

William J. Maledon, Atty. No. 006670
Jeffrey B. Molinar, Atty. No. 018512
OSBORN MALEDON, P.A.
2929 North Central Avenue
Suite 2100
Phoenix, Arizona 85012-2794
Telephone: 602-640-9000
Facsimile: 602-640-9050

DIVISION 1
COURT OF APPEALS
STATE OF ARIZONA
FILED

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PHILIP G. URRY, CLERK
By _____

Attorneys for Defendant/Appellee MasterCard International Incorporated

[Names of additional counsel for Defendant appear on signature page]

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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|-------------------------------|---|---------------------------|
| BRYAN PERRY, |) | Court of Appeals |
| |) | Division One |
| Plaintiff/Appellant, |) | No. 1 CA-CV 06-0635 |
| |) | |
| |) | Maricopa County |
| v. |) | Superior Court |
| |) | No. CV 2003-007154 |
| |) | |
| MASTERCARD INTERNATIONAL, |) | NOTICE OF STAY AND |
| INC., a Delaware corporation, |) | INJUNCTION |
| |) | |
| Defendant/Appellee. |) | |

PLEASE TAKE NOTICE, that, pursuant to paragraph 18 of the Order entered by Judge Pauley in the United States District Court for the Southern District of New York on November 8, 2006 in the consolidated action in *In re Currency Conversion Fee Antitrust Litigation*, MDL No. 1409 (S.D.N.Y.) ("*Currency Conversion*") (the "Preliminary

Approval Order”),¹ Plaintiff is “stayed and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting or enforcing” their claims herein until the proposed settlement receives final judicial approval or terminates. (Ex. A ¶ 18.)

I. PRELIMINARY APPROVAL BY THE CURRENCY CONVERSION COURT OF A NATIONWIDE CLASS SETTLEMENT.

The plaintiffs in the consolidated action in *Currency Conversion* moved the *Currency Conversion* court on August 15, 2006 for preliminary approval of a proposed settlement, including, without limitation, certification of a nationwide Settlement Damages Class, of which Plaintiff and at least most of the putative class members in this case would be members.² On November 8, 2006, the *Currency Conversion* court entered the Preliminary Approval Order. (See Ex. A.)

Paragraph 18 of the Preliminary Approval Order states that “[a]ll Settlement Damages Class Members, and any Person actually or purportedly acting on behalf of any Settlement Damages Class Member(s), are stayed and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting or enforcing any Released Claim (including, without limitation, in any individual, class or putative class, representative or other action or proceeding), directly or indirectly, in any judicial, administrative, arbitral, or other forum until Final Settlement Approval or termination of the Settlement Agreement, whichever occurs earlier”³ (See Ex. A ¶ 18.)

Plaintiff, and at least most of the members of the putative class, are members of the “Settlement Damages Class,” which includes “all Persons who or which were holders

¹ The Preliminary Approval Order is attached hereto and incorporated herein as Exhibit A. The Memorandum and Order entered by the *Currency Conversion* court is attached hereto and incorporated herein as Exhibit B.

² The Settlement Agreement is attached hereto and incorporated herein as Exhibit C.

³ Capitalized terms not defined herein refer to the definitions used in the Settlement Agreement, which is incorporated herein.

of United States-issued MasterCard- or Visa-branded Credit or Debit Cards or United States-issued Diners Club-branded Credit Cards and made a Foreign Transaction from February 1, 1996 to the date of Preliminary Approval.” (Ex. A ¶ 5; *see* Compl. ¶ 28 (alleging foreign transactions in 2002)).

Released Claims under the Settlement Agreement, include, *inter alia*, “any and all Claims . . . which in whole or in part arise out of or relate to any Foreign Transaction(s), or the disclosure or pricing thereof, up to the date of Preliminary Approval, including, without limitation, any and all Claims that are based in whole or in part on any act, agreement, conduct, or omission up to the date of Preliminary Approval that has or had, and/or allegedly has or had, the purpose or effect of fixing, inflating, Embedding, concealing, or inadequately disclosing the nature, pricing, or any other aspect of any Credit Card Foreign Transaction or Debit Card Foreign Transaction (including, but not limited to, Foreign Transaction Fees, Base Exchange Amounts, and/or any component of either)” (*See* Ex. C at 16.)

As Plaintiff’s claims are undeniably based on the purported inadequate disclosure of a claimed “currency conversion fee” allegedly imposed as a result of his asserted use of a MasterCard-branded credit card, they are Released Claims. (*See, e.g.*, Compl. ¶¶ 8-9.) Thus, as the *Currency Conversion* court has entered the Preliminary Approval Order, Plaintiff’s effort to proceed with this case is stayed and enjoined. (*See* Ex. A ¶ 18.)

II. THE CURRENCY CONVERSION COURT IS AUTHORIZED TO STAY AND ENJOIN PLAINTIFF’S PROSECUTION OF THIS ACTION.

An injunction of related litigation is a common feature in class action settlements, and is necessary to protect the jurisdiction of the court presiding over the settlement and ensure the orderly and efficient resolution of the settlement approval process. *See* 28 U.S.C. § 1651; *see also In re Diet Drugs*, 282 F.3d 220, 237-38 (3d Cir. 2002) (“The threat to the federal court’s jurisdiction posed by parallel state actions is particularly significant where there are conditional class certifications and impending settlements in

federal actions. Many-though not all-of the cases permitting injunctions in complex litigation cases involve injunctions issued as the parties approached settlement. . . . These cases are especially vulnerable to parallel state actions that may frustrate the district court's efforts to craft a settlement in the multi-district litigation before it." (internal citations omitted); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998) ("In addition, the temporary approval of the nationwide settlement stayed the state class actions. The federal court had the power to issue an injunction against continued state proceedings under the All Writs Act, 28 U.S.C. § 1651.") (emphasis added); *Hillman v. Webley*, 115 F.3d 1461, 1469 (10th Cir. 1997) ("The district court undoubtedly had the authority under the All Writs Act to enjoin parties before it from pursuing conflicting litigation in the state court"); *In re Baldwin-United Corp.*, 770 F.3d 328, 335 (2d Cir. 1985) ("If states or others could derivatively assert the same claims on behalf of the same class or members of it, there could be no certainty about the finality of any federal settlement. Any substantial risk of this prospect would threaten all of the settlement efforts by the district court and destroy the utility of the multidistrict otherwise ideally suited to resolving such broad claims."); *Nienaber v. Citibank (South Dakota) N.A.*, No. Civ. 04-4054, 2006 WL 2850535, at *4 (D.S.D. Sept. 29, 2006) ("This stay is necessary to protect and effectuate the Settlement, this Preliminary Approval Order, and this Court's flexibility and authority to effectuate this Settlement and to enter Final Judgment when appropriate."); *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 697 (D. Colo. Mar. 22, 2006) ("The Court also finds it appropriate to preliminarily enjoin members of the Nationwide Class and the Damages Sub-Class from asserting or pursuing any of the claims to be released pursuant to this settlement in either federal or state court, as numerous other courts have done in connection with preliminary approval of proposed class action settlements.").

Courts enjoin state court litigation at the preliminary approval stage to prevent confusion to class members, avoid "subject[ing] the . . . defendants to unnecessarily

duplicative and costly efforts when a fairness hearing has already been scheduled in the district court,” and avoid disruption of the federal court’s management of the class settlement “and jeopardize the settlement’s fruition.” *Carlough v. Amchem Products, Inc.*, 10 F.3d 189, 202 (3d Cir. 1992). Each of these justifications supports the stay and injunction of this litigation. The Third Circuit in *Carlough* approved a federal court’s injunction of state court proceedings and explained why state court litigation should not proceed in parallel to a proposed class settlement in federal court:

We find it difficult to imagine a more detrimental effect upon the district court’s ability to effectuate the settlement of this complex and far-reaching matter than would occur if the West Virginia state court was permitted to make a determination regarding the validity of the federal settlement. Challenges that the settlement violates West Virginia law can be presented to the district court, and those plaintiffs wishing to preserve their claims for West Virginia adjudication may opt out of the federal class. Given the concerns of the district court to finalize the settlement and given the time invested in reaching that goal, we find that the district court did not abuse its discretion in determining that the injunction should issue. We will, therefore, affirm the order of the district court granting preliminary relief in favor of the defendants.

Id. Thus, the court in *Currency Conversion* properly exercised its authority to stay and enjoin Plaintiff from prosecuting this putative class action, and Plaintiff’s claim is stayed and enjoined.

III. CONCLUSION

Pursuant to the Preliminary Approval Order in the Consolidated Action in *In re Currency Conversion Fee Antitrust Litigation*, Plaintiff is “stayed and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting or enforcing” his claims herein until the proposed settlement receives final judicial approval or terminates.

(Ex. A ¶ 18.)

RESPECTFULLY SUBMITTED this 15 day of November, 2006.



William J. Maledon
Jeffrey B. Molinar
OSBORN MALEDON, P.A.
2929 North Central Avenue
Suite 2100
Phoenix, Arizona 85012-2794

Yvette Ostolaza
WEIL, GOTSHAL & MANGES, LLP
200 Crescent Court
Suite 300
Dallas, Texas 75201

Attorneys for Defendant/Appellee
MasterCard International Incorporated

Original and four (4) copies of the foregoing hand-delivered this 15th day of November, 2006, to:

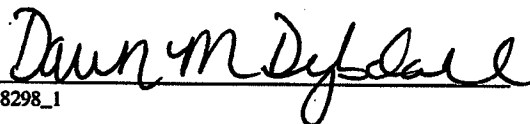
Clerk, Arizona Court of Appeals
Division One
1501 West Washington, Room 203
Phoenix, Arizona 85007

COPIES of the foregoing mailed
this 15th day of November, 2006, to:

Andrew S. Friedman
Francis J. Balint
BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.
2901 North Central Avenue
Suite 1000
Phoenix, Arizona 85012

Edmund W. Searby
SCOTT + SCOTT, LLC
33 River Street
Chagrin Falls, Ohio 44022

Attorneys for Plaintiff/Appellant


Dawn M. Dyball

1428298_1