

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re PAYMENT CARD INTERCHANGE	:	MDL No. 1720(JG)(JO)
FEE AND MERCHANT DISCOUNT	:	
ANTITRUST LITIGATION	:	Civil No. 05-5075(JG)(JO)
	:	
	:	DECLARATION OF ABRAHAM HARARI
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
	:	

I, ABRAHAM HARARI, of full age, do hereby declare and say:

1. My name is Abraham Harari. I am the President, owner and co-founder of Capital Audio Electronics, Inc. (“Capital Audio” or the “Store”).

2. Capital Audio is a small, family-run business that sells consumer electronics (televisions, stereo equipment, video cameras, etc.). Its “retail division” is a single storefront on Duane Street in lower Manhattan. A few doors down the block on Duane Street is the Store’s “corporate division.” From this location, Capital Audio runs a separate wholesale business that sells consumer electronics to retailers in the New York metropolitan area.

3. Capital Audio was proposed as a Class Representative in the First Consolidated Amended Class Action Complaint filed on April 24, 2006 (Dkt. No. 317), and was appointed by the Court to serve as a representative of the Settlement Classes on November 27, 2012 (Dkt. No. 1745). Capital Audio has served continuously as a representative of the Classes through the seven-plus years of extensive litigation.

4. Throughout the litigation, I along with several of my employees have been in frequent contact with our attorneys, specifically our general counsel Bruce Levinson, and Labaton Sucharow LLP (“Labaton Sucharow”), one of the firms representing the Classes, in order to monitor the case, provide input concerning strategy decisions, comply with discovery obligations, address issues related to the proposed settlement, and fulfill various other duties on behalf of the Classes.

5. I am familiar with the terms of the settlement in MDL 1720 and, through consultation with counsel, am familiar with the risks of proceeding through trial and appeals. I believe that the settlement provides an excellent resolution for the Classes in light of the risks of continued litigation. As a small merchant, I am only too cognizant of the high costs of interchange fees, and how high payment card acceptance costs can cut into profits. I believe that the reforms achieved through the

settlement, especially the requirement that Visa and MasterCard modify their rules prohibiting merchants from surcharging credit card transactions, will help lower interchange fees. Even though my business cannot at this time take advantage of this change (because of state law), the surcharge tool is one that should be available to merchants, and not prohibited by the credit card networks. It is beneficial not just for merchants that want to recover their costs of acceptance, but also to aid in steering customers to lower-cost payment methods and brands and putting pressure on Visa and MasterCard to lower rates. I understand that Visa and MasterCard set interchange fees on a nationwide basis, so surcharging in other states should impact my interchange costs.

6. In the beginning of 2006, after consulting with Capital Audio's regular outside counsel Bruce Levinson and attorneys at Labaton Sucharow, I made the decision that Capital Audio should participate in this litigation as a Class Representative. I made that decision because, as a small retail business, I understood the negative impact that payment-card interchange fees have on the profits of Capital Audio.

7. Capital Audio actively participated in this action as a Class Representative. This was an enormous and time-consuming undertaking for us given our small size and very limited resources.

8. Notwithstanding the modest size of the Store – Capital Audio has approximately 20 employees – we undertook significant and time-consuming efforts to respond to Defendants' multiple, complex and voluminous discovery requests. Capital Audio sacrificed weeks of high-level employee time searching for and copying thousands of pages of documents, both on and off-site, participating in interviews with counsel or otherwise responding to their many questions, responding to Defendants' written interrogatories and requests for admission, and preparing for, participating in and reviewing the transcripts of the depositions of Capital Audio's executive personnel. The sacrifice to Capital Audio's ongoing business was substantial and was exacerbated by the fact that I

had to search for and oversee the search for relevant documents during the Store's business hours. I could not simply search for relevant documents during the weekends because, as an observant Jew, I close the Store two hours before sunset on Fridays, observe the Sabbath on Saturdays, and frequently work on Sundays. Many of my contacts with our counsel took place in the evening since during the day I needed to be attending to Capital Audio's business.

9. During the course of this litigation, Capital Audio produced over 5,000 pages of business records and other documents. Notwithstanding the fact that the Store produced voluminous information related to its retail business, Capital Audio was also required to spend many hours searching for and producing documents related to its wholesale business, despite the fact that payment card sales represent barely one percent of the Store's overall wholesale transactions.

10. Almost none of Capital Audio's records were in electronic form, meaning that employees from the Store had to physically locate and rummage through massive quantities of paperwork. As a small business, we do not have a file clerk or records department. Complying with discovery demands meant that I, along with several of my employees, had to crawl around the basement of our premises looking in box after box for relevant documents. In light of the physical volume of material to be searched for, and ultimately produced in this litigation, several employees in our shipping and receiving department dedicated significant time to this undertaking. While doing so, they were unable to perform their usual duties for the Store.

11. Capital Audio's executive employees also expended significant time and effort in connection with deposition discovery. Over the course of three separate days, Capital Audio produced three witnesses, including myself, for depositions. This amounted to approximately 15 percent of the Store's workforce. Each of these depositions generally required Capital Audio's witness to devote the better part of a second day in preparation for his or her deposition. As President

and owner of Capital Audio, I was forced to take two days off from work in order to prepare for and participate in my deposition. As a small, family-run business, this amounted to a significant, time-consuming and costly undertaking.

12. In addition, pursuant to its duties as Class Representative, Capital Audio incurred \$3,600 in out-of-pocket expenses in furtherance of the litigation on behalf of the Class. Defendants' document requests called for, among other things, production of Capital Audio's detailed financial and tax records. A portion of these records sought by Defendants went back many years and were maintained solely by the Store's Certified Public Accountant, Jeffrey Zell. I enlisted Mr. Zell's help to spend time searching for and collecting most of these documents at a cost to Capital Audio of \$3,600. Accordingly, Capital Audio is seeking reimbursement in the amount of \$3,600 for these out-of-pocket expenses. Attached as Exhibit A is a true and correct copy of an invoice documenting the out-of-pocket expenses incurred by Capital Audio in connection with services provided by Mr. Zell and his firm related to Capital Audio's search and collection of financial documents in this action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 3rd day of April, 2013, at New York,
New York.

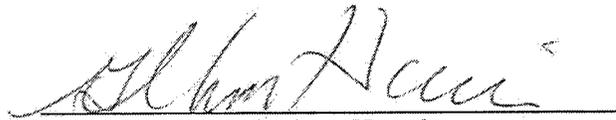

Abraham Harari

EXHIBIT A

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July 16, 2009

Invoice submitted to:

Capital Audio Electronics, Inc.
120 Duane Street
New York NY 10007

INVOICE

Invoice # 20177

For professional tax and accounting services
rendered in connection with the following:

Credit card litigation

Amount
\$3,600.00

NET DUE UPON RECEIPT

Payment Information

Invoice # _____ Amount \$ _____ Cash _____ Credit Card _____

Visa _____ Mastercard _____ AmEx _____

Credit Card # _____ Security Code # _____ Exp. Date _____

Signature _____