedes any and all prior and contemporaneous undertakings of Class Plaintiffs and Visa Defendants and Mastercard Defendants in connection therewith. All terms of this Settlement Agreement are contractual and not mere recitals. The terms of this Settlement Agreement are and shall be binding upon each of the Parties hereto, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, and upon all other Persons claiming any interest in the subject matter hereto through any of the Parties hereto including any Settlement Class Members.

(i) The terms of this Settlement Agreement are not severable, but are interdependent and have been agreed to only as a whole by Class Plaintiffs (for themselves individually and on behalf of each Settlement Class Member in the Action), Visa Defendants, and Mastercard Defendants.

(j) This Settlement Agreement may be modified or amended only by a writing executed by Class Plaintiffs, through Class Lead Counsel, Visa Defendants, through Visa Defendants' Counsel, and Mastercard Defendants, through Mastercard Defendants' Counsel, subject (if after preliminary or final approval by the Court) to approval by the Court. Amendments

and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

(k) Nothing in this Settlement Agreement constitutes an admission by any Released Party as to the veracity or merits of any allegations or claims made in the Action, the validity of any defenses that could be asserted by Visa Defendants or Mastercard Defendants, or the appropriateness of certification of any class other than the Settlement Class under Fed. R. Civ. P. 23 solely for settlement purposes. This Settlement Agreement is without prejudice to the rights of Visa Defendants and Mastercard Defendants to either (i) challenge the Court's certification of any class, including the Settlement Class, in the Action should the Settlement Agreement not be approved or implemented for any reason; or (ii) oppose any certification or request for certification in any other proposed or certified class action; or both.

(l) All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law principles.

(m) Visa Defendants, Mastercard Defendants, Class Plaintiffs, their respective counsel, and the Settlement Class Members hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Columbia, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein.

(n) The Parties acknowledge that this Settlement Agreement makes no determination as to which Settlement Class Members are entitled to distribution from the Settlement Fund, or as to the formula for determining the amounts to be distributed.

(o) Any proposed plan of distribution is not a necessary term of this Settlement Agreement and it is not a condition of this Settlement Agreement that any particular plan of distribution be approved. The Plan of Distribution is a matter separate and apart from the settlement between the Parties and any decision by the Court concerning a particular plan of distribution shall not affect the validity or finality of the proposed settlement, including the scope of the release.

(p) This Settlement Agreement may be executed in counterparts by Class Plaintiffs, Visa Defendants, and Mastercard Defendants, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

(q) Class Plaintiffs, Visa Defendants, and Mastercard Defendants acknowledge that they have been represented by counsel and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, Class Plaintiffs, Visa Defendants, Mastercard Defendants, and their respective counsel agree that they will not seek to set aside any part of this Settlement Agreement on the grounds of mistake. Moreover, Class Plaintiffs, Visa Defendants, Mastercard Defendants, and their respective counsel understand, agree, and expressly assume the risk that any fact may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that this Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

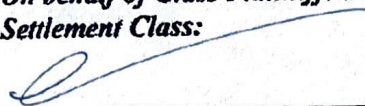
(r) Each of the undersigned attorneys represents that he/she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, subject to Court approval; and the undersigned Class Lead Counsel represent that they are authorized to execute



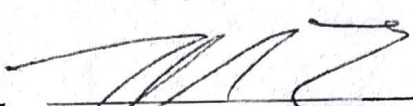
this Settlement Agreement on behalf of Class Plaintiffs. Each of the undersigned attorneys shall use his/her best efforts to effectuate this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the date first herein written above.

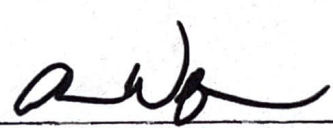
*On behalf of Class Plaintiffs and the Settlement Class:*

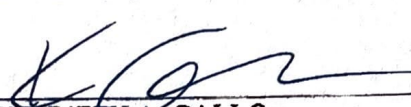
  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ANDREW MACKMIN, *et al.*,

Plaintiffs,

v.

VISA INC., *et al.*

Defendants.

Civil Action No. 1:11-cv-1831-RJL

Assign Date: 8/4/2015

Description: Antitrust – Class Action

**DECLARATION OF STEVE W. BERMAN IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF SETTLEMENT WITH VISA AND MASTERCARD  
DEFENDANTS AND TO DIRECT NOTICE TO THE SETTLEMENT CLASS**

I, Steve W. Berman, declare under penalty of perjury under the laws of the United States as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of Washington, and my *pro hac vice* application was approved by this Court. I am the Managing partner of the law firm of Hagens Berman Sobol Shapiro LLP (“Hagens Berman”). I submit this Declaration in Support of the *Mackmin* Plaintiffs’ Motion For Preliminary Approval of Settlement With Visa and Mastercard Defendants and To Direct Notice To The Settlement Class.<sup>1</sup> I have full knowledge of the matters stated herein and could and would testify thereto.

2. My firm, Hagens Berman, alongside Quinn Emanuel Urquhart & Sullivan, LLP and Mehri & Skalet, PLLC, are counsel of record for the *Mackmin* Plaintiffs (“Plaintiffs”), having been appointed Co-Lead Class Counsel for the litigation Class by this Court, and Settlement Class Counsel for prior settlements with Defendants Bank of America, Chase, and Wells Fargo (“Bank Defendants”).

3. Plaintiffs, via Co-Lead Class Counsel, have aggressively pursued Plaintiffs’ claims from the outset of this litigation in 2011. After Plaintiffs’ claims were initially dismissed on a 12(b)(6) motion (by the judge previously assigned to this matter), Co-Lead Class Counsel appealed and, following briefing and argument, the D.C. Circuit issued a complete reversal, finding that that Plaintiffs had plausibly alleged antitrust violations. *See Osborn v. Visa Inc.*, 797 F.3d 1057 (2015). The Supreme Court granted Defendants’ petition for *certiorari* but, after Class Counsel demonstrated that Defendants were relying on arguments that departed from their

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<sup>1</sup> The Visa and Mastercard defendants are Visa Inc.; Visa U.S.A. Inc.; Visa International Service Association; Plus System, Inc.; Mastercard Incorporated and Mastercard International Incorporated.

petition, the Supreme Court dismissed the writ of *certiorari* as having been improvidently granted. *See Visa Inc. v. Osborn*, 137 S. Ct. 289 (2016) (Mem.).

4. On remand, Co-Lead Class Counsel negotiated several discovery and other related protocols, served extensive document requests and interrogatories, and negotiated the scope of Defendants' productions via numerous in-person, telephonic, and written communications. These initial efforts lasted several months and further efforts to obtain full productions continued years into discovery. Co-Lead Class Counsel attended not only multiple meet and confers with Defendants' counsel, but also regularly traveled to and presented Plaintiffs' positions in this Court's "Gang of 8" discovery conferences.

5. As a result of these efforts, Defendants and 19 subpoenaed third parties collectively produced over 800,000 documents. Plaintiffs also received over three terabytes of transactional data, the full extent of which took years to obtain. Plaintiffs filed four motions to compel productions from three third parties and, after extensive briefing and argument, three of those motions were transferred to this Court pursuant to Rule 45(f) and granted. Plaintiffs withdrew their fourth motion to compel after the subpoenaed party agreed to produce the requested materials. Co-Lead Class Counsel extensively reviewed documents produced by parties and third parties, and analyzed the transactional data with the help of their experts, a process that took years and cost millions of dollars. Co-Lead Class Counsel also took and participated in over 35 depositions.

6. Class certification in this matter involved extensive expert discovery and multiple rounds of briefing (including a sur-reply and sur-reply opposition). *See* Dkt. Nos. 220 & 221. On August 4, 2021, this Court issued an Order and Memorandum Opinion granting Plaintiffs' motion for class certification, as well as granting the class certification motions of the two related

putative classes with claims against Visa and Mastercard. Dkt. Nos. 234, 235.<sup>2</sup> On October 1, 2021, the D.C. Circuit Court of Appeals granted Visa and Mastercard's petition for permission to file an interlocutory appeal from the class certification orders pursuant to Fed. R. Civ. P. 23(f). Dkt. No. 245. The D.C. Circuit affirmed class certification by Judgment dated July 25, 2023. Dkt. No. 269. The Network Defendants petitioned the Supreme Court for certiorari, which was denied on April 15, 2024.

7. The two Class Representatives—Andrew Mackmin and Sam Osborn—have also vigorously represented the Settlement Class in this litigation. Each prepared extensively for and had his deposition taken in the case. Both also actively participated in responding to discovery and cooperated extensively with Co-Lead Class Counsel throughout the course of this prolonged litigation.

8. Co-Lead Class Counsel and counsel for Visa and Mastercard first discussed potential settlement in December 2017, in a mediation before Hon. Layn Phillips (Ret.), one of the nation's foremost mediators. At that time, before any major discovery had occurred, the parties were unable to reach resolution. In May 2020, after reaching settlements with the Bank Defendants, Plaintiffs conducted another mediation session (again with Layn Phillips) with Visa and Mastercard. The parties were again unable to reach resolution. Settlement discussions resumed in early 2024 after this Court had granted class certification and Defendants' petition for *certiorari* was pending before the Supreme Court. This included a full-day mediation session with Judge Phillips in March 2024, throughout which experienced and well-informed counsel on both sides strenuously advocated their positions. This all-day session resulted in a term sheet,

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<sup>2</sup> The Court subsequently issued an Amended Order granting class certification that superseded its prior certification order. Dkt. No. 238. The Amended Order also appointed Co-Lead Class Counsel and Class Representatives for the litigation class. *Id.*

which was later memorialized in the Settlement Agreement attached to this Declaration as **Exhibit A**.

9. The proposed Settlement Class is identical to the Settlement Class in the previously approved settlements with the Bank Defendants. It encompasses: “All individuals and entities that paid an unreimbursed ATM Access Fee directly to any Bank Defendant or Alleged Bank Co-Conspirator for a Foreign ATM Transaction using an ATM card issued by a financial institution in the United States to withdraw cash at an ATM located in the United States at any time from October 1, 2007, to the date of the Preliminary Approval Order.” Exhibit A at § 3(a). Specifically excluded from the Settlement Classes are Defendants; Released Parties; the officers, directors, or employees of any Defendant or Released Party; any entity in which any Defendant or Released Party has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or Released Party and any person acting on their behalf. Also excluded from the Settlement Class are any federal, state, or local governmental entities, Class Lead Counsel, and any judicial officer presiding over the Action and the members of his/her immediate family and judicial staff. According to estimates previously provided by Plaintiffs’ economic expert, Professor Carlton, the Settlement Class is likely to include more than 175 to 215 million individuals and entities. *See* Dkt. No. 222-2 at ¶ 14.

10. The Settlement with Visa and Mastercard yields a substantial percentage of the Settlement Class’s single damages. The Settlement was reached after Visa and Mastercard had supplemented their transactional data productions and Plaintiffs’ economic expert, Professor Carlton, had provisionally updated his damages calculations for upcoming merits reports. As at the class certification stage, Professor Carlton’s modelled three damages scenarios that yielded a low, mid-range, and high estimate for single damages. After incorporating Visa and Mastercard’s

additional transactional data, and making corrections to his transaction counts in response to analyses Defendants' expert had advanced at class certification, Professor Carlton's updated damages calculations for the three tiers were as follows:

<b>Damages Model<sup>3</sup></b>	<b>Single Damages Amount</b>
Low Estimate	\$691.9 million
Mid-Range Estimate	\$858.8 million
High Estimate	\$1.142.0 billion

11. The following chart calculates the percentage of single damages recovered through Plaintiffs' \$197.5 million Settlement with Visa and Mastercard alone, and in combination with the \$66.74 million secured by the prior Bank Settlements:

<b>Damages Model</b>	<b>Visa and Mastercard \$197.5 Million Settlement Percentage of Single Damages<sup>4</sup></b>	<b>Combined \$264.24 Settlements Percentage of Single Damages</b>
Low Estimate (\$691.9 million)	28.5%	38.2%
Mid-Range Estimate (\$858.8 million)	23.0%	30.8%
High Estimate (\$1.142.0 billion)	17.3%	23.1%

<sup>3</sup> The methodology for Professor Carlton's three models is addressed at length in his class certification report. *See* Dkt. No. 177-113 at ¶¶ 105-111. To summarize, the three models estimate the effect of various ATM fees on the ATM surcharges paid by Settlement Class Members. Notably, only the low estimate is limited to fees received by Visa and Mastercard (specifically, the network fees they charge ATM operators). The mid-range and high estimates include fees received by other participants in ATM transactions. *See id.*

<sup>4</sup> All percentages rounded to nearest tenth of a percent.

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

Executed this 29th day of May, 2024, at Seattle, Washington.

/s/ Steve W. Berman

STEVE W. BERMAN



# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ANDREW MACKMIN, *et al.*,

Plaintiffs,

v.

VISA INC., *et al.*,

Defendants.

Case No. 1:11-cv-01831 (RJL)

**STIPULATION AND AGREEMENT OF SETTLEMENT BETWEEN  
MACKMIN PLAINTIFFS AND VISA AND MASTERCARD DEFENDANTS**

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**1. RECITALS**

This Stipulation and Agreement of Settlement (“Settlement Agreement”) is made and entered into on May 2, 2024 (“Execution Date”), between Class Plaintiffs (as defined herein), for themselves individually and on behalf of each Settlement Class Member in the Action (each, as defined herein), Visa Defendants (as defined herein), and Mastercard Defendants (as defined herein), by and through Class Lead Counsel, Visa Defendants’ Counsel, and Mastercard Defendants’ Counsel (each, as defined herein). This Settlement Agreement is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), with respect to the Released Parties (as defined herein), upon and subject to the terms and conditions herein.

WHEREAS, on November 23, 2015, Class Plaintiffs filed a Second Amended Class Action Complaint (“SAC” or “Complaint”);

WHEREAS, by order of August 4, 2021, as amended by order of September 7, 2021, and on the motion of the Class Plaintiffs, the Court certified a class under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3);

WHEREAS, on August 8, 2022, pursuant to a finally approved class settlement, final judgments of dismissal with prejudice were entered in the Action as to all Bank Defendants (as defined herein);

WHEREAS, Class Plaintiffs are prosecuting the Action on their own behalf and on behalf of a certified Rule 23(b)(2) and Rule 23(b)(3) class against Visa Defendants and Mastercard Defendants;

WHEREAS, Class Plaintiffs have alleged, among other things, that Defendants, including Visa Defendants and Mastercard Defendants, participated in an unlawful conspiracy to restrain

trade, pursuant to which Visa Defendants and Mastercard Defendants and their alleged co-conspirators, including the other Defendants, as well as unnamed co-conspirators, agreed, among other things, to so-called Non-Discrimination Rules that allegedly had the effect of increasing the amount of ATM Access Fees (as defined herein) paid by the Settlement Class (as defined herein), in violation of the Sherman Act, 15 U.S.C. § 1, *et seq.* as well as state antitrust, restraint of trade, consumer protection, and unfair competition laws;

WHEREAS, Class Plaintiffs have contended that they are entitled to actual damages, treble damages, and injunctive relief for loss or damage, and threatened loss or damage, as a result of violations of the laws as alleged in the SAC, arising from Visa Defendants' and Mastercard Defendants' (and the other Defendants') alleged conduct;

WHEREAS, Visa Defendants and Mastercard Defendants have denied and continue to deny each and all of the claims made by Class Plaintiffs in the Action and all liability against them arising out of any of the conduct, statements, acts, or omissions that were alleged, or that could have been alleged, in the Action;

WHEREAS, Class Plaintiffs, for themselves individually and on behalf of each Settlement Class Member, Visa Defendants, and Mastercard Defendants, agree that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Visa Defendants or Mastercard Defendants or of the truth of any of the claims or allegations alleged in the Action;

WHEREAS, Class Plaintiffs, Visa Defendants and Mastercard Defendants have engaged in extensive discovery regarding the facts pertaining to Class Plaintiffs' claims and Visa Defendants' and Mastercard Defendants' defenses;

WHEREAS, Class Lead Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action, the legal and factual defenses thereto, and the applicable law, that: (1) it is in the best interests of the Settlement Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein, including the value of the Settlement Amount (as defined herein) to be paid by Visa Defendants and Mastercard Defendants under this Settlement Agreement, are obtained for the Settlement Class; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate and in the best interests of the Settlement Class;

WHEREAS, Visa Defendants and Mastercard Defendants, while each continuing to deny that they are liable for any of the claims asserted against them in the Action, have nevertheless agreed to enter into this Settlement Agreement to avoid the further risk, expense, inconvenience, and distraction of burdensome and protracted litigation, and thereby to put fully to rest this controversy, to avoid the risks inherent in complex litigation, and to obtain complete dismissal of the SAC as to Visa Defendants and Mastercard Defendants and a release of claims as set forth herein; and

WHEREAS, this Settlement Agreement is the product of arm's-length negotiations between Class Lead Counsel and Visa Defendants' Counsel and Mastercard Defendants' Counsel under the guidance and oversight of former U.S. District Judge Layn Phillips as Mediator, and this Settlement Agreement embodies all of the terms and conditions of the settlement agreed upon between Visa Defendants and Mastercard Defendants and Class Plaintiffs, both for themselves individually and on behalf of the Settlement Class;

NOW, THEREFORE, in consideration of the covenants, terms, and releases in this

Settlement Agreement, it is agreed, by and among Class Plaintiffs (for themselves individually and on behalf of the Settlement Class and each member thereof) and Visa Defendants and Mastercard Defendants, by and through Class Lead Counsel and Visa Defendants' Counsel and Mastercard Defendants' Counsel, that, subject to the approval of the Court (as defined herein), the Action be settled, compromised, and dismissed with prejudice as to Visa Defendants and Mastercard Defendants and the other Released Parties (as defined herein), without costs, except as stated herein, and releases be extended, as set forth in this Settlement Agreement.

## 2. DEFINITIONS

As used in this Settlement Agreement, the following capitalized terms have the meanings specified below:

(a) "Action" means *Mackmin et al. v. Visa Inc. et al.*, Case No. 1:11-cv-01831 (RJL), which is currently pending in the United States District Court for the District of Columbia.

(b) "Alleged Bank Co-Conspirator" has the same definition as "Bank Co-Conspirator" in the SAC.

(c) "ATM" means an automated teller machine, which allows Cardholders to complete an ATM Transaction.

(d) "ATM Access Fee" means the fee assessed by an ATM operator to a Cardholder for completing a Foreign ATM Transaction.

(e) "ATM Card" means an access device, usually a card, enabling the holder, among other things, to conduct an ATM Transaction.

(f) "ATM Transaction" means any actual or attempted use of an ATM, including to withdraw cash, deposit funds, transfer funds, or check account balances.

(g) “Authorized Claimant” means any Settlement Class Member who will be entitled to a distribution from the Net Settlement Fund pursuant to the Plan of Distribution approved by the Court.

(h) “Bank” means any bank, credit union, or other financial institution, including its affiliates, subsidiaries, agents, representatives, employees, officers, and directors.

(i) “Bank Defendants” means JPMorgan Chase & Co.; Chase Bank USA, N.A.; JPMorgan Chase Bank, N.A.; Bank of America, N.A.; NB Holdings Corp.; Bank of America Corp.; Wells Fargo & Co.; and Wells Fargo Bank, N.A.

(j) “Cardholder” means any Person that owns, possesses, or controls an ATM Card.

(k) “Claims Administrator” means the third party to be retained by Class Lead Counsel and approved by the Court to manage and administer the process by which each member of the Settlement Class is notified of the Settlement Agreement and paid from the Net Settlement Fund.

(l) “Class Lead Counsel” means Hagens Berman Sobol Shapiro LLP, Quinn Emanuel Urquhart & Sullivan LLP, and Mehri & Skalet PLLC.

(m) “Class Notice” means the proposed form of, method for, and the date of dissemination of notice of the Settlement Agreement to the Settlement Class.

(n) “Class Plaintiffs” means Andrew Mackmin and Sam Osborn.

(o) “Court” means the United States District Court for the District of Columbia.

(p) “Defendants” means JPMorgan Chase & Co.; Chase Bank USA, N.A.; JPMorgan Chase Bank, N.A.; Visa Inc.; Visa U.S.A. Inc.; Visa International Service Association; Plus System, Inc.; Mastercard Incorporated; Mastercard International Incorporated d/b/a Mastercard Worldwide; Bank of America, N.A.; NB Holdings Corp.; Bank of America Corp.; Wells Fargo &



Co.; and Wells Fargo Bank, N.A.; and any other Person or Persons who are named as defendants in the Action at any time up to and including the date a Preliminary Approval Order is entered.

(q) “Effective Date of Settlement” has the meaning given to it in paragraph 7.

(r) “Escrow Agent” means Huntington National Bank.

(s) “Execution Date” means the date of the execution of this Settlement Agreement by counsel for all Parties thereto.

(t) “Fairness Hearing” means the hearing to be held by the Court to determine whether the settlement set forth in this Settlement Agreement shall receive final approval pursuant to Fed. R. Civ. P. 23.

(u) “Fee and Expense Application” has the meaning given to it in paragraph 11.

(v) “Fee and Expense Award” has the meaning given to it in paragraph 11.

(w) “Final Approval Order” has the meaning given to it in paragraph 5.

(x) “Final Judgment and Order of Dismissal” has the meaning given to it in paragraph 5.

(y) “Foreign ATM Transaction” means an ATM Transaction in which the Cardholder uses an ATM that is owned or operated by an entity different from the entity that issued the ATM Card used for that ATM Transaction.

(z) “Mastercard Defendants” means Mastercard Incorporated and Mastercard International Incorporated d/b/a Mastercard Worldwide.

(aa) “Mastercard Defendants’ Counsel” means Paul, Weiss, Rifkind, Wharton & Garrison LLP.

(bb) “Mediator” means former U.S. District Judge Layn R. Phillips.

(cc) “Net Settlement Fund” has the meaning given to it in paragraph 12.

(dd) “Parties” means, collectively, Class Plaintiffs (on behalf of themselves and the Settlement Class) and Visa Defendants and Mastercard Defendants.

(ee) “Person” means an individual or entity, and his, her, or its spouses, heirs, predecessors, successors, representatives, or assignees.

(ff) “Plan of Distribution” means a plan or formula of allocation of the Net Settlement Fund whereby the Settlement Fund shall be distributed to Settlement Class Members after payment of expenses of notice and administration of the settlement, Taxes, and tax expenses, and such attorneys’ fees, costs, service awards, interest, and other expenses as may be awarded by the Court.

(gg) “Preliminary Approval Order” means an order of the Court that preliminarily approves the settlement set forth in this Settlement Agreement and that approves the form of Class Notice and preliminarily approves a proposed Plan of Distribution.

(hh) “Released Claims” means, in consideration of payment of the Settlement Amount into the Settlement Fund as specified in paragraph 12 of this Settlement Agreement, and for other valuable consideration, any and all manner of claims, causes of action, cross-claims, counterclaims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys’ fees, damages, or other payment of money, or for injunctive, declaratory or other equitable relief, whenever incurred, and liabilities of any nature whatsoever (including joint and several) that have or could have been alleged in the Action by the Releasing Parties against the Released Parties to the fullest extent permitted by law, including all potential, unasserted, and “Unknown Claims,” as defined below, from the beginning of time and continuing into the future without end. It is

expressly agreed for purposes of clarity that any claims arising out of the factual predicates of the Action, including with respect to the rules, fees, and/or conduct at issue, are claims that have or could have been alleged in the Action by the Releasing Parties against the Released Parties.

(ii) “Released Party” or “Released Parties” means Visa Inc.; Visa U.S.A. Inc.; Visa International Service Association; Plus System, Inc.; Mastercard Incorporated; and Mastercard International Incorporated d/b/a Mastercard Worldwide, and each entity’s past, present, and future, direct and indirect parents (including holding companies), subsidiaries, affiliates, associates (all as defined in Securities and Exchange Commission Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934, as amended), divisions, predecessors, successors, assigns, and members (including, without limitation, all past, present, and future financial institutions authorized or licensed to issue or acquire Visa- or Mastercard-branded ATM Cards and transactions), and each of their respective officers, directors, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, members, and assigns.

(jj) “Releasing Parties” means, individually and collectively, Class Plaintiffs and each Settlement Class Member, on behalf of themselves and any of their respective past, present or future officers, directors, stockholders, agents, employees, legal or other representatives, partners, associates, trustees, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns, whether or not they object to the settlement set forth in this Settlement Agreement, and whether or not they make a claim for payment from the Net Settlement Fund.

(kk) “Request for Exclusion” has the meaning given to it in paragraph 6.

(ll) “SAC” or “Complaint” means the Second Amended Class Action Complaint filed with the Court in the Action on November 23, 2015.

(mm) “Settlement Agreement” means this Stipulation and Agreement of Settlement.

(nn) “Settlement Amount” means the sum of One Hundred Ninety-Seven Million Five Hundred Thousand Dollars (\$197,500,000.00), payable in lawful tender of the United States.

(oo) “Settlement Class” has the meaning given to it in paragraph 3(a).

(pp) “Settlement Class Member” means a Person who is a member of the Settlement Class and has not timely and validly excluded himself, herself, or itself in accordance with the procedures to be established by the Court.

(qq) “Settlement Fund” means the escrow account established pursuant to paragraph 12 of this Settlement Agreement, including all monies held therein in accordance with the terms of this Settlement Agreement.

(rr) “Taxes” has the meaning given to it in paragraph 14.

(ss) “Unknown Claims” means any and all Released Claims against the Released Parties that any of the Releasing Parties does not know or suspect to exist in his, her, or its favor as of the Effective Date of Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that by operation of the Final Judgment and Order of Dismissal, upon the Effective Date of Settlement, Releasing Parties shall have expressly waived, and each Settlement Class Member shall be deemed to have waived, and by operation of the Final Judgment and Order of Dismissal shall have expressly waived, the provisions, rights and benefits of Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

and any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542.

Any of the Releasing Parties may hereafter discover facts other than or different from those that he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims. Nevertheless, Class Plaintiffs shall expressly, fully, finally, and forever settle and release, and each Settlement Class Member, upon the Effective Date of Settlement, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal shall have, fully, finally, and forever settled and released, any and all Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Class Plaintiffs acknowledge, and Settlement Class Members shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement Agreement.

(tt) “Visa Defendants” means Visa Inc., Visa U.S.A. Inc., Visa International Service Association, and Plus System, Inc.

(uu) “Visa Defendants’ Counsel” means Arnold & Porter Kaye Scholer LLP.

### **3. SETTLEMENT CLASS CERTIFICATION**

(a) The Parties hereby stipulate solely for settlement purposes that the requirements of Fed. R. Civ. P. 23(a), Fed. R. Civ. P. 23(b)(2), and Fed. R. Civ. P. 23(b)(3) are satisfied and, subject to Court approval, the following Settlement Class shall be certified as to Visa Defendants and Mastercard Defendants solely for settlement purposes: “All individuals and entities that paid an unreimbursed ATM Access Fee directly to any Bank Defendant or Alleged Bank Co-Conspirator for a Foreign ATM Transaction using an ATM card issued by a financial institution in the United

States to withdraw cash at an ATM located in the United States at any time from October 1, 2007 to the date of the Preliminary Approval Order.” Specifically excluded from the Settlement Class are Defendants; Released Parties; the officers, directors, or employees of any Defendant or Released Party; any entity in which any Defendant or Released Party has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or Released Party and any person acting on their behalf. Also excluded from the Settlement Class are any federal, state, or local governmental entities, Class Lead Counsel, and any judicial officer presiding over the Action and the members of his/her immediate family and judicial staff.

(b) The Parties’ agreement as to certification of the Settlement Class is solely for purposes of effectuating a settlement and for no other purpose. Visa Defendants and Mastercard Defendants retain all of their objections, arguments, and defenses with respect to class certification, and reserve all rights to contest class certification, if the settlement set forth in this Settlement Agreement does not receive the Court’s final approval, if the Court’s approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to close. The Parties acknowledge that there has been no stipulation to any class or certification of any class for any purpose other than effectuating the settlement, and that if the settlement set forth in this Settlement Agreement does not receive the Court’s final approval, if the Court’s approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to close, this agreement as to certification of the Settlement Class becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-related statement may not be cited regarding certification of

the Settlement Class, or in support of an argument for certifying a class for any purpose related to this proceeding.

**4. GOOD FAITH EFFORTS TO EFFECTUATE THIS SETTLEMENT AGREEMENT**

The Parties agree to cooperate with one another in good faith to effectuate and implement the terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the terms of this Settlement Agreement. This includes Visa Defendants and Mastercard Defendants serving notice on those entities required to receive notice pursuant to 28 U.S.C. § 1715.

**5. FINAL JUDGMENT AND ORDER OF DISMISSAL AGAINST VISA DEFENDANTS AND MASTERCARD DEFENDANTS**

(a) Class Plaintiffs shall seek a Final Approval Order and a Final Judgment and Order of Dismissal against Visa Defendants and Mastercard Defendants, the proposed text of which Class Plaintiffs and Visa Defendants and Mastercard Defendants shall agree upon. The Final Approval Order and Final Judgment and Order of Dismissal submitted for Court approval will include, at a minimum, terms:

(i) certifying the Settlement Class pursuant to Fed. R. Civ. P. 23(b)(2) and Fed. R. Civ. P. 23(b)(3) solely for the purpose of the settlement;

(ii) as to the Action, approving fully and finally this settlement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms and conditions;

(iii) finding that the notice given to Settlement Class Members constitutes the best notice practicable under the circumstances and complies in all respects with the valid, due, and sufficient notice requirements of Federal Rule of Civil Procedure 23, and meets the requirements of due process;

(iv) as to Released Parties, directing that the Action be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs;

(v) discharging and releasing the Released Parties from the Released Claims, regardless of whether any such Releasing Party executes and delivers a proof of claim, and without respect to any rights afforded under California Civil Code § 1542 and/or any other similar, comparable, or equivalent laws;

(vi) permanently barring and enjoining Class Plaintiffs or any Settlement Class Member from (A) instituting or prosecuting any other action against any of the Released Parties as to any of the Released Claims, or (B) assisting any third party in commencing or maintaining any suit against any Released Party related in any way to any of the Released Claims;

(vii) reserving exclusive jurisdiction over the settlement and this Settlement Agreement, including all future proceedings concerning the administration, interpretation, consummation, and enforcement of this settlement and this Settlement Agreement, to the Court; and

(viii) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to the Released Parties shall be final and entered forthwith.



(b) The Final Judgment and Order of Dismissal shall become final when (i) the Court has entered a final order certifying the Settlement Class for settlement purposes and approving this Settlement Agreement under Federal Rule of Civil Procedure 23(e) and a final judgment dismissing the Action with prejudice as to the Released Parties against all Settlement Class Members and without costs other than those provided for in this Settlement Agreement, and (ii) the time for appeal from the Court's approval of this Settlement Agreement and entry of a final judgment as to the Released Parties described in (i) hereof has expired or, if appealed, approval of this Settlement Agreement and the final judgment as to the Released Parties have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times.

(c) As of the Execution Date, Class Plaintiffs, Settlement Class Members, Visa Defendants, and Mastercard Defendants shall be bound by the Settlement Agreement's terms and this Settlement Agreement shall not be rescinded except in accordance with the terms of this Settlement Agreement.

## **6. PRELIMINARY APPROVAL ORDER, NOTICE, AND FAIRNESS HEARING**

(a) As soon as reasonably possible following the Execution Date, Class Lead Counsel shall submit to the Court, and Visa Defendants and Mastercard Defendants shall support, a motion requesting entry of a Preliminary Approval Order. That motion shall:

(i) seek preliminary certification of the Settlement Class solely for settlement purposes, pursuant to Fed. R. Civ. P. 23(a), Fed. R. Civ. P. 23(b)(2), and Fed. R. Civ. P. 23(b)(3);

(ii) request preliminary approval of the settlement set forth in this Settlement Agreement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23;

(iii) seek the appointment of Class Plaintiffs as representatives of the Settlement Class, and Class Lead Counsel as counsel for the Settlement Class under Fed. R. Civ. P. 23(g);

(iv) request authorization to disseminate notice of the settlement and final judgment contemplated by this Settlement Agreement to all potential Settlement Class Members. The motion shall include: (1) a proposed form of, method for, and date of dissemination of notice; and (2) a proposed Preliminary Approval Order. Notice of the settlement shall be as provided in the motion and as approved by the Court, with all expenses paid from the Settlement Fund, subject to the provisions of this Settlement Agreement. The motion shall recite and ask the Court to find that the method of the notice of settlement to all Settlement Class Members who can be identified upon reasonable effort constitutes valid, due, and sufficient notice to the Settlement Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23 and due process. The Claims Administrator will also establish and maintain a dedicated settlement website, from which each Settlement Class Member can view and download relevant documents;

(v) seek appointment of the Claims Administrator;

(vi) seek appointment of Huntington National Bank as Escrow Agent;

(vii) request that the Court, pending final determination of whether the Settlement Agreement should be approved, stay all proceedings in the Action against Visa

Defendants and Mastercard Defendants until the Court renders a final decision on approval of the settlement set forth in this Settlement Agreement;

(viii) request that the Court, pending final determination of whether the Settlement Agreement should be approved, temporarily enjoin each Class Plaintiff and each Settlement Class Member, either directly, representatively, or in any other capacity, from prosecuting in any forum any Released Claim against any of the Released Parties; and

(ix) attach a proposed form of order, the proposed text of which Class Lead Counsel shall provide to Visa Defendants and Mastercard Defendants at least five (5) business days prior to the submission to the Court of the motion requesting entry of a Preliminary Approval Order. Class Lead Counsel will consider in good faith any suggestions from Visa Defendants and Mastercard Defendants regarding the proposed form of order. The form of order will include such provisions as are typical in such orders, including: (1) setting a date for the Fairness Hearing; (2) a provision indicating that, if final approval of the settlement is not obtained, the settlement is null and void, and the Parties will revert to their positions *ex ante* (as of the Execution Date) without prejudice to their rights, claims, or defenses; (3) stating the substantial litigation risks that the Settlement Class faced in the Action; (4) stating the procedures, which shall be consistent with paragraph 6(d), for Persons falling within the definition of the Settlement Class to exclude themselves from the Settlement Class; (5) requiring that all members of the Settlement Class be bound by all final determinations in the Action concerning the settlement, whether favorable or unfavorable to the members of the Settlement Class; and (6) stating that Visa Defendants and Mastercard Defendants have denied and continue to

deny each and all of the claims made by Class Plaintiffs in the Action and have denied and continue to deny liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action.

(b) Class Notice shall apprise each member of the Settlement Class of his, her, or its right to exclude themselves from, or object to, the settlement.

(c) Visa Defendants and Mastercard Defendants shall be responsible for providing all notices required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

(d) Any Person falling within the definition of the Settlement Class may request to be excluded from the Settlement Class (“Request for Exclusion”) in accordance with procedures approved by the Court (which, at a minimum, will require a signed writing or substantially similar submission from each individual or entity requesting exclusion that clearly states (i) the individual’s or entity’s identity with particularity and (ii) his/her/its decision to request exclusion from the Settlement Class in this Action). Within five (5) business days after the end of the period to request exclusion from the Settlement Class, Class Lead Counsel will cause copies of all Requests for Exclusion from the Settlement Class to be provided to counsel for Visa Defendants and Mastercard Defendants. With respect to any potential Settlement Class Member who requests exclusion from the Settlement Class, Visa Defendants and Mastercard Defendants reserve all of their legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Settlement Class Member is a member of the Settlement Class and/or has standing to bring any claim.

(e) The Parties to this Settlement Agreement contemplate and agree that, prior to final approval of the settlement, Class Plaintiffs will request a Court hearing at which the Court will consider the final approval of this Settlement Agreement.

**7. EFFECTIVE DATE OF SETTLEMENT**

(a) The “Effective Date of Settlement” shall be the date when all of the following events shall have occurred and shall be conditioned on the occurrence of all of the following events:

(i) the Settlement Amount has been contributed to the Settlement Fund pursuant to this Settlement Agreement;

(ii) entry of the Preliminary Approval Order;

(iii) final approval by the Court of the settlement set forth in this Settlement Agreement, following Class Notice and the Fairness Hearing;

(iv) no Party has exercised his, her, or its rights to terminate this Settlement Agreement pursuant to paragraph 15, and all periods for any Party to exercise such rights have expired; and

(v) entry by the Court of a Final Judgment and Order of Dismissal, and the Final Judgment and Order of Dismissal becomes final pursuant to paragraph 5(b).

(b) Notwithstanding any other provision herein, any proceeding or order, or motion for reconsideration, appeal, petition for a writ of certiorari or its equivalent, pertaining solely to the Plan of Distribution or Fee and Expense Application, or both, shall not in any way delay or preclude the Effective Date of Settlement.

**8. CLAIMS ADMINISTRATOR**

(a) Pursuant to the Preliminary Approval Order, and subject to Court approval, Class Lead Counsel shall engage a qualified Claims Administrator. The Claims Administrator will assist with the settlement claims process as set forth herein.

(b) The Claims Administrator shall effectuate the notice plan approved by the Court in the Preliminary Approval Order, shall administer and calculate the claims, and shall oversee distribution of the Net Settlement Fund in accordance with the Plan of Distribution.

(c) The Claims Administrator also shall assist in the development of the Plan of Distribution and the resolution of any disputes that may be raised by Settlement Class Members regarding the amount that they are owed under the Plan of Distribution.

## **9. SCOPE AND EFFECT OF SETTLEMENT**

(a) The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action against Visa Defendants and Mastercard Defendants; and (ii) any and all Released Claims as against all Released Parties.

(b) Upon the Effective Date of Settlement, each of the Releasing Parties: (i) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal, shall have fully, finally, and forever waived, released, relinquished, and discharged (1) all Released Claims against the Released Parties, and (2) any rights to the protections afforded under California Civil Code § 1542 and/or any other similar, comparable, or equivalent laws; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; (iii) agrees and covenants not to sue, either directly, representatively, or in any other capacity, any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any of the Released Parties related in any way to any Released Claims; and (iv) represents and acknowledges that, as of the date of Preliminary Approval, any and all competitive issues that were, or could have been, asserted in this litigation have been addressed.

(c) The releases provided in this Settlement Agreement shall become effective immediately upon occurrence of the Effective Date of Settlement without the need for any further action, notice, condition, or event.

(d) The Parties shall seek entry by the Court of an order, in the Final Judgment and Order of Dismissal or otherwise, to the extent not prohibited by law, barring claims by any Person against the Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise.

(e) In the event that this Settlement Agreement is terminated pursuant to paragraph 15, or any condition for the final approval of this Settlement Agreement is not satisfied, the release and covenant not to sue provisions of this paragraph shall be null and void and unenforceable.

## **10. COOPERATION**

(a) Visa Defendants and Mastercard Defendants will, to the extent permitted by law, work in good faith to furnish information reasonably available to them to assist in the identification of potential Settlement Class Members. Visa Defendants and Mastercard Defendants further agree to employ reasonable and good faith efforts to cooperate with Class Plaintiffs to ensure the timely production of this information, as well as to determine the specific information to be provided and the format of that information. Any confidentiality or security concerns Visa Defendants and Mastercard Defendants may have in connection with providing such information will be addressed by Class Plaintiffs in good faith, including by allowing Visa Defendants and Mastercard Defendants to condition their provision of the information upon their approval of the data security and privacy practices of the Claims Administrator handling their information. In turn, Visa Defendants and Mastercard Defendants will respond in good faith to reasonable inquiries or

requests from the Claims Administrator or Class Plaintiffs that may arise in connection with the notice, claims, or distribution process. Visa Defendants and Mastercard Defendants agree to employ reasonable and good faith efforts to cooperate with the Claims Administrator and other third party service providers with respect to notice, claims processing, and claims distribution by providing information concerning their capacity to facilitate those third party service providers' efforts to provide notice. To the extent any disagreements arise as to the information Visa Defendants and Mastercard Defendants agree to provide under this paragraph, the Parties will first attempt to meet and confer in good faith to reach a resolution. If, following a good faith meet and confer process, the Parties cannot reach a resolution, the Parties agree they will submit the dispute to the Court for resolution in accordance with applicable law. Nothing in this paragraph, identifying cooperation that Visa Defendants and Mastercard Defendants shall provide to the Claims Administrator, is intended to cause Visa Defendants or Mastercard Defendants to assume the role or responsibilities of the Claims Administrator. Similarly, nothing in this paragraph is intended to waive any party's rights to seek to impose or oppose any additional obligations with respect to notice, claims, or distribution of the Settlement Amount.

(b) Except as expressly provided herein, no further discovery shall be allowed to be directed by Class Lead Counsel, Class Plaintiffs, or Settlement Class Members to Visa Defendants or Mastercard Defendants, including any discovery regarding the merits of the Action or in connection with processing claims.

## **11. FEE AND EXPENSE APPLICATION**

(a) Class Lead Counsel may submit an application or applications to the Court (the "Fee and Expense Application") for distribution to them from the Settlement Fund of (1) an award of attorneys' fees; plus (2) reimbursement of expenses paid by Class Lead Counsel in connection



with prosecuting the Action; plus (3) any interest earned in the escrow account on such attorneys' fees and expenses (until paid) at the same rate and for the same periods as earned by the Settlement Fund, as appropriate, and as may be awarded by the Court (the "Fee and Expense Award").

(b) The Fee and Expense Award, as approved by the Court, shall be paid solely from the Settlement Fund to an account designated by Class Lead Counsel within thirty (30) days after the granting of the Fee and Expense Award. The Fee and Expense Award may be disbursed during the pendency of any appeals that may be taken from the Court's judgment approving this Settlement Agreement or the Fee and Expense Award, or both.

(c) Class Lead Counsel shall allocate the attorneys' fees among themselves in a manner that they believe in good faith reflects the respective contributions of such counsel to the prosecution and settlement of this Action.

(d) In the event that the order making the Fee and Expense Award is reversed or modified, then Class Lead Counsel shall, within ten (10) business days from receiving notice from Visa Defendants' or Mastercard Defendants' Counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund the Fee and Expense Award or any portion thereof previously paid to them plus interest thereon at the same rate as earned by the account into which the balance of the Settlement Fund is deposited.

(e) The procedure for, and the allowance or disallowance by the Court of, the application by Class Lead Counsel for attorneys' fees, costs, and expenses to be paid out of the Settlement Fund are not part of this Settlement Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement, and any order or proceeding relating to the Fee and Expense Application, the pendency

of any such application, or any appeal from any such order shall not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality of the judgment approving the settlement.

(f) Class Lead Counsel may request service awards for each of the two Class Plaintiffs, to be drawn exclusively from the Settlement Fund.

## **12. THE SETTLEMENT FUND**

(a) The Settlement Fund shall be established as an escrow account at Huntington National Bank and administered by the Escrow Agent, subject to the continuing jurisdiction of the Court. The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Court's continuing supervision and control. No monies shall be paid from the Settlement Fund without the specific authorization of Class Lead Counsel, based on prior approval by the Court. Class Lead Counsel will form an appropriate escrow agreement in conformance with this Settlement Agreement.

(b) Within twenty-one (21) business days following entry of the Preliminary Approval Order, provided that within two (2) days following entry of the Preliminary Approval Order, Class Lead Counsel shall provide Visa Defendants and Mastercard Defendants with such information as Visa Defendants or Mastercard Defendants may require to complete the necessary wire transfers, Defendants shall cause the payment of \$197,500,000.00 to be wired to the Escrow Agent as follows: (i) the Visa Defendants shall cause the payment of 53% of the Settlement Amount (*i.e.*, \$104,675,000.00) to be transferred to the Escrow Agent, and (ii) the Mastercard Defendants shall cause the payment of 47% of the Settlement Amount (*i.e.*, \$92,825,000.00) to be transferred to the Escrow Agent, in accordance with Visa Defendants' and the Mastercard Defendants' agreement among themselves regarding their respective shares. These funds, together with any interest earned thereon, shall constitute the Settlement Fund. In the event that Class Lead Counsel does

not provide Visa Defendants and Mastercard Defendants with the information required to complete the wire transfer within the prescribed time, Visa Defendants' and Mastercard Defendants' payment obligations under this paragraph shall be deferred by an amount of time equivalent to Class Lead Counsel's delay in providing such information.

(c) In all events, the Released Parties shall have no liability, obligation, or responsibility for the costs or provision of notice, including, but not limited to, the identification of potential members of the Settlement Class, beyond those set forth in paragraphs 10(a) and 12(b) above, and paragraph 12(e)(ii) below; for the solicitation, review, or evaluation of proofs of claim; for the administration of the settlement or disbursement of the Settlement Fund; or for any other costs, including any attorneys' fees and expenses or any taxes or tax-related costs relating to the Action, any Released Claim, or the Settlement Fund. The Settlement Fund shall be invested exclusively in accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a United States Treasury Fund or a bank account that is either: (i) fully insured by the Federal Deposit Insurance Corporation; or (ii) secured by instruments backed by the full faith and credit of the United States Government. The proceeds of these accounts shall be reinvested in similar instruments at their then-current market rates as they mature. Visa and Mastercard Defendants shall have no responsibility or liability for any losses incurred by the Settlement Fund.

(d) All funds held by the Escrow Agent shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Settlement Agreement and the Plan of Distribution approved by the Court.

(e) The Settlement Fund shall be applied as follows:

- (i) to pay the Fee and Expense Award, if and to the extent allowed by the Court;
- (ii) to use, if approved by the Court, up to \$1,500,000.00 of the Settlement Amount for payment of any Court-approved costs and expenses in connection with providing Class Notice and the administration of the settlement, including, without limitation, identifying potential members of the Settlement Class; soliciting, reviewing, and evaluating proofs of claim or release forms, or both; and administering the settlement and disbursing the Settlement Fund. If necessary, additional amounts can be used for notice and administration expenses upon the further written agreement of the Parties and approval by the Court, and Visa Defendants and Mastercard Defendants agree to exercise good faith regarding any additional amounts and not to object to reasonable requests to the Court for such additional amounts; in the event Visa Defendants or Mastercard Defendants decline to agree to a request for additional amounts, Class Plaintiffs shall be permitted to apply directly to the Court for approval without Visa Defendants' or Mastercard Defendants' written agreement to the amounts requested (and Visa Defendants and Mastercard Defendants reserve their rights to oppose such an application);
- (iii) to pay the Taxes and tax expenses described in paragraph 14 herein;
- (iv) to pay any other Court-approved fees and expenses; and
- (v) to distribute the balance of the Settlement Fund (the "Net Settlement Fund") to Settlement Class Members as allowed by the Court.

**13. ADMINISTRATION OF THE SETTLEMENT**

- (a) The Claims Administrator shall process this settlement based upon the orders of the Court and this Settlement Agreement, and, after entry of relevant order(s) of the Court, distribute the Net Settlement Fund in accordance with such order(s) and this Settlement Agreement.

(b) Except for their obligation to fund the settlement or cause it to be funded as detailed in this Settlement Agreement, Visa Defendants and Mastercard Defendants shall have no liability, obligation, or responsibility for the administration of the settlement or disbursement of the Net Settlement Fund.

(c) The Net Settlement Fund shall be distributed by the Claims Administrator to, or for the account of, Settlement Class Member claimants, as the case may be, only after the Effective Date of Settlement.

(d) Class Plaintiffs and Settlement Class Members shall look solely to the Settlement Fund as full, final and complete satisfaction of all Released Claims. Except as set forth in paragraph 12(b), Visa Defendants and Mastercard Defendants shall have no obligation under this Settlement Agreement or the settlement to pay or cause to be paid any amount of money, and Visa Defendants and Mastercard Defendants shall have no obligation to pay or reimburse any fees, expenses, costs, liability, losses, Taxes, or damages whatsoever alleged or incurred by Class Plaintiffs, by any Settlement Class Member, or by any Releasing Parties, including, but not limited to, by their attorneys, experts, advisors, agents, or representatives, with respect to the Action and Released Claims. Class Plaintiffs and Settlement Class Members acknowledge that as of the Effective Date of Settlement, the releases given herein shall become effective immediately by operation of the Final Judgment and Order of Dismissal and shall be permanent, absolute, and unconditional.

(e) Any funds that remain in the Net Settlement Fund after distribution of the Net Settlement Fund in accordance with the Plan of Distribution shall not revert to Visa Defendants or Mastercard Defendants. Class Plaintiffs shall apply directly to the Court authorizing the *cy pres* distribution of those remaining funds.

**14. TAXES**

(a) The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulations § 1.468B-1, and agree not to take any position for tax purposes inconsistent therewith. In addition, Class Lead Counsel shall timely make, or cause to be made, such elections as necessary or advisable to carry out the provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such election shall be made in compliance with the procedures and requirements contained in such regulations. The Settlement Fund, less any amounts incurred for notice, administration, and/or Taxes (as defined below), plus any accrued interest thereon, shall be returned to Visa Defendants and Mastercard Defendants, as provided in paragraph 15, if the settlement does not become effective for any reason, including by reason of a termination of this Settlement Agreement pursuant to paragraph 15.

(b) For the purpose of 26 U.S.C. § 468B and the Treasury regulations thereunder, Class Lead Counsel shall be designated as the “administrator” of the Settlement Fund. Class Lead Counsel shall timely and properly file, or cause to be filed, all income, informational, and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Regulations § 1.468B-2(k)). Such returns shall be consistent with this paragraph 14 and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

(c) All: (i) taxes or other similar imposts or charges (including any estimated taxes, interest, penalties, or additions to tax) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement

Fund does not qualify as a “Qualified Settlement Fund” within the meaning of Treasury Regulations § 1.468B-1 (or any relevant equivalent for state tax purposes); and (ii) other taxes or tax expenses imposed on or in connection with the Settlement Fund (collectively, “Taxes”), shall promptly be paid out of the Settlement Fund by the Escrow Agent without prior order from the Court. The Escrow Agent shall also be obligated to, and shall be responsible for, withholding from distribution to Settlement Class Members any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes. The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph 14.

(d) Neither the Parties nor their counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent, Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement Fund or otherwise; (ii) the Plan of Distribution; (iii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (v) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. The Escrow Agent shall indemnify and hold harmless the Parties, using monies from the Settlement Fund, from and against any claims, liabilities, or losses relating to the matters addressed in the preceding sentence.

## **15. TERMINATION OF SETTLEMENT**

(a) Class Plaintiffs, through Class Lead Counsel, Visa Defendants, through Visa Defendants’ Counsel, and Mastercard Defendants, through Mastercard Defendants’ Counsel, shall, in each of their separate discretions, have the right to terminate the settlement set forth in

this Settlement Agreement by providing written notice of their election to do so to all other Parties hereto within thirty (30) days of the date on which the following occurs: (1) if the Court, in a final order, declines to enter the Preliminary Approval Order, the Final Approval Order, or the Final Judgment and Order of Dismissal (denying it in its entirety or in any material respect), or (2) if the Court enters the Final Approval Order and the Final Judgment and Order of Dismissal and appellate review is sought and, on such review, the Final Approval Order or the Final Judgment and Order of Dismissal is finally vacated, modified, or reversed; provided, however, that the Parties agree to act in good faith to secure final approval of this settlement, and to attempt to address in good faith concerns regarding the settlement identified by the Court or any court of appeal. Notwithstanding this paragraph, the Court's determination as to the Fee and Expense Application or any plan of distribution, or both, or any determination on appeal from any such orders, shall not provide grounds for termination of this Settlement Agreement or settlement.

(b) Visa Defendants or Mastercard Defendants may also terminate this Settlement Agreement if 5,000,000 potential members of the Settlement Class, who but for their exclusion would likely have been eligible to receive a distribution from the Settlement Fund, timely and validly exclude themselves from the Settlement Class pursuant to the procedures approved by the Court. Any application to terminate under this paragraph must be made in writing within ten (10) days following the deadline for Persons to exclude themselves from the Settlement Class.

(c) Except as otherwise provided herein, in the event the Settlement Agreement is terminated in accordance herewith, is vacated, or is not approved, or in the event the Effective Date of Settlement fails to occur for any reason, then the Parties to this Settlement Agreement shall be deemed to have reverted to their respective status in the Action as of the Execution Date, and, except as otherwise expressly provided herein, the Parties shall proceed in all respects as if this



Settlement Agreement and any related orders had not been entered (subject to seeking whatever revisions to the pretrial schedule as may be necessary to protect the rights of the Parties), and any portion of the Settlement Fund previously paid by or on behalf of Visa Defendants or Mastercard Defendants, together with any interest earned thereon (and, if applicable, re-payment of any Fee and Expense Award referred to in paragraph 11 above), less Taxes due, if any, with respect to such income, and less costs of administration and notice actually incurred and paid or payable, shall be returned to the Defendant by or for whom the payment was made within ten (10) business days from the date of the event causing such termination. At the request of Visa Defendants' Counsel or Mastercard Defendants' Counsel, the Escrow Agent shall apply for any tax refund owed on the Settlement Fund and pay the proceeds to Visa Defendants and Mastercard Defendants.

(d) Visa Defendants, Visa Defendants' Counsel, Mastercard Defendants, and Mastercard Defendants' Counsel represent that they will not direct Visa Defendants' employees or agents, Mastercard Defendants' employees or agents, or any other persons, to submit or encourage others to submit requests for exclusion from the Settlement Class.

## **16. MISCELLANEOUS**

(a) The Parties to this Settlement Agreement intend the settlement to be a final and complete resolution of all disputes asserted or that could be asserted by Class Plaintiffs or any Settlement Class Member against the Released Parties with respect to the Action and the Released Claims. Accordingly, Class Plaintiffs and Visa Defendants and Mastercard Defendants agree not to assert in any judicial proceeding that the Action was brought by Class Plaintiffs or defended by Visa Defendants or Mastercard Defendants in bad faith or without a reasonable basis. The Parties further agree not to assert in any judicial proceeding that any Party violated Fed. R. Civ. P. 11. The Parties agree that the amount paid and the other terms of the settlement were negotiated at

arm's-length in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel and the Mediator.

(b) The Settlement Amount to be paid by Visa Defendants and Mastercard Defendants pursuant to this Settlement Agreement shall be treated as strictly confidential until such time as a motion requesting entry of the Preliminary Approval Order has been filed with the Court, unless Visa Defendants or Mastercard Defendants have an independent obligation to disclose the Settlement Amount or disclosure is jointly agreed to by Visa Defendants, Mastercard Defendants, and Class Plaintiffs before filing a motion requesting entry of the Preliminary Approval Order.

(c) The terms and provisions of the Stipulated Protective Order, filed on January 20, 2017, and approved by the Court on January 30, 2017, shall survive and continue in effect through and after any final adjudication of the Action.

(d) Nothing in this Settlement Agreement is intended to waive any right to assert that any information or material is protected from discovery by reason of any individual or common interest privilege, attorney-client privilege, work product protection, or other privilege, protection, or immunity, or is intended to waive any right to contest any such claim of privilege, protection, or immunity.

(e) The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

(f) The administration and consummation of the settlement as embodied in this Settlement Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders relating to the Fee and Expense Application and the Plan of Distribution, and enforcing the terms of this Settlement Agreement.

(g) For the purpose of construing or interpreting this Settlement Agreement, Class Plaintiffs and Visa Defendants and Mastercard Defendants agree that it is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

(h) This Settlement Agreement shall constitute the entire agreement between Class Plaintiffs and Visa Defendants and Mastercard Defendants pertaining to the settlement of the Action against Visa Defendants and Mastercard Defendants and supersedes any and all prior and contemporaneous undertakings of Class Plaintiffs and Visa Defendants and Mastercard Defendants in connection therewith. All terms of this Settlement Agreement are contractual and not mere recitals. The terms of this Settlement Agreement are and shall be binding upon each of the Parties hereto, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, and upon all other Persons claiming any interest in the subject matter hereto through any of the Parties hereto including any Settlement Class Members.

(i) The terms of this Settlement Agreement are not severable, but are interdependent and have been agreed to only as a whole by Class Plaintiffs (for themselves individually and on behalf of each Settlement Class Member in the Action), Visa Defendants, and Mastercard Defendants.

(j) This Settlement Agreement may be modified or amended only by a writing executed by Class Plaintiffs, through Class Lead Counsel, Visa Defendants, through Visa Defendants' Counsel, and Mastercard Defendants, through Mastercard Defendants' Counsel, subject (if after preliminary or final approval by the Court) to approval by the Court. Amendments

and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

(k) Nothing in this Settlement Agreement constitutes an admission by any Released Party as to the veracity or merits of any allegations or claims made in the Action, the validity of any defenses that could be asserted by Visa Defendants or Mastercard Defendants, or the appropriateness of certification of any class other than the Settlement Class under Fed. R. Civ. P. 23 solely for settlement purposes. This Settlement Agreement is without prejudice to the rights of Visa Defendants and Mastercard Defendants to either (i) challenge the Court's certification of any class, including the Settlement Class, in the Action should the Settlement Agreement not be approved or implemented for any reason; or (ii) oppose any certification or request for certification in any other proposed or certified class action; or both.

(l) All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law principles.

(m) Visa Defendants, Mastercard Defendants, Class Plaintiffs, their respective counsel, and the Settlement Class Members hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Columbia, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein.

(n) The Parties acknowledge that this Settlement Agreement makes no determination as to which Settlement Class Members are entitled to distribution from the Settlement Fund, or as to the formula for determining the amounts to be distributed.

(o) Any proposed plan of distribution is not a necessary term of this Settlement Agreement and it is not a condition of this Settlement Agreement that any particular plan of distribution be approved. The Plan of Distribution is a matter separate and apart from the settlement between the Parties and any decision by the Court concerning a particular plan of distribution shall not affect the validity or finality of the proposed settlement, including the scope of the release.

(p) This Settlement Agreement may be executed in counterparts by Class Plaintiffs, Visa Defendants, and Mastercard Defendants, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

(q) Class Plaintiffs, Visa Defendants, and Mastercard Defendants acknowledge that they have been represented by counsel and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, Class Plaintiffs, Visa Defendants, Mastercard Defendants, and their respective counsel agree that they will not seek to set aside any part of this Settlement Agreement on the grounds of mistake. Moreover, Class Plaintiffs, Visa Defendants, Mastercard Defendants, and their respective counsel understand, agree, and expressly assume the risk that any fact may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that this Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

(r) Each of the undersigned attorneys represents that he/she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, subject to Court approval; and the undersigned Class Lead Counsel represent that they are authorized to execute

this Settlement Agreement on behalf of Class Plaintiffs. Each of the undersigned attorneys shall use his/her best efforts to effectuate this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the date first herein written above.

*On behalf of Class Plaintiffs and the Settlement Class:*



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HAGENS BERMAN SOBOL SHAPIRO  
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steve@hbsslw.com

*On behalf of Visa Defendants:*

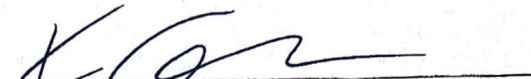


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*On behalf of Mastercard Defendants:*



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UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

*Mackmin, et al. v. Visa Inc., et al.*

Case No. 1:11-cv-01831 (RJL)

**DECLARATION OF ERIC  
SCHACHTER IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
SETTLEMENT WITH VISA AND  
MASTERCARD DEFENDANTS**

This Document Relates to:  
All Plaintiff Actions

I, Eric Schachter, hereby declare as follows:

1. I am a Senior Vice President with A.B. Data, Ltd. ("A.B. Data"). I am fully familiar with the facts contained herein based upon my personal knowledge, and if called as a witness, could and would testify competently thereto. I submit this Declaration at the request of Class Counsel in connection with the above-captioned action (the "Action").

2. A.B. Data has been acting as the Court-appointed Settlement Administrator for the class action settlements previously reached in this Action with the Bank Defendants (Bank of America, Chase, and Wells Fargo). A.B. Data has also been appointed as Notice, Claims, and/or Settlement Administrator in hundreds of class actions and related matters, administering some of the largest and most complex notice and claims administration programs of all time, involving all aspects of media, direct, and third-party notice programs, data management and analysis, claims administration, and settlement fund distribution. An updated profile of A.B. Data's background and capabilities is attached as **Exhibit A**.

3. I have over 20 years of experience in legal administration that includes implementing and maintaining notice plans and claims administration programs in hundreds of class action cases and related proceedings, including complex consumer, antitrust, and securities class actions; Securities and Exchange Commission settlements and related distributions; and civil rights, employment, and insurance class actions.

4. At the request of Class Counsel, and in consultation with A.B. Data's media experts, I prepared a proposed notice plan for the Settlement with Visa Inc., Visa U.S.A. Inc., Visa International Service Association, Plus System, Inc. ("Visa") and Mastercard Incorporated and Mastercard International Incorporated d/b/a Mastercard Worldwide ("Mastercard") that is substantially similar to the successful notice plan that was previously used to provide notice of Plaintiffs' previous settlements with the Bank Defendants. This Declaration will describe the proposed notice plan and how it will meet Federal Rule of Civil Procedure 23 and due process requirements.

5. The objective of the proposed notice plan is to provide the best practicable notice, under the circumstances, of the proposed Settlements to potential Settlement Class Members. The Settlement Class is defined as:

All individuals and entities that paid an unreimbursed ATM Access Fee directly to any Bank Defendant or Alleged Bank Co-Conspirator for a Foreign ATM Transaction using an ATM card issued by a financial institution in the United States to withdraw cash at an ATM located in the United States at any time from October 1, 2007 to the date of the Preliminary Approval Order.



**DIRECT NOTICE**

6. A.B. Data currently maintains a database of approximately 100 million potential Settlement Class Member email addresses previously provided by the Bank Defendants to facilitate settlement notice. A.B. Data also maintains approximately 400,000 potential Class Member email addresses derived from claims submitted in the settlements with the Bank Defendants. Accordingly, the proposed notice plan will feature robust direct notice via email to all previously identified potential Settlement Class Member email addresses.

7. Direct notice will be provided via a Short-Form Notice, attached as **Exhibit B**, that will be formatted as an email and sent to all known potential Settlement Class Member email addresses. Email notice is the most practicable form of direct notice here as mailed notice to potential Settlement Class Members would incur millions or tens of millions of dollars in print and postage costs and, thus, would be cost prohibitive. A Long-Form Notice, attached as **Exhibit C**, will be posted on the case-specific website, [www.ATMClassAction.com](http://www.ATMClassAction.com), in English and Spanish. With appropriate updates, these notice documents track the information and organization of the notice documents approved for the prior Bank Defendant settlements, and the website on which the Long-Form Notice can be accessed is the same case-specific website that was used for those settlements.

8. The Short-Form Notice and Long-Form Notice will include summary information about the proposed Settlement with Visa and Mastercard, including: this is a class action; the Class definition in plain and engaging language ("Used an ATM Card and were Assessed a Surcharge? You Could Get Money From a \$197.5 Million Class Action

Settlement.”); the Class alleges antitrust violations related to ATM surcharges; Settlement Class Members may appear through an attorney; Settlement Class Members can ask to be excluded, or if they remain in the Settlement Class, may object to the Settlements’ terms; Settlement Class Members who submitted claims and/or who received a payment in the previous settlements do not need to file another claim to be eligible to get a payment; the deadlines to submit a claim (for those who did not do so previously), request exclusion, and object; and the binding effect of a Class judgment.

9. When sending email notice, A.B. Data implements certain best practices to maximize deliverability. For example, the subject line, the sender, and the body of the message will be designed to overcome SPAM filters and encourage readership. The email notice will be in an embedded html text format without graphics, tables, images, attachments, and other elements that would increase the likelihood that the message could be blocked by email service providers. The email notice will also be transmitted with a digital signature to the header and content of the email notice, which will allow providers to programmatically authenticate that the email notices are from A.B. Data's authorized mail servers. The email notice will also include an embedded link to the case-specific website, [www.ATMClassAction.com](http://www.ATMClassAction.com), so Settlement Class Members can easily access frequently asked questions, important dates and deadlines, and other relevant documents and information about the case.

#### **DIGITAL MEDIA**

10. To supplement direct notice efforts, targeted digital banner and newsfeed advertisements will be placed on various websites and applications.

11. Digital advertising allows the viewer to click on a banner or newsfeed advertisement and instantly be directed to the Settlement website. A.B. Data's digital media experts will analyze syndicated data from Comscore<sup>1</sup> and MRI-Simmons<sup>2</sup> to place digital banner, text, and/or newsfeed ads through popular digital networks and social media platforms. Digital advertisements will appear on Google Display Networks, Google AdWords, YouTube, Facebook, Instagram, and X (formally known as Twitter). The banner ads will be translated into Spanish and appear on websites specifically serving the Hispanic community. These advertisements will appear across devices, including desktop/laptop, tablet, and mobile platforms. Samples of the proposed digital banner and newsfeed ads are attached as **Exhibit D**.

12. Digital impressions will be highly targeted, specifically delivered to the social media feeds of Settlement Class Members using their known contact information and digital users who have expressed an interest in information relevant to the subject of this case, such as information concerning ATM withdrawals.

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<sup>1</sup> Comscore is a global internet information provider on which leading companies and advertising agencies rely for consumer behavior insight and internet data usage. Comscore maintains a proprietary database of more than 2 million consumers who have given Comscore permission to monitor their browsing and transaction behavior, including online and offline purchasing.

<sup>2</sup> MRI Simmons is the leading provider of insights on the American consumer. This nationally accredited media and marketing research firm provides syndicated data on audience size, composition, and other relevant factors pertaining to major media, including broadcast, magazines, newspapers, and outdoor advertising. The firm's multidimensional database is the largest and most reliable source for integrated media planning. Data from its Survey of the American Consumer is used in the majority of media and marketing plans written in the United States. It provides a single source for in-depth consumer demographic and lifestyle/psychographic characteristics, including how consumers use major media, products, and services. The annual study collects information from tens of thousands of adults in two waves a year and measures approximately 500 product/service categories, 6,000 brands, and various lifestyle activities.

13. Several campaign optimization strategies will be utilized to deliver targeted ads including:

- Mobile In-App - Target individuals, including those from available data, while they are using relevant mobile applications that fit into our data pool;
- Mobile websites - Target phones and tablets whose users are visiting websites that are contextually relevant or websites being visited by relevant users;
- Contextual targeting - Target individuals who visited websites with relevant content and context;
- Behavioral targeting - Target user IDs across the Internet whose owners have shown activity (e.g., clicked through to the website) in the past or filed a claim; and
- Predictive Modeling - Use "look alike" modeling to target ads to user IDs whose owners have strong similarities to users who previously "clicked through" to the case website.

14. All banner and newsfeed ads will include embedded and trackable links to the case-specific website, [www.ATMClassAction.com](http://www.ATMClassAction.com), providing a way to optimize ad placement based on traffic and conversions. A.B. Data employs a fully staffed digital buying team to manage all digital and social media programs in-house for the greatest control and oversight. A.B. Data's digital media experts will monitor the success, conversions, and activity associated with the digital and social media and will optimize the number of impressions delivered across each platform to achieve maximum engagement and efficiency.

15. To make it easier for potential Settlement Class Members to locate the case-specific website, sponsored search listings will be purchased on Google, the most visited search engine and other search engine partners. When a person uses certain identified target phrases and keywords relevant to the Settlements in the Google search engine, links to the case-specific website may appear on the search result pages.

16. The digital and social media ad campaign will run 60 days to ensure ample time to deliver targeted impressions and drive Settlement Class Members to the website. We expect a minimum of 500 million impressions to be delivered on digital networks and social media enabling maximum exposure and delivering the reach required to satisfy due process. The proposed digital and social media ad campaign is flexible and will be adjusted as necessary to provide sufficient notice coverage. Thus, the number of impressions ultimately served will depend on how many Settlement Class Members are successfully sent direct notice by email and will be adjusted accordingly to provide sufficient reach. Notably, over 630 million impressions, resulting in over 540,000 clicks, were delivered as part of the notice plan in the Bank Defendant settlements.

#### **PRINT MEDIA**

17. To reach older Settlement Class Members and other light digital and social media users, the Short-Form Notice will be published one time as a 1/3-page ad in *People* magazine. *People* is a trusted source for celebrity and entertainment news; captivating human-interest stories; and beauty, food, and style trends. This weekly publication has a broad national readership, reaching over 96 million consumers.

**EARNED MEDIA**

18. A.B. Data will disseminate the Short-Form notice as a news (press) release via *PR Newswire*'s US1 and Hispanic Newswire distribution lists to help the case gain more attention from the media and potential Settlement Class Members. The press release will reach traditional media outlets (television, radio, newspapers, magazines), news websites, and journalists nationwide.

19. News about the Settlements will also be broadcast to the news media via X (formerly known as Twitter). It will be tweeted from *PR Newswire*'s and A.B. Data's X accounts to thousands of media outlets, journalists, and other followers.

**TOLL-FREE TELEPHONE NUMBER**

20. A.B. Data will update and continue to maintain the dedicated toll-free telephone number with an automated interactive voice response system to assist potential Settlement Class Members in understanding the terms of the Settlements and their rights. The toll-free telephone number will appear on the Short-Form Notice and Long-Form Notice. The automated interactive voice response system presents callers with a series of choices to hear prerecorded information about the Settlements. If callers need further help, they have an option to leave a voicemail to receive a call back.

**WEBSITE**

21. As noted above, A.B. Data will also update and continue to maintain the case-specific website, [www.ATMClassAction.com](http://www.ATMClassAction.com). Many members of the Settlement Class have accessed this website already in connection with the Bank Defendant settlements. The website address will appear on the Short-Form Notice and Long-Form

Notice and be hyperlinked from the digital and social media ads and email. The website will provide, among other things, a downloadable version of the Long-Form Notice, a detailed summary of the Settlement's terms, functionality for Settlement Class Members to submit their claims online, all relevant documents, important dates, and any pertinent updates concerning the litigation or settlement process. The website is secure, with a "https" designation.

### **EXCLUSION PROCESSING**

22. The notices will provide that the Court will exclude any Settlement Class Member who timely sends a written, mailed request to the Notice Administrator asking to be excluded from the Settlement Class. A.B. Data will promptly circulate copies of all such requests to the parties and provide a report that tracks each request and whether the required information was included.

### **CLAIMS AND DISTRIBUTION**

23. Settlement Class Members who submitted a claim or received a payment in the previous settlements will not be required to submit another claim. Such Settlement Class Members may, however, submit an updated claim at their election and any such updated claim may include additional qualifying ATM transactions occurring after submission of the prior claim form.

24. Settlement Class Members who did not submit a claim in the previous settlements must submit a timely, valid claim to receive monetary compensation from the Settlement with Visa and Mastercard. These Settlement Class Members will be permitted to submit claims online through a secure website or by mail. Attached as **Exhibit E** is the

proposed Claim Form. This is substantially the same claim form that was used for the Bank Defendant settlements. The only difference is that the instructions have been updated to advise Settlement Class Members that if they submitted a claim previously, and do not wish to claim additional transactions, they do not need to submit another claim form to receive a payment. As with the Bank Defendant settlements, The Net Settlement Fund will be distributed to valid claimants *pro rata* based on the number of claims that are submitted. A.B. Data will process each claim in accordance with the Court-approved Plan of Allocation and/or relevant Court orders.

25. Settlement payments will be digitally sent to each eligible claimant using the email address they provide on their submitted Claim Form. At the time of distribution, each eligible claimant will be provided with a number of digital options to instantaneously receive their payment, such as a virtual debit card, PayPal, or other ecommerce platforms. Given the large size of this Settlement Class and the expected payment amounts, a digital distribution is again recommended to reduce administrative costs and provide convenience and efficiency for claimants (who will be able to receive their funds without having to deposit a check or visit a bank). Settlement Class Members can also request a traditional paper check payment by mail.

#### **ESTIMATED ADMINISTRATIVE COSTS**

26. A.B. Data estimates total administrative costs to provide notice, process claims, and to distribute funds to eligible claimants, as described above, to be in the range of \$1 million to \$1.25 million. These costs include out-of-pocket expenses, such as media



placements; postage; and our professional fees associated with disseminating notice, processing claims, and effectuating payment to eligible claimants.

### CONCLUSION

27. It is my opinion, based on my individual expertise and experience and that of my A.B. Data colleagues, that the proposed notice plan is the best notice practicable under the circumstances. The plan tracks the plan that was approved and successfully implemented to deliver notice of the prior Bank Defendant settlements. It is designed to effectively reach potential Settlement Class Members, will feature robust direct notice, and will deliver plain language notices that capture readers' attention and provide relevant information about their rights and options in an informative and easy to understand manner.

28. A.B. Data estimates that notice of the prior Bank Defendant settlements reached over 80% of the target audience, and thus potential Settlement Class Members. Because it uses the same multi-channel approach as the previous settlement notice program, including direct notice, paid media (digital, social, and print advertising), and earned media, A.B. Data's notice program for the current settlement with Visa and Mastercard should have the same reach.<sup>3</sup> The proposed notice plan provides a reach similar to not only the Bank Defendant settlements, but also notice programs that courts have approved previously and the range recommended and considered reasonable by The

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<sup>3</sup> Reach is the estimated percentage of a target audience reached through a specific media vehicle or combination of media vehicles.

Federal Judicial Center’s *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide*.<sup>4</sup>

29. This proposed notice plan conforms to the standards employed by A.B. Data in notification plans designed to reach potential class members of settlement groups or classes that are national in scope. For all these reasons, in my opinion, the proposed notice plan satisfies the requirements of Federal Rules of Civil Procedure Rule 23 and due process.

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

Executed this 28<sup>th</sup> day of May 2024 in Milwaukee, Wisconsin.



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ERIC SCHACHTER

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<sup>4</sup> The *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* states: “The lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70-95%.”

# EXHIBIT A

**Class  
Action  
Administration**



**Headquarters**

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F: 414-961-3099

**New York**

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New York, NY 10004  
P: 646-290-9137

**Washington DC**

915 15<sup>th</sup> St., NW, Ste. 300  
Washington, DC 20005  
P: 202-618-2900  
F: 202-462-2085

**Florida**

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Palm Beach Gardens, FL 33418  
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F: 561-252-7720


**Israel**

19 Weissburg Street  
Tel Aviv 69358  
Israel  
P: +972 (3) 720-8782




# CAPABILITIES

## About A.B. Data

 Founded in 1981, **A.B. Data has earned a reputation** for expertly managing the complexities of class action administration in consumer, antitrust, securities, Securities and Exchange Commission (SEC) enforcement actions, and ERISA, Attorneys General, employment, civil rights, insurance, environmental, wage and hour, and other class action cases. **A.B. Data's work in all aspects of class action administration** has been perfected by decades of experience in hundreds of class action cases involving billions of dollars in total settlements. Dedicated professionals deliver **A.B. Data's all-inclusive services**, working in partnership with its clients to administer their class action cases effectively, efficiently, and affordably, regardless of size or scope.

**A.B. Data offers unmatched resources and capacity** and is capable of expertly administering any class action notice, settlement, and/or fund administration. Whether notifying millions of class members in the United States or throughout the world, processing millions of claims, distributing payments digitally via A.B. Data's Digital PayPortal<sup>SM</sup>, or printing and distributing millions of checks, **A.B. Data matches its talent and technology** to the specific needs of its clients, delivering unparalleled service on time and on budget without ever compromising quality.

## Location, Ownership Structure

 **A.B. Data is an independently owned**, more than 40-year-old, Milwaukee, Wisconsin-based company that prides itself on its vast expertise and industry-leading innovations. We like to remind our clients and partners that we're not just a class action administration company, but a group of experienced, dedicated professionals who believe that relationships are just as important as the accurate and timely management of class action administrations. In other words, we are people who do business with people.

## Services

 **Every A.B. Data client is deserving of the best job we can put forward.** A.B. Data makes class action administration easy for our clients with clarity, convenience, and efficiency. Our priority is to navigate the intricacies of our clients' matters and deliver successful results by using our solid expertise, advanced technology, and top-quality products and services. We pay attention to the details and get it right the first time.

We aim to provide our clients the full experience of a truly collaborative working relationship. It is why we believe much of our success originates from our philosophy of "people doing business with people."

## Services

### All Digital — From Notice to Distribution

**A.B. Data is uniquely positioned to design, implement, and maintain notice and settlement administration programs** using an innovative, "all-digital" approach that replaces the more traditional and less efficient methods of administration, such as newspaper ads, mailed notices, and paper checks. Many of our recent proposed notice plans and claim programs utilize the latest technologies such as microtargeted digital ads for notice, streamlined online claims, and distributing settlement funds electronically using a digital paywall. These methods provide significant cost savings, are consistent with the amendments to Rule 23 that are now in effect, and importantly provide much-needed alignment of class action notice and administration with current consumer behaviors.

### Pre-Settlement Consultation

**The pre-settlement consultation is a collaborative session** designed to help A.B. Data clients prepare a stronger case. Our support teams simplify the task of sorting through a maze of documents during investigation and discovery, streamlining the process and preserving fund assets. From there, we assist with fully interactive media packages for court presentations and settlement negotiations. A.B. Data works closely with our clients, offering expert testimony on documents, processing, class and notice manageability, and proposed plans of allocation.

### Media Services

**A.B. Data continues to earn our reputation** as the early innovator in integrating advanced micro-targeting techniques, including contextual targeting, behavioral targeting, and predictive modeling. Coupled with inventive digital media strategies to drive claims, case-specific banner ad development, class member research, and comScore analysis services, our multi-tiered media programs are designed to cost-effectively deliver notice to potential class members and increase claims rates.

### Notice Administration

**In A.B. Data, clients have a comprehensive resource** with a depth of experience in direct notice. Our compliance and understanding of Rule 23 of the Federal Rules of Civil Procedure are crucial in meeting the "plain language" legal requirements for any campaign. From our sophisticated digital media capabilities and extensive global experience with class member research, our experts create notice documents that are easily understandable and cost-efficient to produce. We consult with our clients to deliver notice documents from multi-page, mailed, or emailed notice packets to concise postcards that establish the most influential and cost-effective means of communicating with potential claimants.

## Claims Processing

**A.B. Data continues to bring game-changing technologies** to improve the speed and precision in claims processing. Our robust system for online claims submissions allows us to meticulously verify data and documentation, preserve and authenticate claims, and calculate and verify settlement amounts. In addition, our data network infrastructure includes on-site data storage, backup, contingency plans, and security for electronic and hard copy claim filings. It is all part of a total commitment to be the most innovative and comprehensive resource in the industry. At A.B. Data, we take pride in having the in-house capacity to process millions of pages, as well as the organizational integrity to treat every claim as if it were the only one.

## Contact Center

**A.B. Data's Contact Center is comprised of a full staff** that is trained on and equipped with online and telecommunication systems to monitor and connect with class members. Associates routinely monitor class member communication for all class action administrations, including antitrust, consumer, and securities.

Utilizing monitoring software, associates watch multiple social media channels simultaneously, allowing for instantaneous routing of inquiries and interaction with claimants. Detailed and concise analytical reports outlining Contact Center activities are always provided.

Our Contact Center and case websites are capable of handling millions of class member engagements, as recently displayed in a campaign which garnered over 1.2 million website visits in two months and had more than 72,500 Facebook engagements. Facebook comments and threads are monitored and claimants are guided to the website for more information. Google AdWords and display advertising have also brought hundreds of thousands of visitors to various case websites.

A.B. Data's Contact Center also has Spanish language associates in-house and we can accommodate any language, given proper lead time. Traditional call center facilities are also available, if needed.

## Case Websites

**We offer a state-of-the-art technology platform** that supports every step of our class action administration process. Our expert marketing professionals design customized case-specific websites that provide potential class members easy access to case information, critical documents, important deadlines, as well as the capability to file claim forms and register for future mailings about the case. Claimants can use the website to elect to receive their settlement payments by mail or by one of several digital payment options, all accessible by mobile devices.

## Settlement Fund Distribution

**From complete escrow services to establishment of qualified settlement funds**, check printing and mailing, electronic cash or stock distribution and tax services, A.B. Data has always provided a full-service solution to Settlement Fund Distribution. Our IT team has decades of experience in developing and implementing fast, secure databases and claims administration systems that ensure class members receive the correct amount in their settlement disbursement. Today's digital capabilities allow even greater convenience for class members. In certain instances, claimants can now elect to

instantaneously receive settlement payments through popular digital-payment options, such as PayPal, Amazon, and virtual debit cards.

## A.B. Data's Leadership



A.B. Data's administration team is composed of the following key executives, who collectively have decades of experience settling and administering class actions:

**Bruce A. Arbit, Co-Managing Director** and one of the founders of the A.B. Data Group, serves as Chairman of the Board and oversees the day-to-day operations of the A.B. Data Group of companies, employing almost 400 people in the United States and Israel. Mr. Arbit is also Chairman of the Board of Integrated Mail Industries, Ltd. and has served as a member of the Board of Directors of University National Bank and State Financial Bank. He is the past Chairman of Asset Development Group, Inc., Home Source One, and American Deposit Management and is a member of the National Direct Marketing Association, the Direct Marketing Fundraising Association, and the American Association of Political Consultants. He was named 1996 Direct Marketer of the Year by the Wisconsin Direct Marketing Association.

A.B. Data's work in class action litigation support began with the Court selecting A.B. Data to oversee the restitution effort in the now-famous Swiss Banks Class Action Case, the International Commission on Holocaust Era Insurance Claims, and every other Holocaust Era Asset Restitution program, in which it was the company's job to identify, contact, and inform survivors of the Holocaust. A.B. Data delivered by reaching out to millions of people in 109 countries who spoke more than 30 languages. Since those days, Mr. Arbit has guided the class action division through phenomenal growth and success. Today, A.B. Data manages hundreds of administrations annually that distributes billions of dollars to class members.

**Thomas R. Glenn, President**, Mr. Glenn's management of A.B. Data's Class Action Administration Company includes designing and implementing notice plans and settlement administration programs for antitrust, securities, and Securities and Exchange Commission settlements and SEC disgorgement fund distributions, as well as consumer, employment, insurance, and civil rights class actions. Mr. Glenn previously served as Executive Vice President at Rust Consulting and has more than 30 years of executive leadership experience.

**Eric Miller, Senior Vice President**, as a key member of A.B. Data's Class Action Administration Leadership Team, oversees the Case Management Department and supervises the operations and procedures of all of A.B. Data's class action administration cases. Mr. Miller is recognized in the class action administration industry as an expert on securities, SEC, consumer, product recall, product liability, general antitrust, pharmaceutical antitrust, and futures contract settlements, to name a few settlement types. Prior to joining A.B. Data, Mr. Miller served as the Client Service Director for Rust Consulting, responsible there for its securities practice area. He has more than 20 years of operations, project management, quality assurance, and training experience in the class action administration industry. In addition, Mr. Miller manages A.B. Data's office in Palm Beach Gardens, Florida.



**Eric Schachter, Senior Vice President**, is a member of A.B. Data's Class Action Administration Leadership Team. He has over 15 years of experience in the legal settlement administration services industry. Mr. Schachter's responsibilities include ensuring successful implementation of claims administration services for A.B. Data's clients in accordance with settlement agreements, court orders, and service agreements. He also works closely with Project Managers to develop plans of administration to provide the highest level of effective and efficient delivery of work product. A frequent speaker on claims administration innovation and best practices at industry events nationwide, Mr. Schachter has a bachelor's degree in sociology from Syracuse University, earned his law degree at Hofstra University School of Law, and was previously an associate at Labaton Sucharow LLP in New York City.

**Elaine Pang, Vice President, Media**, oversees the Media Department and is responsible for the direction, development, and implementation of media notice plans for A.B. Data's clients. Ms. Pang brings more than 15 years of experience in developing and implementing multifaceted digital and traditional media for high profile complex legal notice programs. She uses her experience in class actions and advertising to provide the best practicable notice plans for large scale campaigns across domestic and international regions, and she leverages her expertise to better understand the evolving media landscape and utilize cutting-edge technology and measurement tools. Prior to entering the class action industry, Ms. Pang worked with many leading reputable brands, including General Mills, Air Wick, Jet-Dry, Comedy Central, Madison Square Garden, Radio City Music Hall, and Geox. She earned her MBA from Strayer University and holds a BS in Marketing from Pennsylvania State University. Ms. Pang's credentials include Hootsuite Social Marketing Certification, Google Adwords and Analytics Certification, and IAB Digital Media Buying and Planning Certification.

**Paul Sauberer, Vice President of Quality**, is responsible for overseeing quality assurance and process management, working diligently to mitigate risk, ensure exceptional quality control, and develop seamless calculation programming. Mr. Sauberer brings more than 20 years of experience as a quality assurance specialist with a leading claims-processing company where he developed extensive knowledge in securities class action administration. He is recognized as the class action administration industry's leading expert on claims and settlement administrations of futures contracts class actions.

**Justin Parks, Vice President**, is a member of A.B. Data's Class Action Administration Leadership Team. Mr. Parks brings extensive experience in client relations to A.B. Data's business development team. Mr. Parks has over 15 years of experience in the legal settlement administration services industry and has successfully managed and consulted on notice plans and other administrative aspects in hundreds of cases. Mr. Parks is uniquely experienced in Data Privacy matters, having consulted with clients on numerous matters stemming from data breaches as well as violations of the Illinois Biometric Information Privacy Act (BIPA), including some of the first ever Biometric Privacy related settlements in history. Mr. Parks' knowledge and understanding of the class action industry, as well as his client relationship skills, expand A.B. Data's capacity to achieve its business development and marketing goals effectively.

**Steve Straub, Senior Director of Operations**, started with A.B. Data in 2012 as a Claims Administrator. He moved through the ranks within the company where he spent the past five years as Senior Project Manager managing many of the complex commodities cases such as *In re LIBOR-Based Financial Instruments Antitrust Litigation*, *In re London Silver Fixing, Ltd. Antitrust Litigation*, and *Laydon v. Mizuho Bank, Ltd., et al.* Mr. Straub's performance in these roles over the past ten years, along with his comprehensive knowledge of company and industry practices and first-person experience leading the project management team, has proven him an invaluable member of the A.B. Data team.

In his role as Claimant Operations Director, his responsibilities include developing efficiencies within the operations center, which includes mailroom, call center, and claims processing areas. His areas of expertise include business process development, strategic/tactical operations planning and implementation, risk analysis, budgeting, business expansion, growth planning and implementation, cost reduction, and profit, change, and project management. Mr. Straub is well-versed in the administration of securities, consumer, and antitrust class action settlements. He earned his Juris Doctor degree from Seton Hall University School of Law in Newark, New Jersey.

**Jack Ewashko, Director of Client Services**, brings twenty years of industry and brokerage experience to his role with A.B. Data. He is an accomplished client manager adept at facilitating proactive communications between internal and outside parties to ensure accurate and timely deliverables. Mr. Ewashko previously held positions at two claim administration firms where he oversaw the securities administration teams and actively managed numerous high-profile matters, including the \$2.3 billion foreign exchange litigation. He notably served as Vice President, FX and Futures Operations at Millennium Management, a prominent global alternative investment management firm. As he progressed through trading, analytic, management, and consultancy roles at major banks and brokerage firms, Mr. Ewashko gained hands-on experience with vanilla and exotic securities products, including FX, commodities, mutual funds, derivatives, OTC, futures, options, credit, debt, and equities products. In the financial sector, he also worked closely with compliance and legal teams to ensure accuracy and conformity with all relevant rules and regulations regarding the marketing and sale of products, as well as the execution and processing of trades. He has held Series 4, Series 6, Series 7, and Series 63 licenses, and has been a member of the Futures Industry Association (FIA) and Financial Industry Regulatory Authority (FINRA). Mr. Ewashko earned his Bachelor of Business Administration from Long Island University, Brooklyn, New York.

**Brian Devery, Director of Client Services**, brings more than a decade of experience in class action administration and project management, as well as over two decades of experience as an attorney (ret.). Mr. Devery currently focuses on consumer, antitrust, employment, and other non-securities based administrations. In addition to driving project administration, he is focused on the implementation of process improvement, streamlining, and automation. Mr. Devery is admitted to practice law in State and Federal Courts of New York with his Juris Doctorate earned from the Maurice A. Deane School of Law at Hofstra University, Hempstead, New York.

**Adam Walter, PMP, Director of Client Services**, has nearly fifteen years of experience managing the administration of securities class action settlements and SEC disgorgements totaling more than \$4 billion. He has managed settlement programs in engagements involving some of the largest securities class action settlements and is a key contributor to the development of administration strategies that meet the evolving needs of our clients. His responsibilities include developing case administration strategies to ensure that all client and court requirements and objectives are met, overseeing daily operations of case administrations, ensuring execution of client deliverables, providing case-related legal and administration support to class counsel, overseeing notice dissemination programs, implementing complex claims-processing and allocation methodologies, establishing quality assurance and quality control procedures, and managing distribution of settlement funds. Mr. Walter holds a bachelor's degree in business administration from Florida Atlantic University, Boca Raton, Florida. He also has been an active member of the Project Management Institute since 2010 and is PMP®-certified.

**Eric Nordskog, Director of Client Services**, started with A.B. Data in 2012 on the operations team, managing dozens of team leads and claims administrators in the administration of legal cases and actions. In 2017, Mr. Nordskog was promoted to Project Manager, due in part to his proven ability to add consistency and efficiency to the e-claim filing process with new streamlined processes and audit practices. Today, as Senior Project Manager, he directs many of A.B. Data's securities, insurance, and

consumer cases. He regularly oversees the administration of large insurance cases, such as two recent Cigna Insurance matters that involved complex calculations and over one million class members each. He is also the primary hiring and training manager for new project managers and coordinators. Mr. Nordskog earned his Juris Doctor degree from Marquette University Law School, Milwaukee, in 2001.

**Eric Schultz, MCSE, Information Technology Manager and Security Team Chairperson**, has been with A.B. Data for more than 19 years, and is currently responsible for overseeing all information technology areas for all A.B. Data divisions across the United States and abroad, including network infrastructure and architecture, IT operations, data security, disaster recovery, and all physical, logical, data, and information systems security reviews and audits required by our clients or otherwise. As a Microsoft Certified Systems Engineer (MCSE) with more than 25 years of experience in information technology systems and solutions, Mr. Schultz has developed specializations in network security, infrastructure, design/architecture, telephony, and high-availability network systems.

## Secure Environment



**A.B. Data's facilities provide the highest level of security** and customization of security procedures, including:

- A Secure Sockets Layer server
- Video monitoring
- Limited physical access to production facilities
- Lockdown mode when checks are printed
- Background checks of key employees completed prior to hire
- Frequency of police patrol – every two hours, with response time of five or fewer minutes
- Disaster recovery plan available upon request

## Data Security



**A.B. Data is committed to protecting the confidentiality, integrity, and availability of personal identifying information** and other information it collects from our clients, investors, and class members and requires that its employees, subcontractors, consultants, service providers, and other persons and entities it retains to assist in distributions do the same. A.B. Data has developed an Information Security Policy, a suite of policies and procedures intended to cover all information security issues and bases for A.B. Data, and all of its divisions, departments, employees, vendors, and clients. A.B. Data has also recently taken the necessary, affirmative steps toward compliance with the EU's General Data Protection Regulation and the California Consumer Privacy Act.

A.B. Data has a number of high-profile clients, including the Securities and Exchange Commission (SEC), the United States Department of Justice, the Attorneys General of nearly all 50 states, other agencies of the United States government, and the Government of Israel, as well as direct banking and payment services companies with some of the most recognized brands in United States financial services and some of the largest credit card issuers in the world.

We are therefore frequently subjected to physical, logical, data, and information systems security reviews and audits. We have been compliant with our clients' security standards and have also been determined to be compliant with ISO/IEC 27001/2 and Payment Card Industry (PCI) data-security standards, the Gramm-Leach-Bliley Act (GLB) of 1999, the National Association of Insurance Commissioners (NAIC) Regulations, the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and the Health Information Technology for Economic and Clinical Health Act (HITECH).

The Government of Israel has determined that A.B. Data is compliant with its rigorous security standards in connection with its work on Project HEART (Holocaust Era Asset Restitution Taskforce).

A.B. Data's fund distribution team has been audited by EisnerAmper LLP and was found compliant with class action industry standards and within 99% accuracy. EisnerAmper LLP is a full-service advisory and accounting firm and is ranked the 15th-largest accounting firm in the United States.

In addition, as part of PCI compliance requirements, A.B. Data has multiple network scans and audits from third-party companies, such as SecurityMetrics and 403 Labs, and is determined to be compliant with each of them.

## Fraud Prevention and Detection



**A.B. Data is at the forefront of class action fraud prevention.**

A.B. Data maintains and utilizes comprehensive proprietary databases and procedures to detect fraud and prevent payment of allegedly fraudulent claims.

We review and analyze various filing patterns across all existing cases and claims. Potential fraudulent filers are reported to our clients as well as to the appropriate governmental agencies where applicable.

## Representative Class Action Engagements



**A.B. Data and/or its team members have successfully administered** hundreds of class actions, including many major cases. Listed below are just some of the most representative or recent engagements.

### Consumer & Antitrust Cases

- *In re EpiPen Marketing, Sales Practices and Antitrust Litigation*
- *In re Broiler Chicken Antitrust Litigation - Commercial (Indirect)*
- *In re Broiler Chicken Antitrust Litigation - Indirect*
- *In re Broiler Chicken Antitrust Litigation - Direct*
- *In re Pork Antitrust Litigation - Directs*
- *In re Pork Antitrust Litigation - Indirects*

- *Peter Staley, et al. v. Gilead Sciences, Inc., et al.*
- *In re: Opana ER Antitrust Litigation*
- *In re Ranbaxy Generic Drug Application Antitrust Litigation*
- *In re Valeant Pharmaceuticals Int'l, Inc. Third-Party Payor Litigation*
- *Staley, et al., v. Gilead Sciences*
- *In Re: Generic Pharmaceuticals Pricing Antitrust Litigation – Direct Purchasers*
- *Beef Direct Purchaser Antitrust Litigation*
- *BCBSM, Inc. v. Vyera Pharmaceuticals, et al. (Daraprim)*
- *In re Automobile Antitrust Cases I and II*
- *Olean Wholesale Grocery Cooperative, Inc., et al. v. Agri Stats, Inc., et al. (Turkey)*
- *Integrated Orthopedics, Inc., et al. v. UnitedHealth Group, et al.*
- *In Re: Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litigation*
- *Vista Healthplan, Inc., et al. v. Cephalon, Inc., et al. (Provigil)*
- *Jeffrey Koenig, et al. v. Vizio, Inc.*
- *Wit, et al. v. United Behavioral Health*
- *Weiss, et al. v. SunPower Corporation*
- *Smith, et al. v. FirstEnergy Corp., et al.*
- *Resendez, et al. v. Precision Castparts Corp. and PCC Structural, Inc.*
- *Julian, et al. v. TTE Technology, Inc., dba TCL North America*
- *Eugenio and Rosa Contreras v. Nationstar Mortgage LLC*
- *Phil Shin, et al. v. Plantronics, Inc.*
- *In re: Qualcomm Antitrust Litigation*
- *In re Resistors Antitrust Litigation*
- *The Hospital Authority of Metropolitan Government of Nashville and Davidson County, Tennessee v. Momenta Pharmaceuticals, Inc. and Sandoz Inc. ("Lovenox Antitrust Matter")*
- *William Kivett, et al. v. Flagstar Bank, FSB, and DOES 1-100, inclusive*
- *Adelphia, Inc. v. Heritage-Crystal Clean, Inc.*
- *LLE One, LLC, et al. v. Facebook, Inc.*
- *Bach Enterprises, Inc., et al. v. Advanced Disposal Services South, Inc., et al.*
- *JWG Inc., et al. v. Advanced Disposal Services Jacksonville, L.L.C., et al.*
- *State of Washington v. Motel 6 Operating L.P. and G6 Hospitality LLC*
- *In re GSE Bonds Antitrust Litigation*
- *Wave Lengths Hair Salons of Florida, Inc., et al. v. CBL & Associates Properties, Inc., et al.*
- *In re Loestrin 24 FE Antitrust Litigation*
- *Office of the Attorney General, Department of Legal Affairs, State of Florida v. Pultegroup, Inc. and Pulte Home Company, LLC*
- *In re Cigna-American Specialties Health Administration Fee Litigation*
- *In re: Intuniv Antitrust Litigation*
- *High Street, et al. v. Cigna Corporation, et al.*
- *Gordon Fair, et al. v. The Archdiocese of San Francisco, San Mateo, and Marin County*
- *Bizzarro, et al. v. Ocean County Department of Corrections, et al.*
- *Meeker, et al. v. Bullseye Glass Co.*
- *MSPA Claims 1, LLC v. Ocean Harbor Casualty Insurance Company*
- *Tennille v. Western Union Company - Arizona*
- *Garner, et al. v. Atherotech Holdings, Inc. and Garner, et al. v. Behrman Brothers IV, LLC, et al.*
- *Robinson, et al. v. Escallate, LLC*
- *Josefina Valle and Wilfredo Valle, et al. v. Popular Community Bank f/k/a Banco Popular North America*
- *Vision Construction Ent., Inc. v. Waste Pro USA, Inc. and Waste Pro USA, Inc. and Waste Pro of Florida, Inc.*

- *Plumley v. Erickson Retirement Communities, et al.*
- *In re London Silver Fixing, Ltd. Antitrust Litigation*
- *Ploss v. Kraft Foods Group, Inc. and Mondelēz Global LLC*
- *In re Mexican Government Bonds Antitrust Litigation*
- *In re Ready-Mixed Concrete Antitrust Litigation*
- *In re: Marine Hose Antitrust Litigation*
- *Iowa Ready Mixed Concrete Antitrust Litigation*
- *In re Potash Antitrust Litigation (II)*
- *In re Evanston Northwestern Healthcare Corp. Antitrust Litigation*
- *In re Polyurethane Foam Antitrust Litigation*
- *In re LIBOR-Based Financial Instruments Antitrust Litigation*
- *In re Lorazepam and Clorazepate Antitrust Litigation*
- *In re Cardizem CD Antitrust Litigation*
- *Vista Healthplan, Inc., and Ramona Sakiestewa v. Bristol-Myers Squibb Co., and American BioScience, Inc.*
- *In re Lupron Marketing and Sales Practices Litigation*
- *In re Terazosin Hydrochloride Antitrust Litigation*
- *In re Warfarin Sodium Antitrust Litigation*
- *Rosemarie Ryan House, et al. v. GlaxoSmithKline PLC and SmithKline Beecham Corporation*
- *Carpenters and Joiners Welfare Fund, et al. v. SmithKline Beecham*
- *New Mexico United Food and Commercial Workers Union's and Employers' Health and Welfare Trust Fund, et al. v. Purdue Pharma L.P.*
- *In Re Pharmaceutical Industry Average Wholesale Price Litigation*
- *Alma Simonet, et al. v. SmithKline Beecham Corporation, d/b/a GlaxoSmithKline*
- *In re Relafen Antitrust Litigation*
- *In Re Remeron Direct Purchaser Antitrust Litigation*
- *In re TriCor Indirect Purchasers Antitrust Litigation*
- *Nichols, et al., v. SmithKline Beecham Corporation*
- *In re: DDAVP Indirect Purchaser Antitrust Litigation*

## Securities Cases

- *Plymouth County Retirement Association v. Spectrum Brands Holdings, Inc., et al.*
- *Tung, et al. v. Dycom Industries, Inc., et al.*
- *Boutchard., et al. v. Gandhi, et al. ("Tower/e-Minis")*
- *MAZ Partners LP v. First Choice Healthcare Solutions, Inc.*
- *SEB Investment Management AB, et al. v. Symantec Corporation, et al.*
- *In re Impinj, Inc. Securities Litigation*
- *In re Netshoes Securities Litigation*
- *Yellowdog Partners, LP, et al. v. Curo Group Holdings Corp., et al.*
- *In re Brightview Holdings, Inc. Securities Litigation*
- *In re Obalon Therapeutics, Inc. Securities Litigation*
- *In re Willis Towers Watson PLC Proxy Litigation*
- *In re Blue Apron Holdings, Inc. Securities Litigation*
- *In re: Qudian Inc. Securities Litigation*
- *Plymouth County Contributory Retirement System v. Adamas Pharmaceuticals, et al.*
- *In re Perrigo Company PLC Securities Litigation*
- *Enriquez, et al. v. Nabriva Therapeutics PLC, et al.*
- *Teamsters Local 456 Pension Fund, et al. v. Universal Health Services, Inc., et al.*
- *Olenik, et al. v. Earthstone Energy, Inc.*

- *Shenk v. Mallinckrodt plc, et al.*
- *In re The Allstate Corp. Securities Litigation*
- *Christopher Vataj v. William D. Johnson, et al. (PG&E Securities II)*
- *Kirkland v. WideOpenWest, Inc.*
- *Oklahoma Police Pension and Retirement System v. Sterling Bancorp, Inc.*
- *In re Uxin Limited Securities Litigation*
- *City of Hallandale Beach Police Officers' & Firefighters' Personnel Retirement Trust v. Ergen, et al. (Echostar)*
- *Lewis v. YRC Worldwide Inc., et al.*
- *Tomaszewski v. Trevena, Inc., et al.*
- *In re Restoration Robotics, Inc. Securities Litigation*
- *Public Employees' Retirement Systems of Mississippi, et al. v. Treehouse Foods, Inc., et al.*
- *Ronald L. Jackson v. Microchip Technology, Inc., et al.*
- *In re Micro Focus International plc Securities Litigation*
- *In re Dynagas LNG Partners LP Securities Litigation*
- *Weiss, et al. v. Burke, et al. (Nutraceutical)*
- *Yaron v. Intersect ENT, Inc., et al.*
- *Utah Retirement Systems v. Healthcare Services Group, Inc., et al.*
- *In re PPDAl Group Inc. Securities Litigation*
- *In re: Evoqua Water Technologies Corp. Securities Litigation*
- *In re Aqua Metals, Inc. Securities Litigation*
- *St. Lucie County Fire District Firefighters' Pension Trust Fund v. Southwestern Energy Company*
- *In re CPI Card Group Inc. Securities Litigation*
- *Arkansas Teacher Retirement System, et al. v. Alon USA Energy, Inc., et al.*
- *In re TAL Education Group Securities Litigation*
- *GCI Liberty Stockholder Litigation*
- *In re SciPlay Corporation Securities Litigation*
- *In re Allergan Generic Drug Pricing Securities Litigation*
- *In re Vivint Solar, Inc. Securities Litigation*
- *In re YayYo Securities Litigation*
- *In re JPMorgan Treasury Futures Spoofing Litigation*
- *Searles, et al. v. Crestview Partners, LP, et al. (Capital Bank)*
- *In re Lyft, Inc. Securities Litigation*
- *In re Aegean Marine Petroleum Network, Inc. Securities Litigation*
- *In re JPMorgan Precious Metals Spoofing Litigation*
- *In re Pivotal Software, Inc. Securities Litigation*
- *Longo, et al. v. OSI Systems, Inc., et al.*
- *In re Homefed Corporation Stockholder Litigation*
- *Pierrelouis v. Gogo Inc., et al.*
- *Pope v. Navient Corporation, et al.*
- *In re Merit Medical Systems, Inc. Securities Litigation*
- *In re Frontier Communications Corporation Stockholder Litigation*
- *Holwill v. AbbVie Inc.*
- *Budicak, Inc., et al. v. Lansing Trade Group, LLC, et al. (SRW Wheat Futures)*
- *Yannes, et al. v. SCWorx Corporation*
- *In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations*
- *In re Myriad Genetics, Inc. Securities Litigation*
- *In re Chicago Bridge & Iron Co. N.V. Securities Litigation*
- *The Arbitrage Fund, et al. v. William Petty, et al. (Exactech)*
- *In re Columbia Pipeline Group, Inc. Merger Litigation*

- *Martinek v. AmTrust Financial Services, Inc.*
- *City of Pittsburgh Comprehensive Municipal Pension Trust Fund, et al. v. Benefitfocus, Inc., et al.*
- *In re: Evoqua Water Technologies Corp. Securities Litigation*
- *Laydon v. Mizuho Bank, Ltd., et al.*
- *Lomingkit, et al. v. Apollo Education Group, Inc., et al.*
- *In re Caraco Pharmaceutical Laboratories, Ltd. Shareholder Litigation*
- *Norfolk County Retirement System, et al. v. Community Health Systems, Inc., et al.*
- *Chester County Employees' Retirement Fund v. KCG Holdings, Inc., et al.*
- *Oklahoma Law Enforcement Retirement System, et al. v. Adeptus Health Inc., et al.*
- *Di Donato v. Insys Therapeutics, Inc., et al.*
- *Lundgren-Wiedinmyer, et al. v. LJM Partners, Ltd, et al.*
- *Martin, et al. v. Altisource Residential Corporation, et al.*
- *Stephen Appel, et al. v. Apollo Management, et al.*
- *In re Medley Capital Corporation Stockholder Litigation*
- *Forman, et al. v. Meridian BioScience, Inc., et al.*
- *Public Employees' Retirement System of Mississippi, et al. v. Endo International PLC, et al.*
- *In Re Flowers Foods, Inc. Securities Litigation*
- *Jiangchen, et al. v. Rentech, Inc., et al.*
- *In re Liberty Tax, Inc. Stockholder Litigation*
- *In re RH, Inc. Securities Litigation*
- *Lazan v. Quantum Corporation, et al.*
- *Nabhan v. Quantum Corporation, et al.*
- *Edmund Murphy III, et al. v. JBS S.A.*
- *Public Employees' Retirement System of Mississippi, et al. v. Sprouts Farmers Market, Inc., et al.*
- *In re Starz Stockholder Litigation*
- *Judith Godinez, et al. v. Alere Inc., et al.*
- *Rahman and Giovagnoli, et al. v. GlobalSCAPE, Inc., et al.*
- *Arthur Kaye, et al. v. ImmunoCellular Therapeutics, Ltd., et al.*
- *In re CPI Card Group Inc. Securities Litigation*
- *Daniel Aude, et al. v. Kobe Steel, Ltd., et al.*
- *In re Quality Systems, Inc. Securities Litigation*
- *Cooper, et al. v. Thoratec Corporation, et al.*
- *Washtenaw County Employees' Retirement System, et al. v. Walgreen Co., et al.*
- *Elkin v. Walter Investment Management Corp., et al.*
- *In Re CytRx Corporation Securities Litigation*
- *Ranjit Singh, et al. v. 21Vianet Group, Inc., et al.*
- *In re PTC Therapeutics, Inc. Securities Litigation*
- *Securities and Exchange Commission v. Mark A. Jones*
- *In re Sequans Communications S.A. Securities Litigation*
- *In re Henry Schein, Inc. Securities Litigation*
- *Ronge, et al. v. Camping World Holdings, Inc., et al.*
- *Oklahoma Firefighters Pension & Retirement System v. Lexmark International, Inc.*
- *Christakis Vrakas, et al. v. United States Steel Corporation, et al.*
- *Emerson et al. v. Mutual Fund Series Trust, et al. ("Catalyst")*
- *In re Fannie Mae 2008 Securities Litigation*
- *In re Anadarko Petroleum Corporation Class Action Litigation*
- *Ge Dandong, et al., v. Pinnacle Performance Limited, et al.*
- *In Re: Rough Rice Commodity Litigation*
- *Xuechen Yang v. Focus Media Holding Limited et al.*
- *In re Massey Energy Co. Securities Litigation*



- *In re Swisher Hygiene, Inc.*
- *The City of Providence vs. Aeropostale, Inc., et al.*
- *In re Metrologic Instruments, Inc. Shareholders Litigation*
- *Public Pension Fund Group v. KV Pharmaceutical Company et al.*
- *Pension Trust Fund for Operating Engineers, et al. v. Assisted Living Concepts, Inc., et al.*
- *In re Lehman Brothers Equity/Debt Securities Litigation*
- *In re: Platinum and Palladium Commodities Litigation (Platinum/Palladium Physical Action)*
- *In re: Platinum and Palladium Commodities Litigation (Platinum/Palladium Futures Action)*
- *In re General Electric Co. Securities Litigation*
- *In re CNX Gas Corporation Shareholders Litigation*
- *Oscar S. Wyatt, Jr. et al. v. El Paso Corporation, et al.*
- *In re Par Pharmaceutical Securities Litigation*
- *In re Par Pharmaceutical Companies, Inc. Shareholders Litigation*
- *In re Delphi Financial Group Shareholders Litigation*
- *In re SLM Corporation Securities Litigation*
- *In re Del Monte Foods Company Shareholder Litigation*
- *Leslie Niederklein v. PCS Edventures!.com, Inc. and Anthony A. Maher*
- *In re Beckman Coulter, Inc. Securities Litigation*
- *Michael Rubin v. MF Global, Ltd., et al.*
- *Allen Zametkin v. Fidelity Management & Research Company, et al.*
- *In re BP Prudhoe Bay Royalty Trust Securities Litigation*
- *Police and Fire Retirement System of the City of Detroit et al. v. SafeNet, Inc., et al.*
- *In re Limelight Networks, Inc. Securities Litigation*
- *In re Gilead Sciences Securities Litigation*
- *In re ACS Shareholder Litigation, Consolidated C.A. No. 4940-VCP*
- *Lance Provo v. China Organic Agriculture, Inc., et al.*
- *In re LDK Solar Securities Litigation*

### Labor & Employment Cases

- *Verizon OFCCP Settlement*
- *Alvarez, et al. v. GEO Secure Services, LLC*
- *Sartena v. Meltwater FLSA*
- *Carmen Alvarez, et al. v. Chipotle Mexican Grill, Inc., et al.*
- *Turner, et al. v. Chipotle Mexican Grill, Inc.*
- *Long, et al. v. Southeastern Pennsylvania Transportation Authority*
- *Matheson, et al. v. TD Bank, N.A.*
- *Ludwig, et al. v. General Dynamics Information Technology, Inc., et al.*
- *Bedel, et al. v. Liberty Mutual Group Inc.*
- *Irene Parry, et al. v. Farmers Insurance Exchange, et al.*
- *Maldonado v. The GEO Group, Inc.*
- *Alderman and Maxey v. ADT, LLC*
- *Albaceet v. Dick's Sporting Goods*
- *Rodriguez v. The Procter & Gamble Company*
- *Adekunle, et al. v. Big Bang Enterprises, Inc. d/b/a The Revenue Optimization Companies*
- *Gorski, et al. v. Wireless Vision, LLC*
- *Lopez, et al. v. New York Community Bank, et al.*
- *Hamilton, et al. v. The Vail Corporation, et al.*
- *Eisenman v. The Ayco Company L.P.*
- *Matheson v. TD Bank, N.A.*

- *Simon v. R.W. Express LLC, d/b/a Go Airlink NYC*
- *Perez v. Mexican Hospitality Operator LLC, d/b/a Cosme*
- *Shanahan v. KeyBank, N.A.*
- *Loftin v. SunTrust Bank*
- *Alvarez v. GEO Secure Services, LLC*
- *Weisgarber v. North American Dental Group, LLC*
- *Talisa Borders, et al. v. Wal-mart Stores, Inc.*
- *Reale v. McClain Sonics Inc., et al.*
- *Larita Finisterre and Songhai Woodard, et al. v. Global Contact Services, LLC*
- *Adebisi Bello v. The Parc at Joliet*
- *Garcia, et al. v. Vertical Screen, Inc.*
- *Brook Lemma and Matthieu Hubert, et al. v. 103W77 Partners LLC, et al. ("Dovetail Settlement")*
- *American Federation of Government Employees, Local 1145 v. Federal Bureau of Prisons, U.S. Penitentiary, Atlanta, Georgia*
- *Lisa Ferguson, Octavia Brown, et al. v. Matthew G. Whitaker, Acting AG, DOJ Bureau of Prisons ("USP Victorville")*
- *American Federation of Government Employees, Local 2001 v. Federal Bureau of Prisons, Federal Correctional Institution, Fort Dix, New Jersey*
- *American Federation of Government Employees, Local 506 v. U.S. Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary Coleman II, Coleman, Florida*
- *Vargas v. Sterling Engineering*
- *Rosenbohm v. Verizon*
- *Alex Morgan, et al. v. United States Soccer Federation, Inc.*
- *Iskander Rasulev v. Good Care Agency, Inc.*
- *Kyndl Buzas, et al., v. Phillips 66 Company and DOES 1 through 10*
- *American Federation of Government Employees, Local 408 v. U.S. Dept. of Justice, Federal Bureau of Prisons, Federal Correctional Complex, Butner, NC*
- *In re 2014 Avon Products, Inc. ERISA Litigation*
- *In re Eastman Kodak ERISA Litigation*
- *Taronica White, et al. v. Attorney General Loretta Lynch, Department of Justice*
- *Lisa Ferguson, et al. v. Acting Attorney General Matthew Whitaker, Department of Justice*
- *Melissa Compere v. Nusret Miami, LLC, et al.*
- *Abelar v. American Residential Services, L.L.C., Central District of California*
- *Flores, et al. v. Eagle Diner Corp., et al., Eastern District of Pennsylvania*
- *Michael Furman v. Godiva Chocolatier, Inc., 15<sup>th</sup> Judicial Circuit, Palm Beach County, Florida*
- *Finisterre et. al v. Global Contact Services, LLC, New York State Supreme Court, Kings County*
- *McGuire v. Intelident Solutions, LLC, et al., Middle District of Florida, Tampa Division*
- *Duran De Rodriguez, et al. v. Five Star Home Health Care Agency, Inc. et al., Eastern District of New York*

### Data Breach/BIPA Cases

- *Hunter v. J.S.T. Corp. BIPA Settlement*
- *Atkinson, et al. v. Minted, Inc.*
- *Rosenbach, et al. v. Six Flags Entertainment Corporation and Great America LLC*
- *Pratz, et al. v. MOD Super Fast Pizza, LLC*
- *The State of Indiana v. Equifax Data Breach Settlement*
- *In re: Vizio, Inc. Consumer Privacy Litigation*
- *In re: Google, Inc. Street View Electronic Communications Litigation*
- *Devin Briggs and Bobby Watson, et al. v. Rhinog, Inc. ("Briggs Biometric Settlement")*
- *Trost v. Pretium Packaging L.L.C.*

- *In re: Barr, et al. v. Drizly, LLC f/k/a Drizly, Inc., et al.*

### Telephone Consumer Protection Act (TCPA) Cases

- *Perrong, et al. v. Orbit Energy & Power, LLC*
- *Baldwin, et al. v. Miracle-Ear, Inc.*
- *Floyd and Fabricant, et al. v. First Data Merchant Services LLC, et al.*
- *Hoffman, et al. v. Hearing Help Express, Inc., et al.*
- *Lowe and Kaiser, et al. v. CVS Pharmacy, Inc., et al.*
- *Johansen v. HomeAdvisor, Inc., et al.*
- *Charvat, et al. v. National Holdings Corporation*
- *Hopkins, et al. v. Modernize, Inc.*
- *Diana Mey vs. Frontier Communications Corporation*
- *Matthew Donaca v. Dish Network, L.L.C.*
- *Matthew Benzion and Theodore Glaser v. Vivint, Inc.*
- *John Lofton v. Verizon Wireless (VAW) LLC, et al.*
- *Lori Shamblin v. Obama for America, et al.*
- *Ellman v. Security Networks*

## For More Information

For more detailed information regarding A.B. Data's experience, services, or personnel, please see our website at [www.abdataclassaction.com](http://www.abdataclassaction.com).

# EXHIBIT B

## Used An ATM Card And Were Assessed A Surcharge? You Could Get Money From a \$197.5 Million Class Action Settlement

Records show you could be affected by a new Settlement in a class action lawsuit that says Defendants violated federal antitrust laws by adopting restraints that inflated the automated teller machine (“ATM”) surcharges (also called ATM access fees) that some people and businesses paid. The Defendants deny these allegations. The Court has not decided who is right.

Previously, you may have seen a notice in this case about \$67 million in settlements with JPMorgan & Chase Co. (“JP Morgan”); Wells Fargo & Co. and Wells Fargo Bank (“Wells Fargo”); and Bank of America, N.A., NB Holdings Corp., and Bank of America Corp. (“Bank of America”). You can no longer file a claim in the previous settlements. Payments were made to eligible class members in June 2023.

Now, the remaining Defendants in this case, Visa Inc., Visa U.S.A. Inc. Visa International Service Association, Plus System, Inc. (“Visa”) and Mastercard Incorporated and Mastercard International Incorporated (“Mastercard”) have agreed to a Settlement to resolve the claims against them.

### What are the related lawsuits?

This notice is about the case known as *Mackmin v. Visa Inc.* No. 1:11-cv-01831 in the United States District Court for the District of Columbia. There are two related (or parallel) lawsuits in the same court called *Burke v. Visa Inc.*, No. 1:11-cv-01882 and *National ATM Council v. Visa Inc.*, No. 1:11-cv-01803 that are proceeding at the same time. Each case involves different groups with similar claims against the Defendants. You may receive other notices if you are included in more than one lawsuit. The choices you make in this case will not affect your rights in the other related lawsuits.

### Am I included?

Generally, you are included if, at any time between October 1, 2007 and [Date of Preliminary Approval Order], you paid a surcharge to withdraw cash from a bank ATM in the United States. You are not included if all of your surcharged ATM transactions were (a) reimbursed, or (b) conducted on cards issued by financial institutions located outside of the United States. Visit the website, [www.ATMClassAction.com](http://www.ATMClassAction.com), for more information and the exact Settlement Class definition.

### What does the Settlement provide?

The Settlement provides for a total of \$197.5 million to resolve the claims. Visa will pay \$104,675,000 and Mastercard will pay \$92,825,000 into a Settlement Fund. After deductions for attorneys’ fees, litigation costs, and other expenses, the Settlement Fund will be distributed proportionally (or *pro rata*) to each valid claimant. Any money remaining in the Settlement Fund after all claims are paid will be directed to a court-approved “next best” recipient.

### How can I get a payment?

If you filed a valid claim and received a payment in the previous settlements, you will automatically be eligible to get a payment from the Settlement with Visa and Mastercard and you do not need to submit another claim unless you paid additional ATM surcharges after submitting your prior claim form and wish to claim these additional transactions.

If you did not previously file a valid claim, you must complete a Claim Form to receive money from this Settlement. The Claim Form asks you to state under oath that you were assessed ATM surcharges. You are not

required to provide documentation with the Claim Form, but the Settlement Administrator has the right to ask you to provide your bank statements or other documents to support your claim.

Visit [www.ATMClassAction.com/claims](http://www.ATMClassAction.com/claims) to fill out a Claim Form online or download one that can be mailed. To be eligible for payment, Claim Forms must be submitted electronically or postmarked no later than [Month 00, 2024].

Please note your Notice ID Number is <<Unique ID>>. You will be asked to provide your Notice ID Number on your Claim Form to make it faster to validate your claim.

### **What are my rights?**

If you are a Settlement Class Member, even if you do nothing, you will be bound by the Court's decisions and judgments concerning this Settlement.

If you want to keep your right to sue Visa or Mastercard regarding the claims in this lawsuit, you must exclude yourself from the Settlement Class in writing by [Month 00, 2024]. If you previously submitted a request to exclude yourself from the prior settlements in 2022, and do not want to stay in the Settlement with Visa and Mastercard, you need to separately exclude yourself from this Settlement Class.

If you stay in the Settlement Class, you may object to the Settlement in writing by [Month 00, 2024]. The Settlement Agreement and more details about how to exclude yourself or object, are available at [www.ATMClassAction.com](http://www.ATMClassAction.com).

The U.S. District Court for the District of Columbia is scheduled to hold a hearing on [Month 00, 2024], at X:00 p.m., at 333 Constitution Avenue N.W., Courtroom 18, Washington D.C. 20001, to consider whether to approve the Settlement with Visa and Mastercard.

Class Lead Counsel will also ask the Court at the hearing, or at a later date, for attorneys' fees of up to 33% of the Settlement Fund, plus reimbursement of costs and expenses, for investigating the facts, litigating the case, and negotiating the Settlement and service award payments up to \$10,000 for each of the individual Class Representatives.

You or your own lawyer may appear and speak at the hearing at your own expense, but you don't have to. The hearing may be conducted electronically or moved to a different date or time without additional notice, so it is a good idea to check [www.ATMClassAction.com](http://www.ATMClassAction.com) for additional information. Please do not contact the Court about this case.

**For more information: 1-877-311-3724**

**[www.ATMClassAction.com](http://www.ATMClassAction.com)**

*Para recibir una notificación en español, llama al o visita nuestro sitio web.*

# EXHIBIT C

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

**Used An ATM Card And Were Assessed A Surcharge?  
You Could Get Money From a \$197.5 Million Class Action Settlement**

- Please read this Notice and the Settlement Agreement available at [www.ATMClassAction.com](http://www.ATMClassAction.com) carefully. Your legal rights may be affected whether you act or do not act. This Notice is a summary. To obtain more specific details concerning the Settlement, please read the Settlement Agreement.
- There is a new Settlement in a class action lawsuit that says Defendants violated federal antitrust laws by adopting restraints that inflated the automated teller machine (“ATM”) surcharges (also called ATM access fees) that some people and businesses paid. The Defendants deny these allegations. The Court has not decided who is right.
- Previously, three Defendants in this case, including JPMorgan & Chase Co. (“JP Morgan”); Wells Fargo & Co. and Wells Fargo Bank (“Wells Fargo”); and Bank of America, N.A., NB Holdings Corp., and Bank of America Corp. (“Bank of America”) agreed to settle the lawsuit. Those Settlements totaled \$67 million. **You may have seen a previous notice, filed a claim, or received a payment for these settlements.**
- Now, the remaining Defendants in this case, Visa Inc., Visa U.S.A. Inc. Visa International Service Association, Plus System, Inc. (“Visa”) and Mastercard Incorporated and Mastercard International Incorporated (“Mastercard”) have agreed to a Settlement resolving the claims against them.
- Visit [www.ATMClassAction.com](http://www.ATMClassAction.com) to make a claim. You can also opt out of, comment on, or object to the Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS		DEADLINE
<b>SUBMIT A CLAIM FORM FOR PAYMENT</b>	<p>If you filed a claim and received a payment in the previous settlements, you will automatically be eligible to get a payment from the new Settlements with Visa and Mastercard based on the Claim Form you previously submitted. If you paid additional ATM surcharges after submitting a claim in the previous settlements, and wish to claim those additional transactions, you will need to submit another Claim Form.</p> <p>If you did not previously file a valid claim, you must submit a valid claim to receive a payment in this Settlement.</p>	<b>[Month 00, 2024]</b>
<b>EXCLUDE YOURSELF</b>	<p>You can exclude yourself from the Settlement with Visa and Mastercard by mailing a letter to the Settlement Administrator saying you want to opt out. This is the only option that allows you to keep your legal right to sue Visa or Mastercard for claims related</p>	<b>[Month 00, 2024]</b>

This Settlement affects your legal rights even if you do nothing.  
 Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
*Para recibir una notificación en español, llama al o visita nuestro sitio web.*



SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS		DEADLINE
	to this case. If you exclude yourself, you will <u>not</u> be eligible to receive a payment from the new Settlement.	
<b>OBJECT TO THE SETTLEMENT AND/OR ATTEND A HEARING</b>	You can write the Court about why you like or do not like the Settlement or object to Court approval, but you can't ask the Court to change the Settlement. You can also ask to speak to the Court at the hearing about the fairness of the Settlement, with or without your own attorney.	<b>[Month 00, 2024]</b>
<b>DO NOTHING</b>	If you take no action, you give up your legal right to continue to sue Visa and Mastercard for the claims related to this case. If you filed a claim and received a payment in the previous settlements, you will be automatically eligible to get a payment based on the Claim Form you previously submitted. If you did not previously file a valid claim and do not submit a claim now, you will not get any money from this Settlement.	No Deadline

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This Settlement affects your legal rights even if you do nothing.  
 Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
*Para recibir una notificación en español, llama al o visita nuestro sitio web.*

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This Settlement affects your legal rights even if you do nothing.  
Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
*Para recibir una notificación en español, llama al o visita nuestro sitio web.*

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This Settlement affects your legal rights even if you do nothing.  
Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
*Para recibir una notificación en español, llama al o visita nuestro sitio web.*

## BASIC INFORMATION

### 1. Why is there a notice?

A Court authorized this notice because you have a right to know how a new proposed Settlement may affect your rights.

Judge Richard J. Leon, of the United States District Court for the District of Columbia, is currently overseeing this lawsuit. This case is known as *Mackmin v. Visa Inc.* No. 1:11-cv-01831. The people who filed the class action case are called the Plaintiffs. The companies they sued are called the “Defendants.”

Previously, you may have received a notice about the settlements in this case with Defendants JP Morgan, Wells Fargo, and Bank of America. These prior settlements received final approval from the Court on August 22, 2022. Payments to eligible class members were made in June 2023.

Now, the remaining Defendants in this case, Visa and Mastercard, have agreed to a proposed Settlement resolving the claims against them. This notice explains the nature of the litigation, the general terms of this proposed Settlement, and what it may mean to you. This notice also explains the ways you may participate in, or exclude yourself from, this Settlement.

### 2. What is this lawsuit about?

This lawsuit was brought on behalf of ATM cardholders who used a bank ATM owned by an entity (or bank) different from the entity (or bank) that issued their ATM card and paid an ATM surcharge. The lawsuit says the Defendants violated federal antitrust laws by participating in an unlawful agreement that allegedly had the effect of increasing the amount of the ATM surcharges paid by the Class. The Defendants deny these allegations. The Court has not decided who is right.

### 3. Why is this a class action?

In a class action, one or more people called “class representatives” sue on behalf of themselves and people who have similar claims. All of these people are a “class” or “class members.” One court and one case resolve the issues for all class members, except for those people who exclude themselves from the class.

In this case, two persons (Andrew Mackmin and Sam Osborn) who were assessed ATM surcharges are named as Plaintiffs in a class action complaint against the Defendants. They serve as Settlement Class Representatives and represent their personal interests and the interests of all the Settlement Class Members.

This Settlement affects your legal rights even if you do nothing.  
Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
*Para recibir una notificación en español, llama al o visita nuestro sitio web.*

Even if you have not filed your own lawsuit against Defendants about the claims in this one, you can obtain the benefits provided by this Settlement because the litigation is a class action.

#### 4. Why is there a Settlement?

Settlements avoid the costs and uncertainty of a trial and related appeals, while providing benefits to Settlement Class Members when Settlements become final. The Court has not decided in favor of Plaintiffs or Defendants Visa and Mastercard. The Settlement Class Representatives and Class Lead Counsel think the proposed Settlement is in the best interests of everyone affected.

#### 5. What are the other related lawsuits? Why did I get other notices?

There are three related (or parallel) lawsuits that were filed in October 2011. They each involve different Classes with similar claims against the Defendants and are proceeding at the same time. You may receive notices about these other cases.

This Notice is about the case known as *Mackmin v. Visa Inc.* No. 1:11-cv-01831. This case involves individuals and entities who were charged unreimbursed access fees to withdraw cash at bank-operated ATMs (see Question 2). You may have received a previous notice about the settlements in this case that were with JP Morgan, Wells Fargo, and Bank of America. The previous settlements were approved on August 22, 2022 and totaled \$67 million. You may have filed a claim and/or received a payment from these previous settlements.

There is now a new proposed Settlement with the remaining Defendants, Visa and Mastercard. That is why you are getting a new notice in this case.

Another related case is known as *Burke v. Visa Inc.*, No. 1:11-cv-01882. It involves people who were charged an unreimbursed access fee to withdraw cash at an independent (non-bank) ATMs. The Court recently approved this lawsuit to proceed as a class action against Visa and Mastercard.

The last related case is known as *National ATM Council v. Visa Inc.*, No. 1:11-cv-01803. It involves entities or businesses that own and/or operate independent ATMs.

**You may be included in more than one Class, so it is important to read this Notice and any other notices you receive carefully, so you can understand your rights and options.** The choices you make to act on your rights in this case (*Mackmin v. Visa*) will not affect your rights in the other related lawsuits.

This Settlement affects your legal rights even if you do nothing.  
Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
*Para recibir una notificación en español, llama al o visita nuestro sitio web.*

## SETTLEMENT CLASS MEMBERSHIP

### 6. How do I know if I can participate in the Settlement?

You are a Settlement Class Member, and you are affected by this Settlement, if you are:

- An individual or entity that paid an unreimbursed ATM Access Fee directly to any Bank Defendant or Alleged Bank Co-Conspirator for a Foreign ATM Transaction using an ATM card issued by a financial institution in the United States to withdraw cash at an ATM located in the United States at any time from October 1, 2007 to [Date of Preliminary Approval Order].

ATM Access Fee means the fee assessed by an ATM operator to a cardholder for completing a Foreign ATM Transaction. ATM Access Fees are also referred to as “surcharges.”

Bank Defendant means JP Morgan, Wells Fargo, or Bank of America. Alleged Bank Co-Conspirator means a bank that is a member of the Visa and/or Mastercard ATM networks.

Foreign ATM Transaction means an ATM transaction in which the cardholder uses an ATM that is owned by an entity different from the entity that issued the ATM card used for that ATM transaction. For example, when a customer of one bank withdraws money from their account by using an ATM owned and/or operated by another bank.

### 7. Who is not included in the Settlement Class?

The Class does **not** include:

- The Defendants;
- The Released Parties;
- The Defendants and Released Parties’ officers, directors, or employees;
- Entities in which the Defendants and Released Parties have a controlling interest;
- The Defendants and Released Parties affiliates, legal representatives, heirs, or assigns;
- Any person acting on behalf of any Defendant or Released Party;
- Federal, state, or local government entities;
- Lead lawyers for the Class (Class Lead Counsel);
- Any judge assigned to this case, the judge’s staff, and any member of the judge’s immediate family; and
- Anyone that excludes themselves from the Class (see Question 22).

This Settlement affects your legal rights even if you do nothing.  
Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
*Para recibir una notificación en español, llama al o visita nuestro sitio web.*

## THE SETTLEMENT BENEFITS

### 8. What does the Settlement provide?

Visa and Mastercard will collectively pay approximately \$197,500,000—Visa (\$104,675,000) and Mastercard (\$92,825,000)—into a Settlement Fund. After deductions for attorneys’ fees, litigation costs, and other expenses, the Fund will be distributed to Class Members who submit valid claims.

### 9. How much money can I get from the Settlement?

If you filed a claim and received a payment in the previous settlements, you will automatically be eligible to get a payment from the Settlement with Visa and Mastercard based on the Claim Form you previously submitted. If you paid additional ATM surcharges after submitting your prior claim, and wish to claim those additional transactions, you will need to submit another Claim Form including them.

If you did not previously file a valid claim, you must file a timely, valid claim now in order to receive a payment.

Each claim will be eligible to receive a *pro rata* (or proportional) share of the Net Settlement Fund, after deductions for attorneys’ fees, litigation costs, and other Court-approved expenses, based on the number of valid claims. Because the amount of each payment depends on the number of approved claims, nobody can know in advance how much the payment will be.

## HOW TO GET A PAYMENT—MAKING A CLAIM

### 10. How can I get a payment?

If you filed a claim and received a payment in the previous settlements, you do not need to submit another claim to get money from the Settlement, as you will be entitled to a payment based on the Claim Form you previously submitted. If you paid additional ATM surcharges after submitting that prior Claim Form, and wish to claim those additional transactions, you will need to submit another claim form including them.

If you did not previously file a valid claim, you must complete a Claim Form to receive money from this Settlement. The Claim Form asks you to state under oath that you were assessed ATM surcharges.

You can fill out a Claim Form online at [www.ATMClassAction.com](http://www.ATMClassAction.com).

This Settlement affects your legal rights even if you do nothing.  
Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
*Para recibir una notificación en español, llama al o visita nuestro sitio web.*

If you prefer a paper Claim Form, you can ask for one by contacting the Settlement Administrator by telephone at 877-311-3724; email at [info@ATMClassAction.com](mailto:info@ATMClassAction.com); or U.S. Mail at ATM Surcharge Settlement, P.O. Box 170500, Milwaukee, WI 53217.

### **11. What is the deadline to submit a Claim Form?**

To be eligible for payment, Claim Forms must be submitted electronically or postmarked no later than **[Month 00, 2024]**.

### **12. If I previously filed a valid claim, do I need to submit another claim?**

No. If you submitted a claim and received a payment in the previous settlements, you will automatically be eligible to get money from the Settlement with Visa and Mastercard based on the Claim Form you previously submitted. You need to submit another claim only if you paid additional ATM surcharges after submitting your prior claim and wish to claim these additional transactions.

### **13. When and how will I get my payment?**

The Court is scheduled to hold a hearing on **[Month 00, 2024]**, to decide whether to approve the Settlement. The hearing may be held electronically or moved to a different date or time without additional notice, so it is a good idea to check [www.ATMClassAction.com](http://www.ATMClassAction.com) for additional information.

If the Court approves the Settlement, that decision may be appealed. It is hard to estimate how long it might take for any appeals to be resolved. If the Settlement are approved and no appeals are filed, the Settlement Administrator anticipates that payments will be sent out within 6 months.

Settlement payments will be digitally sent to you via email. Please make sure you provide a current, valid email address on the Claim Form. When you receive the email notifying you about your payment, you will be provided with a number of digital payment options to select from, such as PayPal or a virtual debit card. For many people, this is the easiest and quickest option to receive money.

You will also have the opportunity to request that a check be mailed to you by the Settlement Administrator.

Updates regarding the Settlement and when payments will be made will be posted on the website, [www.ATMClassAction.com](http://www.ATMClassAction.com).

This Settlement affects your legal rights even if you do nothing.  
Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
*Para recibir una notificación en español, llama al o visita nuestro sitio web.*



**14. What happens if my contact information changes?**

If you change your mailing address or email address after you submit a Claim Form, it is your responsibility to inform the Settlement Administrator of your updated information. Notify the Settlement Administrator of any changes to your mailing address or email address by writing:

ATM Surcharge Settlement  
P.O. Box 170500  
Milwaukee, WI 53217  
[info@ATMClassAction.com](mailto:info@ATMClassAction.com)

**15. What happens if some of the money from this Settlement is not claimed?**

Settlement Funds that are not paid out or distributed as part of the Settlement administration will not be returned to Visa or Mastercard for any reason. To the extent, if any, that an unpaid or undistributed part of the Settlement Fund is held by the Settlement Administrator at the completion of the administration of the Settlement, such remaining funds will be directed to a court-approved “next best” recipient.

**16. Can I file a claim in this Settlement if I excluded myself previously?**

Yes. If you excluded yourself from the previous settlements with JP Morgan, Wells Fargo, or Bank of America, you are still in the Settlement Class for the proposed Settlement with Visa and Mastercard. If you do not exclude yourself (see Question 22), you can submit a claim for monetary compensation from the Settlement with Visa and Mastercard even if you excluded yourself from the previous settlements.

**17. Can I file a claim in the previous settlements in this case?**

No. The deadline to submit a claim in the previous settlements has passed, and you cannot submit a claim for a payment from them. Payments to eligible class members were made in June 2023.

**LEGAL RIGHTS RESOLVED THROUGH THE SETTLEMENT**

**18. What am I giving up if I stay in the Settlement Class?**

If you are a Settlement Class Member and you make a claim, or if you do nothing, you will be releasing all of your legal claims relating to the Visa and Mastercard’s conduct described in this notice and will be bound by the Court’s decisions and judgments concerning the Settlement. The

This Settlement affects your legal rights even if you do nothing.  
Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
*Para recibir una notificación en español, llama al o visita nuestro sitio web.*

Released Parties are Visa and Mastercard and each entity's past, present, and future direct and indirect parents (including holding companies), subsidiaries, affiliates, associates (all as defined in Securities and Exchange Commission Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934, as amended), divisions, predecessors, successors, assigns, and members (including, without limitation, all past, present, and future financial institutions authorized or licensed to issue or acquire Visa- or Mastercard-branded ATM Cards and transactions), and each of their respective officers, directors, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, members and assigns.

This notice provides only a summary of the claims being released. The specific details of the claims being released by Settlement Class Members who do not exclude themselves from the Settlement with Visa and Mastercard are set forth in the Settlement Agreement, which may be viewed at [www.ATMClassAction.com](http://www.ATMClassAction.com).

## THE LAWYERS REPRESENTING YOU

### 19. Do I have a lawyer in the case?

Yes. The Court appointed the law firms of Hagens Berman Sobol Shapiro LLP, Quinn Emanuel Urquhart & Sullivan, LLP, and Mehri & Skalet PLLC to represent you and the other Settlement Class Members. These attorneys are called Class Lead Counsel. You will not be charged for their services.

**HAGENS BERMAN  
SOBOL SHAPIRO LLP**  
STEVE BERMAN  
1301 Second Avenue  
Suite 2000  
Seattle, WA 98101  
Telephone: 206-623-7292

**QUINN EMANUEL  
URQUHART &  
SULLIVAN, LLP**  
ADAM WOLFSON  
865 S. Figueroa St.,  
10th Floor  
Los Angeles, CA 90017  
Telephone: 213-443-3000

**MEHRI & SKALET,  
PLLC**  
STEVEN A. SKALET  
1250 Connecticut Avenue,  
NW, Suite 300  
Washington, DC 20036  
Telephone: (202) 822-5100

### 20. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Lead Counsel is working on your behalf. If you want your own lawyer, you may hire one, but you will be responsible for paying that lawyer. For example, you can ask your own lawyer to appear in Court for you if you want someone other than Class Lead Counsel to speak for you. You may also appear for yourself without a lawyer.

### 21. How will the lawyers be paid?

This Settlement affects your legal rights even if you do nothing.  
Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
*Para recibir una notificación en español, llama al o visita nuestro sitio web.*

You do not have to pay Class Lead Counsel. They will seek an award of attorneys' fees out of the Settlement Fund, as well as reimbursement for litigation costs they advanced in pursuing the claims. The fees will compensate Class Lead Counsel for investigating the facts, litigating the case, and negotiating and administering the Settlement. Class Lead Counsel's attorneys' fee request will not exceed 33 percent of the Settlement Amount of \$197,500,000. Additionally, Class Lead Counsel will seek reimbursement of their out-of-pocket litigation expenses as part of their application for attorney's fees, which will be posted to the website 14 days before the objection deadline.

Class Lead Counsel will also ask the Court to approve service award payments not to exceed \$10,000 to each of the individual Class Representatives, Andrew Mackmin and Sam Osborn.

The costs of providing this notice and administering the Settlement are being paid from the Settlement Fund.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from the Settlement, and you want to keep your right, if any, to sue Visa and Mastercard on your own about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself from—or “opting out” of—the Settlement Class.

### 22. How do I exclude myself from the Settlement?

If you want to keep the right to sue or continue to sue the Visa and Mastercard based on claims this Settlement resolves, you must take steps to exclude yourself from the Settlement Class. This is sometimes called “opting out.” If you exclude yourself, however, you will not be eligible to receive a payment from the Settlement with Visa and Mastercard.

You may opt out of the Settlement by mailing a letter to the Settlement Administrator with the following information:

- Your full name and mailing address, telephone number, and/or email address;
- The statement, “I wish to exclude myself from the Settlement Class and do not wish to participate in the Settlement with Visa and Mastercard in *Mackmin v. Visa Inc.* No. 1:11-cv-01831” or substantially similar clear and unambiguous language; and
- Your handwritten signature. (An attorney's signature, or a typed signature, is not sufficient.)

Your letter must be sent First Class mail, postmarked by [**Month 00, 2024**], to:

ATM Surcharge Settlement  
ATTN: EXCLUSIONS  
P.O. Box 173001  
Milwaukee, WI 53217

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Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
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Your exclusion letter must be signed by you, personally, and not your lawyer or anyone else acting on your behalf. “Mass” or “class” opt-outs made on behalf of multiple persons or classes of persons will be deemed invalid.

You cannot exclude yourself by mailing a notification to any other location or after [Month 00, 2024]. You cannot exclude yourself by telephone or by email.

**23. If I don't exclude myself, can I sue the Visa and Mastercard for the same thing later?**

No. Unless you opt out, you give up the right to sue Visa and Mastercard for the claims this Settlement resolves. You must exclude yourself from the Settlement Class if you want to try to pursue your own lawsuit.

**24. What happens if I exclude myself?**

If you exclude yourself, you will not have any rights as a Settlement Class Member under the Settlement with Visa and Mastercard; you will not receive any payment as part of the Settlement; you will not be bound by any further orders or judgments in this case; and you will keep the right, if any, to sue Visa and Mastercard about the claims alleged in the case, at your own expense.

**25. If I exclude myself, am I still represented by Class Lead Counsel?**

No. Class Lead Counsel represents the members of the Settlement Class. If you exclude yourself from the Settlement Class, you are not represented by Class Lead Counsel.

**26. If I excluded myself from the previous settlements, am I still part of the Settlement Class?**

Yes. If you excluded yourself from the previous settlements, you will still be part of the Settlement Class in the Settlement with Visa and Mastercard unless you exclude yourself (see Question 22).

If you want to keep your right to sue or continue to sue Visa and Mastercard for the claims in this lawsuit, you must exclude yourself from the Settlement Class. If you exclude yourself, you will not get any money from the Settlement with Visa and Mastercard.

If you want to remain in the Settlement Class, you do not need to take any action. You can submit a claim for a payment from the Settlements with Visa and Mastercard.

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**27. Can I exclude myself from the previous settlements?**

No. You can no longer exclude yourself from the previous settlements, as that exclusion deadline has passed.

**COMMENTING ON OR OBJECTING TO THE SETTLEMENT**

**28. How do I tell the Court that I like or don't like the Settlement?**

If you're a Settlement Class Member and do not opt out of the Settlement with Visa and Mastercard, you can comment on or object to the Settlement, including telling the Court that you like or don't like the Settlement. By filing an objection, however, you are asking the Court to deny approval of the Settlement. You can't ask the Court to order larger a Settlement or change its terms; the Court can only approve or deny the Settlement.

If the Court denies approval, no Settlement payments will be sent out and the lawsuit against Visa and Mastercard will continue. If that is what you want to happen, you must object.

To comment on or object to this Settlement, you must mail a letter containing the following information:

- The name and case number of this lawsuit, *Mackmin v. Visa Inc.* No. 1:11-cv-01831;
- Your full name and mailing address, and email address or telephone number;
- An explanation of why you believe you are a Settlement Class Member;
- If you are objecting, a statement whether the objection applies only to you, or to a specific subset of the Settlement Class, or to the entire Settlement Class;
- All reasons for your objection or comment, stated with specifics;
- A statement identifying the number of class action settlements you have objected to or commented on in the last five years;
- Whether you intend to personally appear and/or testify at the Final Approval Hearing;
- The name and contact information of any and all attorneys representing, advising, or assisting you, including any counsel who may be entitled to compensation for any reason related to your objection or comment;
- Whether any attorney will appear on your behalf at the Final Approval Hearing, and if so the identity of that attorney;
- The identity of any persons who wish to be called to testify at the Final Approval Hearing; and
- Your handwritten or electronically imaged written (e.g., "DocuSign") signature. An attorney's signature, or a typed signature, is not sufficient.

This Settlement affects your legal rights even if you do nothing.  
Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
*Para recibir una notificación en español, llama al o visita nuestro sitio web.*

Your objection must be submitted directly to the Court either by mailing it to the United States District Court for the District of Columbia, 333 Constitution Avenue N.W., Washington D.C. 20001, or by filing it in person at the United States District Court for the District of Columbia. To be considered, the objection must be filed or postmarked by [Month 00, 2024].

### **29. Can I object to the previous settlements?**

No. The deadline to object to the previous settlements has passed.

### **30. What's the difference between excluding yourself and objecting?**

Excluding yourself from the Settlement Class means that you are no longer a Settlement Class Member and don't want the Settlement with Visa and Mastercard to apply to you. Once you are excluded, you lose any right to receive any benefits from this Settlement or to object to any aspect of the Settlement because the case no longer affects you.

You object to the Settlement when you disagree with some aspect of the Settlement and think the Court should not give Final Approval. An objection, like a comment, allows your views to be heard in Court.

## **DOING NOTHING**

### **31. What happens if I do nothing at all?**

If you do nothing and the Court grants Final Approval, you'll be a member of the Settlement Class and you won't be able to sue Visa or Mastercard for the conduct alleged in this case. If you filed a claim and received a payment in the previous settlements, you will be automatically eligible to get a payment from this Settlements based on the Claim Form you previously submitted. If you did not previously file a valid claim and do not submit a Claim Form by [Month 00, 2024], you will not get any money from these Settlements.

## **THE COURT'S FAIRNESS HEARING**

### **32. When and where will the Court decide whether to approve the Settlements?**

The Court will hold a Fairness Hearing at **X:00 p.m.** on [Month 00, 2024], at the U.S. District Court for the District of Columbia 333 Constitution Avenue N.W., Washington D.C. 20001, Courtroom 18. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them.

This Settlement affects your legal rights even if you do nothing.  
Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
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The Court may also decide how much to pay to Class Lead Counsel in fees and expense reimbursements and if it will approve service award payments to the Class Representatives. After the hearing, the Court will decide whether to approve the Settlement with Visa and Mastercard.

The Court may hold the Fairness Hearing electronically, reschedule the Fairness Hearing, or change any of the deadlines described in this notice. The date of the Fairness Hearing may change without further notice to the Settlement Class Members. Be sure to check the website, [www.ATMClassAction.com](http://www.ATMClassAction.com), for news of any such changes. You can also access the case docket via the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.dcd.uscourts.gov>.

### **33. Do I have to come to the Fairness Hearing?**

No. Class Lead Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

### **34. May I speak at the hearing?**

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must include a statement in your written objection that you intend to appear at the hearing. Be sure to include your name, address, and signature as well.

You cannot speak at the hearing if you exclude yourself from the Settlement Class.

## **GETTING MORE INFORMATION**

### **35. How do I get more information?**

This notice summarizes the proposed Settlement—more details are in the Settlement Agreement and other important case documents. You can get a copy of the Settlement Agreement, view other case documents, and get additional information and updates by visiting [www.ATMClassAction.com](http://www.ATMClassAction.com).

All of the case documents that have been filed publicly in this case are also available online through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.dcd.uscourts.gov>. This case is called *Mackmin v. Visa* and the case number is No. 1:11-cv-01831. You may also obtain case documents by visiting the office of the Clerk of the Court for the United States District Court for the District of Columbia, 333 Constitution Avenue N.W.,

This Settlement affects your legal rights even if you do nothing.  
Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
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Washington D.C. 20001, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding court-observed holidays.

You can get additional information or request a copy of the Settlement Agreement by calling toll-free 877-311-3724 or writing to the Settlement Administrator by email at [info@ATMClassAction.com](mailto:info@ATMClassAction.com) or mail to ATM Surcharge Settlement, P.O. Box 170500, Milwaukee, WI 53217.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO ASK ABOUT THESE SETTLEMENTS OR THE CLAIMS PROCESS.

This Settlement affects your legal rights even if you do nothing.  
Questions? Go to [www.ATMClassAction.com](http://www.ATMClassAction.com) or call 877-311-3724  
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# EXHIBIT D



**Used an  
ATM Card  
and Were  
Assessed  
a Surcharge?**

**You Could Get Money from  
\$197.5 MILLION  
Class Action Settlements**

**File a Claim [HERE >](#)** [ATMClassAction.com](https://ATMClassAction.com)

# EXHIBIT E

# ATM SURCHARGE SETTLEMENT

## CLAIM FORM

### INSTRUCTIONS

This class action alleges Defendants violated federal antitrust laws by adopting restraints that inflated the automated teller machine (“ATM”) surcharges (also called ATM access fees) that some people and businesses paid. The Defendants deny these allegations.

Generally, you are a Settlement Class Member if, at any time between October 1, 2007 and [Date of Preliminary Approval Order], you paid a surcharge to withdraw cash from a bank ATM in the United States. You are not included if all of your surcharged ATM transactions were (a) reimbursed, or (b) conducted on cards issued by financial institutions located outside of the United States.



**If you filed a claim or got a payment in the previous settlements, you will automatically be eligible to get money from the Settlement with Visa and Mastercard based on the claim you submitted previously. If you paid additional unreimbursed ATM surcharges after submitting a claim form in the previous settlements, you will need to submit an updated claim by [Month 00, 2024] to claim those transactions.**

**If you did not file a claim in the previous settlements, you must submit a claim no later than [Month 00, 2024].**

**Settlement payments will be sent to you digitally via email.** Please provide a current, valid email address and mobile phone number on your Claim Form. If the email address or mobile phone number you include with your submission becomes invalid for any reason, it is your responsibility to provide accurate contact information to the Settlement Administrator to receive a payment. When you receive the email and/or mobile phone text notifying you of your Settlement payment, you will be provided with a number of digital payment options, such as PayPal or a virtual debit card, to immediately receive your Settlement payment. At that time, you will also have the option to request a paper check.

The information you provide on this Claim Form will be used solely by the Court-approved Settlement Administrator to administer the Settlements and will not be provided to any third party or sold for marketing purposes.

You do not need to provide any documentation at this time. However, the Settlement Administrator may ask for additional documentation or proof supporting your claim.

**CLAIM FORM****NOTICE ID NUMBER (IF EMAIL NOTICE WAS SENT TO YOU)**

--

**NAME\***

FIRST NAME LAST NAME

--

**STREET ADDRESS\*****APT**

--	--

**CITY\*****STATE\*****ZIP\***

--	--	--

**MOBILE PHONE NUMBER\***

XXX-XXX-XXXX

--

**EMAIL ADDRESS\*****VERIFY EMAIL ADDRESS\***

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Please ensure you provide a current, valid email address and mobile phone number on this Claim Form. If the email address or mobile phone number you provided becomes invalid for any reason, it is your responsibility to provide the Settlement Administrator with a current, valid email address and mobile phone number for payment.

**ATM SURCHARGE INFORMATION**

**HAVE YOU PAID AN UNREIMBURSED SURCHARGE TO WITHDRAW CASH FROM AN ATM IN THE UNITED STATES AT ANY POINT ON OR AFTER OCTOBER 1, 2007?\***

- YES
- NO

**[IF YES] WERE ANY OF THESE SURCHARGES PAID TO A BANK TO USE AN ATM OPERATED BY THAT BANK?\***

- YES
- NO

**[IF YES] WERE ANY OF THESE SURCHARGED BANK ATM TRANSACTIONS CONDUCTED WITH AN ATM CARD ISSUED BY A FINANCIAL INSTITUTION (INCLUDING ANY BANK OR CREDIT UNION) IN THE UNITED STATES?\***

- YES
- NO

**[IF YES] ESTIMATE THE NUMBER OF TIMES BETWEEN OCTOBER 1, 2007 AND [DATE OF PRELIMINARY APPROVAL] THAT YOU PAID AN UNREIMBURSED SURCHARGE TO**

**WITHDRAW CASH FROM A BANK ATM IN THE UNITED STATES USING AN ATM CARD ISSUED BY A UNITED STATES FINANCIAL INSTITUTION.\***

- [4 DIGIT INTEGER]

[DROP DOWN]

**“AS STATED BELOW, THIS CLAIM FORM IS SUBMITTED UNDER PENALTY OF PERJURY, AND THE SETTLEMENT ADMINISTRATOR HAS THE RIGHT TO ASK YOU TO PROVIDE BANK STATEMENTS OR OTHER DOCUMENTS TO SUPPORT YOUR CLAIM.”**

\*Denotes required field

**CERTIFICATION**

By signing this claim submission, I certify, under penalty of perjury, that the information included with this claim submission is accurate and complete to the best of my knowledge, information, and belief. If I am submitting this claim submission on behalf of a claimant, I certify that I am authorized to submit this claim submission on the individual’s behalf. I am, or the individual on whose behalf I am submitting this claim submission is, a member of the Settlement Class, and have not submitted a request to exclude myself, or “opt-out of,” the Settlement with Visa and Mastercard. I agree and consent to be communicated with electronically via email and/or mobile phone text (message & data rates may apply). I agree to furnish additional information regarding this claim submission if so requested to do so by the Settlement Administrator.

**SIGNATURE**

**DATE**

	<i>mm/dd/yyyy</i>
--	-------------------