EXHIBIT 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re PAYMENT CARD INTERCHANGE FEE AND MERCHANT DISCOUNT ANTITRUST LITIGATION	MDL No. 1720(JG)(JO) Civil No. 05-5075(JG)(JO)
This Document Relates To: ALL ACTIONS.	DECLARATION OF CHARLES B. RENFREW AS TO THE RISKS OF LITIGATION

I, CHARLES B. RENFREW, declare as follows:

1. I have been asked by counsel for Class Plaintiffs 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 counsel for Class Plaintiffs, which are listed on Exhibit A attached hereto. I have also discussed this matter with counsel for Class Plaintiffs. Based upon my analysis, if called as a witness, I could and would competently testify as follows.

2. I am an attorney duly licensed to practice before all of the courts in the State of California. I have been a member of the State Bar of California since 1956.

3. I have been engaged in the practice of law for over fifty-seven (57) years.

4. Following graduation from Princeton University and service as a forward observer in the United States Army in Korea, I went to the University of Michigan Law School. At law school I was Order of the Coif, on the Law Review and the finalist in the moot court competition.

5. I started practice in San Francisco, California, with Pillsbury, Madison & Sutro, a large corporate law firm, where I practiced principally antitrust law. In 1972, I went on the federal bench as a United States District Court Judge for the Northern District of California.

6. While serving as a United States District Court Judge, I taught a variety of subjects at the Federal Judicial Center in Washington, D.C., to newly-appointed federal judges. During that time, I also taught trial advocacy and other courses at Boalt Hall School of Law of the University of California at Berkeley. In 1980, I resigned from the Court to become Deputy Attorney General of the United States.

7. Following that service, in 1981 I returned to Pillsbury, Madison & Sutro where 1 stayed for over one year.

8. I next became a Director and Chief Legal Officer of Chevron, a large international oil company. Retiring from Chevron, I became a partner at LeBoeuf, Lamb, Greene & McRae where I practiced for four years.

9. Presently I am a sole practitioner. My practice is and has been for the last twenty (20) years almost exclusively in the field of alternative dispute resolution ("ADR"), particularly arbitrations and mediations. I have also done a number of corporate internal investigations.

10. I have been active in the American Bar Association. I served as Vice-Chairman of the Antitrust Section, as a member of the Standing Committee on Federal Judiciary (which reviewed perspective judicial nominees) and the Executive Committee of the Central and Eastern European Law Initiative ("CEELI").

11. I am a Fellow and a former president of the American College of Trial Lawyers, a life member of the American Bar Foundation and the American Law Institute, a former member of the London Court of International Arbitration and serve as a neutral on the national panel of distinguished neutrals of the International Institute for Conflict Prevention and Resolution, a leading ADR organization. I was also the Chairman of the Board of Directors of that organization for many years. A more detailed curriculum vitae is attached as Exhibit B hereto.

12. This Court, in its exercise of its fiduciary duty to the class herein, and in determining whether the proposed settlement is fair, reasonable and adequate must first look to see if the settlement was the result of collusion. Were the interests of the class protected, or was the settlement for the sole benefit of class representatives and counsel?

ABSENCE OF COLLUSION

13. An early settlement may be the result of collusion, but here there was no early settlement. The settlement was only reached after over seven (7) years of exhaustive and protracted litigation.

14. The case was near trial. Some 50 million documents were produced and reviewed. Over four hundred (400) depositions were taken. Scores of expert opinions were exchanged and the experts have been deposed. The case was complex and the litigation likely to extend for years as Class certification and perhaps a host of other issues would be appealed to the Second Circuit.

15. The counsel on each side are experienced, high-regarded and leaders at the Bar. There was no rush to settlement here. The settlement was reached in large part based upon the settlement efforts of two of the Nation's outstanding settlement mediators, Professor Eric Green and Edward A. Infante (Ret.). Both agree the 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.

16. Finally, settlement was ultimately reached with the active participation of the Court and the Magistrate Judge.

17. While the size of the settlement itself, the largest antitrust settlement ever obtained with a cash value reaching up to $7.25 billion, is but one of the determinative factors in deciding whether the settlement is fair, reasonable and adequate, the fact that these complex issues were fully litigated and then this settlement reached speaks volumes about its foundation. And, in addition to the monetary recovery, the Class Plaintiffs achieved significant modifications to the existing rules, which according to Plaintiffs' expert Frankel are estimated to be worth at a minimum $26+ billion.

18. Aside from the mediators' conclusions, and the Court's participation which assured the absence of collusion, there is no evidence in this case which even suggests that there may have been collusion between the parties and counsel. All the evidence is to the contrary – there was no collusion.

PENDING MOTIONS

19. In this case, there are a number of motions pending including dispositive motions. On July 17, 2012, the Court entered the following order:

> In light of the Memorandum of Understanding pursuant to which the parties anticipate settling the cases in this multi-district litigation, *see* Docket Entry 1588, all pending motions for relief (including motions concerning discovery, class certification, dismissal, summary judgment and the preclusion of expert testimony) are deemed withdrawn without prejudice to reinstatement if the settlement is not consummated.

20. These pending motions represent a substantial risk of litigation as set forth in greater detail below had these cases not been settled. The extent of these risks support the settlement reached here. The reason for looking at the risks of litigation was set forth by Judge Friendly in *Weinberg v. Kendrick*, 698 F.2d 61, 73 (2d. Cir. 1982):

> The central question raised by the proposed settlement of a class action is whether the compromise is fair, reasonable and adequate.
>
> * * *
>
> The primary concern is with the substantive terms of the settlement: "Basic to this . . . is the need to compare the terms of the compromise with the likely rewards of litigation."

We turn now to the unusual and numerous risks, that the parties faced were the settlement not approved.

21. 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.

22. This case could have been won or lost in any number of legal technicalities by the jury's interpretation of disputed facts. The potential financial impact of such rulings is tremendous. If Class Plaintiffs lose, they fail to achieve any of their litigation objectives. Were defendants to lose, the potential damages could be astronomical, *i.e.*, billions upon billions.

INTERCHANGE FEE LITIGATION

23. The first case dealing with the interchange fee was *Nat'l Bancard Corp., (NaBanco) v. VISA U.S.A., Inc*., 596 F. Supp. 1231, 1241 (S.D. Fla. 1984) *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.

24. The trial Court found that the VISA establishment of interchange rates should be analyzed under the Rule of Reason. It was an agreement necessary for VISA to market its products and to be an effective competitor, noting that VISA still competed for cardholders and merchants which are pro-competitive. The Court concluded that: the principal purpose of these agreements with member banks does not appear to improperly fix prices as now NaBanco asserts, but rather, to provide a service which each member bank could not alone provide, namely, universal payment service which assures that a VISA card will be honored by any merchant regardless of which bank issued it so long as the merchant displays the VISA logo on its door.

25. On appeal, the 11th 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." *Nat'l Bancard Corp., (NaBanco)*, 596 F. Supp. at 1257.

26. 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 competitive exercise of the product. The establishment of the interchange rates are the most, if not the only, realistic alternative.

27. The use and volume of payment cards has greatly expanded since that decision and the interchange fees have been under attack throughout the world, resulting in them being regulated in some countries and even forbidden in other parts of the world. Nevertheless this is the only decision by a Court of Appeals on this issue and it must be addressed and dealt with. Were this Court to follow that decision, Class Plaintiffs may 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.

28. Over ten years ago, a Class Action was brought by a class very similar to Class Plaintiffs. That class sued VISA and MasterCard, alleging that the networks and their member banks had fixed interchange rates. 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).

29. This Court 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).

30. The settlement included a payment over a ten year period of more than $3 billion in cash, a delinking of debit and credit card acceptance over a period of time. Debit card acceptances,

were established substantially below the previous link rates. 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. In addition, in *VISA Check*, Plaintiffs released VISA and MasterCard and the member banks by a release that may have an effect on the claims in the present cases. It is discussed at paragraphs 58-66 in this Declaration.

31. In 1998, the Department of Justice 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 and that secondarily the two networks exclusivity rule prevented member banks from issuing American Express and Discover Cards. Both constituted agreements in violation of Section 1. *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) ("*Visa Check*"). The Court found that the issuance duality did not violate Section 1 but 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 for an issuing bank, that competition has been seriously damaged by the defendants' exclusionary rule. The elimination of the network's exclusivity rules led to increased competition among the four payment card network service providers for the business of issuers and led, among other things, to the increase in the development issuance of premium cards that each offered increased awards to the card holders.

DAUBERT MOTIONS

32. There are a number of unresolved *Daubert* motions pending the resolution of proposed settlement. The outcome of these *Daubert* motions could have a greater impact on these cases than in ordinary litigation.

33. Defendants have moved to exclude the testimony of Class Plaintiffs class certification expert and to disqualify the Class Plaintiffs' principal economic experts and the Class Plaintiffs have moved to exclude defendants' experts. All of the experts are highly qualified and it is not possible at this time to state how the 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. One is particularly worth noting. It points to the risk that each party faces depending upon the admissibility of an expert opinion. Defendants have moved to exclude as inadmissible, the opinion of plaintiffs' economic expert, Dr. Alan S. Frankel regarding: (1) injury and damages attributed to the challenged conduct of defendants; and (2) the adverse competitive effects. Dr. Frankel's testimony is highly supportive of Class Plaintiffs' theory and is some of the strongest evidence that they have as to essential elements of their antitrust claims.

34. If this testimony is excluded there may be little, if any, evidence to establish 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 anti-competitive effect in any marked degree to Class Plaintiffs. This, of course, poses a significant risk to Class Plaintiffs. Likewise the risk of defendants is substantial in that damages, if liability is found, could range in the billions. The risk of litigation posed by that ruling is significant, and the uncertainty of the outcome affects each party.

CLASS CERTIFICATION

35. Two recent Supreme Court decisions highlight the difficulties in obtaining Class certification in cases of this magnitude. *See Wal-Mart Stores, Inc. v. Dukes*, ___ U.S. ___, 131 S. Ct. 2541 (2011) (Rule 23 does not set forth a mere pleading standard but instead requires the proponent to prove that the Rule's requirements are met); *Comcast Corp. v. Behrend*, No. 11-864, ___ U.S. ___, 2013 U.S. Dist. LEXIS 2544 (Mar. 27, 2013) (holding that an anti-trust class was improperly certified where damage model inconsistent with liability case).

36. Failure here by Class Plaintiffs to obtain certification would seriously undermine their ability to receive any recovery in this case. At the time the proposed settlement was reached there had not been a ruling as to the certification of the Class. Nevertheless there are risks for class plaintiffs in the absence of class certification because of some unusual circumstances in these cases.

37. A ruling on Class Certification may determine the outcome of the case if the settlement is not approved. If there is no class, there may well be no recovery.

APPLICATION OF *ILLINOIS BRICK*

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

39. Defendants had argued in this case that the only damages claimed by 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 it on to the merchants. Thus, defendants assert that Class Plaintiffs do not directly pay interchange fees. The price the merchants

pay for card acceptance is the merchant's discount fee. Thus, according to the defendants, Class Plaintiffs' damage claims are based upon Class Plaintiffs' status as an indirect payer of interchange fees.

40. Class Plaintiffs responded to this claim by defendants by asserting that in analyzing anti-trust violations, one does not look to the form of the transaction, one looks at the substance, the results or consequences.

41. 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, Class Plaintiffs argued, there can be no *Illinois Brick* application.

42. Finally, 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.

43. 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 a damage claim 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" 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.

44. In *Kendall v. Visa USA*, 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.

45. The District Court in *In re ATM Fee Antitrust Litig.*, 686 F.3d 741 (9th Cir. 2012), 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.

46. 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.

47. Class Plaintiffs also allege that an exception to *Illinois Brick* applies here – where the direct purchaser is owned or controlled by the price fixer.

48. Were *Illinois Brick* to apply, it would reduce if not eliminate any recovery for the Class Plaintiffs. If it does not apply then the defendants lose a major defense and face significant damages. Again, great pressures on each side to come to a settlement.

STRUCTURAL CHANGES IN VISA AND MASTERCARD

49. At the time of their establishment, VISA and MasterCard were organized as joint ventures, owned and operated by the member banks. They each served their member banks' collective financial interests.

50. It was this structure that the Court of Appeals for Second Circuit in *United States v. VISA U.S.A.*, 344 F.3d 229 (2d Cir. 2003), found to be unlawful as a "consortium of competitors." Shortly after this decision, Class Plaintiffs filed this Class Action. This led defendants to abandon their joint venture structures to avoid "ruinous" antitrust liability. In mid-2006 MasterCard entered into an initial public offering ("IPO") in which control was taken from the member banks and given to a Board of Directors not dominated by the member banks. VISA entered into an initial public offering ("IPO") in 2008.

51. Class Plaintiffs filed a First Amended Supplemental Class Action Complaint alleging that the MasterCard IPO was an unlawful "acquisition" under §7 of the Clayton Act and an unlawful "contract" under §1 of the Sherman Act. They also filed a Second Supplemental Class Action Complaint challenging the VISA IPO. Defendants filed motions to dismiss the supplemental complaints. The Court granted the motions and held that the supplemental complaints failed to state a claim. It granted defendants' motion to dismiss but gave leave to Class Plaintiffs to file amendments.

52. This Court, in granting the motion to dismiss, stated that Class Plaintiffs' failed to allege plausible facts to suggest that MasterCard's independent board of directors, with fiduciary

duties to act in MasterCard's best interests, would adopt the alleged restraints to benefit the banks and at MasterCard's expense, and that as a result Class Plaintiffs did not effectively challenge that MasterCard's IPO threatened to lessen substantially competition or to cause any actual anticompetitive effects.

53. Class Plaintiffs argued that the VISA's IPO lessened competition by: (i) creating a new "single entity" with the market power to raise interchange rates with impunity; (ii) erecting "barriers to entry"; and (iii) preserving the banks "'effective control' over VISA." The Court commented that it had rejected Class Plaintiffs' challenge to the MasterCard IPO, Class Plaintiffs asserted that the interchange rates both before and after the IPO were set by VISA's Board of Directors but Class Plaintiffs failed to suggest how the banks could control VISA's Board of Directors. As in the dismissed complaint of MasterCard, Class Plaintiffs alleged no facts to make it plausible that the post IPO VISA would adopt measures to benefit the banks at VISA's expense. Thus, the Court held that Class Plaintiffs have not alleged that VISA's IPO is likely to lessen competition substantially and it too should be dismissed.

54. Class Plaintiffs filed amended supplemental complaints challenging both the MasterCard and VISA IPOs. Defendants moved to dismiss them. The motions were fully briefed and argued and are pending. They may be reinstated dependent upon the outcome of the proposed settlement. Depending upon the ruling, there could be a swing of billions in a possible recovery.

55. In *National ATM Council, Inc. v. Visa, Inc.*, Nos. 11-1803, 11-1831, 11-1882, 2013 U.S. Dist. LEXIS 19306 (D.D.C. Feb. 13, 2013), the court dismissed a complaint because plaintiffs failed to allege that banks controlled VISA and MasterCard post-IPO that were simply vehicles by which the banks exercise a horizontal agreement; demonstrates risk of losing Post-IPO claims.

RELEASE

56. In paragraph 31 of this declaration, I refer to the Court's decision in the *Visa Check* case in which the defendants were given a release from Class Plaintiffs.

57. Defendants assert 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.

58. As part of the settlement of the *Visa Check* case, this Court 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.2d at 514. 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 . . . . " Defendants contend that the present claims of Class Plaintiffs fall into the scope of that release and that they are barred from pursuing their present claims.

59. Defendants argued that the court has already ruled that Class Plaintiffs' claims fall within the scope of the release. It bars 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 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.

60. 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 Class Plaintiffs from pursuing those claims.

61. 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.

62. 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 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.

63. The applicability of the releases to Class Plaintiffs' post-2004 conduct would be devastating and reduce or even eliminate recovery by Class Plaintiffs. Without the application of the earlier releases as argued by the defendants, defendants lose a defense to anti-trust liability.

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

65. In my Declaration, I have not attempted to opine on the merits of the unique issues in this case, nor have I gone into any details with respect to them. They are the subject of hundreds if not thousands of pages of briefing by the parties. That massive effort is not duplicated or even summarized here.

66. These issues are the subject of motions which may be reinstated if the proposed settlement is not consummated. They also raise dispositive issues when the case goes to trial. Discovery as to all of these issues is complete. They have been fully briefed and argued, counsel, the parties, and the Court are fully aware of the strengths and weaknesses of each parties' position with respect to them.

67. The great disparity on the issues of liability and the extent of damages based upon the potential rulings on pending motions and the uncertainty as to the outcome of issues that need to be resolved are factors which drove the parties to seek a global settlement here.

68. These cases are highly unusual. Rulings on the pending motions and some of the unique features of some of these cases could result in complete vindication for either side. The defendants may completely prevail or face astronomical exposure. The Class Plaintiffs may lose their cases or obtain an unprecedented recovery. There is little between the two extremes. The cumulative effect of all of the uncertain outcomes on such major issues puts significant pressure on each of the parties to seek settlement and not risk the real possibility of adverse judgments if the cases went to trial.

69. All settlements are reached in the shadow of perspective litigation. That shadow here was dark, large and foreboding for both sides.

I declare under penalty of perjury, under the law of the United States of America, that the foregoing is true and correct and that this declaration was executed on the 4th day of April, 2013, in San Francisco, California.

Charles B. Renfrew

CHARLES B. RENFREW

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EXHIBIT A

***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation,* Case No. 1:05-MD-01720(JG)(JO) (E.D.N.Y.)**

EXHIBIT A
MATERIAL RELIED ON

1.	Class Settlement Preliminary Approval Order.
2.	Second Circuit Order Denying Expedited Briefing. Further ordering that briefing for appeal is deferred until after USDC for the EDNY has entered Final Approval and Final Judgment.
3.	Transcript of Proceedings regarding Motions for Summary Judgment, held November 2, 2011.
4.	Transcript of Proceedings regarding Daubert Motions, held November 2, 2011.
5.	Transcript of Proceedings regarding Preliminary Approval of Proposed Settlement Agreement, held November 9, 2012.
6.	Objecting Plaintiffs' Request to Stay the Class Settlement Preliminary Approval Order.
7.	Class Plaintiffs' Opposition to Objecting Plaintiffs' Request to Stay the Class Settlement Preliminary Approval Order.
8.	Defendants' Opposition to Objecting Plaintiffs' Request to Stay the Class Settlement Preliminary Approval Order.
9.	Individual Plaintiffs' Opposition to Objecting Plaintiffs' Request to Stay the Class Settlement Preliminary Approval Order.
10.	Objecting Plaintiffs' Reply to Request to Stay the Class Settlement Preliminary Approval Order.
11.	Motion to Expedite Briefing, Argument and Decision on Appeal.
12.	Class Plaintiffs' Opposition to Motion to Expedite Appeal.
13.	Defendants' Response to Motion to Expedite Briefing, Argument and Decision On Appeal.
14.	Class Plaintiffs-Appellees' Motion to Defer All Briefing in Interlocutory Appeals Until After Final Approval Order.

15.	Individual Plaintiffs' Joinder in Class Plaintiffs' Motion to Defer All Briefing in Interlocutory Appeals Until After Final Approval Order.
16.	Notice of Defendants' Motion to Exclude the Opinions of Victor Fleischer.
17.	Memorandum of Law in Support of Defendants' Motion to Exclude the Opinions of Victor Fleischer.
18.	Class Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Exclude the Opinions of Victor Fleischer.
19.	Declaration of David W. Mitchell in Support of Class Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Exclude the Opinions of Victor Fleischer.
20.	Reply Memorandum of Law in Support of Defendants' Motion to Exclude the Opinions of Victor Fleischer.
21.	Defendants' Notice of Motion to Exclude Certain Opinions of Class Plaintiffs' Economic Expert Dr. Alan S. Frankel.
22.	Defendants' Memorandum of Law in Support of the Motion to Exclude Certain Opinions of Class Plaintiffs' Economic Expert Dr. Alan S. Frankel.
23.	Class Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Exclude Certain Opinions of Class Plaintiffs' Economic Expert Dr. Alan S. Frankel.
24.	Defendants' Reply Memorandum of Law in Support of Their Motion to Exclude Certain Opinions of Class Plaintiffs' Economic Expert Dr. Alan S. Frankel.
25.	Notice of Visa and MasterCard Defendants' Motion to Exclude the Opinion Of Dr. Joseph Stiglitz.
26.	Memorandum of Law In Support of the Visa and MasterCard Defendants' Motion to Exclude the Opinion of Dr. Joseph Stiglitz.
27.	Individual Plaintiffs' Response to the Visa and MasterCard Defendants' Motion to Exclude the Opinion of Dr. Joseph Stiglitz.
28.	Reply Memorandum of Law in Support of the Visa and MasterCard Defendants' Motion to Exclude the Opinion of Dr. Joseph Stiglitz.
29.	Notice of the Network Defendants' Motion to Exclude the Damages Opinion of Dr. Christopher A. Vellturo.

30.	Memorandum of Law in Support of the Network Defendants' Motion to Exclude the Damages Opinion of Dr. Christopher A. Vellturo.
31.	Individual Plaintiffs' Response to the Network Defendants' Motion to Exclude the Damages Opinion of Dr. Christopher A. Vellturo.
32.	Reply Memorandum of Law in Support of the Network Defendants' Motion to Exclude the Damages Opinions of Dr. Christopher A. Vellturo.
33.	Letter from K. Craig Wildfang to Hon. Judge Gleeson and Hon. Magistrate Judge Orenstein re Class Plaintiffs' Status Report.
34.	Definitive Class Action Settlement Agreement.
35.	Letter from Bonny E. Sweeney to Jeffrey I. Shinder.
36.	Order (Not for Publication).
37.	Retailers & Merchants' Objection to Proposed Class Settlement Agreement.
38.	Fourth Amended Protective Order.
39.	Objecting Plaintiffs' Opposition to Class Plaintiffs' Motion for Preliminary Approval of Proposed Class Settlement.
40.	Declaration of Jeffrey I. Shinder in Support of Opposition to Class Plaintiffs' Motion for Class Settlement Preliminary Approval.
41.	The Home Depot's Objection to Preliminary Approval of Proposed Class Settlement.
42.	Objections of Target Corp., to Preliminary Approval of the Definitive Settlement Agreement.
43.	Objections of American Express Co., American Express Travel Related Service Co., Travel Impressions, Ltd., and American Express Publishing Corp. to Preliminary Approval of the Class Settlement.
44.	Amicus Brief from ATMIA Challenging Preliminary Approval of Class Settlement.
45.	American Eagle Outfitters, Inc.'s Objection to the Preliminary Approval of the Definitive Settlement Agreement.

46.	Objections of First Data Corporation, First Data Merchant Services, TASQ Technology, Inc., TRS Recovery Services Inc., First Data Government Solutions, and Telecheck Services Inc. to Plaintiffs' Motion for Preliminary Approval.

EXHIBIT B

CHARLES B. RENFREW
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Employment:

Law Offices of Charles B. Renfrew

Partner in LeBoeuf, Lamb, Greene & MacRae, L.L.P., San Francisco, from November 1, 1993 through December 31, 1997.

Standard Oil Company of California from January 1, 1983 as Vice-President, Legal Affairs. Elected Director on March 1, 1984. Corporate name changed to Chevron Corporation on July 1, 1984, retired from Chevron on October 31, 1993.

Pillsbury, Madison & Sutro, San Francisco, from March 1, 1981 to December 31, 1982.

Deputy Attorney General of the United States, Washington, D.C., February 28, 1980 to February 28, 1981.

United States District Judge for the Northern District of California, San Francisco, February 1 1972 to February 27, 1980.

Pillsbury, Madison & Sutro, San Francisco, from July 1956 to January 1972.

Instructor (part-time) at Boalt Hall School of Law, University of California, Berkeley, 1977, 1978-79, 1979-80.

Professional:

Member of Bar Association of San Francisco
Member of State Bar of California since 1956
Member of American Bar Association since 1965
Member of Committee on Corporate Law Departments, 1985-1991
Member of Resource Development Council 1983-1988
Vice-Chairman of Antitrust Section, 1982-83
Council Member of Antitrust Section, 1978-82
Member of American Law Institute, 1978
Member of American College of Trial Lawyers, 1981
Regent of American College of Trial Lawyers, 1990
Treasurer, American College of Trial Lawyers, 1993
President, American College of Trial Lawyers, 1995-1996
Member of American Judicature Society, 1983
Fellow of American Bar Foundation, 1983
Vice Chairman, California Blue Ribbon Commission on Jury Reform, 1996
Member of Association of General Counsel, 1985
Research Fellow of the Southwestern Legal Foundation, 1983; Trustee, 1990
Member of Advisory Board of International and Comparative Law Center, 1983; Chairman, 1990-1993

EXHIBIT B

Professional:

Member of San Francisco Lawyers Committee for Urban Affairs (San Francisco Branch of the National Committee for Civil Rights under Law) 1983; Co-Chairman, 1971-72
Member, Extraordinary Challenge Committee under United States-Canada Free Trade, 1988
Member of National Judicial Panel of Center for Public Resources, 1981; Director 1988; Chairman, Executive Committee, 1989-1994; Chairman, Board of Directors, 1995
Head of United States Delegation to Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Caracas, Venezuela, 1980
Member of Council on the Role of Courts, U.S. Department of Justice, 1978-83
Chairman of Special Committee to Study the Problems of Discovery, Federal Judicial Center, 1978-79
Member of Special Committee to Propose Standards for Admission to Practice in the Federal Courts, United States Judicial Conference, 1976-79
Recipient, American Jewish Committee Learned Hand Award, July 1996
Former Member, American Bar Association Standing Committee on the Federal Judiciary, 1997

Publications:

Negotiation and Judicial Scrutiny of Settlement In Civil and Criminal Antitrust Cases, 57 Chicago Bar Record 130-143 (Nov.-Dec. 1975) 70 F.R.D. 495-507

Sentence Review by the Trial Court: A Proposal to Amend Rule 35, 51 Indiana Law Journal 355-366 (Winter 1976)

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Affirmative Action: A Plea for a Rectification Principle, 9 Southwestern University Law Review 597-611 (1977)

Discovery Sanctions: A Judicial Perspective, 67 California Law Review 264-283 (March 1979)

Query: Did the Devitr Committee Find Problems Worthy of Its Solutions? 64 Judicature 58-59, 100 (August 1980)

Affiliations:

Ninth Judicial Circuit Historical Society, Board of Directors, 1987
Claremont university, Board of Fellows, 1986
Historical Society of United States District Court for the Northern District of California, Board of Directors, 1986
London Court of International Arbitration, 1990
Former Member of the Court, 1993
Grace Cathedral, Board of Trustees, 1986-1989
National Judicial College, Board of Directors, 1985-1991
National Crime Prevention Council, Board of Directors, 1982-1990