

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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IN RE : **MASTER FILE NO:**  
VISA CHECK/MASTERMONEY ANTITRUST : **CV-96-5238**  
LITIGATION : **(Gleeson, J.) (Orenstein, M.J.)**  
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This Document Relates To :  
All Actions: :  
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**DECLARATION OF ROBERT L. BEGLEITER**

Pursuant to 28 U.S.C. § 1746, Robert L. Begleiter declares as follows:

1. I am an attorney admitted to practice in the State of New York and in the United States District Court for the Eastern District of New York. I am a member of Constantine Cannon LLP, Co-Lead Counsel along with Hagens Berman Sobol Shapiro LLP (together, “Lead Counsel”) for the Plaintiff Class in this action. This declaration is submitted in support of Lead Counsel’s motion to approve the Agreement To Prepay Future Payments At A Discount between Lead Counsel and Visa U.S.A. Inc. (“Visa”), dated August 31, 2009 (the “Visa Prepayment Agreement”), a true and correct copy of which is annexed hereto as Exhibit A.

2. The Plaintiff Class in this case includes both named Plaintiffs (Wal-Mart, Circuit City, Sears, The Limited, Safeway, Burlington Coat Factory, Payless Shoe Source, three major retail trade associations, and several smaller merchants) and the millions of United States merchants who accepted Visa and/or MasterCard for payment during the class period, October 25, 1992 through June 21, 2003. Approximately 700,000 Class Members filed approved claims in this action (the “Plaintiff Class”).

### **Relevant Background**

3. On the eve of trial, the Plaintiff Class and the defendants, Visa and MasterCard International Incorporated (“MasterCard”), reached a preliminary settlement. Each defendant entered into a separate settlement agreement with the Plaintiff Class, both dated June 4, 2003, which were submitted to the Court for approval. As set forth in each settlement agreement, in multiple installments between July 4, 2003 and December 22, 2012, Visa agreed to pay the Plaintiff Class \$2.025 billion and MasterCard agreed to pay the Plaintiff Class \$1.025 billion. A true a correct copy of the Settlement Agreement between the Plaintiff Class and Visa (the “Visa Settlement Agreement”) is annexed hereto as Exhibit B. Final settlement approval occurred on June 1, 2005, after all appeals were exhausted and the time to seek further review in the United States Supreme Court expired.

4. On August 18, 2003, Lead Counsel submitted to the Court a Plan of Allocation for the distribution of settlement funds which included provisions allowing for and delineating the process of a securitization of the settlement funds, as well as allowing for prepayment by either defendant. The Plan of Allocation was amended on August 16, 2005 (the “Amended Plan of Allocation”), but the securitization and prepayment provisions – Sections 11.16 and 11.17 – remained unchanged. True and correct copies of the Plan of Allocation and the Amended Plan of Allocation are annexed hereto as Exhibits C and D, respectively.

5. To date, both defendants have partially satisfied their obligations under their respective settlement agreements. Collective payments in the amount of \$1.85 billion have been received by the Plaintiff Class with Visa having paid six installments totaling \$1.225 billion, and MasterCard having paid six installments totaling \$625 million. In accordance with the terms of the Visa Settlement Agreement, Visa is obligated to pay the Plaintiff Class an

additional \$800 million between December 2009 and December 2012 (the “Future Payments”). As set forth in greater detail below, in satisfaction of all of its obligations to the Plaintiff Class, MasterCard has agreed to pay an additional \$335 million on September 30, 2009, pursuant to the terms of an Agreement To Prepay Future Payments At A Discount entered into between Lead Counsel and MasterCard, dated July 1, 2009, and approved by the Court on August 21, 2009 (the “MasterCard Prepayment Agreement”).<sup>1</sup> True and correct copies of the MasterCard Prepayment Agreement and the Court’s August 21, 2009 Order are annexed hereto as Exhibits E and F, respectively.

6. The table below reflects the dates and amounts of distributions made through approximately 823,300 checks to Class Claimants:

<b>DATE OF DISTRIBUTION</b>	<b>AMOUNT DISTRIBUTED</b>
December 19, 2005	\$52,729,595.18
June 28, 2006	\$609,990,110.38
December 23, 2006	\$317,281,533.80
December 21, 2007	\$185,947,129.93
December 23, 2008	\$257,308,370.08
Distributions made under specific Court Orders between December 19, 2005 and December 23, 2008	\$6,587,797.15
<b>TOTAL</b>	<b>\$1,429,844,536.52</b>

**The MasterCard Securitization And Prepayment**

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<sup>1</sup> Prior to entering into the MasterCard Prepayment Agreement, MasterCard was obligated to pay the Plaintiff Class \$400 million between December 2009 and December 2012, in accordance with the terms of its settlement agreement with the Plaintiff Class. See Exhibit E.

7. After final settlement approval, Lead Counsel began consulting with the financial advisor for the Plaintiff Class, Cannonade Capital, LLC (“Cannonade Capital”), with regard to the initiation of the securitization process for the remaining settlement account payments from MasterCard. At or about the time the Amended Plan of Allocation was approved, MasterCard had completed an initial public offering and Visa was undergoing an initial public offering. Accordingly, Lead Counsel focused first on the securitization of MasterCard’s remaining settlement account payments (the “MasterCard Securitization”) because Lead Counsel was advised against attempting a securitization of the Visa Future Payments while Visa was still in the public offering process. Therefore, upon approval of the Amended Plan of Allocation, Lead Counsel, with the assistance of Cannonade Capital, undertook the MasterCard Securitization. *See* Declaration of Robert L. Begleiter, dated March 5, 2009 (the “March Begleiter Decl.”) at ¶¶ 9-11.

8. However, because of litigation commenced by the government in January 2006, regarding its claim to participate in the distribution of the settlement funds, Lead Counsel was unable to make certain representations to the investment community with respect to the finality of the settlement which were necessary to proceed with the MasterCard Securitization. *See* March Begleiter Decl. at ¶¶ 12-14.

9. While the dispute with the government was resolved and that settlement became final in April 2007, other events beyond Lead Counsel’s control further delayed the MasterCard Securitization. *See* March Begleiter Decl. at ¶¶ 15-23. For example, MasterCard refused to cooperate with Lead Counsel in obtaining the necessary credit rating for the MasterCard Securitization until approximately August 2008. *See* March Begleiter Decl. at ¶¶ 15-21. Despite the resolution of this issue, by September 2008, the credit markets fell apart and

the MasterCard Securitization was once again delayed.

10. On March 6, 2009, Lead Counsel filed its Motion to Approve the Securitization of the MasterCard Settlement Account Payments and related papers. After rejecting the sole objection to the MasterCard Securitization,<sup>2</sup> the Court issued an order approving it, dated April 29, 2009 (the “MasterCard Securitization Order”). A true and correct copy of the Securitization order is annexed hereto as Exhibit G.

11. Thereafter, Lead Counsel began finalizing the MasterCard Securitization, and, by June 2009, Lead Counsel commenced marketing the MasterCard Securitization.

12. On July 1, 2009, before the MasterCard Securitization could be completed, and subject to Court approval, Lead Counsel and MasterCard entered into the MasterCard Prepayment Agreement whereby MasterCard agreed to pay \$335 million to the Plaintiff Class by September 30, 2009, in full satisfaction of its \$400 million in remaining payment obligations through December 2012. *See* Exhibit E.

13. On July 2, 2009, Lead Counsel made an application for Court approval of the MasterCard Prepayment Agreement, informing the Court that Lead Counsel believed that the MasterCard Prepayment Agreement would be more beneficial to the Plaintiff Class than proceeding with the MasterCard Securitization. In that regard, not only did the payment under the MasterCard Prepayment Agreement equate to a discount rate well below the maximum discount rate authorized by the Court in the MasterCard Securitization Order, it also eliminated all market risk and the need for a large residual distribution to the Plaintiff Class of the MasterCard remaining settlement account payments at the conclusion of the MasterCard Securitization in 2012. In addition, the MasterCard Prepayment Agreement offered the

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<sup>2</sup> Three other objections were either voluntarily withdrawn by the objecting party or disposed of by the Court as moot prior to an April 24, 2009 fairness hearing on the MasterCard Securitization.

advantage of (i) eliminating the need to establish reserve accounts totaling in excess of \$8.0 million; (ii) reducing certain transaction costs associated with closing the MasterCard Securitization; and (iii) eliminating the costs associated with administering the MasterCard Securitization going forward.

14. On July 14, 2009, the Court appointed Independent Expert, Professor Bernard Black, submitted a Supplemental Report, advising the Court that the terms of the MasterCard Prepayment Agreement were more beneficial to the Plaintiff Class than proceeding with the MasterCard Securitization.

15. By an order dated August 21, 2009, after notice to the Plaintiff Class and the receipt of no objections to the MasterCard Prepayment Agreement, the Court approved the MasterCard Prepayment Agreement. *See* Exhibit F.

### **The Visa Securitization and Prepayment**

16. As with the MasterCard remaining settlement account payments, Lead Counsel intended to securitize Visa's Future Payments. Toward that end, preliminary meetings with Visa and with credit rating agencies were held in the spring and summer of 2009, and the engagement agreement between Lead Counsel and Winston & Strawn LLP, counsel for the contemplated securitization, was recently was approved by the Court. *See* Exhibits H and I annexed hereto.

17. While Lead Counsel was proceeding with the securitization process, in late July 2009, Visa approached Lead Counsel regarding the prepayment of its Future Payments under the Visa Settlement Agreement.

18. On August 31, 2009, Visa and Lead Counsel entered into the Visa

Prepayment Agreement whereby, subject to Court approval, Visa agreed to pay \$682 million to the Plaintiff Class by the later of September 30, 2009, or the date upon which the Court approves the Visa Prepayment Agreement, in full satisfaction of its \$800 million in Future Payments through December 2012. *See* Exhibit A.

19. After consultation with the Independent Expert and Cannonade Capital, Lead Counsel believes that, as with MasterCard, the terms of the Visa Prepayment Agreement are more beneficial to the Plaintiff Class than proceeding with the securitization of the Visa Future Payments. In that regard, not only does the payment under the Visa Prepayment Agreement equate to a discount rate comparable to that already approved by the Court in connection with the prepayment by MasterCard, it also eliminates all market risk and the need for a large residual distribution to the Plaintiff Class of the Visa Future Payments which would occur at the conclusion of a securitization in 2012. In addition, this prepayment offers the advantage of (i) eliminating the need to establish reserve accounts totaling approximately \$21 million; (ii) reducing substantially all of the transaction costs associated with closing a securitization; (iii) eliminating the need to maintain a residual balance estimated at \$16 million; and (iii) eliminating the costs associated with administering a securitization going forward.

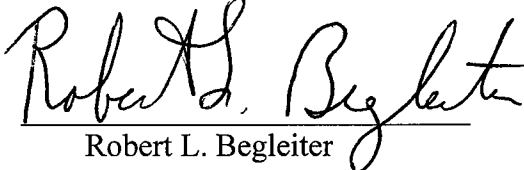
20. The Independent Expert is in the process of preparing a Supplemental Report advising the Court as to whether the terms of the Visa Prepayment Agreement are more beneficial to the Plaintiff Class than proceeding with a securitization of the Visa Future Payments.

21. Should the Court grant this motion, Lead Counsel requests that the Court approve the Proposed Order, annexed hereto as Exhibit J.

WHEREFORE, I respectfully request that the Court approve the Visa Prepayment Agreement.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

Dated: September 1, 2009  
New York, NY

  
Robert L. Begleiter

**EXHIBIT A**

## AGREEMENT TO PREPAY FUTURE PAYMENTS AT A DISCOUNT

This Agreement to Prepay Future Payments at a Discount (the "Agreement") is dated as of August 31, 2009, by and between Co-Lead Counsel (as defined below), acting collectively as binding representative and agent of the Plaintiffs and Visa U.S.A. Inc. ("Visa"). Terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement (as defined below).

### WITNESSETH

WHEREAS, Constantine Cannon LLP (formerly, Constantine & Partners) and Hagens Berman Sobol Shapiro LLP (formerly, Hagens Berman), together serve as co-lead counsel ("Co-Lead Counsel") to the Plaintiffs in the In Re Visa Check/MasterMoney Antitrust Litigation, No. 96-CV-5238 (JG/JO), a class action filed in the U.S. District Court for the Eastern District of New York (the "Court") against Visa; and

WHEREAS, the Plaintiffs and Visa filed with the Court an executed settlement agreement (the "Settlement Agreement") on June 4, 2003, that the Court approved on December 19, 2003, and that became final on June 1, 2005, after the denial of or expiration of all time for appeals; and

WHEREAS, Visa is obligated under Section 3(a) of the Settlement Agreement to make four additional payments of \$200 million each (the "Future Payments") into the Settlement Fund Account on or before the following dates: December 22, 2009, December 22, 2010, December 22, 2011, and December 22, 2012; and

WHEREAS, in connection with the Settlement Agreement, Co-Lead Counsel established the Visa Qualified Settlement Fund bearing Employer Identification Number 200065396 (the "Visa Qualified Settlement Fund"); and

WHEREAS, Sections 11.16 and 11.17 of the Amended Plan of Allocation submitted to the Court by Co-Lead Counsel on August 16, 2005, provides that Visa may request that Plaintiffs work with Visa to establish a mutually agreeable discount rate to apply to any prepayment(s) in the event that Visa desires to make one or more payments on an accelerated basis; and

WHEREAS, Visa and Co-Lead Counsel now desire to enter into this Agreement to evidence their mutual agreement and to specify the terms with respect to the prepayment by Visa of the Future Payments at a discount.

NOW THEREFORE, the parties hereto agree as follows:

Section 1. Payment. The parties hereby agree that Visa shall make a payment of \$682,000,000 (the "Payment"), on the later of September 30, 2009 or the business day after the date upon which the Court enters an order approving this Agreement and Co-Lead Counsel's authority to enter into it (the "Payment Date"), into the existing Visa Qualified Settlement Fund account established pursuant to and in compliance with the terms of the Settlement Agreement, which are incorporated herein. The Payment shall be in full satisfaction of all of Visa's remaining payment obligations to the Plaintiffs under the Settlement Agreement upon Final Approval as defined in Section 4 below.

Section 2. Future Payments. Except as provided in Section 4, upon making the Payment, Visa shall no longer be obligated to make the Future Payments.

Section 3. Event of Default. Failure of Visa to make the Payment on the Payment Date, shall constitute an event of default hereunder and shall entitle the Plaintiffs to seek from the Court immediate recovery of the Payment and any and all additional relief they believe appropriate including immediately payable post-judgment interest.

Section 4. Court Approval. Co-Lead Counsel agrees to seek approval of the Court and will use reasonable efforts to secure that approval as promptly as possible. Upon Court approval and the exhaustion of all available appeals from said approval, this Agreement will become final ("Final Approval"). Except as provided below, no disbursement from the Payment will be made unless and until Final Approval has occurred and the Court has approved such disbursement. Visa shall make the Payment on the Payment Date regardless of whether Final Approval of the Agreement occurs on or before the Payment Date. In the event that Final Approval of this Agreement does not occur on or before December 22, 2009, or the subsequent dates for such settlement payments under the Settlement Agreement, then Visa's December 22, 2009 payment obligation of \$200 million pursuant to Section 3(a) of the Settlement Agreement or such subsequent payment(s) under the Settlement Agreement that become due under Section 3(a) of the Settlement Agreement shall be deemed to have been made and the \$200 million settlement payment for such year may be withdrawn from the Visa Qualified Settlement Fund by Co-Lead Counsel on or after the date that such settlement payment was to be paid under Section 3(a) of the Settlement Agreement in full satisfaction of Visa's obligation to make a settlement payment for such year. In the event that Final Approval of this Agreement is not obtained as a result of a rejection of the Agreement by the Court or, if approved, rejected as a result of an appeal of said Court approval, then and only then, shall this Agreement become null and void and Plaintiffs shall return the Payment with any accrued interest less any reductions that were made to the Payment pursuant to Visa's payment obligations under Section 3(a) of the Settlement Agreement, and any portion of that sum that Plaintiffs fail to return to Visa shall be deducted from any remaining Visa payment obligations under Section 3(a). Should this Agreement so become null and void, all the terms of the Settlement Agreement shall remain in full force and effect.

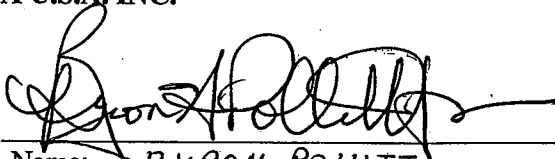
Section 5. Choice of Law; Jurisdiction of the Court. All terms of this Agreement shall be governed and interpreted according to the substantive laws of the State of New York without regard to its choice of law or conflict of laws principles. Co-Lead Counsel and Visa agree to hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to this Agreement.

Section 6. Requisite Authority. Visa represents and warrants that it has the requisite power and authority to enter into this Agreement, and that no additional actions or approvals are required or necessary to evidence such authority.

[Signature page follows]

**IN WITNESS WHEREOF**, the signatories have read and understood this Agreement, have executed it, represent that the undersigned are authorized to execute this Agreement on behalf of the represented parties, have agreed to be bound by its terms and have entered into this Agreement as of the day and year first above written.

**VISA U.S.A. INC.**

By:   
Name: BYRON POLLITT  
Title: CHIEF FINANCIAL OFFICER

**CONSTANTINE CANNON LLP,**  
Co-Lead Counsel, as binding representative and agent of the  
Plaintiffs

By: \_\_\_\_\_  
Name:  
Title:

**HAGENS BERMAN SOBOL SHAPIRO LLP,**  
Co-Lead Counsel, as binding representative and agent of the  
Plaintiffs

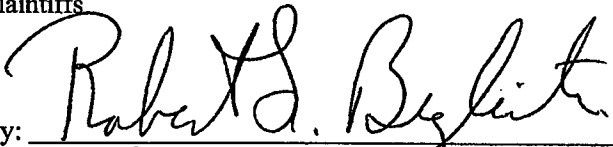
By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the signatories have read and understood this Agreement, have executed it, represent that the undersigned are authorized to execute this Agreement on behalf of the represented parties, have agreed to be bound by its terms and have entered into this Agreement as of the day and year first above written.

VISA U.S.A. INC.

By: \_\_\_\_\_  
Name:  
Title:

CONSTANTINE CANNON LLP,  
Co-Lead Counsel, as binding representative and agent of the  
Plaintiffs

By:   
Name: ROBERT S. BEAL  
Title: PARTNER

HAGENS BERMAN SOBOL SHAPIRO LLP,  
Co-Lead Counsel, as binding representative and agent of the  
Plaintiffs

By: \_\_\_\_\_  
Name:  
Title: