

# **EXHIBIT 6**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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In re PAYMENT CARD INTERCHANGE : MDL No. 1720(JG)(JO)  
FEE AND MERCHANT DISCOUNT :  
ANTITRUST LITIGATION : Civil No. 05-5075(JG)(JO)  
\_\_\_\_\_ :  
: AUGUST 16, 2013 REPORT OF MIKE  
This Document Relates To: : McCORMACK  
: :  
ALL ACTIONS. : :  
\_\_\_\_\_ :  
X

**I. Summary of Qualifications**

1. I previously filed two reports in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* (MDL 1720): the first on July 2, 2009 and the second on June 22, 2010. I testified in a deposition in this matter on August 25, 2010. My *curriculum vitae* is attached at Schedule A to this document. I have acted and been qualified as a payment card industry expert in other litigation and official government proceedings in the United States, Canada and New Zealand. A list of previous experience as a testifying and consulting expert is attached as Schedule B to this document.

**II. Assignment**

2. I was asked by class counsel to review the report filed regarding the proposed class settlement in this matter by Stephen C. Mott (“Mott Report”).<sup>1</sup> Class counsel asked me to consider Mr. Mott’s assertions, characterizations, and opinions about payment card transaction industry subjects, and respond to those which I believe Mr. Mott misunderstood, omitted or overlooked information.

**III. Summary of Opinions**

3. Mr. Mott makes assertions throughout his report without citation, reference, or support for his positions and/or underlying calculations. For example, Mr. Mott asserts in his report that because of unspecified Visa and/or MasterCard operating rules changes that took effect in year 2000, merchants accepting Visa and/or MasterCard through the internet incurred billions in additional costs, and issuers received billions more in profit.<sup>2</sup> However, Mr. Mott provides no supporting basis for these statements. Because of the lack of support for statements such as these at various parts of his report, it is difficult to evaluate the accuracy of many of Mr. Mott’s opinions. Nonetheless, I do take issue with certain of Mr. Mott’s factual assertions and predictions about how Visa and MasterCard operating rules and regulations affect, or may affect, competition in the payment card industry.<sup>3</sup> In summary:

4. Mr. Mott asserts that Visa and MasterCard are using their respective U.S. implementation of chip-card technology to require merchants to accept each network’s cards through contactless technology.<sup>4</sup> This is incorrect, neither Visa’s nor MasterCard’s respective operating regulations

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<sup>1</sup> “Report Regarding the Proposed Class Settlement In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation,” (“Mott Report”), Stephen C. Mott, Principal—BetterBuyDesign, May 28, 2013, paras 34 – 43.

<sup>2</sup> See Mott Report, para 38.

<sup>3</sup> I understand from Class Counsel the release provisions within the proposed settlement in the MDL 1720 matter does not release MasterCard or Visa from claims concerning future new conduct, changes to operating regulations or rules, or newly implemented operating regulations or rules.

<sup>4</sup> See Mott Report, paras 36-37, 42-43, and 52.

and rules require merchants to accept cards through contactless technology methods.<sup>5</sup> Mr. Mott's view of Visa and MasterCard also ignores that other general purpose payment card networks including American Express and Discover, and U.S. PIN debit networks such as Pulse and NYCE are also implementing chip-card technology. Payment chip card technology has or is being implemented by major general purpose payment card brands in 80 countries globally, with billions of cardholders and millions of merchants around the world using chip cards for payments.<sup>6</sup>

5. Mr. Mott predicts that Visa's Bank Identification Number (BIN) use rule could be modified to undermine competition.<sup>7</sup> I believe Mr. Mott's concern is overwrought as financial institutions or merchants have the ability to license BIN ranges directly from the American National Standards Institute (ANSI) and design payment card products around them, such as Target's debit REDcard, Shell Oil's debit "Shell Saver Card" and Starbucks' gift cards.<sup>8</sup>

6. Mr. Mott claims Visa could change its operating regulations concerning its contactless card "payWave" technology to block competition at the Issuer level of other contactless payment technologies.<sup>9</sup> The Visa operating regulations Mr. Mott cites do not limit an Issuer's ability to implement payment card contactless services other than Visa's.

7. Mr. Mott states Visa may attempt to use its Operating Regulations concerning the V.me consumer software wallet service or its Issuer Visa Chip Service to limit competition.<sup>10</sup> Mr. Mott failed to disclose that use of either of these services is voluntary, not required.

8. Mr. Mott claims Visa could raise transaction processing fees charged to financial institution customers of its PIN Debit Gateway Service to prohibitively expensive levels, and

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<sup>5</sup> U.S. Merchants who accept Visa and/or MasterCard credit or debit cards by electronically reading magnetic stripe data have not been required under either network's Honor All Cards (HAC) rules to accept cards through contactless technologies. Further, merchants such as Exxon Mobil who have implemented proprietary contactless payment services such as Exxon Mobil Speedpass have not been required under either Visa or MasterCard HAC rules to accept either brands credit or debit cards in contactless modes either.

<sup>6</sup> See Smart Card Alliance web page, "EMV:FAQ", accessed online July 25, 2013 at <http://www.smartcardalliance.org/pages/publications-emv-faq>

<sup>7</sup> See Mott Report, paras 47-48.

<sup>8</sup> See ANSI web site "Issuer Identification Number (IIN)," accessed online July 26, 2013 at [http://www.ansi.org/other\\_services/registration\\_programs/iin\\_registration.aspx?menuid=10#.UFHlaIITEO](http://www.ansi.org/other_services/registration_programs/iin_registration.aspx?menuid=10#.UFHlaIITEO), See Starbucks web page "Starbucks Card", accessed online July 31, 2013 at <https://www.starbucks.com/card> and Target web site, "REDcard", accessed online July 31, 2013 at <http://www.target.com/redcard/manage>, and Shell Oil's web page "Shell Saver Card", accessed online July 31, 2013 at <http://www.shell.us/products-services/shell-cards/shell-saver-card.html>.

<sup>9</sup> See Mott Report, paras 50-52.

<sup>10</sup> See Mott Report, paras 53-54, 57.

limit competition in the debit card market.<sup>11</sup> However, the customers of this optional Visa service are financial institutions, and there are a number of other practical alternatives to Visa's PIN Debit Gateway Service, which I discuss in this report. Examples of alternatives include other network and processor's comparable credit and debit transaction routing gateway services, such as those of Discover, First Data, Fiserve, MasterCard and Vantiv.<sup>12</sup>

#### **IV. General Purpose Payment Card Networks Have Implemented EMV Chip Capable Payment Cards in Many Countries Around the World**

9. Mr. Mott discusses MasterCard and Visa announcements to implement computer chip credit and debit cards in the U.S. ("chip cards") using the "EMV"<sup>13</sup> specifications standards, and related Visa and MasterCard operating regulations and rules.<sup>14</sup> Chip cards are those that contain embedded microprocessors that provide for additional security features and other application capabilities not possible with traditional magnetic stripe cards.<sup>15</sup> The EMV specifications were developed in the mid-1990s by Europay, MasterCard, and Visa to define a set of requirements to ensure interoperability between chip-based payment cards, merchant point of sale terminals, and financial institution Automated Teller Machines (ATMs).<sup>16</sup>

10. EMV is an open-standard set of specifications for financial payment chip cards and POS acceptance devices, and are used by most general purpose credit and debit card networks which choose to implement chip card technology.<sup>17</sup> EMV has existed as an established open-standard payment card technology since 1996, and has been implemented by most general purpose credit

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<sup>11</sup> See Mott Report, paras 55-56.

<sup>12</sup> See MasterCard web site, "MasterCard Payment Gateway", accessed online July 20, 2013, at [http://www.mastercard.com/us/company/en/whatwedo/payment\\_gateway.html](http://www.mastercard.com/us/company/en/whatwedo/payment_gateway.html), Pulse (A Discover company) "Payments-Gateway Services", accessed online July 20, 2013 at <https://www.pulsenetwork.com/payments/gateway-services.html>, First Data web site, "Debit Processing, ATM & Network", accessed online July 20, 2013 at [http://www.firstdata.com/en\\_us/products/financial-institutions/debit-processing-atm-and-network.html](http://www.firstdata.com/en_us/products/financial-institutions/debit-processing-atm-and-network.html), Fiserve web site, "Credit and Debit Solutions", accessed online July 20, 2013 at [http://www.cardsolutions.fiserv.com/credit\\_debit\\_solutions.aspx](http://www.cardsolutions.fiserv.com/credit_debit_solutions.aspx), Vantiv web site, "products, Network Gateway Services", accessed online July 20, 2013 at <http://www.vantiv.com/Products/ATM-Solutions/Network-Gateway-Services>.

<sup>13</sup> The EMV chip-card standards are named for the three organizations that originally developed them in 1996: Europay, MasterCard and Visa (EMV). See EMVco web site, "About EMVco", accessed online July 24, 2013 at [http://www.emvco.com/about\\_emvco.aspx](http://www.emvco.com/about_emvco.aspx).

<sup>14</sup> See Mott Report, paras 35 – 43.

<sup>15</sup> See Smart Card Alliance web page, "EMV:FAQ", accessed online July 25, 2013 at <http://www.smartcardalliance.org/pages/publications-emv-faq>

<sup>16</sup> See Ibid and EMVco web site, "A Guide to EMV", Version 1.0, May 2011, pp.6 - 11, accessed online July 24, 2013 at [http://www.emvco.com/best\\_practices.aspx?id=217](http://www.emvco.com/best_practices.aspx?id=217)

<sup>17</sup> See Smart Card Alliance web page, "EMV:FAQ", accessed online July 25, 2013 at <http://www.smartcardalliance.org/pages/publications-emv-faq>

and debit card networks in many countries around the world. The EMV payment card chip specifications and standards are managed and owned by a consortium organization called EMVco.<sup>18</sup> EMVco, in turn, is owned and managed by its five general purpose card network owner organizations: American Express, Japanese Card Bureau (JCB), MasterCard, UnionPay and Visa.<sup>19</sup> Each of the payment card network owners hold equal 20% shares of the EMVco organization.<sup>20</sup> Each of the five EMVco-owner payment card network's individual chip payment card products are based on EMV standards.<sup>21</sup>

11. EMV-capable chip payment cards have been issued under the Visa, MasterCard, American Express, Discover, China Union Pay, and other regional and domestic payment card brands in large numbers around the world. Similarly, many merchants have upgraded their POS systems and terminals to accept and read cardholder data from EMV-enabled chip cards. According to EMVco, at year end 2012, approximately 1.62 billion EMV cards have been issued globally and 23.8 million merchant POS terminals accept EMV cards.<sup>22</sup> This represents 44.9% of the total payment cards in circulation and 75.7% of the merchant POS terminals installed globally, excluding the U.S. (Figures 1 and 2).<sup>23</sup> There has been widespread adoption of chip-enabled payment cards throughout 80 countries by major general purpose card networks, consumers and merchants without Visa and MasterCard forcing the adoption of their contactless products.<sup>24</sup>

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<sup>18</sup> See EMVco web site, "About EMVco", accessed online July 24, 2013 at [http://www.emvco.com/about\\_emvco.aspx](http://www.emvco.com/about_emvco.aspx).

<sup>19</sup> See EMVco web site, "EMVco Members", accessed online July 24, 2013 at [http://www.emvco.com/about\\_emvco.aspx?id=156](http://www.emvco.com/about_emvco.aspx?id=156).

<sup>20</sup> See *ibid.*

<sup>21</sup> See Discover Press Releases web site, "Discover Financial Services Announces Next Steps for EMV Deployment across the Globe", accessed online August 2, 2013 at [http://investorrelations.discoverfinancial.com/phoenix.zhtml?c=204177&p=irol-newsArticle&ID=1757400&highlight=&cmpgn=0809\\_ZZ\\_srch\\_gsan\\_txt\\_1](http://investorrelations.discoverfinancial.com/phoenix.zhtml?c=204177&p=irol-newsArticle&ID=1757400&highlight=&cmpgn=0809_ZZ_srch_gsan_txt_1), Finextra web site, "China UnionPay joins EMVCo", 20 May 2013, accessed online August 2, 2013 at <http://www.finextra.com/News/Announcement.aspx?pressreleaseid=49871>, JCB web site, "J/Smart™ - The Smart Card Solution –" accessed online August 2, 2013 at <http://partner.jcbcard.com/security/jsmart/index.html>, MasterCard web site "MasterCard EMV", accessed August 2, 2013 at <http://www.mastercard.us/mchip-emv.html>, Visa web site "Visa U.S. Merchant EMV Chip Acceptance Readiness Guide", accessed August 2, 2013 online at <http://usa.visa.com/download/merchants/visa-merchant-chip-acceptance-readiness-guide.pdf>.

<sup>22</sup> See EMVco web site, "Worldwide EMV Deployment", accessed online July 27, 2013 at [http://www.emvco.com/about\\_emvco.aspx?id=202](http://www.emvco.com/about_emvco.aspx?id=202).

<sup>23</sup> See *Ibid.*

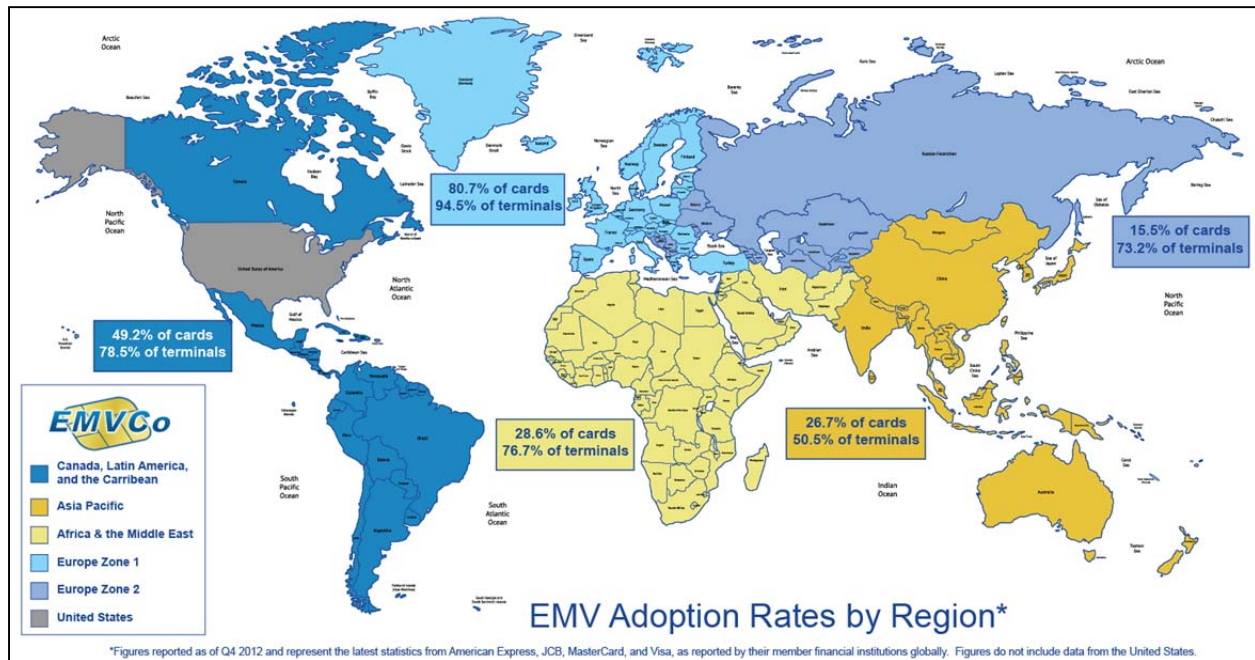
<sup>24</sup> An example where payment card chip credit and debit cards have been widely implemented without lock-step adoption of contactless payment card technologies in the United Kingdom (UK). General purpose credit and debit networks implemented EMV in the UK in the early 2000s, by August 2006 there was near ubiquitous use of EMV chip cards for card-present transactions in the UK, with over 99.8% PIN verified. However, contactless card acceptance adoption in the UK has trailed chip payment cards, with major retailers such as Tesco declining to implement contactless card acceptance, stating the technology is "too complicated, there are too many parties involved and the concept offers too little value". See Payment Card News web site "APACS Reports UK Chip And

Figure 1 – Global Region EMV Chip Payment Card Deployment & Adoption

Region	EMV Cards	Adoption Rate	EMV Terminals	Adoption Rate
Canada, Latin America, and the Caribbean	401M	49.2%	5.6M	78.5%
Asia Pacific	372M	26.7%	5M	50.5%
Africa & the Middle East	50M	28.6%	0.6M	76.7%
Europe Zone 1	755M	80.7%	11.7M	94.5%
Europe Zone 2	46M	15.5%	0.9M	73.2%
United States†				
<b>TOTALS</b>	<b>1.62B</b>	<b>44.9%</b>	<b>23.8M</b>	<b>75.7%</b>

\* Figures reported in Q4 2012 and represent the latest statistics from American Express, JCB, MasterCard and Visa, as reported by their member financial institutions globally.  
 † Figures do not include data from the United States.

Figure 2 – Illustration of Global EMV Chip Payment Card Adoption Rates



PIN Success”, August 14, 2006, accessed online August 9, 2013 at [http://www.paymentsnews.com/2006/08/apacs\\_reports\\_u.html](http://www.paymentsnews.com/2006/08/apacs_reports_u.html), and NFC World web site, “Tesco: NFC payments are too complex and offer too few benefits”, April 24, 2013, accessed online August 9, 2013 at <http://www.nfcworld.com/2013/04/24/323704/tesco-nfc-payments-are-too-complex-and-offer-too-few-benefits/>. Another publication stated “On a global perspective, contactless payment is still finding its feet. Analyst Gartner has had to retract its initial predictions as uptake in 2012 was slower than expected – last year Gartner predicted NFC payments would total \$38bn by 2016, but this year its prediction was reduced to \$22bn.” See Engineering and Technology Magazine, “Contactless Payments: The Future for Consumers?” 15 July 2013, accessed online August 9, 2013 at <http://eandt.theiet.org/magazine/2013/07/new-ways-to-pay.cfm>.

**V. American Express, Discover, and U.S. PIN Debit Networks Have Announced Plans to Implement EMV Chip Payment Cards**

12. American Express and Discover announced in 2012 that they were implementing EMV capable chip credit and debit cards in the U.S., with timetable and operating rule changes that are similar to Visa and MasterCard's.<sup>25</sup> Mr. Mott did not consider or discuss either American Express or Discover's plans to implement EMV chip cards in the U.S. in his report. Further, American Express, Discover, and Discover's debit network Pulse require that its acquirers and merchant processors support EMV chip card processing by 2013.<sup>26</sup> American Express and Discover have also separately announced that they are making operating rule changes concerning counterfeit card transaction "liability shift" policies for merchants who chose not to support EMV chip card acceptance, very similar those of Visa and MasterCard.<sup>27</sup> American Express and Discover's chip card liability shift periods will take effect in 2015 for most merchants and in 2017 for merchants operating automated fuel dispenser "pay at the pump" POS equipment, which are the same dates as Visa and MasterCard's announced operating rule changes.<sup>28</sup>

13. Mr. Mott asserts there is "growing speculation that merchants would have to invest \$6 billion in implementation to meet EMV mandates only to possibly discontinue its use in five years or less."<sup>29</sup> Mr. Mott fails to provide any support for this claim. It is unclear why Mr. Mott believes U.S. merchant EMV chip payment card acceptance would be discontinued within 5 years of implementation, given the extensive use of EMV chip payment card technology by major general purpose payment card networks worldwide.<sup>30</sup>

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<sup>25</sup> See American Express press release, "American Express Announces U.S. EMV Roadmap to Advance Contact, Contactless and Mobile Payments", June 29, 2012, accessed online July 24, 2013 at [http://about.americanexpress.com/news/pr/2012/emv\\_roadmap.aspx](http://about.americanexpress.com/news/pr/2012/emv_roadmap.aspx) and Discover Network News, "Discover Implements EMV Mandate for U.S., Canada and Mexico", March 15, 2012, accessed online July 24, 2013 at <http://discovernetworknews.com/stories/discover-implements-emv-mandate-for-u-s-canada-and-mexico/>.

<sup>26</sup> See *ibid.*

<sup>27</sup> "Liability Shift" refers to payment card network operating rules concerning potential financial liability for counterfeit card transactions: Currently in the United States, POS counterfeit fraud involving cards with magnetic stripe technology is largely absorbed by card issuers. Under payment card network "liability shift" rules, if a contact chip card is presented to a merchant that has not adopted contact chip POS terminal technology, liability for counterfeit fraud may shift to the merchant's acquirer. See First Data white paper, "EMV in the U.S.: Putting It into Perspective for Merchants and Financial Institutions", p.10, 2011, accessed online July 24, 2013 at [http://www.firstdata.com/downloads/thought-leadership/EMV\\_US.pdf](http://www.firstdata.com/downloads/thought-leadership/EMV_US.pdf).

<sup>28</sup> See *Ibid.*, and Smart Card Alliance, "EMV and NFC: Complementary Technologies that Deliver Secure Payments and Value-Added Functionality", p. 6, October 2012, accessed online July 24, 2013 at <http://www.smartcardalliance.org/pages/publications-emv-and-nfc-complementary-technologies-that-deliver-secure-payments-and-value-added-functionality>.

<sup>29</sup> See Mott Report, para 36.

<sup>30</sup> See Smart Card Alliance web page, "EMV:FAQ", accessed online July 25, 2013 at <http://www.smartcardalliance.org/pages/publications-emv-faq>.



14. Mr. Mott states that a barrier to EMV chip card implementation in the United States is “potential failure to comply with Durbin Amendment requirements, which are designed to give merchants routing options for all debit card transactions....”<sup>31</sup> However U.S. PIN debit networks apart from Visa’s Interlink and MasterCard’s Maestro have announced implementation of EMV chip card technology that is compliant with Federal Reserve Bank rules concerning debit card transaction routing requirements. In March 2013, the Secure Remote Payment Council (SRPc), whose members include ten of the largest U.S. PIN debit card Electronic Funds Transfer (EFT) networks, announced it would license Discover’s EMV-based chip card application “DPAS” as the foundation for the ten member network’s common debit EMV chip card payment solution.<sup>32</sup> The licensing arrangement between Discover and the ten PIN debit networks helped address PIN debit EMV card compliance with the Durbin amendment provisions concerning transaction routing. The SRPc states that one of the benefits of the March 2013 licensing arrangement is that “The merchant and acquiring community maintain their ability to route transactions as they choose, based on their own selection criteria.”<sup>33</sup>

#### **VI. General Purpose Payment Card Networks Have Implemented EMV Chip-Card Liability Shift Rules in Many Countries Around the World**

15. Mr. Mott opines that MasterCard and Visa’s proposed U.S. EMV chip card “liability shift” rules for counterfeit card transactions “demonstrates the networks’ power over the rest of the industry because many stakeholders (including merchants and acquirers) strongly resisted the networks’ approach to EMV adoption, but have been forced to accept it.”<sup>34</sup> By “liability shift,” my belief is Mr. Mott is referring to MasterCard and Visa’s respective operating rules that state starting from a pre-announced point in time, if a merchant and/or acquirer has not upgraded their POS equipment and systems to accept chip cards; they may bear financial liability for counterfeit card transactions originating from their acceptance location(s).<sup>35</sup> Conversely, if merchants upgrade POS equipment to accept chip cards, and process payment card transactions using chip data instead of magnetic stripes, liability for any transactions conducted with counterfeit card

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<sup>31</sup> See Mott Report, para 36.

<sup>32</sup> The Secure Remote Payment Council’s membership includes 10 of the largest U.S. EFT networks, which account for more than half of U.S. PIN-debit transactions: AFFN, ATH, Co-Op Financial Services, Jeanie, NETS, NYCE, Presto!, Pulse, Shazam, and Star. See Digital Transactions, “EFT Networks and Discover Strike a Deal That Could Resolve a Chip Card Controversy”, March 20, 2013, accessed July 27, 2013 online at <http://digitaltransactions.net/news/story/3924>.

<sup>33</sup> See Secure Remote Payments council press release, “Ten Debit Networks Adopt Common U.S. Debit Aid”, accessed online July 27, 2013 at [http://cardnotpresent.com/email/130318\\_SRPC\\_Common\\_US\\_Debit%20AID\\_Release\\_Final.pdf](http://cardnotpresent.com/email/130318_SRPC_Common_US_Debit%20AID_Release_Final.pdf).

<sup>34</sup> See Mott Report, para 42.

<sup>35</sup> See Visa International Operating Regulations, “EMV Liability Shift and Fallback”, 15 April 2013, pp. 517-518, MasterCard Chargeback Guide, “3.5 Chip Liability Shifts”, 26 April 2013, pp. 3-12 to 3-19.

remains with the issuers.<sup>36</sup> At present, MasterCard, Visa, and other general purpose card networks have announced the intention to implement counterfeit card liability shift rules effective in October 2015 for most U.S. merchants and in October 2017 for merchants who accept cards for payment at automated fuel dispenser “pay at the pump” Point of Sale (POS) equipment.<sup>37</sup>

16. Mr. Mott asserts without support that “many stakeholders (including merchants and acquirers) strongly resisted the networks’ approach to EMV adoption.”<sup>38</sup> However I note that each of the major U.S. general purpose card networks have implemented EMV chip card technology in their payment card products outside of the United States, as have other networks, including Interac (Canada’s national debit card network), China Union Pay (CUP), and the Japanese Card Bureau (JCB).<sup>39</sup> I am unaware of any legal or regulatory challenges or official proceedings directed at payment card EMV chip technology changes, or related network operating rules changes concerning financial liability for counterfeit transactions.

**VII. Merchants May Implement POS Technology to Read Data from Visa and MasterCard Branded EMV-Enabled Chip Cards Without Having to Accept Them Using Visa or MasterCard’s “Contactless” Technology**

17. Mr. Mott states “Moreover, in the U.S, Visa has adopted programs to ensure that the required EMV card readers are “dual interface,” which Visa defines as being able to read both physical cards and wireless transactions based on the Visa-approved NFC standard and Visa’s EMV-based chip card contactless “payWave” product.”<sup>40</sup> Mr. Mott refers to a “Technology Innovation Program” (Visa TIP) that Visa announced in 2011.<sup>41</sup> For Merchants who chose to implement Visa EMV technology at their points of sale for in both a contact mode (where the chip data is read from insertion into the terminal) and a contactless mode (where the card is

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<sup>36</sup> See Visa International Operating Regulations, “Chip Issuer Liability”, , 15 April 2013, pp. 205-210, MasterCard Chargeback Guide, “3.5 Chip Liability Shifts”, 26 April 2013, pp. 3-12 to 3-19.

<sup>37</sup> See Wells Fargo Merchant Services, “Merchant Connect”, p.6, Issue 18, January 2013, accessed online July 18, 2013 at <http://www.wellsfargo.com/biz/merchant/service/newsletters>.

<sup>38</sup> See Mott Report, para 42.

<sup>39</sup> See China Union Pay web site, “UnionPay Joined EMVCo, Improving the Global IC Card Development”, accessed online July 30, 2013 at [http://en.unionpay.com/news/newsroom/file\\_103037325.html](http://en.unionpay.com/news/newsroom/file_103037325.html), Interac web site, “Security - What is Chip Technology?”, accessed July 30, 2013 online at <http://www.interac.ca/index.php/en/security/what-is-chip>, JCB web site, “Security”, accessed online July 30, 2013, at <http://www.jcbcorporate.com/english/business/security.html>.

<sup>40</sup> See Mott Report, para 42.

<sup>41</sup> See Visa Bulletin, “Visa Introduces Technology Innovation Program for Merchants”, 9 February 2011, accessed July 17, 2013 at <http://usa.visa.com/download/merchants/bulletin-tip-020911.pdf>.

waved in front of a reader), Visa will waive certain data security audit requirements concerning Payment Card Industry Data Security Standards (PCI DSS).<sup>42</sup>

18. Mr. Mott misconstrues the Visa TIP as mandatory. Visa TIP is at the merchant's discretion. Merchants are free to decide whether to take up Visa's offer to implement contactless modes of Visa card acceptance at their POS, in exchange for foregoing producing an annual data security audit to Visa.<sup>43</sup> Mr. Mott does not provide citations or support for his assertion that merchant eligibility for Visa's EMV liability shift process requires contactless acceptance, and the excerpts of Visa operating rules cited in the Mott Report on page 9 do not mention Visa's "payWave" contactless card product.<sup>44</sup>

19. Mr. Mott similarly asserts that U.S. merchants will be relieved of fraud liability on counterfeit MasterCard transactions after October 1, 2015 on the condition that merchants accept MasterCard EMV chip-capable payment cards in both contact and contactless modes.<sup>45</sup> However, Mr. Mott's characterization of MasterCard's announcements and related MasterCard operating rules changes is incorrect. MasterCard does not mandate that U.S. merchants implement EMV chip-card acceptance in both a contact and contactless modes in order to qualify for the "liability shift" concerning counterfeit transactions.<sup>46</sup>

20. Instead, MasterCard offers merchants who choose to implement EMV – enabled POS terminals that support both contact and contactless modes of card acceptance a reduction in counterfeit fraud Operating Recovery (OR) assessment fees.<sup>47</sup> These "OR" fees are charged to acquirers and merchants in the event the acquirer and/or merchant is found by MasterCard to have experienced a data breach involving MasterCard payment card transaction data, which

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<sup>42</sup> See Visa Bulletin "Visa Expands Technology Innovation Program for U.S. Merchants to Adopt Dual Interface Terminals", 9 August 2011, accessed online July 17, 2013 at <http://usa.visa.com/download/merchants/bulletin-tip-us-merchants-080911.pdf>.

<sup>43</sup> Many types of U.S. merchants, such as those operating e-commerce internet businesses, or other card not present businesses such as airlines or cruise line reservations are usually unable to accept general purpose payment cards in a contactless mode. Further, most merchants who are required to conduct annual PCI DSS security audits are larger ones with millions of payment card transactions conducted annually. As such, it's questionable whether these merchants will find Visa's offer of a waiver of PCI DSS audit of value, given that compliance with payment card and personal information data security programs, policies, and is often a requirement of payment card networks other than Visa, under merchant's insurance policies, and/or with various government statutes.

<sup>44</sup> See Mott Report, paras 42-43.

<sup>45</sup> See Mott Report, para 43. Note: The Mott Report refers to MasterCard Security Rules, August 17, 2012 edition, section 10.2.4.5, however there is no section with that numbering. I believe the correct reference is to the same documents' section 10.2.5.4, titled "Operational Reimbursement (OR) Calculation".

<sup>46</sup> See Digital Transactions, "MasterCard's 'Road Map,' including Merchant Incentives, Lifts Industry Hopes for EMV", January 31, 2012, accessed August 10, 2013 online at <http://digitaltransactions.net/news/story/3415>.

<sup>47</sup> See MasterCard Security Rules and Procedures, "10.2.5.4 Operational Reimbursement (OR) Calculation", pp. 10-13 to 10-14, February 22, 2013.

MasterCard terms an Account Data Compromise event.<sup>48</sup> MasterCard does not require merchants to implement MasterCard contactless card acceptance.<sup>49</sup>

**VIII. Visa’s Bank Identification Number (BIN) Use Rule Does Not Prevent Merchants or Financial Institutions from Licensing Bins and Using Them to Route New Transaction Types**

21. Operators of general or private label payment card products use Issuer Identification Number (IINs) licensed by the American National Standards Organization (ANSI) to number their card products.<sup>50</sup> For example, Visa licenses the “4” range from ANSI, thus any payment card account number that starts with a 4 is presumed to be a Visa product. Similarly, American Express licenses the “34” and “37” ranges, and any payment card account number starting with either of those two digits is presumed to be an American Express issued card product.<sup>51</sup> General purpose payment card networks use IIN numbers to identify acquirers and issuers within their systems, and to assist in processing and routing transactions, and often refer to the first six digits as “BINs”, for Bank Identification Numbers.<sup>52</sup>

22. Mr. Mott highlights several of Visa’s operating regulations concerning Visa BIN use which he asserts are mechanisms Visa could use “to deprive the marketplace of innovative payment options that compete with Visa products.”<sup>53</sup> The Visa rules Mr. Mott cites concern member (acquirer or issuer) use of licensed Visa BINs. Mr. Mott also cites MasterCard’s Rule

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<sup>48</sup> See MasterCard Security Rules and Procedures, “Chapter 10 Account Data Protection Standards and Programs”, pp. 10-1 to 10-17, February 22, 2013.

<sup>49</sup> “By choosing to accept PayPass, you’re opening the door to powerful benefits.” See MasterCard “Paypass Toolkit For Merchants”, accessed online August 10, 2013 at [https://www.paypass.com/\\_assets/docs/MCPP\\_Toolkit\\_Merchants\\_A4\\_REL.pdf](https://www.paypass.com/_assets/docs/MCPP_Toolkit_Merchants_A4_REL.pdf).

<sup>50</sup> General purpose card Issuer identification numbering is structured globally according to the International Standard Organization (ISO) specification # 7812. Under ISO standard #7812, financial payment card products may have account numbers between 15 and 19 digits in length. Within the U.S., general purpose card IINs are assigned and managed by American National Standards Institute (ANSI). See ANSI web site “Issuer Identification Number (IIN),” accessed online July 26, 2013 at [http://www.ansi.org/other\\_services/registration\\_programs/iin\\_registration.aspx?menuid=10#.UFHlaIITEO](http://www.ansi.org/other_services/registration_programs/iin_registration.aspx?menuid=10#.UFHlaIITEO).

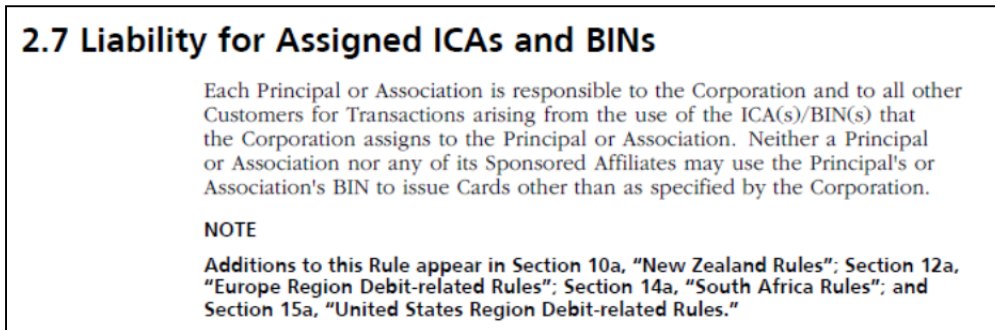
<sup>51</sup> First Data, BIN Range Reference Document, October 06, 2009, Version 2009-2, pp. 1-2.

<sup>52</sup> General purpose credit card account numbers are between 15 and 19 digits in length, with the first 6 to 9 digits being an issuer identification number (“IIN”), which indicates the entity that is the card issuer. As such, it is possible to use the card account’s IIN, or first 6 to 9 digits, to determine the general purpose network brand and the card’s financial institution issuer. It is also possible to use the card account’s IIN to determine the type of the card account (e.g., credit or debit), and the underlying card account’s product classification (e.g., consumer card, corporate card, government card, etc.), and the types of networks it is enabled for (e.g., .credit, signature debit, PIN debit, and/or ATM).

<sup>53</sup> See Mott Report, para 48. The few Visa operating regulations Mr. Mott cites are from a larger section within the Visa operating rules entitled “BIN License and Administration”. See Visa International Operating Regulations, 15 April 2013, pp. 94 – 108.

2.7 “Liability for Assigned ICAs and BINs” and claims it has similar effects to Visa’s BIN use rules (figure 3).<sup>54</sup> Claims that Visa and MasterCard rules concerning BIN use limit financial institutions ability to implement new payment products are erroneous. Financial institutions interested in “experimenting with new payment card products using BINs for routing” can license payment card number ranges from ANSI directly. Numerous merchant payment card products, such as Starbucks’ cards, Target’s REDcard debit product, and Shell Oil’s “Shell Saver Card” debit card use payment card prefix IINs licensed by ANSI.<sup>55</sup>

Figure 3 – MasterCard Rules Section 2.7 “Liability for Assigned ICAs and BINs”<sup>56</sup>



**IX. Visa’s “payWave” Contactless Card Application Requirement Does Not Require Issuers to Exclude Other Competing Contactless Applications**

23. Mr. Mott opines that two Visa Operating Regulations concerning Visa’s payWave contactless card software application could be changed and then used to “essentially block competition.”<sup>57</sup> One of the regulations Mr. Mott identifies requires U.S. issuers that issue Visa branded contactless chip cards to enable Visa’s payWave application on the chip.<sup>58</sup> However, Issuers are not required to make Visa’s application primary or dominant, and are free to enable other contactless software applications on their chip cards.<sup>59</sup> Further, issuers have the alternative of choosing to issue other brands of general purpose credit or debit cards.

<sup>54</sup> See Mott Report, para 49 and MasterCard Rules, 12 December 2012, page 2-6.

<sup>55</sup> See Starbucks web page “Starbucks Card”, accessed online July 31, 2013 at <https://www.starbucks.com/card> and Target web site, “REDcard”, accessed online July 31, 2013 at <http://www.target.com/redcard/manage>, and Shell Oil’s web page “Shell Saver Card”, accessed online July 31, 2013 at <http://www.shell.us/products-services/shell-cards/shell-saver-card.html>.

<sup>56</sup> See MasterCard Rules, page 2-6, 12 December 2012.

<sup>57</sup> See Mott Report, para 50.

<sup>58</sup> See Mott Report, para 51.

<sup>59</sup> See Visa International Operating Regulations, 15 April 2013, “Visa payWave Application Requirement - U.S. Region (Updated)” p. 211.

24. The second payWave related Visa regulation Mr. Mott highlights states that a transaction initiated using Visa's payWave application on a Visa card must be processed as a Visa or Interlink transaction.<sup>60</sup> This regulation is not functionally different from Visa requiring that a transaction initiated using a Visa card's magnetic stripe be processed as a Visa or Interlink transaction. Similar to the first rule Mr. Mott cites, this Visa regulation does not limit the issuer from enabling other contactless software applications on their chip cards.

**X. Rules Concerning Visa's V.me Internet Payment Service Do Not Limit Competitive Digital Wallets**

25. Mr. Mott cites two Visa operating regulations concerning Visa's V.me service, and predicts that Visa could change the regulations to "indirectly (*e.g.*, by means of a Visa certification requirement discussed above) or even directly block competing digital wallet offerings."<sup>61</sup> However, Mr. Mott does not mention that V.me is an optional service that individual cardholders and e-commerce merchants can optionally choose to use, or not.

26. V.me is an optional Visa service cardholders may choose to use for storing card account information in a PC, tablet device or mobile phone. Consumers may use V.me to purchase at e-commerce merchants, if the merchant has chosen to offer V.me technology on their web site.<sup>62</sup> Further, Consumers may use the V.me service with cards other than Visa, including American Express, Discover and MasterCard cards.<sup>63</sup> Visa's Operating Regulations confirm the V.me service is optional (figure 4).<sup>64</sup> In my opinion, V.me is very similar to Visa's internet purchase authentication service launched in 2002, "Verified by Visa,"<sup>65</sup> an optional Visa service which has experienced modest levels of consumer and merchant adoption and use.<sup>66</sup>

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<sup>60</sup> See Mott Report, paras 50 - 51. Note: The Mott Report illustration excludes a section of the Visa payWave Transaction Processing U.S. Region operating regulation: "This provision does not apply to U.S. Covered Visa Debit Cards that are Visa contactless-only payment devices (*i.e.*, a payment device with no Magnetic Stripe or contact Chip capability, such as a mobile phone)." See Visa International Operating Regulations, 15 April 2013, "Visa payWave Transaction Processing - U.S. Region (Updated)", p. 211.

<sup>61</sup> See Mott Report, paras 53 - 54.

<sup>62</sup> See Visa V.me web site, "Personal", accessed online August 5, 2013 at <https://www.v.me/>, and "Business" accessed online August 5, 2013 at <https://business.v.me/console/login>.

<sup>63</sup> "V.me lets you use any major credit or debit card through one service – the choice is yours! Visa, MasterCard, American Express, and Discover cards can all be used through V.me", see Visa V.me web site, "Personal, Flexible", accessed online August 5, 2013 at <https://www.v.me/>.

<sup>64</sup> See Visa International Operating Regulations, 15 April 2013, p. 1173.

<sup>65</sup> See Finextra web site, "Visa Launches Verified by Visa Issuer Service", 8 May 2002, accessed online August 3, 2013 at <http://www.finextra.com/news/fullstory.aspx?newsitemid=5593>.

<sup>66</sup> Many e-commerce merchants, including Amazon, eBay, and PayPal have chosen not to implement Visa's optional "Verified by Visa" service. See GetElastic web site, "Who Needs 3D Secure? Verified By Visa and MasterCard SecureCode Examined", March 7, 2011, accessed online August 10, 2013 at

Figure 4 – Visa Operating Regulation V.me Definition<sup>67</sup>

**V.me by Visa (Updated)**

Where available, a Visa platform that enables a V.me by Visa Account Holder to store and manage accounts in a secure location, make purchases with merchants, and use other forms of financial and non-financial services. V.me by Visa is an optional platform accessed directly by users and merchants and governed by the *Visa International Operating Regulations* and the V.me by Visa terms of service. V.me by Visa may support Visa and non-Visa products and services, as applicable in a Visa Region.

ID#: 150413-150412-0026984

**XI. The Visa Chip Services Requirements Mr. Mott Discusses Concern an Optional Service Visa Offers to Issuers**

27. Visa announced in February 2012 it was making optional technology services available to Issuers, termed Visa Chip Services.<sup>68</sup> Mr. Mott misunderstood the Visa Chip Services regulations that he highlights as mandatory to all U.S. Issuers of Visa chip cards. Credit or debit card Issuers' use of the Visa Chip Services is optional, and at the discretion of each Issuer (figures 5).<sup>69</sup> Mr. Mott then posits that the Visa Chip Services operating regulations "allows Visa to impose a range of anticompetitive conditions regarding technical specs, fees, certification of competing offers, and timing that could severely limit competition."<sup>70</sup> However, Mr. Mott's prediction is misplaced because the Visa Regulations he highlights are applicable only to issuers that choose to become clients of Visa's Chip Services products.

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<http://www.getelastic.com/who-needs-3d-secure-verified-by-visa-and-mastercard-securecode-examined/>, and [cxpartners web site "Verified by Visa and MasterCard SecureCode are broken and need to be fixed"](http://www.cxparkers.co.uk/cxblog/verified_by_vis_a_and_mastercard_securecode_are_broken_and_need_to_be_fixed/), November 16, 2010 accessed online August 10, 2013 at [http://www.cxparkers.co.uk/cxblog/verified\\_by\\_vis\\_a\\_and\\_mastercard\\_securecode\\_are\\_broken\\_and\\_need\\_to\\_be\\_fixed/](http://www.cxparkers.co.uk/cxblog/verified_by_vis_a_and_mastercard_securecode_are_broken_and_need_to_be_fixed/).

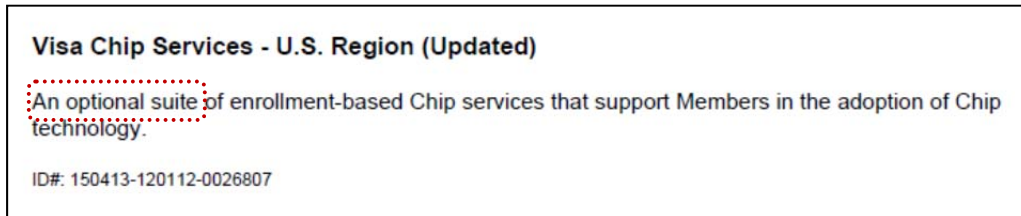
<sup>67</sup> See Visa International Operating Regulations, 15 April 2013, p. 1173.

<sup>68</sup> See Visa Media Center web site, "Visa Tops One Million Chip Cards in the U.S.", February 6, 2012, accessed online August 3, 2013 at <http://corporate.visa.com/newsroom/press-releases/press1175.jsp>.

<sup>69</sup> See Visa International Operating Regulations, 15 April 2013, p. 1184.

<sup>70</sup> See Mott Report, para 57.

Figure 5 – Visa Operating Regulations, Visa Chip Services<sup>71</sup>



**X. Financial Institution Have Numerous Alternatives if Visa Were to Raise Fees to “Prohibitively Expensive Levels” for its PIN Debit Gateway Service**<sup>72</sup>

28. In his report, Mr. Mott discusses an optional transaction routing (gateway) service Visa offers its acquiring and issuing clients for routing non-Visa branded PIN debit card transactions through other brand’s networks.<sup>73</sup> Mr. Mott asserts that for clients of Visa’s PIN debit gateway service, “Visa has unbridled discretion to impose fees on transactions using competing debit cards.”<sup>74</sup>

29. First, Visa’s and other payment card network transaction gateway routing services are intended for their acquiring or issuing clients for authorization processing. As an example, to simplify its technical systems’ requirements, an acquirer could chose to implement a single authorization system interface to a network such as the STAR network, and route all of its various brand’s acquired merchant authorization transactions to STAR for forwarding on to the underlying authorization network for each transaction (Visa, MasterCard, American Express, Discover, Pulse, Interlink, NYCE, Shazam, etc.).<sup>75</sup> In my experience, transaction gateway services have been offered as optional services by most general purpose credit and debit/EFT networks to their acquiring and issuing financial institutions and third party processors since the early 1990s.<sup>76</sup>

<sup>71</sup> See Visa International Operating Regulations, 15 April 2013, p. 1184.

<sup>72</sup> See Mott Report, para 56.

<sup>73</sup> See Mott Report, paras 55 and 56.

<sup>74</sup> See Mott Report, para 56.

<sup>75</sup> “The STAR Network provides cost-effective gateway access to all leading ATM/POS networks and card associations.” See First Data, “STAR Network”, 2011, p. 2, accessed online July 20, 2013 at <http://www.firstdata.com/downloads/thought-leadership/fd-star-network.pdf>.

<sup>76</sup> While I was employed within Wells Fargo’s merchant acquiring group in the 1990s, I managed implementation and operation of two gateway services arrangements for Wells Fargo’s acquiring business: One with STAR System, which provided gateway services for MasterCard’s Maestro PIN debit transactions, and the second with Visa, for gateway access to Discover for Wells Fargo’s bank branch acquired Discover card cash advance transactions. Wells Fargo chose to contract with both STAR and Visa for gateway services as it was determined to be more cost-effective than developing separate transaction processing interfaces with MasterCard-Maestro and Discover at the time.



30. Payment card networks provide processing system gateway services for other-brand's authorization transactions on a per-transaction basis, usually at a premium above the per-transaction fees the network charges to authorize its own brand's cards. Accordingly, depending on transaction volumes, it is usually more cost-effective for an acquirer or issuer to develop individual authorization systems processing interfaces to each network, rather than use a network for gateway services for many other brands.

31. In the event Visa set fees for gateway transaction services at "prohibitively expensive levels", acquirers or issuers have viable alternatives. One alternative is to use other competing networks' or processors' gateway services. Aside from Visa, numerous other networks and processors provide transaction gateway routing services, including MasterCard, Pulse (Discover), First Data (Star Network), American Express, NYCE, Shazam, Alaska Option, Elan Financial Services, Fiserve, and Vantiv.<sup>77</sup> A second alternative would be for the acquirer or issuer to develop or procure processing system software with separate interfaces to each non-Visa network, and shift the non-Visa traffic off Visa's gateway service product.<sup>78</sup>

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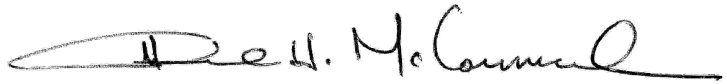
<sup>77</sup> See MasterCard web site, "MasterCard Payment Gateway", accessed online July 20, 2013 at [http://www.mastercard.com/us/company/en/whatwedo/payment\\_gateway.html](http://www.mastercard.com/us/company/en/whatwedo/payment_gateway.html), Pulse (a Discover company) "Payments-Gateway Services", accessed online July 20, 2013 at <https://www.pulsenetwork.com/payments/gateway-services.html>, First Data web site, "Debit Processing, ATM & Network", accessed online July 20, 2013 at [http://www.firstdata.com/en\\_us/products/financial-institutions/debit-processing-atm-and-network.html](http://www.firstdata.com/en_us/products/financial-institutions/debit-processing-atm-and-network.html), American Express web site, "American Express Payment Gateway", accessed online July 20, 2013 at <https://paymentgateway.americanexpress.com/>, NYCE web site, "Gateway Services", accessed July 20, 2013 online at <http://www.nyce.net/financial/productsandservices/gatewayservices/index.htm>, Shazam web site, "Products | Switching Services", accessed online July 20, 2013 at <https://www.shazam.net/ProductsSwitchingServices.html>, Alaska Option web site, "Network Transaction Services", accessed online July 20, 2013 at <https://www.alaskaoption.com/NetworkServices.aspx>, see Elan web site, "Debit, POS, & ATM Gateway Services", accessed online July 20, 2013 at <http://www.elanfinancialservices.com/atm-debit-fi/gateway-services.php>, Fiserve web site, "Credit and Debit Solutions", accessed online July 20, 2013 at [http://www.cardsolutions.fiserv.com/credit\\_debit\\_solutions.aspx](http://www.cardsolutions.fiserv.com/credit_debit_solutions.aspx), Vantiv web site, "products, Network Gateway Services", accessed online July 20, 2013 at <http://www.vantiv.com/Products/ATM-Solutions/Network-Gateway-Services>.

<sup>78</sup> Financial institutions may obtain payment card transaction processing systems software from various vendors such as ACI Payment Networks and CSF International to route transaction authorization requests to individual general purpose credit and debit card networks rather than gateway services such as Visa's. For example, ACI's Base24-eps system "provides flexible switching and routing to major networks, card associations and processors". See ACI Payment Systems web site "Base24-eps" accessed online August 8, 2013 at <http://www.aciworldwide.com/en/products-and-services/retail-payments/payments-processing/base24-eps.aspx>. CSFi's Switchware product provides access to multiple general purpose card networks. See CFSi web pages "SWITCHWARE", accessed online August 8, 2013 at <http://www.csfi.com/SWITCHWARE.cfm>, and "Supported (EFT) Network/Switch Interfaces", accessed online August 8, 2013 at <http://www.csfi.com/EFTnetworks-USA.cfm>.

**XI. Conclusion**

32. Mr. Mott's report contains descriptions of select MasterCard and Visa network operating rules, predictions as to how these rules may be changed or interpreted in the future, and corresponding effects on competition in the payment card industry. As I have described in this report, Mr. Mott misinterprets, misunderstands, and/or overlooks information in various parts of his report concerning or relating to the identified network rules, and the context in which they apply. Mr. Mott's report ignores practical alternatives available to acquirers, issuers, and/or merchants, and fails to account for the competitive effects of these options in the payment card industry. As such, I believe Mr. Mott's predictions of the competitive threats posed by those MasterCard and Visa operating rules are misdirected and misplaced.

August 14, 2013

A handwritten signature in black ink, appearing to read "Mike McCormack", written over a horizontal line.

Mike McCormack

## **Schedule A – Curriculum Vitae of Mike McCormack**

### **Michael “Mike” H. McCormack**

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Lauderdale by the Sea, Florida 33308

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Fax: (954) 761-8860  
E-Mail: mike.mccormack@palmaadvisors.com

### **BUSINESS EXPERIENCE**

#### **Managing Director, Palma Advisors**

1999 -*Present*

A Consultancy, Fort Lauderdale, Florida (\*)

Palma Advisors is a consultancy specializing in the payments transaction industry, with a particular focus on merchant acquiring. The firm’s customers include financial institutions, government agencies, law firms, merchants, transaction processing companies, and technology companies, both domestic and international. The group specializes in providing expert advisory services and practical hands-on involvement in managing complex acquiring and payment transaction projects, drawing on a unique skills background of business, operations and technical experiences.

*(\*) From 1999 – 2008, I was affiliated with the firm Noblett & Associates, which closed in 2008.*

#### **Notable Consulting Projects of Mike McCormack**

- ❖ Trusted advisor to hundreds of merchants and other clients in the U.S., Canada, New Zealand, the Middle East, and Southeast Asia as a tenured 14-year payment acquiring industry consultant. Extensive experience in client development, payment transaction architectures, economics, services, overcoming adversity, and achieving project objectives.
- ❖ Conducting payment audit and Request-For-Proposal (RFP) supplier advisory projects for multi-national cruise-line merchant with 45+ ships where card processing fees are third largest company variable expenses after fuel and personnel. Provided expert advice and action plans for merchant to realize significant annual savings in card processing expense. Previously undertook similar studies for a large national petroleum merchant and several other U.S. national retailers. Re-engaged by merchant a third time for additional projects in 2013.
- ❖ Led 2011 profitability analysis study and merchant accounting system analysis for 5<sup>th</sup> largest merchant acquirer in Middle East / Africa / South Asia region.
- ❖ Led forensic accounting analysis and identification effort for a small regional bank with a \$3.5 million loss/out-of-balance condition which occurred over a 5 year period from a divested merchant acquiring business. The sources of the outage were identified, amounts quantified, and the bank successfully recovered its funds from the purchasers of the merchant business.

- ❖ Serving as testifying payment card industry expert for Canadian Bureau of Competition in their proceedings with Visa and MasterCard concerning merchant acceptance rules for credit card payment transactions.
- ❖ Working as payment card industry and merchant acquiring expert witness since 2006 in *In re Payment Card Interchange Fee and Merchant-Discount Antitrust Litigation* (MDL 1720).
- ❖ Between 2002 and 2007, lead design, implementation, and enhancement of a new multi-currency merchant card acquiring accounting, processing and interchange system for Planet Payment. Led requirements definition, product design, and major implementation efforts, including development of authorization, clearing, and settlement interfaces with Visa and MasterCard, and integration with several large banks, and TSYS. The system is now supporting processing for 70+ financial institutions in the United States, Canada, Hong Kong, Malaysia, Singapore, the Philippines, China, the U.K, South Africa, United Arab Emirates, and other countries. Planet Payment made an \$18 million equity placement on the London Stock Exchange in 2008.
- ❖ Retained by the New Zealand's competition regulatory agency, the Commerce Commission, as the payment card industry expert witness for their regulatory action concerning domestic credit and debit card interchange fees. Settlements in the proceedings were announced with Visa and MasterCard in August 2009 and with bank defendants in September 2009.
- ❖ Worked as merchant acquiring and payment network services expert for plaintiff Discover Financial Services in its U.S. federal damages lawsuit against Visa and MasterCard. Authored two complex expert reports in 60 days. Multi-billion dollar settlements in the case were announced in October 2008.
- ❖ Served as Plaintiff consulting and testifying expert in currency conversion fee disclosure litigations in the State of California and in U.S. Federal Court (MDL 1409) from 2000 - 2006. A settlement of the case was reached for \$336 million in 2007.
- ❖ Worked as consulting and testifying expert on transaction processing to New Zealand's Commerce Commission from 2005 – 2007 in its investigation of nine bank credit card issuers for non-disclosure of currency conversion fees to cardholders.
- ❖ Served from 2003 to 2011 as the acquiring industry expert to Constantine Cannon settlement distribution to multi-million merchant class members in the Visa-MasterCard signature debit card litigation settlement. Functioned as liaison with several hundred U.S. merchants for complex claims analysis and issue resolution.
- ❖ Work with merchant card ISO clients in acquisition or sales of merchant card portfolio businesses. Co-managed four completed acquisition transactions since 2006, including successful sales of two ISO businesses in challenging economic conditions in 2008 and 2009.
- ❖ Serve on editorial board of the weekly payments industry publication *ISO & Agent Weekly*, published by Source Media.

**CONCENTRIC NETWORK CORPORATION**

**1996-2001**

Network Services Provider, Cupertino and San Jose, California

**Senior National Sales Engineer, Product Manager (Employee, 1996-1999, Consultant, 1999-2001)**

- Managed development and implementation of Internet access services for Intuit, Microsoft, AT&T/Pacific Bell, and other enterprise customers. Accounts comprised approximately 50% of Concentric's 1999 revenue of \$140 million.
- Subject matter expert at Concentric for managing its processing services with Chase Paymentech (then First USA Paymentech) for merchant card processing.

**WELLS FARGO BANK – Merchant Card Services, Business Banking Group**

**1992-1996**

Walnut Creek, California

**Assistant Vice President & Senior Project Manager**

- Acquiring business subject matter expert on association and debit network interfaces, rules, and settlement operations.
- Managed Visa and MasterCard bankcard and debit POS network association affairs and rules compliance. Managed all initiatives and projects involving card associations and networks, including twice a year interchange fee and merchant pricing projects.
- Managed the payment network settlement and general ledger functions for Wells Fargo's merchant acquiring business. Designed and implemented the acquiring settlement processes used by Wells Fargo since its 1994 joint-venture alliance with First Data.
- Represented Wells Fargo as Member of MasterCard's Maestro and Visa's Interlink Operations Committees from 1994 – 1996.
- Designed and lead approval for innovative electronic capture bank branch cash advance product that resulted in a \$2 million dollar net gain in additional revenue and expense savings for Wells Fargo in 1996. The product is the one presently used by WFB branches across the U.S...
- Assistant Leader in project to form alliance joint venture with First Data and convert 48,000 merchant accounts, which resulted in Wells' merchant division profitability increasing 130% in 1995. This was the largest conversion ever undertaken in the industry at the time, and Wells presently operates its acquiring business in the same joint venture (JV) relationship with First Data. The alliance/JV merchant card processing structure was subsequently replicated by First Data and several dozen banks in the U.S., Latin America and Asia over the past 16 years.
- Responsible for merchant acquiring component of Mondex stored value "chip" card product initiative in 1995. Recruited and implemented 22 merchants for San Francisco chip-card pilot, including Starbucks and Walgreens' locations.

**WELLS FARGO BANK – Item (Check) Processing**

**1989-1991**

**Project & Operations Manager**

- Core member of project team which implemented of IBM's check processing control system (CPCS) in Wells' two check processing centers and replacement of several in-house check processing systems. The system is in use at Wells Fargo today and is the basis for Wells' image-check services.
- Managed operations unit with 14 staff in Wells Fargo's check processing division.

**EDUCATION**

**Stanford University**

Palo Alto, California

**M.A., Ford Dorsey Program in International Policy Studies**

Conferred June 1991

**California Polytechnic State University**

San Luis, Obispo, California

**B.A., Cum Laude, Political Science**

Conferred June 1988

**SELECT PUBLICATIONS & SPEECHES**

“Places You Will Go With Cross-Border Acquiring”

Given at Electronic Transaction Association Show, March 5, 2000

Payment Card Industry Data Security Standard (PCI DSS)

Briefing for National Restaurant Association Members, July 20, 2007, with W. Stephen Cannon, Esq.

“The Currency Of Progress?” with W. Stephen Cannon, Esq, December 2009, HospitalityLawyer.com's PCI Compliance Newsletter.

Located online at [http://www.constantinecannon.com/pdf\\_etc/Payment-Security-Article-10.pdf](http://www.constantinecannon.com/pdf_etc/Payment-Security-Article-10.pdf)

“The U.S. Payment Card Industry: Select Challenges and Issues From A Hospitality Industry Perspective,” with W. Stephen Cannon, Esq.,

Given at Hospitality Law Conference, Houston Texas Feb. 4 and 5, 2010.

Located online at [http://www.constantinecannon.com/pdf\\_etc/Hospitality-Lawyers-2-4-10.pdf](http://www.constantinecannon.com/pdf_etc/Hospitality-Lawyers-2-4-10.pdf)

Expert Reports of Mike McCormack filed with the Canada Competition Tribunal, March and April 2012, in *Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated et al.*

Public (redacted) versions located at <http://www.ct-tc.gc.ca/CasesAffaires/CasesDetails-eng.asp?CaseID=333>

## **PATENTS**

Co-Inventor of U.S. patent “Time-of-Transaction Foreign Currency Conversion,” granted U.S. Patent Number 7,660,768 in February 2010, and filed and granted in other countries including Singapore, Australia, New Zealand, Canada, and the Philippines (*International Patent Classification # G06Q 20/34*)

**Schedule B – Deposition and/or Trial Testimony and Declarations of Mike McCormack**

- (A) Adam A. Schwartz v. Visa International Corp., Visa International Service Association, Inc., Visa U.S.A., Inc., And MasterCard International Incorporated, Superior Court Of California, County Of Alameda – testified in 2002 & 2003

*Expert witness for plaintiff.*

- (B) Mayor Pharmaceutical Laboratories v. Compass Bank Inc. et al., Superior Court Of The State Of Arizona, In And For The County Of Maricopa, No. CV02-1642 Phx.(Az. Sup. Ct.) – testified in 2004

*Expert witness for plaintiff.*

- (C) Ross v. Visa USA et al. MDL Docket Number 1409 (S.D.N.Y.) – testified in 2005

*Expert witness for plaintiff.*

- (D) Ross v. American Express Co., et al. No. CV-05723 (S.D.N.Y.) (related to MDL 1409 In re Currency Conversion Fee Antitrust Litigation) – testified in 2005

*Expert witness for plaintiff.*

- (E) Briefs of Evidence, in New Zealand Commerce Commission v. ANZ National Bank Limited, Westpac Banking Corporation, and American Express International (NZ) Incorporated, Disclosure of Currency Conversion Fees, Fair Trading Act 1986, CRI 2004-004-022528 and CRI 2005 – 499 – 006805

*Expert witness for New Zealand Commerce Commission*

- (F) Discover Financial Services, DFS Services LLC, and Discover Bank v. Visa U.S.A., Inc., Visa International Services Association, MasterCard Incorporated, and MasterCard International Incorporated, Civ Action No. 04-CV-7844 (BSJ) – testified in 2008

*Expert witness for plaintiffs.*



- (G) Montrenes Financial Services Inc. v. Calvin Lim, Jerry Vigil, Kirk Moore, Michael Little, Superior Bankcard Services, Inc., Superior Court of California, County of Orange, Case No. 04CC08276 – testified in 2008

*Expert witness for plaintiff.*

- (H) Tim Deernick et al. v. Save Mart Supermarkets, a California Corporation, dba S-Mart, SaveMart Foods, and Food Maxx, Superior Court of California, County of San Joaquin, Case No. CV024368 – testified in 2008

*Expert witness for plaintiffs.*

- (I) The Marcus Corporation, on behalf of itself and all similarly situated persons v. American Express Company and, American Express Travel Related Services Company, Inc., Civ Action No. Civ. Action No. 04 Civ. 05432 (GBD), Southern District of New York - Declaration filed, June 2008

*Declaration Filed.*

- (J) U.S. Bank National Association, as successor in interest to Multi Service Corporation, and Multi Service Corporation, Claimants, v. PerfectStop Partners, L.P.; Perfect Stop, Inc. et. al., American Arbitration Association, Case Management Center, Houston, Texas, Case No. 70 180 Y 00849 05 – testified in 2008

*Expert witness for counter-claim defendants (Perfect Stop)*

- (K) Brief of Evidence, in New Zealand Commerce Commission v. Cards NZ Limited and Others, October 2008

*Expert witness for New Zealand Commerce Commission*

- (L) Amended Brief of Evidence, in New Zealand Commerce Commission v. Cards NZ Limited and Others, May 2009

*Expert witness for New Zealand Commerce Commission*

- (M) American Arbitration Association, Atlanta Office, MerchantServices.Com, Inc., claimant, v. Nova Information Systems Inc., N/K/A Elavon, Inc., respondent, Case No. 30 181 00599 08 – testified in June 2010

*Expert witness for plaintiff.*

- (N) In Re Payment Card Interchange Fee and Merchant-Discount Antitrust Litigation, MDL Docket Number 1720 (E.D.N.Y.) – testified in August 2010

*Expert witness for plaintiff.*

- (O) Montrenes Financial Services, Inc. dba US Merchant Services, a California Corporation, RST Ventures, Inc., a California Corporation, and Dan Montrenes, and Individual v. Paul, Hastings, Janofsky & Walker LLP, and Michael Hood, an individual, Superior Court of California, County of Orange, Case No: 30-2009 00119750

*Expert witness for plaintiffs.*

- (P) Canada Bureau of Competition, In The Matter Of the Competition Act, R.S.C. 1985, c. C-34, as amended: The Commissioner of Competition (applicant), Visa Canada Corporation and MasterCard International Incorporated (respondents), and Canadian Bankers Association and The Toronto-Dominion Bank (intervenor).

*Expert witness for Canadian Bureau of Competition*

- (Q) Reid Yeoman and Rita Medellin, On Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v. IKEA U.S. West, INC. and DOES 1-25, Inclusive, Defendants, United States District Court, Southern District of California, Case No: 3:11-CV-00701-WQH(BGS).

*Expert witness for plaintiffs.*

- (R) In Re American Express Anti-Steering Rules Antitrust Litigation (No. II), No. 11-MD-02221 (NGG) (RER) – Testified in July 2013.

*Expert witness for plaintiffs.*