EXHIBIT 1

The original proposed class settlement agreement was reached on July 13, 2012. ECF No. 1588-1. But certain plaintiffs withdrew from that original agreement, becoming known in the litigation as the "Objecting Plaintiffs." These Objecting Plaintiffs were represented by others firms, including Constantine Cannon, and consisted of large retailers such as Home Depot U.S.A., Inc. and Target Corporation.

After the original agreement was reviewed and problems noted, moving counsel began communicating with smaller retailers and merchants (absent class members) about its terms. Also, counsel began reviewing the agreement, pleadings and commentaries on the proposed settlement, including law reviews, statements by congressional officers and others. In particular, the smaller retailers and merchants these counsel represented outlined the burden the swipe fee represented as a fixed cost of business in accepting credit cards in ratio to their income (second only to the cost of employment for some) and other problems with the settlement which would bind these class members forever, whether they liked it or not. This background, including reviewing documents customarily reviewed and meetings with clients, helped develop the grounds to file a written objection and diligently advance the claims of these class members absent from the litigation – the smaller folks. This group became known as the Retailers and Merchants Objectors, or "R&M Objectors" to differentiate them from the large Plaintiff-Objectors represented by the Constantine Cannon group.

This was an important distinction, since the filing by the R&M Objectors was the first objection for "absent class members" – those that were not prior plaintiffs. This was a filing made the day before the Class Counsel filed the "Definitive Class Settlement Agreement" on October 19, 2012. ECF No. 1656-1. Counsel for the R&M Objectors filed their Objection to Proposed

Class Settlement Agreement ("Objection"), on behalf of their small retailer and merchant members on October 18, 2012, signed by Jerrold S. Parker, Esq. of Parker Waichman LLP, one of the movant's group of attorneys. This objection was filed prior to the Preliminary Approval Hearing and included citations to case law, law review articles and other commentators. The R&M Objectors also sought discovery, an issue that was also addressed in a letter to the district court shortly thereafter. ECF No. 1657. In language that would resonate with that utilized by the Second Circuit a year later, the R&M Objectors determined that "significant issues regarding the fairness, adequacy and reasonableness of the proposed settlement" needed to be fully aired and discussed at the preliminary approval hearing. Objections included the inadequacy of the monetary fund and proposed refund, the inadequacy of the injunctive relief, and excessiveness and overbreadth of the release provisions.

On October 19, 2012, Class Counsel filed the Definitive Settlement Agreement (ECF No. 1656-1) and within three days, on October 22, 2012, the R&M Objectors wrote the district court requesting an opportunity to review the depositions and discovery which led to that proposed agreement. ECF No. 1657. Reference was made to a commentator who had agreed that "'[t]o accept this settlement is short-sighted to the point of near blindness, and will leave merchants and ultimately the US economy's payments infrastructure at the mercy of the card networks' profit motive, rather than subject to the competitive dynamics of the marketplace'." *Id.* at 2, quoting Adam J. Levitin, *An Analysis of the Proposed Interchange Fee Litigation Settlement*, Georgetown Law and Economics Research paper No. 12-033 (August 12, 2012), http://ssrn.com/abstract=2133361 at 24).

While typically a district court in New York would not hold a hearing for the preliminary approval of the settlement (ECF No. 1668), that was not to be the case here. Other plaintiff

objectors filed after the district court's order as well. *See, e.g.,* ECF No. 1670 (Objections of Target Corporation, et al., filed on November 1, 2012). In fact, Rule 23 was changed on December 1, 2018, now making the preliminary approval process more exacting. *See* ECF No. 7363 at 20, n. 2. The R&M Objectors' filing had changed the procedural process in addition to raising substantive arguments. *Id.* at 24, n. 23.

The R&M Objectors also made a specific request to form a Proposed Objectors' Committee so that the Committee could be given full access to the discovery materials and that there be a presentation of a report from this Proposed Objectors' Committee to the district court prior to final approval. This request was made very early in the preliminary settlement process so that the terms of the settlement and its procedural mechanics, including notice, could be addressed (and solved) early by transparency in how the original settlement process was reached based upon meaningful discovery. R&M members had valid concerns with notice, the actual benefit of the surcharge and benefit of the settlement agreement for a full release. A Proposed Objectors' Committee was a concept that the R&M Objectors proposed to examine the discovery materials behind the original proposed settlement agreement so that the issues could be fully addressed for the district court's review.

On October 24, 2012, the district court responded to the R&M Objectors and the objecting opt-out plaintiffs, identifying the request to "organize a Proposed Objectors Committee, grant it certain discovery, and set a schedule for a report from that committee." ECF No. 1668. The court noted, however, that the threshold for preliminary approval was less than that for final approval. The court requested written objections and then recognized the special nature of the objections it had received: "*Ordinarily I do not schedule oral argument of preliminary approval motions.* However, based on my review of the parties' submissions and consultations with Magistrate Judge

Orenstein, it seems clear that there is an expectation among some interested parties that the preliminary approval process *should be more involved in this case than in the usual class action.* Therefore, oral argument shall occur on

November 9, 2012 at 11:30 a.m., and anyone wishing to make that point, or to speak against or in support of preliminary approval, will be permitted to do so." ECF No. 1668 at 2 (emphasis added). The district court also denied the formation of an Objectors' Committee and the grant of any discovery, basing that decision, in part, on the level of expertise of the objectors. "I see no need to form an Objectors' Committee or to arrange for the discovery requested. The parties seeking that relief have a great deal of sophistication and familiarity with both the terms of the Settlement Agreement and the course of the negotiations that culminated in that agreement. I also see no need to establish procedures for absent class member – who will have ample rights to be heard before any final approval is even considered – to intervene so that they can be heard in connection with the pending application for preliminary approval. *Id.* at 2-3.

On November 5, 2012, the R&M Objectors filed an Amended Objection to Preliminary Approval of Proposed Settlement, which added twenty-two *additional* small retailers and merchant objectors, for a total of some sixty. ECF No. 1701. The R&M Objectors also filed a Memorandum in Opposition to Preliminary Approval of Definitive Class Action Settlement Agreement. ECF No. 1703. In this Memorandum, the R&M Objectors addressed additional points raised by the district court in its October 24, 2012, order that the threshold requirements for preliminary approval were not met. These points addressed the need to *increase* the value of the settlement and provide for *reevaluation* of the surcharge because the proposed surcharge conflicts with laws of several states, including most of the retailers and merchants objectors, an unsatisfactory and illusory remedy for many of them. ECF No. 1702, at 2 and 7. Importantly, this was early in the settlement process

(prior to notice), so that adjustments to the terms of the settlement document could have been adjusted to meet the merit in the arguments, which affected relief to retailers and merchants. In its memorandum, the R&M Objectors again requested discovery documents so that actual facts and figures provided in the documents could be used to assess the fairness and reasonableness of the proposed agreement. ECF No. 1703, at 4. Notably, this briefing pointed out that early access to discovery would be more valuable to assess the proposed agreement with the R&M Observers' financial expert. These requests included documents that were to provide access to necessary financial records to evaluate the damages component; access to necessary financial documents for cost analysis; and analysis of documents for determining change in marketplace as a result of injunctive relief.

On November 9, 2012, counsel for the R&M Objectors appeared at the Preliminary Approval Hearing. In attendance for the hearing, Phillip Duncan, Esq., of Arkansas from the firm of Duncan Firm, P.A., flew to New York and appeared with Jay L. T. Breakstone, Appellate Counsel of Parker Waichman's New York office to present oral argument in support of the R&M Objectors objections to the proposed settlement agreement.

During this time, a financial expert was retained by R&M Objectors for consultation and for potential appearance at future hearings, if discovery was permitted, to examine the underlying discovery documents to evaluate fairness of the settlement agreement. The R&M Objectors continued developing requests to submit to the district court and further research and refinement of argument for objection to the proposed agreement at the Final Approval Hearing.

The district court granted preliminary approval and notice was sent to class members. The surcharge provision was to become effective January 27, 2013. The R&M Objectors evaluated the entirety of the proposed agreement and notification to retailers and merchants. The R&M

Objectors found problems with the confusing and binding nature of the notice, were not sure of the opt-out provision, were opposed to full release or immunity, and continued to have real problems with the surcharge provisions. During this time, ten states had laws affecting surcharges imposed for credit card payments and several others were proposing similar laws prohibiting surcharges in states where the R&M Objectors were located. These laws were being changed while notice was being sent. Retailers and merchants were confused and the surcharge provision was illusory relief for many of the affected retailers and merchants from those states represented by Retailers and Merchants.

Consequently, on May 15, 2013, the R&M Objectors filed their Objection to Final Approval with some sixty objecting retailers and merchants. ECF No. 2281. The R&M Objectors also provided additional objectors after filing, on May 24, 2013, and filed a Notice of Intent to Appear at Final Approval Hearing. ECF No. 2282. R&M worked on Additional Notice of R&M Conditional Opt-Outs and filed a precautionary Conditional Notice of Opt-Out Form due to the confusing nature of the notice provided by the proposed settlement agreement involving the substantive rights of class members and the binding effect of a judgment. ECF No. 2618 at 1.

The district court then assigned evaluation of the proposed settlement agreement to Professor Alan O'Neil Sykes, appointing him to assist the court in reviewing the agreement for fairness, adequacy and reasonableness. To assist Professor Sykes, the R&M Objectors sent a seven page letter to Professor Sykes outlining their concerns with the agreement and including Objector's Recommended Specific Materials from the Existing Case Documents for Professor Sykes' review. ECF No. 5948. These discovery requests encompassed twenty-one numerated paragraphs seeking documents to evaluate the various terms of the proposed settlement agreement, including factors involving valuing the settlement agreement where there is information on the availability of the

surcharge to class members in some states, but not others, "which prohibit a surcharge," "loss of settlement value to absent class members in states where the surcharge is prohibited," "the actual usage and realized value of the surcharge" provision, "economic value of the settlement," impact of the release on individuals and entities. ECF 5948 at 5-6. This discovery presented to the appointed magistrate was consistent with earlier efforts by the R&M Objectors to obtain discovery by requests in filings with the district court and in their letter to the district court which had requested the appointment of a discovery committee.

On November 12, 2013, counsel for the R&M Objectors (Tom Thrash of the Thrash Law Firm, P.A., Jay L. T. Breakstone of Parker Waichman, and Jim Bartolomei of the Duncan Firm) appeared and argued at the Final Fairness Hearing. The court approved the proposed settlement agreement over the R&M Objectors' arguments and request for discovery information, which was denied.

On January 10, 2014, now sixty-five R&M Objectors filed a Notice of Appeal seeking review of the district court's approval of the proposed settlement agreement to the Second Circuit Court of Appeals. The R&M Objectors then cooperated with and worked together with counsel for Plaintiff Objectors on the appellate briefing to the Second Circuit. The R&M Objectors provided supplemental arguments for the due process arguments contained in the Plaintiff Objectors' brief and drafted a separate R&M Objectors' brief with separate arguments on conflicts with absent class members. This briefing portion contained arguments on "Notice" and "Worthless Surcharge" which were not developed in Plaintiff Objectors' brief. The R&M Objector's version of the notice argument, that the class members deserved a new notice, because the opt-out right was illusory, does not appear in Plaintiff Objectors' brief; the "Worthless Surcharge" claim appears in a few sentences within Plaintiff Objectors' brief, but it occupies more than ten pages

and is a major argument in the R&M Objectors' brief. Additionally, while the Plaintiff Objectors made this claim abstractly, the R&M Objectors chose to describe the plight of two representative clients (105 Degrees and Whole Hog), who stood to lose from this specific aspect of the settlement.

During this time period and during November 2014, the R&M Objectors participated and worked with Plaintiff Objectors' appellate counsel on appellate reply briefs for the Second Circuit. Once again, the R&M Objectors filed their own, separate reply brief emphasizing points made by the R&M Objectors. Finally, in an agreed upon strategic move, the R&M Objectors yielded their argument time to the Goldstein firm for the benefit of the entire argument of R&M Objectors and Plaintiff-Objectors before the Second Circuit. Letter of Jay L. T. Breakstone, Esq., to Catherine O'Hagan Wolfe, dated July 17, 2015, Case 12-4671, ECF No. 1414.