UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re PAYMENT CARD INTERCHANGE FEE AND MERCHANT DISCOUNT ANTITRUST LITIGATION	MDL No. 1720(MKB)(JO) Civil No. 05-5075(MKB)(JO) DECLARATION OF THE HONORABLE H. LEE SAROKIN ON THE RISKS OF LITIGATION
This Document Relates To: ALL ACTIONS.	

I, H. Lee Sarokin, declare as follows:

1. I have been asked by counsel for the Rule 23(b)(3) Damages Class ("Class Counsel") to opine on the risks of litigation if the proposed settlement is not consummated. In preparing this Declaration, I have reviewed and relied upon the documents and materials submitted to me by Class Counsel, which are listed on Exhibit A attached hereto. I have also discussed this matter with Class Counsel. Based upon my analysis, if called as a witness, I could and would competently testify as follows.

2. I am a graduate of Dartmouth College and Harvard Law School. I am admitted to the bar in New Jersey, the Third Circuit and the Supreme Court. I practiced as a trial lawyer/litigator for 25 years. For seven of those years I also served as assistant county counsel. I was appointed to the United States District Court (N.J.) by President Carter. Thereafter I was elevated to the United States Court of Appeals (3rd Cir.) by President Clinton. I served a total of 17 years on the federal bench. Since retirement, I have served as a mediator, arbitrator, consultant and expert witness. I was designated Distinguished Jurist in Residence by the University of San Diego School of Law, and served in that capacity as lecturer and student mentor for five years. I have been a guest lecturer at a variety of law schools. I am a lifetime member of the American Law Institute.

3. This declaration details the primary risks faced by both sides in this litigation. It aims to provide the Court a different perspective to aid it in the exercise of its fiduciary duty to the Class to determine whether the proposed settlement is fair, reasonable and adequate.

4. The first settlement was reached after more than seven years of exhaustive litigation and the second settlement was reached nearly six years after the District Court granted preliminary approval to the first settlement. The record is immense.

5. The case was nearing trial (both prior to the first and second settlements). In the first phase (prior to the Second Circuit's reversal of the final approval of the first settlement), the Defendants produced almost 4 million documents, totaling over 56 million pages. Rule 23(b)(3) Class Plaintiffs produced nearly 200,000 documents, ultimately totaling over 2 million pages. Individual Plaintiffs' production added over 8.4 million pages to this count. In addition, third parties subpoenaed by Individual Plaintiffs, Rule 23(b)(3) Class Plaintiffs or Defendants, produced nearly 300,000 documents totaling over 4 million pages. The Phase I record also included 370 depositions taken in this litigation by the parties. During the second phase of discovery, more than 5 million pages of documents were reviewed and Class Counsel took or participated in an additional 150 depositions. Another 32 depositions of third parties also took place. The Rule 23(b)(3) Class Plaintiffs also again produced documents, totaling about 500,000 additional pages. Massive volumes of expert opinions were exchanged.

6. Many substantive issues, including class certification, *Daubert* issues and summary judgment were pending. Those decisions, should they have issued, would likely extend the case for years as appeals to the Second Circuit by the losing party would be assured.

7. The counsel on each side are experienced, highly-regarded and leaders at the Bar. Both settlements were reached in large part based upon the settlement efforts of two of the Nation's outstanding settlement mediators, Professor Eric Green and the Hon. Edward A. Infante (ret.). Both agree the current settlement was reached only after the facts were fully developed by experienced counsel, the positions contentiously argued and the settlement reached in the absence of collusion. These experienced mediators were intimately familiar with the facts and theories underlying the litigation as well as the extensive efforts to reach this current settlement.

8. The size of the current settlement, believed to be the largest antitrust settlement ever obtained, is but one of the factors used to determine whether the settlement is fair, reasonable and adequate. The fact that many of the complex issues in the case were fully litigated, speaks volumes.

PENDING MOTIONS

9. Following the first settlement, pending motions including motions concerning discovery, class certification, dismissal, summary judgment and the preclusion of expert testimony were deemed withdrawn without prejudice to reinstatement. In addition to those motions, the Rule 23(b)(3) Class Plaintiffs had filed a new amended complaint.

10. Since the time of the first settlement, significant changes in the law, as detailed more fully below, increased the risks related to all of the motions pending before the Court. The extent of these risks support the settlement reached here. In cases of this magnitude, there are the normal risks of litigation because of the daunting, sophisticated and incredibly complex factual, legal, damage and financial issues. But this case has some unique risks that must be considered as well

11. The parties faced unusual and numerous risks in this litigation, particularly in light of the first settlement being overturned by the Second Circuit, discussed more fully below.

PRIOR INTERCHANGE FEE LITIGATION

12. The first case dealing with payment card network interchange fees was *Nat'l Bancard Corp. (NaBanco) v. Visa U.S.A., Inc.*, 596 F. Supp. 1231, 1241 (S.D. Fla. 1984) ("*NaBanco*"), *aff'd*, 779 F.2d 592 (11th Cir. 1986). *NaBanco*, a processing agent for various Visa acquiring banks, charged that the Visa interchange rule violated Section 1 of the Sherman Act. It sought an interchange fee established by the Court, acceptable to it, or alternatively that each merchant should establish individually by negotiations as to interchange rates with the issuing banks.

13. On appeal, the Eleventh Circuit Court affirmed the District Court and held that "so long as a practice is 'fairly necessary' to achieve a legitimate purpose, it is not unlawful under the Rule of Reason." *NaBanco*, 596 F. Supp. at 1257 (citations omitted). The Court also found that the establishment of network interchange rates was vital to the day-to-day functioning of the network which makes universal acceptability possible which is itself the foundation for the creation of the product. The Court held that the establishment of the interchange rates by the Visa network are the most, if not the only, realistic alternative.

14. Since *Nabanco*, the volume, use and central place payment cards play in the economy has greatly expanded. Interchange fees have been under scrutiny across the globe, in some cases resulting in regulations. In the U.S., however, *Nabanco* remains a critical precedent that must be dealt with. Were this Court to follow *Nabanco*, Rule 23(b)(3) Class Plaintiffs would be out of court, with nothing to show for their massive efforts. If this Court does not follow the reasoning and result in this case, Defendants lose one of their principle defenses to the instant case. The uncertainty of what this Court may do is another reason the parties reached settlement.

15. Another seismic shift in the payment card world is the recent decision of the United States Supreme Court in *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2287 (2018) ("*AmEx*"). That case holding that challenge to American Express rules must establish harm to competition in "two-sided" relevant market.

16. Nearly 20 years ago, a class action, similar in certain respects to this case was brought against Visa and Mastercard, alleging that the networks and their member banks had violated the Sherman Act by unlawfully "tying" the merchants' acceptance of credit cards and the acceptance of debit cards. The artificially high rate was a result of requiring merchants to accept all Visa or Mastercard branded debit cards as a condition of their ability to accept Visa and Mastercard branded

credit cards. *In re Visa Check/MasterMoney Antitrust Litig.*, 297 F. Supp. 2d 503 (E.D.N.Y. 2003) ("*Visa Check*").

17. Judge Gleeson approved the settlement of that case, the *Visa Check* case, on the grounds that it was fair, reasonable and adequate and not the product of collusion. The Court of Appeals affirmed *sub nom. Wal-Mart Stores v. Visa U.S.A., Inc.*, 396 F.3d 96 (2d Cir. 2005). The settlement included a payment over a 10 year period of more than $3 billion in cash, a delinking of debit and credit card acceptance over a period of time, and a five month slight reduction in debit interchange fees. Certain network rules were changed but importantly, left in place were the default interchange rules, the no surcharge rules, the non-discounting (discrimination) rule and a host of other rules allegedly affecting merchants' acceptance of Visa and Mastercard payment cards. That settlement also included a release that impacts this case.

18. Other, historic litigation also impacts the risk calculus. For example, in 1998, the Department of Justice ("DOJ") sued Visa and Mastercard on two grounds. The first was the so-called issuance duality the '"situation in which a bank has formal decision-making authority in one system, while issuing a significant percentage of its credit and charge cards on a rival system."' *United States v. Visa U.S.A., Inc.*, 163 F. Supp. 2d 322, 345 (S.D.N.Y. 2001), *aff'd*, 344 F.3d 229 (2d Cir. 2003) (citations omitted). Second, the two networks' "exclusivity" rules prevented member banks from issuing American Express and Discover Cards. The DOJ claimed that both constituted agreements in violation of Section 1. *Id.* The District Court found that the issuance duality did not violate Section 1, but that the exclusivity rule did violate Section 1 because it restrained competition in the United States market for general purpose card network services. The District Court held that the abolishment of the network exclusivity rule would increase competition among the four network service providers Visa, Mastercard, American Express and Discover as they competed for the

business of issuing banks. The Second Circuit affirmed the District Court's decision at the network level, where four major networks seek to sell their technical infrastructure of financial services to both issuing and acquiring banks, and that competition has been seriously damaged by defendants' exclusivity rules. The elimination of the network's exclusivity rules led to increased competition among the four payment card networks for the business of issuers and acquirers and led, among other things, to the increase in the development of the issuance of premium cards that each offered increased rewards to the card holders.

EXPERT OPINIONS

19. As discussed above, there were numerous unresolved motions pending at the time of the first settlement and those pending motions were deemed withdrawn without prejudice to reinstatement. Assuming there was no settlement, it is very likely that the unresolved motions would be reinstated.

20. Defendants moved to exclude the testimony of Rule 23(b)(3) Class Plaintiffs' class certification expert and to disqualify the Rule 23(b)(3) Class Plaintiffs' principal economic experts, and the Rule 23(b)(3) Class Plaintiffs moved to exclude certain of Defendants' experts. It is my opinion that all of the experts are highly qualified and it is not possible at this time to predict how the Court would rule on the *Daubert* motions, nor to state how a jury would react to these experts. It will be a battle of experts and the ultimate outcome may depend upon which one or ones the jury accepts. Additionally, there is a risk of juror confusion based on the complex economic theories presented in both Rule 23(b)(3) Class Plaintiffs' and Defendants' experts' reports.

21. Defendants moved to exclude as inadmissible the opinion of Rule 23(b)(3) Class Plaintiffs' economic expert, Dr. Alan S. Frankel regarding: (1) liability injury and damages attributed to the challenged conduct of Defendants; and (2) the adverse competitive effects. Dr. Frankel's testimony is highly supportive of Rule 23(b)(3) Class Plaintiffs' theory and is some of the strongest evidence that they have as to essential elements of their antitrust claims.

22. If this testimony was excluded it would be much harder to establish Rule 23(b)(3) Class Plaintiffs' theory that they suffered injury or measurable damages as a result of the establishment of the default interchange rates and merchant acceptance rules, or that the establishment of definitive interchange rates and merchant acceptance rates had an anticompetitive effect to any marked degree on Rule 23(b)(3) Class Plaintiffs. This, of course, poses a significant risk to Rule 23(b)(3) Class Plaintiffs. Likewise the risk to Defendants is substantial in that if Dr. Frankel is allowed to testify and the jury credits his damages opinions in whole or even in part, damages, if liability is found, could range in the many billions of dollars. The risk of litigation posed by the ruling on the motion to exclude is significant, and the uncertainty of the outcome affects each party.

23. The Visa and Mastercard networks were converted from joint ventures to publicly traded companies during the course of the litigation. Defendants insisted that after the IPOs that the setting of default interchange fees was lawful and not illegal horizontal price fixing. *See In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 2019 WL 359981, at *22 (E.D.N.Y. Jan. 28, 2019) ("*Payment Card*"). I understand that Rule 23(b)(3) Class Plaintiffs filed supplemental complaints alleging the formation of the new corporate entities were antitrust violations. This was a novel claim and the Court dismissed the claim asserted against Mastercard

with leave to amend. ECF No. 1118. An amended complaint was later filed, but there was no certainty that the new complaints would be sustained.

24. Additionally, even if the outstanding motions were reinstated, there was no certainty as to whether Defendants' motions to dismiss and summary judgment would be denied in their entirety. Several developments in the law since the motions were briefed and argued have made proving liability and damages potentially more difficult. The most notable being that if the Court were to rule that the Supreme Court's recent decision in *AmEx*, requires Rule 23(b)(3) Class Plaintiffs to prove harm in a two-sided market, consisting of both merchants and cardholders, rather than one-sided market consisting of just merchants, it would be harder for Rule 23(b)(3) Class Plaintiffs to prove that the anticompetitive effects of default interchange fees and the various merchant rules outweigh any procompetitive justifications for those fees and rules. *Payment Card*, 2019 WL 359981, at *23.

25. In *AmEx* the Supreme Court held that in "[e]valuating both sides of a two-sided transaction platform is also necessary to accurately assess competition." *AmEx*, 138 S. Ct. 2287. The Court then determined "plaintiffs have not carried their burden to prove anticompetitive effects in the relevant market." *Id.* This was because, the Court held, "plaintiffs' argument about merchant fees wrongly focuses on only one side of the two sided credit-card market." *Id.* The Court then went on to state that the:

> credit-card market must be defined to include both merchants and cardholders. Focusing on merchant fees alone misses the mark because the product that credit-card companies sell is transactions, not services to merchants, and the competitive effects of a restraint on transactions cannot be judged by looking at merchants alone. Evidence of a price increase on one side of a two-sided transaction platform cannot by itself demonstrate an anticompetitive exercise of market power. To demonstrate anticompetitive effects on the two-sided credit-card market as a whole, the plaintiffs must prove that Amex's antisteering provisions increased the cost of credit-card transactions above a competitive level, reduced the number of credit-card transactions, or otherwise stifled competition in the credit-card market.

Id. (citations omitted).

26. The requirement that the credit card market cannot be judged looking at merchants alone could create devastating consequences for Rule 23(b)(3) Class Plaintiffs should the Court find enough similarities between the American Express network and the Visa and Mastercard networks. American Express' system has significant differences from Visa and Mastercard, but there is a significant risk that the Court may feel bound by the *AmEx* decision and strictly follow the language in the *AmEx* case. This could make a verdict for Rule 23(b)(3) Class Plaintiffs more doubtful.

27. As a result of governmental action as well as the original 2012 settlement, there have been other changes to the networks rules that were challenged in this case. The DOJ consent decree and the Durbin Amendment to the Dodd-Frank Act have provided benefits to merchants. However, the changes have added challenges to Rule 23(b)(3) Class Plaintiffs' ability to show that Defendants' continuing conduct is anticompetitive. Since the case was filed, the risks have increased. *Payment Card*, 2019 WL 359981, at *23. "The more progress the merchants make – through private lawsuits, government cases, and legislation – the more difficult it becomes to establish an antitrust violation." *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 991 F. Supp. 2d, 437, 444 (E.D.N.Y. 2014).

ILLINOIS BRICK

28. Defendants claim that Rule 23(b)(3) Class Plaintiffs are precluded from recovering damages based upon an allegedly unlawful inflated interchange fee because Defendants assert they do not directly pay interchange fees. *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977) ("*Illinois Brick*"), has the effect of precluding Federal antitrust damages recovery by indirect purchasers of price fixed goods and services.

29. Defendants had argued in this case that the only damages claimed by Rule 23(b)(3) Class Plaintiffs are the amounts they have had to pay for interchange fees. According to the

Defendants, interchange fees are not paid by merchants. They are not charged to merchants. Issuing banks receive interchange fees from the acquiring banks which in turn pass those costs on to the merchants. Thus, Defendants assert that Rule 23(b)(3) Class Plaintiffs do not directly pay interchange fees. The price the merchants pay for card acceptance is the merchant's discount fee, which is a tiny charge added by the acquiring banks. Thus, according to the Defendants, Rule 23(b)(3) Class Plaintiffs' damage claims can only be based upon Rule 23(b)(3) Class Plaintiffs' status as an indirect payer of interchange fees. Therefore, Defendants argue, Rule 23(b)(3) Class Plaintiffs lack standing to bring their damage claims under the Clayton Act.

30. Rule 23(b)(3) Class Plaintiffs responded to this claim by Defendants by asserting that in analyzing antitrust violations, one does not look to the form of the transaction, one looks at the substance, the results or consequences. In these cases, the presence of an intermediary does not change the nature of a transaction. The Defendants fail to recognize the difference between agency and purchase and resale. *Illinois Brick* requires that there must be a sale in order for there to be a purchase and a resale. Acquiring banks act as agents for the issuing bank in the collection of interchange fees paid by merchants. When acting in this capacity, Rule 23(b)(3) Class Plaintiffs argued, there can be no *Illinois Brick* application. Finally, Rule 23(b)(3) Class Plaintiffs assert accounting rules reflect this difference. Acquiring banks account for interchange fees as an offset to gross revenues as opposed to an expense. They are agents with respect to the collection of interchange fees paid by merchants. Rule 23(b)(3) Class Plaintiffs' argument may be bolstered by the Supreme Court's recent decision in *Apple Inc. v. Pepper*, __U.S.__, 139 S. Ct. 1514 (2019).

31. This Court has issued an extensive ruling (later upheld on appeal) (*Salveson v. JP Morgan Chase & Co.*, No. 14-CV-3529 (JG), slip op. (E.D.N.Y. Nov. 26, 2014)) regarding the application of *Illinois Brick* in an interchange fee related case brought by consumers of credit cards.

In that case, although faced with a different class of plaintiffs, the Court held pursuant to the Supreme Court decision in *Illinois Brick*, "indirect purchasers – individuals or entities that do not make purchases directly from the defendants alleged to have violated antitrust laws – do not have standing to sue under §4 of the Clayton Act." *Salveson*, slip. op. at 5.

32. As the Court stated, '"only direct purchasers have standing under §4 of the Clayton Act to seek damages for antitrust violations."' *Id.* (quoting *Delaware Valley Surgical Supply Inc. v. Johnson & Johnson*, 523 F.3d 1116, 1120-21 (9th Cir. 2008)). The Court further explained that the presumption against recovery for plaintiffs who are '"not the immediate buyers from the alleged antitrust violations"' includes cases '"in which immediate buyers pass on 100 percent of their costs to their customers."' *Id.* (quoting *Kansas v. Utilicorp United, Inc.*, 497 U.S. 199, 207-208 (1990)).

33. There are other cases involving the application of *Illinois Brick* to payment card transactions. The Second Circuit in *Paycom Billing Servs., Inc. v. MasterCard Int'l, Inc.*, 467 F.3d 283, 291-92 (2d Cir. 2006), held that the merchant plaintiffs were indirect purchasers and barred by *Illinois Brick* to bring damages claims against Mastercard and its member banks alleging that they conspired to set certain charges which, like interchange fees, were levied on acquiring banks which in turn were allegedly passed on to merchants. That case involved a "charge back" whenever a card holder had a dispute with respect to a charge on his payment card. *Id.* at 292. The issuing bank could but did not always have to, require the merchant acquirer to return the funds to the issuing bank pending resolution of the dispute. Any charge back they made was against the acquirer, not the merchant. If an acquirer's merchant customers had excessive charges which may have been subject to fines and penalties the acquirer "usually" (but not always) passed on these reimbursed obligations and fines to the merchant bank by deducting the "chargeback" funds and any fines from the

merchant's account. It would have made no difference if the acquiring bank passed on these reimbursement obligations and fines in all cases. The merchants were still indirect purchasers.

34. In *Kendall v. Visa U.S.A.*, 518 F.3d 1042 (9th Cir. 2008), the Ninth Circuit affirmed the dismissal of merchants' treble damage claims where the merchants' alleged damages based on a conspiracy between the payment card network and issuers to fix interchange fees. The Court held that *Illinois Brick* barred plaintiff merchants from pursuing this damage claim where it did not allege that the defendants had fixed the merchant discount fee.

35. The District Court in *In re ATM Fee Antitrust Litig.*, 686 F.3d 741 (9th Cir. 2012) ("*ATM Fee*"), held that *Illinois Brick* required summary judgment for defendants where a class of bank customers alleged that ATM Network and several large banks fixed ATM's interchange fees paid by card issuing banks to unrelated ATM owners. In *ATM Fee*, when a card-issuing bank customer uses an ATM card that is not owned by its bank (a foreign ATM) the card-issuing bank pays interchange fees to the foreign ATM bank. The plaintiffs alleged that defendants marked up the fixed interchange fee and charged it as part of the Foreign ATM fee. The Court found that plaintiffs did not directly pay the fixed interchange fee but instead that fee was paid by the banks.

36. Rule 23(b)(3) Class Plaintiffs also allege that an exception to *Illinois Brick* applies here – where the direct purchaser is owned or controlled by the price fixer. Were *Illinois Brick* to apply, it would reduce if not eliminate any recovery for the Rule 23(b)(3) Class Plaintiffs. If it does not apply then the Defendants lose a major defense and face significant damages.

THE *VISA CHECK* RELEASE

37. As noted above, the *Visa Check* settlement contained a release. Defendants have asserted that all of the antitrust claims in the present cases are within the scope of the release given in the *Visa Check* litigation and are therefore barred.

38. As part of the settlement of the *Visa Check* case, the Court of Appeals noted that: "in exchange for an unprecedented amount of compensatory damages [$3 billion], plaintiffs here have released all claims based on the mix of facts that produced anticompetitive interchange rates." *Visa Check*, 297 F. Supp. 2d at 515. The release provided: "'[MasterCard and Visa] shall be released and forever discharged from all manner of claims – that any Releasing Party [Class Members] had, now has, or hereafter can, shall or may have, relating in any way to conduct prior to January 1, 2004, concerning any claims alleged in the complaint or the complaints consolidated therein . . . .'" *Id.* at 512 (citations omitted). Defendants contend that the present claims of Rule 23(b)(3) Class Plaintiffs fall into the scope of that release and that they are barred from pursuing their present claims.

39. Defendants argued that the court has already ruled that Rule 23(b)(3) Class Plaintiffs' claims fall within the scope of the release. It bars Rule 23(b)(3) Class Plaintiffs in the present case from recovering damages incurred prior to January 1, 2004. By the same reasoning, Defendants assert that the release also bars Rule 23(b)(3) Class Plaintiffs from charging Defendants liable for: (1) conduct (including network rules that occurred or were in place before January 1, 2004); and (2) for continued enforcement of or adherence to such conduct after January 1, 2004.

40. Defendants argue that, since continued adherence to the rules that existed before January 1, 2004, relates to the claims at issue in the *Visa Check* litigation, and hence were or could have been challenged in that litigation, the release in that case bars Rule 23(b)(3) Class Plaintiffs from pursuing those claims.

41. The release also provided in part that each class member covenants and agrees that it shall not hereafter seek to establish liability against any of the released parties based, in whole or in

part, upon any of the released claims. Defendants cite this as further support for barring the present claims.

42. Rule 23(b)(3) Class Plaintiffs deny the applicability of the release and assert that the Defendants have engaged in new unlawful conduct since January 1, 2004. They argue that an agreement to fix prices gave rise to a new cause of action which accrues whenever a plaintiff pays a fixed price for a product. Defendants countered by stating that Rule 23(b)(3) Class Plaintiffs based their present claims on network rules that pre-date the release and relate to claims which have been asserted or could have been asserted in the *Visa Check* litigation. Defendants contended that the Second Consolidated Amended Class Action Complaint does not challenge any rule, policy or practice not in existence as of January 1, 2004. Nor does the Second Consolidated Amended Class Action Complaint allege that Defendants collectively established or maintained the challenged default interchange fee and alleged anti-steering rules after January 1, 2004. Defendants further assert that the Defendants' post-2004 conduct was simply a continuation of the prior January 1, 2004 conduct, that the default interchange rule, the honor all cards rule and the prohibition on surcharge and discounting have not changed since January 1, 2004 and therefore there is no challenge raised as to any new conduct post-2004.

43. The applicability of the releases to Rule 23(b)(3) Class Plaintiffs' post-2004 conduct would be substantial and would reduce or even eliminate recovery by Rule 23(b)(3) Class Plaintiffs. Without the application of the earlier releases as argued by the Defendants, Defendants lose a defense to antitrust liability.

44. In the absence of a definitive ruling on this issue, which has been fully briefed and argued, both sides face tremendous pressure to seek settlement.

CONCLUSION

45. Based upon my review of the record and my experience as a lawyer and judge, it is my professional opinion, considering the risks enumerated above, that the parties face daunting challenges should litigation continue, that settlement is not only justified and appropriate, but is mandated in the best interests of the parties, the public and the court system. Because of the dispute regarding damages, I cannot render an opinion regarding the terms and conditions of the settlement, but I would have no hesitancy in accepting and recommending to the Court the compromise of the experienced and dedicated counsel who have toiled in this matter for more than a decade and the distinguished mediators who have served to bring that compromise about. I hope that I have been of assistance to the Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 4 day of June, at San Diego, California.

HON. H. LEE SAROKIN (ret.)

***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720 (E.D.N.Y.)**

EXHIBIT A
(MATERIALS RELIED ON)

1.	Definitive Class Settlement Agreement (Appendices A-J), dated October 15-17, 2012
2.	Superseding and Amended Definitive Class Settlement Agreement of the Rule 23(b)(3) Class Plaintiffs and the Defendants (Appendices A-J), dated August 31-September 17, 2018
3.	Notice of Rule 23(b)(3) Class Plaintiffs' Motion for Class Settlement Preliminary Approval, dated September 18, 2018
4.	Memorandum in Support of Rule 23(b)(3) Class Plaintiffs' Motion for Class Settlement Preliminary Approval, dated September 18, 2018
5.	Declaration of K. Craig Wildfang, Esq. in Support of Rule 23(b)(3) Class Plaintiffs' Motion for Preliminary Approval of Settlement (Exhibits 1-7), dated September 17, 2018
6.	Declaration of Eric Green in Support of Rule 23(b)(3) Class Plaintiffs' Motion for Preliminary Approval of Settlement, dated September 10, 2018
7.	Declaration of the Honorable Edward A. Infante (Ret.) in Support of Rule 23(b)(3) Class Plaintiffs' Motion for Preliminary Approval of Settlement, dated June 27, 2018
8.	Letter to Court from Branded Operators, dated October 30, 2018
9.	Rule 23(b)(3) Class Counsel response to Branded Operators' October 30, 2018 letter to Court, dated November 15, 2018
10.	Branded Operators Memorandum in Opposition to Preliminary Approval of Class Settlement, dated November 20, 2018
11.	Statement of Objection Regarding the Proposed Class Settlement by the National Association of Shell Marketers, the Petroleum Marketers Association of America, and the Society of Independent Gasoline Marketers of America, filed November 20, 2018
12.	Transcript re. hearing on Preliminary Approval, held December 6, 2018
13.	Order re. Preliminary Approval, dated January 24, 2019
14.	Order re. Preliminary Approval, dated January 28, 2019
15.	Declaration of Charles B. Renfrew as to the Risks of Litigation, dated April 4, 2013
16.	Memorandum of Law in Support of Defendants' Motion to Dismiss or, Alternatively, to Strike Plaintiffs' Pre-2004 Damages Claims, dated June 9, 2006

EXHIBIT A
(MATERIALS RELIED ON)

17.	Class Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss or, Alternatively to Strike Plaintiffs' Pre-2004 Damages Claims, dated July 21, 2006
18.	Reply Memorandum of Law in Further Support of Defendants' Motion to Dismiss or, Alternatively, to Strike Plaintiffs' Pre-2004 Damages Claims, dated August 18, 2006
19.	Memorandum of Law of Defendants Mastercard International Incorporated and Mastercard Incorporated in Support of Their Motion to Dismiss Class Plaintiffs' First Supplemental Class Action Complaint, dated September 15, 2006
20.	Class Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss Class Plaintiffs' First Supplemental Class Action Complaint, dated October 30, 2006
21.	Memorandum in Support of Bank Defendants' Motion to Dismiss Class Plaintiffs' First Supplemental Class Action Complaint, dated September 15, 2006
22.	Reply Memorandum in Support of Bank Defendants' Motion to Dismiss Class Plaintiffs' First Supplemental Class Action Complaint, dated November 29, 2006
23.	Reply Memorandum of Law in Further Support of Mastercard's Motion to Dismiss Class Plaintiffs' First Supplemental Class Action Complaint, dated November 29, 2006
24.	Supplemental Memorandum of Law in Further Support of Mastercard's Motion to Dismiss Class Plaintiffs' First Supplemental Class Action Complaint, dated February 12, 2007
25.	Letter to Judge Orenstein from Berger & Montague, P.C., dated February 21, 2007
26.	Report and Recommendation, dated September 7, 2007
27.	Order, dated January 8, 2008
28.	Report and Recommendation, dated January 11, 2008
29.	Report and Recommendation, dated February 12, 2008
30.	Letter to Judge Orenstein from Berger & Montague, P.C., dated December 2, 2008
31.	Defendants' Corrected Memorandum of Law in Opposition to Plaintiffs' Motion for Class Certification, dated October 6, 2008

EXHIBIT A
(MATERIALS RELIED ON)

32.	Reply Memorandum of Law in Support of Class Plaintiffs' Motion for Class Certification, dated January 29, 2009
33.	Memorandum of Law in Support of Motion to Dismiss the Second Consolidated Amended Class Action Complaint, dated March 31, 2009
34.	Memorandum of Law in Support of Motion to Dismiss the Second Supplemental Class Action Complaint, dated March 31, 2009
35.	Memorandum of Law in Support of Motion to Dismiss the First Amended Supplemental Class Action Complaint, dated March 31, 2009
36.	Class Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Second Consolidated Amended Class Action Complaint, dated June 2, 2009
37.	Page-Proof Reply Brief of Appellants Blue Cross and Blue Shield Entities and Wellpoint Entities, dated November 25, 2014
38.	Reply Memorandum in Support of Motion to Dismiss the Second Supplemental Class Action Complaint, dated July 2, 2009
39.	Reply Memorandum of Law in Support of Motion to Dismiss the First Amended Supplemental Class Action Complaint, dated July 2, 2009
40.	Motion Information Statement, dated December 9, 2014
41.	Memorandum and Order, dated November 25, 2008
42.	Class Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment, dated May 13, 2011
43.	Defendants' Memorandum of Law in Support of the Motion for Summary Judgment as to the Claims in the Second Consolidated Amended Class Action Complaint, dated February 11, 2011
44.	Defendants' Reply Memorandum of Law in Support of Their Motion for Summary Judgment as to the Claims in the Second Consolidated Amended Class Action Complaint, dated June 30, 2011
45.	Class Plaintiffs' Memorandum of Law In Support of Their Motion for Summary Judgment, dated February 11, 2011
46.	Class Plaintiffs' Reply Memorandum of Law in Further Support of Their Motion for Summary Judgment, dated June 30, 2011
47.	Defendants' Memorandum of Law in Opposition to Class Plaintiffs' Motion for Summary Judgment, dated February 11, 2011

EXHIBIT A
(MATERIALS RELIED ON)

48.	Memorandum of Law in Support of Defendants' Motion for Summary Judgment on Class Plaintiffs' IPO, Post-IPO Conspiracy, and Fraudulent Conveyance Claims, and Individual Plaintiffs' Post-IPO Conspiracy Claims, dated February 11, 2011
49.	Reply Memorandum of Law in Support of Defendants' Motion for Summary Judgment on Class Plaintiffs' IPO, Post-IPO Conspiracy, and Fraudulent Conveyance Claims, and Individual Plaintiffs' Post-IPO Conspiracy Claims, dated June 30, 2011
50.	Second Circuit Opinion, dated June 30, 2016
51.	Memorandum and Order, dated November 30, 2016
52.	Third Consolidated Amended Class Action Complaint, dated February 8, 2017
53.	Report of Alan S. Frankel, Ph.D. Relating to Injunctive Relief, dated November 14, 2011
54.	Rebuttal Report of Alan S. Frankel, Ph.D., dated June 22, 2010
55.	Report of William Wecker, dated December 14, 2009
56.	Report of Alan S. Frankel, Ph.D., dated July 2, 2009