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July 8, 2005

BY ELECTRONIC DELIVERY

The Honorable John Gleeson
United States District Court Judge
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11021

Re: Visa Check/MasterMoney Antitrust Litigation (CV-96-5238)(JG)(RLM)

Dear Judge Gleeson:

Lead Counsel Constantine Cannon submits the following responses to the questions raised in the Court's June 30, 2005 Order regarding the proposed amendments to the Plan of Allocation (the "Plan").

Question 1 - Will Class Members who possess records of their on-line debit transactions or purchase volumes have the opportunity to be heard regarding their estimated shares?

Yes. Class Members who possess records of their on-line debit transactions or purchase volumes can challenge their allocation by submitting records showing that the volumes estimated by the Fisher Methodologies are less than the amounts they actually received. Lead Counsel and the Claims Administrator intend to make the methodology for all estimates available to Class Members on a confidential basis on the case website. This will give Class Members the ability to compare the estimated purchase volumes calculated by the Claims Administrator to any actual figures that Class Members may be able to glean from records, such as processor statements, that they have maintained. Such comparisons will give Class Members a meaningful opportunity to evaluate the reasonableness and accuracy of their estimated cash payment. See Declaration of Neil Zola, dated July 8, 2005, attached as Exhibit 1, at ¶2.

Class Members that elect to challenge their estimated cash payment may submit challenges in accordance with Section 7 of the Plan, and if successful, their allocation will be adjusted accordingly. (If necessary, Class Members may petition Lead Counsel, and subsequently the Court, for review of the Claims Administrator's determination of their challenges.) In short, as stated in our June 23 submission, none of the changes proposed by Lead Counsel, including the revisions regarding on-line debit, affect Class Members' right to challenge

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their estimated cash payment to the Claims Administrator, to Lead Counsel and ultimately to the Court.

Question 2 - Will the Claims Administrator pay 100% of the amount of the approved claim? If yes, what if the settlement funds are insufficient to pay out every approved claim?

Under Lead Counsel's proposal, the Claims Administrator would pay 100% of the amount of approved claims. For Class Members identified in the Visa Transactional Database (which includes the vast majority of the Class), their pro rata shares and estimated cash payments for Visa/MasterCard debit and credit damages will be calculated with the assumption that: (i) all eligible Class Members will claim their share of the settlement fund; and (ii) all Class Members in the Visa Transactional Database accepted Visa and MasterCard during the entire Class Period (i.e. October 25, 1992 - June 21, 2003), and are therefore eligible for a full allocation.¹ These estimates will be provided to Class Members in their claim form, and if unchallenged, will form the basis for the approved claims that will be distributed to Class Members.²

Lead Counsel and the Claims Administrator have carefully evaluated whether this approach could result in an unwarranted depletion of the settlement fund, where sufficient funds would not be available to pay out claims or challenges that are addressed later in the process. For the following reasons, we have concluded that there is little risk of such a scenario.

First, Lead Counsel intends to create an effective reserve by calculating Class Members' cash payments based on an amount that is somewhat less than the estimated securitization amount. For example, if the settlement fund is estimated to be approximately \$2.3 billion after securitization, Class Members' cash payments will be calculated from an amount closer to \$2.2 billion.³ This approach is designed to protect against a drastic (and unanticipated) change in

¹ The Visa Transactional Database includes transaction volumes for all merchants that accepted Visa between October 1, 1996 and July 31, 2003. The Class Period has been defined as the period from October 25, 1992 to June 21, 2003.

² As we explained in our June 23 submission, we are proposing this approach to avoid a two-stage process whereby Class Members first have to submit their merchant contracts along with their claim form to show that they are entitled to an allocation for the entire Class Period. Under that approach, if the Class Member submits the requisite documentation, a revised claim form with an estimated cash payment would then be sent. The new approach proposed by Lead Counsel eliminates the two-stage process by assuming that Class Members identified in the Visa Transactional Database accepted Visa and MasterCard throughout the Class Period for purposes of calculating their estimated cash payment. By eliminating the need to mail a second claim form to most Class Members, this approach will substantially expedite the distribution of the settlement fund to these merchants, and reduce the cost of administering the settlement fund.

³ Lead Counsel has been working with underwriters to lay the groundwork for the securitization, and their advice will inform the estimated securitization amount that will be used to calculate Class Members' estimated cash payments.

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interest rates or the risks facing Visa and MasterCard, and to ensure that sufficient funds are available to pay all approved claims.

Second, as described above, the initial pro rata shares and estimated cash payments will be based on all eligible Class Members participating in the distribution. According to the Claims Administrator, the participation rate in this distribution almost certainly will not approach 100%, and may even be lower than 50% given the size of the class and the duration of the Class Period. See Zola Declaration at ¶6. This attrition, therefore, will create a significant residue that likely will help cover claims or challenges that are submitted later in the process.

Finally, the initial estimated cash payments for Class Members identified in the Visa Transactional Database will be calculated with the assumption that Class Members accepted Visa and MasterCard debit and credit transactions for the entire Class Period, even though many did not. The claim form will ask Class Members to report the period during which they actually accepted Visa and MasterCard, and the estimated cash payments of those Class Members who report a shorter acceptance period will be reduced accordingly. Those adjustments also will increase the residue that will cover later-filed claims.⁴

For all these reasons, we anticipate that there likely will be significant residue which will result in a second distribution to approved claimants after all approved claims have been paid.

Enlarging the Court's February 17, 2004 Order

The Court also requested comments on its intention to enlarge its February 17, 2004 Order to authorize referral to the Special Master of "any disputes or matters arising out of or relating to the Plan of Allocation of, or any proposal to securitize, the settlement funds that Visa and MasterCard are required to pay under the Agreements." Lead Counsel respectfully suggests that submissions regarding the overall architecture of the Plan, such as this one, and any proposals to securitize the settlement fund should be exclusively determined by the Court. We are especially concerned that delegating the initial handling of these issues to the Special Master will delay their resolution to the detriment of the Class. For example, the securitization will be highly dependent on time-sensitive market conditions, interest rates and credit ratings, and thus, it must be evaluated quickly by the Court. Adding another layer of review could delay the process and jeopardize the entire proposal if market conditions change.

⁴ We anticipate that most Class Members will accurately report the period during which they accepted Visa and MasterCard, as they are submitting their claim forms under penalty of perjury. To further encourage accuracy, and to prevent merchants from improperly claiming funds, Lead Counsel intends to ask certain merchants to submit documentation to establish their entitlement to a cash payment for the entire class period. The likelihood of such random audits will be prominently detailed in the claim form, in the instructions that will accompany the form, and on the case website.

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We would have no objection, however, to the Special Master determining the merits of challenges that Class Members may raise to their allocations. As such, we propose that any enlargement of the Court's February 17 Order be limited to "any disputes or matters arising out of challenges to Class Members' estimated cash payments, pursuant to Section 7 of the Plan."

We are prepared to make ourselves immediately available in person or by teleconference to respond to any further questions regarding our proposed modifications to the Plan. Indeed, Lead Counsel believes that such a conference would be the best way to address any further questions the Court may have. We appreciate the Court's prompt attention to our request to amend the Plan.

Respectfully submitted,



Jeffrey I. Shinder