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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

BRYAN PERRY,,)	No. CV2003-007154
)	
Plaintiff,)	NOTICE OF STAY AND
)	INJUNCTION
vs.)	
)	(Assigned to the Honorable Paul A.
MASTERCARD INTERNATIONAL,)	Katz)
INC., a Delaware corporation,)	
)	
Defendant.)	

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" his claims

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.

COPY

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MICHAEL K. JEANES, CLERK
S. SEELEY
DEPUTY CLERK

1 herein until the proposed settlement receives final judicial approval or terminates.

2 (Ex. A ¶ 18.)

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

5 As this Court is aware, the plaintiffs in the consolidated action in *Currency*
6 *Conversion* moved the *Currency Conversion* court on August 15, 2006 for
7 preliminary approval of a proposed settlement, including, without limitation,
8 certification of a nationwide Settlement Damages Class, of which Plaintiff and at least
9 most of the putative class members in this case would be members.² On November 8,
10 2006, the *Currency Conversion* court entered the Preliminary Approval Order. (*See*
11 *Ex. A.*)

12 Paragraph 18 of the Preliminary Approval Order states that “[a]ll Settlement
13 Damages Class Members, and any Person actually or purportedly acting on behalf of
14 any Settlement Damages Class Member(s), are stayed and enjoined from
15 commencing, instituting, continuing, pursuing, maintaining, prosecuting or enforcing
16 any Released Claim (including, without limitation, in any individual, class or putative
17 class, representative or other action or proceeding), directly or indirectly, in any
18 judicial, administrative, arbitral, or other forum until Final Settlement Approval or
19 termination of the Settlement Agreement, whichever occurs earlier . . .”³ (*See Ex. A*
20 *¶ 18.*)

21 Plaintiff, and at least most of the members of the putative class, are members of
22 the “Settlement Damages Class,” which includes “all Persons who or which were
23 holders of United States-issued MasterCard- or Visa-branded Credit or Debit Cards or
24

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

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

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

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

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

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

22 An injunction of related litigation is a common feature in class action
23 settlements, and is necessary to protect the jurisdiction of the court presiding over the
24 settlement and ensure the orderly and efficient resolution of the settlement approval
25 process. *See* 28 U.S.C. § 1651; *see also In re Diet Drugs*, 282 F.3d 220, 237-38 (3d
26

1 Cir. 2002) (“The threat to the federal court’s jurisdiction posed by parallel state
2 actions is particularly significant where there are conditional class certifications and
3 impending settlements in federal actions. Many-though not all-of the cases permitting
4 injunctions in complex litigation cases involve injunctions issued as the parties
5 approached settlement. . . . These cases are especially vulnerable to parallel state
6 actions that may frustrate the district court’s efforts to craft a settlement in the multi-
7 district litigation before it.”) (internal citations omitted); *Hanlon v. Chrysler Corp.*,
8 150 F.3d 1011, 1025 (9th Cir. 1998) (“In addition, the temporary approval of the
9 nationwide settlement stayed the state class actions. The federal court had the power
10 to issue an injunction against continued state proceedings under the All Writs Act, 28
11 U.S.C. § 1651.”) (emphasis added); *Hillman v. Webley*, 115 F.3d 1461, 1469 (10th
12 Cir. 1997) (“The district court undoubtedly had the authority under the All Writs Act
13 to enjoin parties before it from pursuing conflicting litigation in the state court”);
14 *In re Baldwin-United Corp.*, 770 F.3d 328, 335 (2d Cir. 1985) (“If states or others
15 could derivatively assert the same claims on behalf of the same class or members of it,
16 there could be no certainty about the finality of any federal settlement. Any
17 substantial risk of this prospect would threaten all of the settlement efforts by the
18 district court and destroy the utility of the multidistrict otherwise ideally suited to
19 resolving such broad claims.”); *Nienaber v. Citibank (South Dakota) N.A.*, No. Civ.
20 04-4054, 2006 WL 2850535, at *4 (D.S.D. Sept. 29, 2006) (“This stay is necessary to
21 protect and effectuate the Settlement, this Preliminary Approval Order, and this
22 Court’s flexibility and authority to effectuate this Settlement and to enter Final
23 Judgment when appropriate.”); *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 697 (D. Colo.
24 Mar. 22, 2006) (“The Court also finds it appropriate to preliminarily enjoin members
25 of the Nationwide Class and the Damages Sub-Class from asserting or pursuing any
26 of the claims to be released pursuant to this settlement in either federal or state court,

1 as numerous other courts have done in connection with preliminary approval of
2 proposed class action settlements.”).

3 Courts enjoin state court litigation at the preliminary approval stage to prevent
4 confusion to class members, avoid “subject[ing] the . . . defendants to unnecessarily
5 duplicative and costly efforts when a fairness hearing has already been scheduled in
6 the district court,” and avoid disruption of the federal court’s management of the class
7 settlement “and jeopardize the settlement’s fruition.” *Carlough v. Amchem Products,*
8 *Inc.*, 10 F.3d 189, 202 (3d Cir. 1992). Each of these justifications supports the stay
9 and injunction of this litigation. The Third Circuit in *Carlough* approved a federal
10 court’s injunction of state court proceedings and explained why state court litigation
11 should not proceed in parallel to a proposed class settlement in federal court:

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

21 *Id.* Thus, the court in *Currency Conversion* properly exercised its authority to stay
22 and enjoin Plaintiff from prosecuting this putative class action.

23 **III. CONCLUSION**

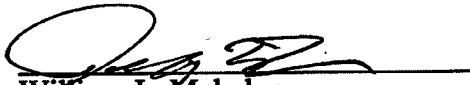
24 Pursuant to the Preliminary Approval Order in the Consolidated Action in *In re*
25 *Currency Conversion Fee Antitrust Litigation*, Plaintiff is “stayed and enjoined from
26

1 commencing, instituting, continuing, pursuing, maintaining, prosecuting or enforcing”
2 his claims herein until the proposed settlement receives final judicial approval or
3 terminates. (Ex. A ¶ 18.)

4 DATED this 15 day of November, 2006.

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1 COPY of the foregoing hand-delivered
this 15th day of November, 2006, to:

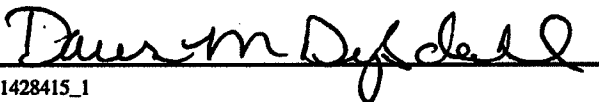
2
3 The Honorable Paul A. Katz
4 Maricopa County Superior Court
201 West Jefferson, ECB-612
Phoenix, Arizona 85003

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

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