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The Class Representatives initiating this case seek incentive awards from the settlement fund in light of the important role they played in this litigation. This case was vigorously prosecuted for more than five-and-one-half years, and it presented numerous complex legal issues. The incentive awards sought herein are necessary and appropriate to reward the Class Representatives for their time and effort in advancing complex claims on behalf of a class of millions of injured persons and businesses.

I. Class Action Public Policy Considerations Favor an Incentive Award for the Class Representatives.

Courts in this and other Circuits embrace incentive awards in light of the enormous benefits created by the class representatives. These plaintiffs have little to gain by choosing to represent a class: their individual recoveries are small compared to the benefits bestowed upon the class as a whole, yet by acting as class representatives they bear added risks and burdens not faced by the unnamed class members who simply file claims after a case is settled.¹ In addition, the class

¹ See, e.g., *In re Worldcom, Inc. ERISA Litig.*, No. 02 Civ. 4816, 2004 WL 2338151, at *11 (S.D.N.Y. Oct. 18, 2004) (“The named plaintiffs have performed an important service to the class and the burden of this commitment deserves to be recognized.”); *RMED Int’l, Inc. v. Sloan’s Supermarkets, Inc.*, No. 94 Civ. 5587, 2003 WL 21136726, at *2 (S.D.N.Y. May 15, 2003) (“Incentive awards are given to compensate named plaintiffs for the risk they have incurred by pursuing the class action and the extra effort they have expended.”); *Golden v. Shulman*, No. CV-85-3624, 1988 WL 144718, at *8 (E.D.N.Y. Sept. 30, 1988) (“In addition to the appointment as representative of a class, Golden ... has been required to respond personally to the discovery requests of defendants, including document production Through his shouldering of these responsibilities, Golden has benefited all of the members of the class. Courts have recognized that name plaintiffs may be rewarded for taking on extra responsibilities of this sort.” (citations omitted)); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *18 (E.D. Pa. June 2, 2004) (“Like the attorneys in this case, the class representatives have conferred benefits on all other class members and they deserve to be compensated accordingly.”); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (“Because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit.”); *In re Plastic Tableware Antitrust Litig.*, No. 94-CV-3564, 1995 WL 723175, at *2 (E.D. Pa. Dec. 4, 1995) (“Payments to class representatives may be considered a form of restitutionary relief within the

representatives' efforts are necessary to carry out Congress' vision of private enforcement of the antitrust laws, which benefits society as a whole.² Incentive awards recognize the external benefits bestowed by the class representatives and ensure that in the future, other plaintiffs will make the same sacrifices.

When deciding the propriety of an incentive award, courts consider

the existence of special circumstances including the personal risk (if any) incurred by the plaintiff-applicant in becoming and continuing as a litigant, the time and effort expended by that plaintiff in assisting in the prosecution of the litigation or in bringing to bear added value (*e.g.*, factual expertise), any other burdens sustained by that plaintiff in lending himself or herself to the prosecution of the claim, and, of course, the ultimate recovery.

Roberts v. Texaco, Inc., 979 F. Supp. 185, 200 (S.D.N.Y. 1997). Courts also look to the amount of the incentive award in relation to the overall recovery for the class. *Dornberger v. Metropolitan Life Ins. Co.*, 203 F.R.D. 118, 125 (S.D.N.Y. 2001).

The representative Plaintiffs in this case exemplify how the dedication and perseverance of a few plaintiffs can generate wide-ranging benefits for a class of millions. These Plaintiffs were

discretion of the trial court... They may also be treated as a reward for public service and for the conferring of a benefit on the entire class.”).

² See, *e.g.*, *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 266 (1972) (“Rule 23 of the Federal Rules of Civil Procedure provides for class actions that may enhance the efficacy of private actions by permitting citizens to combine their limited resources to achieve a more powerful litigation posture.”); *Linney v. Cellular Alaska Partnership*, Nos. C-96-3008, C-97-0203, C-97-0425, C97-0457, 1997 WL 450064, at *7 (N.D. Cal. July 18, 1997) (“Incentive fees for class representatives serve much the same function as attorneys’ fees do in the class action context: they provide the economic incentive necessary to ensure that meritorious actions are prosecuted.”); *In re Sugar Industry Antitrust Litig.*, 73 F.R.D. 322, 357 (E.D. Pa. 1976) (“[T]he United States Supreme Court has called the private civil action a bulwark of antitrust enforcement, whereby the purposes of the federal antitrust laws are best served by the ever-present threat of these types of lawsuits to deter anyone contemplating business misbehavior.”) (citing *Perma Life Mufflers, Inc. v. International Parts Corp.*, 392 U.S. 134 (1968)).

consistently attentive and involved in the litigation. Class Representatives answered interrogatories, produced documents, submitted to depositions, assisted in the preparation of litigation materials, and worked with counsel at all stages of this five-and-one-half-year litigation. Certain Class Representatives also endured challenges and attacks in their depositions and in briefing before the Court on their personal adequacy to act as representatives for the class. They all played a vital role in the extraordinary success of this litigation. Had these Plaintiffs not assumed the burden of commencing and participating in this litigation, and persevered in their prosecution of the case, there would have been no litigation at all to remedy the alleged price-fixing of foreign transaction fees.³

The Class Representatives have well-served the underlying class action policy of acting as private attorneys general for the antitrust laws. As the following descriptions of their contributions demonstrate, they have more than satisfied the legal and factual criteria for granting the requested incentive awards.

Robert Ross. Mr. Ross initiated the investigation into the antitrust and disclosure issues that form the basis of the claims in this litigation. He was joined by two other Class Representatives (Randal Wachsmuth and Camille LaPlaca-Post) when he filed the first antitrust complaint in this multidistrict litigation, *Ross, et al. v. Visa U.S.A., Inc.*, No. 01-cv-1006 (E.D Pa. Feb. 28, 2001). Following his efforts with the pre-filing investigation, Mr. Ross remained active in the case throughout the five-and-one-half-years of this litigation. He reviewed and edited memoranda and other legal documents. Mr. Ross advised counsel on a long list of key filings in this case, including

³ With more than 38 million notices issued to class members and more than 7.5 million claims received to date, Plaintiffs have only received four objections concerning the request for incentive awards. *See* Objections by Sanford Rees (docketed on March 14, 2007); Benjamin Cohen (docketed on October 10, 2007); Ira Stoll (docketed on October 10, 2007); William Rae Caldwell (docketed on October 12, 2007).

the initial and amended complaints; the motion to dismiss, the motion for class certification, and the motion to compel arbitration; and the settlement agreement. He responded to interrogatories and to two rounds of requests for the production of documents. Mr. Ross also sat for deposition where he underwent extensive investigation by three of the six defense lawyers present at his deposition. He withstood Defendants' challenge to his adequacy as a class representative when Defendants erroneously asserted, in their brief opposing Plaintiffs' class certification motion, that he had not agreed to assume his *pro rata* share of the litigation costs. Mr. Ross also traveled from Pennsylvania to New York to attend the class certification hearing. Mr. Ross deserves special recognition for his service to the class, and Plaintiffs respectfully request that he be granted an incentive award of \$45,000.⁴

S. Byron Balbach, Jr. and Michael H. Oshry. These Plaintiffs also helped to initiate this litigation. They were attentive and informed about the litigation. They each responded to interrogatories and to two rounds of requests for the production of documents. These Plaintiffs also sat for depositions and underwent extensive investigation by Defendants: Mr. Balbach was questioned by four of the ten defense lawyers present at his deposition; and Mr. Oshry was questioned by three of the five defense lawyers present at his deposition. They withstood Defendants' challenge to their adequacy as class representatives when Defendants erroneously

⁴ In addition to his efforts in this matter, Mr. Ross is also a plaintiff in two other related cases in MDL 1409: (1) *Ross and Wachsmuth, et al. v. American Express Company, et al.*, No. 04-cv-5723 (S.D.N.Y., Pauley, J.) (alleging antitrust claims against American Express for its participation as a co-conspirator for the foreign transaction fees imposed by Visa, MasterCard, Diners Club and the Bank Defendants and for the Bank Defendants' imposition of arbitration clauses); and (2) *Ross, et al. v. Bank of America, N.A. (USA), et al.*, No. 05-cv-7116 (S.D.N.Y., Pauley, J.) (alleging antitrust allegations for defendants' imposition of arbitration clauses). With respect to *American Express*, Mr. Ross has also responded to interrogatories, produced documents, and he has sat for a deposition.

asserted, in their brief opposing Plaintiffs' class certification motion, that they had not agreed to assume their *pro rata* share of the litigation costs. Both Plaintiffs also traveled to New York to attend the class certification hearing. These Class Representatives deserve special recognition for their services to the class, and Plaintiffs respectfully request an incentive award of \$35,000 each to Mr. Balbach⁵ and Mr. Oshry.

Jeanne H. Balbach, Leslie Cooper, Cherie R. Donald, Andrea Kune, Camille LaPlaca-Post, Herve Senequier and Randal Wachsmuth. These Class Representatives were among the group of plaintiffs whose complaints were transferred to this Court on August 17, 2001 by the Judicial Panel on Multidistrict Litigation. Like the three Plaintiffs above, these Class Representatives each responded to interrogatories and to two rounds of requests for the production of documents, and sat for depositions where they underwent extensive investigation by Defendants: Ms. Balbach (eight defense lawyers attended; five questioned); Mr. Cooper (five defense lawyers attended; three questioned); Ms. Donald (five defense lawyers attended; four questioned); Ms. Kune (eight defense lawyers attended; four questioned); Ms. LaPlaca-Post (four defense lawyers attended; three questioned); Mr. Senequier (four defense lawyers attended; three questioned); and Mr. Wachsmuth⁶ (seven defense lawyers attended; three questioned). They also withstood Defendants' challenge to their adequacy as class representatives when Defendants erroneously asserted, in their

⁵ Mr. Balbach is also a plaintiff in the related MDL 1409 case *Ross, et al. v. Bank of America, N.A. (USA), et al.*, No. 05-cv-7116 (S.D.N.Y., Pauley, J.). The other Class Representatives here that joined Mr. Ross and Mr. Balbach in the *Bank of America* action are Andrea Kune, Woodrow Clark and Herve Senequier.

⁶ Mr. Wachsmuth is also a plaintiff in the related MDL 1409 case *Ross and Wachsmuth, et al. v. American Express Company, et al.*, No. 04-cv-5723 (S.D.N.Y., Pauley, J.), where he responded to interrogatories, produced documents, and sat for a deposition.

brief opposing Plaintiffs' class certification motion, that they had not agreed to assume their *pro rata* share of the litigation costs. In recognition of their service to the class, Plaintiffs respectfully request an incentive award of \$20,000 to each of these seven Class Representatives.

Kayta George, David Shrieve, Tara Rado, Anthony Ralphs and David Ultan. These Plaintiffs initiated litigation on behalf of Visa and MasterCard debit cardholders in California state court, *Shrieve v. Visa U.S.A., Inc., et al.*, No. RG04155097 (Alameda Cty, Cal.). They became Class Representatives when the class needed separate representatives for class members who incurred foreign transaction fees when they used their debit cards. These Plaintiffs produced documents, responded to interrogatories, and sat for depositions. In recognition of their service to the class, Plaintiffs respectfully request an incentive award of \$12,000 to each of these five Class Representatives.

Woodrow W. Clark and Pamela Meyerson. Mr. Clark and Ms. Meyerson offered to serve as class representatives in the fall of 2005 when the Court permitted Plaintiffs to designate class representatives for Diners Club cardholders. They both produced documents (Mr. Clark produced over 1,000 pages of documents and Ms. Meyerson produced over 700 pages), responded to interrogatories, sat for depositions, and withstood Diners Club's challenge to their adequacy to serve as representatives in a litigation that had commenced more than four years earlier. By stepping forward to act as class representatives, Mr. Clark and Ms. Meyerson both ensured that Diners Club cardholders would retain their claims in court, and they aided the remaining Plaintiffs' efforts to resist Defendants' attempt to require all Plaintiffs and class members to pursue their claims in individual arbitrations (as opposed to collectively in a class action before a court). In recognition of their service to the class, Plaintiffs respectfully request an incentive award of \$10,000 each to Mr.

Clark and Ms. Meyerson.

Shannon Mattingly and Timur Nusratty. These Plaintiffs also initiated litigation on behalf of Visa and MasterCard debit cardholders in California state court, *Mattingly v. Visa U.S.A., Inc., et al.*, No. RG05198142 (Alameda Cty, Cal.). They collected documents in anticipation of answering interrogatories and requests for production, although they were never required to do so. In recognition of their service to the class, Plaintiffs respectfully request an incentive award of \$6,000 to each of these two Class Representatives.

Jeffrey Zakem. Mr. Zakem volunteered to serve as a Class Representative in the Third Amended Complaint, which the Court granted leave to file in its November 8, 2006 Memorandum and Order preliminarily approving the settlement. Prior to doing so he was interviewed at length by Plaintiffs' counsel and he produced his records. In recognition of his service to the class, Plaintiffs respectfully request an incentive award of \$3,000 to Mr. Zakem.

II. The Incentive Awards Compensate the Class Representatives for Their Efforts on Behalf of the Class and the Awards are Comparable to Other Such Awards.

The incentive awards sought are necessary to compensate the Class Representatives for their efforts on behalf of the class. These Plaintiffs were instrumental in obtaining a settlement fund totaling \$336 million (plus interest), as well as important changes concerning Defendants' foreign transaction fee policies and practices. Compared to the size of the overall settlement, the incentive awards requested (a total of \$350,000) are relatively modest, totaling only 0.10% of the amount of the total settlement fund. *Cf. Roberts v. Texaco, Inc.*, 979 F. Supp. 185 (S.D.N.Y. 1997) (incentive awards amounting to 0.18% of settlement fund); *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187 (W.D.N.Y. 2005) (award to sole class representative of 8.4% of fund).

The size of the incentive awards requested is in line with awards courts have approved in the past for plaintiffs who stepped forward as champions of the class. *Cf. In re Buspirone Antitrust Litig.*, MDL 1413, 2003 U.S. Dist. LEXIS 26538, at *12 (S.D.N.Y. Apr. 17, 2003) (\$25,000 to lead plaintiff); *Roberts*, 979 F. Supp. 185 (in discrimination case, approving awards to class representatives totaling \$212,500 divided among six representatives: \$85,000 (x1); \$50,000 (x1); \$25,000 (x3); and \$2,500 (x1)); *Yap v. Sumitomo Corp. of Am.*, 1991 U.S. Dist. LEXIS 2124, at *9 (S.D.N.Y. Feb. 22, 1991) (\$30,000 award); *Fears v. Wilhelmina Model Agency*, 2005 WL 1041134, at *3 (S.D.N.Y. May 5, 2005) (approving awards of \$25,000 for plaintiffs who had been deposed, and \$15,000 for plaintiffs who testified at trial and other class representatives), vacated in part on other grounds, *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423 (2d Cir. 2007); *Meijer, Inc. v. 3M*, 2006 WL 2382718, at *25 (E.D. Pa. Aug. 14, 2006) (\$25,000 award); *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *18 (D.N.J. Nov. 9, 2005) (total incentive award of \$60,000 to two named plaintiffs); *In re Remeron End-Payor Antitrust Litig.*, 2005 WL 2230314, at *33 (D.N.J. Sept. 13, 2005) (\$30,000 award); *In re Terazosin Hydrochloride Antitrust Litig.*, No. 99-MDL-1317 (S.D. Fla. Apr. 19, 2005) (\$45,000 to one plaintiff; \$30,000 to the other); *Godshall v. Franklin Mint Co.*, 2004 WL 2745890, at *6 (E.D. Pa. Dec. 1, 2004) (\$20,000 to each of two plaintiffs from a \$1.125 million settlement fund); *North Shore Hematology-Oncology Associates, P.C. v. Bristol-Myers Squibb Co.*, No. 04-248 (D.D.C. Nov. 30, 2004) (\$25,000 award); *Linerboard*, 2004 WL 1221350, at *18 (\$25,000 to each of five class representatives); *In re Relafen Antitrust Litig.*, Master File No. 01-12239 (D. Mass. Apr. 9, 2004) (\$25,000 award); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907 (S.D. Ohio 2001) (\$50,000 bonus to plaintiff who was instrumental in bringing lawsuit); *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251 (S.D.

Ohio 1991) (awarding \$50,000 each to six class representatives, totaling \$300,000 out of a total settlement valued at approximately \$56 million (of which \$32 million was the cash component of the settlement)); *Van Vracken v. Atl. Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (\$50,000 award); *In re Revco Sec. Litig.*, Nos. 851 & 89 CV 593, 1992 WL 118800 (N.D. Ohio May 06, 1992) (award of \$200,000 appropriate); *In re Dun & Bradstreet Credit Serv. Customer Litig.*, 130 F.R.D. 366, 373-74 (S.D. Ohio 1990) (approving awards from \$35,000 to \$55,000).

III. Conclusion.

As demonstrated above, these Class Representatives have performed an important service to a class of millions of persons and businesses. As a group, they have borne the burden and risks attendant to litigation, including the obligation to bear their *pro rata* share of costs. These Plaintiffs have assisted counsel (even providing written edits to draft legal documents as Mr. Ross has done), and they have provided discovery in the form of documents, written interrogatory responses and testimony. They have withstood challenges from Defendants and they have stepped forward to lend critical assistance to the litigation to preserve and advance claims on behalf of the class (*e.g.*, for Diners Club cardholders and debit card cardholders). They have more than satisfied the requirements for an incentive award and the awards sought are comparable to those that have been granted in other class actions.

In recognition of the substantial benefit that the Class Representatives have bestowed upon the class, Plaintiffs respectfully request that this Court grant their motion for incentive awards.

DATED: January 30, 2008

Respectfully submitted,

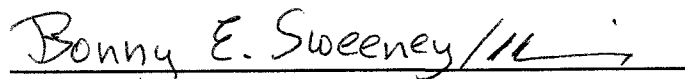
BERGER & MONTAGUE, P.C.
MERRILL G. DAVIDOFF
RUTHANNE GORDON
DAVID A. LANGER


MERRILL G. DAVIDOFF

1622 Locust Street
Philadelphia, PA 19103
Telephone: 215/875-3000
215/875-4604 (fax)

DATED: January 30, 2008

COUGHLIN STOIA GELLER RUDMAN
& ROBBINS LLP
BONNY E. SWEENEY
CHRISTOPHER M. BURKE


BONNY E. SWEENEY

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Co-Lead Counsel for Plaintiffs

HULETT HARPER STEWART LLP
DENNIS STEWART
550 West C Street, Suite 1600
San Diego, CA 92101
Telephone: 619/338-1133
619/338-1139 (fax)

Counsel for Plaintiffs

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on January 29, 2008, declarant served the **MEMORANDUM IN SUPPORT OF CLASS REPRESENTATIVES' PETITION FOR INCENTIVE AWARDS** by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of January, 2008, at San Diego, California.


ADRIANA DEL CARMEN

VISA ANTITRUST (MDL)

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Counsel for Defendant(s)

Robert J. Vizas
Arnold & Porter LLP
90 New Montgomery Street, Suite 600
San Francisco, CA 94105
415/356-3000
415/356-3099(Fax)

Mark S. Stewart
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
215/665-8500
215/864-8999(Fax)

Charles E. Buffon
Robert Wick
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004
202/662-6000
202/662-6291(Fax)

Alexander Geiger
Geiger & Rothenberg LLP
30 Vesey Street
New York, NY 10007
585/232-1946

Mark A. Aronchick
Hangley Aronchick Segal & Pudlin
One Logan Square
18th & Cherry Streets, 27th Floor
Philadelphia, PA 19103-6933
215/568-6200
215/568-0300(Fax)

M. Laurence Popofsky
Brian P. Brosnahan
Heller Ehrman LLP
333 Bush Street, Suite 3100
San Francisco, CA 94104-2878
415/772-6000
415/772-6268(Fax)

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Lawrence J. Zweifach
Richard Cashman
Daniel D. Edelman
Heller Ehrman LLP
Times Square Tower, 7 Times Square
New York, NY 10036
212/832-8300
212/763-7600(Fax)

Jackie Redin Klein
Locke Lord Bissell & Liddell LLP
300 South Grand Avenue, 8th Floor
Los Angeles, CA 90071-3119
213/485-1500
213/485-1200(Fax)

Edward C. Fitzpatrick
Randall A. Hack
Locke Lord Bissell & Liddell LLP
111 South Wacker Drive
Chicago, IL 60606-4410
312/443-0700
312/443-0336(Fax)

Gregory T. Casamento
Locke Lord Bissell & Liddell LLP
885 Third Avenue, 26th Floor
New York, NY 10022
212/947-4700
212/947-1202(Fax)

David H. Marion
Montgomery, McCracken Walker & Rhoads, LLP
123 S. Broad Street
Philadelphia, PA 19109
215/772-1500
215/772-7620(Fax)

Harry T. Robbins
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178-0060
212/309-6000
212/309-6273(Fax)

Gregory A. Cummings, Jr.
Morgan, Lewis & Bockius LLP
Spear Street Tower
One Market Plaza, 23rd Floor
San Francisco, CA 94105
415/442-1000
415/442-1001(Fax)

Joseph B.G. Fay
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
215/963-5000
215/963-5001(Fax)

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Mark P. Ladner
Morrison & Foerster LLP
1290 Avenue of the Americas
New York, NY 10104-0050
212/468-8000
212/468-7900 (Fax)

Michael T. Scott
Reed Smith, LLP
2500 One Liberty Place, 1650 Market Street
Philadelphia, PA 19103
215/851-8100
215/851-1420 (Fax)

Thomas D. Nevins
Sheppard, Mullin, Richter & Hampton LLP
4 Embarcadero Center, 17th Floor
San Francisco, CA 94111
415/434-9100
415/434-3947 (Fax)

David F. Graham
Theodore R. Scarborough, Jr.
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
312/853-7000
312/853-7036 (Fax)

Peter E. Greene
Peter S. Julian
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036
212/735-3000
212/735-2000 (Fax)

Jay N. Fastow
Bruce A. Colbath
Fiona Schaeffer
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153-0119
212/310-8000
212/310-8007 (Fax)

Christopher R. Lipsett
Wilmer Cutler Pickering Hale and Dorr LLP
399 Park Avenue
New York, NY 10022
212/230-8807
212/230-8888 (Fax)

Daniel Squire
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, N.W.
Washington, DC 20006
202/663-6000
202/663-6363 (Fax)

VISA ANTITRUST (MDL)

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Counsel for Plaintiff(s)

Merrill G. Davidoff
Ruthanne Gordon
Edward W. Millstein
Berger & Montague, P.C.
1622 Locust Street
Philadelphia, PA 19103
215/875-3000
215/875-4604 (Fax)

Bonny E. Sweeney
Joseph D. Daley
Christopher M. Burke
Coughlin Stoia Geller Rudman & Robbins LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
619/231-1058
619/231-7423 (Fax)

Dennis Stewart
Hulett Harper Stewart, LLP
550 West C Street, Suite 1600
San Diego, CA 92101
619/338-1133
619/338-1139 (Fax)

Daniel B. Allanoff
Meredith Cohen Greenfogel & Skirnick, P.C.
1521 Locust Street, 8th Floor
Philadelphia, PA 19102
215/564-5182
215/569-0958 (Fax)

Thomas F. Schrag
James S. Baum
Michael L. Schrag
Schrag & Baum, P.C.
280 Panoramic Way
Berkeley, CA 94704
510/849-1618
510/841-6050 (Fax)

Allan Steyer
Steyer Lowenthal Boodrookas Alvarez & Smith
LLP
One California Street, 3rd Floor
San Francisco, CA 94111
415/421-3400
415/421-2234 (Fax)

Counsel for Plaintiff(s)

R. Scott Palmer
Manuel J. Dominguez
Berman DeValerio Pease Tabacco Burt & Pucillo
222 Lakeview Avenue, Suite 900
Esperante Building
West Palm Beach, FL 33401
561/835-9400
561/835-0322 (Fax)

Brian Barry
Law Offices of Brian Barry
1801 Avenue of the Stars, Suite 307
Los Angeles, CA 90067
310/788-0831
310/788-0841 (Fax)

Alan M. Caplan
Philip Neumark
Bushnell, Caplan, Fielding & Maier, LLP
900 Kearny Street, Suite 299
San Francisco, CA 94133-5124
415/217-3800
415/217-3820 (Fax)

Linda P. Nussbaum
Cohen, Milstein, Hausfeld & Toll, P.L.L.C.
1100 New York Ave., N.W., Suite 500
Washington, DC 20005-3964
202/408-4600
202/408-4699 (Fax)

Michael D. Donovan
Donovan Searles, LLC
1845 Walnut Street, Suite 1100
Philadelphia, PA 19103
215/732-6067
215/732-8060 (Fax)

James O. Latturner
William Crane
Edelman, Combs & Latturner, LLC
120 S. LaSalle Street, 18th Floor
Chicago, IL 60603
312/739-4200
312/419-0379 (Fax)

Lionel Z. Glancy
Michael Goldberg
Glancy Binkow & Goldberg LLP
1801 Avenue of the Stars, Suite 311
Los Angeles, CA 90067
-310/201-9150
310/201-9160 (Fax)

Richard D. Greenfield
Greenfield & Goodman, LLC
24579 Deep Neck Road
Royal Oak, MD 21662

Marc H. Edelson
Hoffman & Edelson, LLC
45 W. Court Street
Doylestown, PA 18901
215/230-8043
215/230-8735 (Fax)

Joseph C. Kohn
Robert J. LaRocca
William E. Hoese
Kohn, Swift & Graf, P.C.
One South Broad Street, Suite 2100
Philadelphia, PA 19107-3389
215/238-1700
215/238-1968 (Fax)

Robert G. Eisler
David S. Stellings
Erik Shawn
Lieff, Cabraser, Heimann & Bernstein, LLP
780 Third Avenue, 48th Floor
New York, NY 10017-2024
212/355-9500
212/355-9592 (Fax)

Terri Mandel
Terri Mandel, P.C.
1777 Borel Place, Suite 107
San Mateo, CA 94402
650/357-0354
650/357-0384 (Fax)

VISA ANTITRUST (MDL)

Service List

Page 6 of 10

R. Alexander Saveri
Saveri & Saveri, Inc.
111 Pine Street, Suite 1700
San Francisco, CA 94111-3600
415/217-6810
415/217-6813 (Fax)

Richard S. Schiffrin
Krishna Narine
Schiffrin Barroway Topaz & Kessler, LLP
280 King of Prussia Road
Radnor, PA 19087
610/667-7706
610/667-7056 (Fax)

Stephen A. Weiss
Seeger Weiss LLP
1 William Street
New York, NY 10004-2502
212/584-7000
212/584-0799 (Fax)

Jonathan Shub
Sheller, P.C.
1528 Walnut Street, 3rd Floor
Philadelphia, PA 19102
215/790-7300
215/546-0942 (Fax)

Alan C. Milstein
Harris Pogust
Sherman, Silverstein, Kohl, Rose & Podolsky
4300 Haddonfield Road, Suite 311
Pennsauken, NJ 08109
609/662-0700
609/662-0165 (Fax)

Christopher T. Micheletti
Craig C. Corbitt
Zelle, Hofmann, Voelbel, Mason & Gette LLP
44 Montgomery Street, Suite 3400
San Francisco, CA 94104
415/693-0700
415/693-0770 (Fax)

Randall J. Sunshine
Liner Yankelevitz Sunshine & Regenstreif LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, CA 90024-3503
310/500-3500
310/500-3501 (Fax)

Robert C. Susser
Robert C. Susser, P.C.
270 Madison Avenue, Suite 1500
New York, NY 10016
212/808-0298
212/949-0966 (Fax)

Roberta D. Liebenberg
Fine, Kaplan & Black, R.P.C.
1835 Market Street, 28th Floor
Philadelphia, PA 19103
215/567-6565
215/568-5872 (Fax)

Daniel J. Mogin
The Mogin Law Firm
110 Juniper Street
San Diego, CA 92101-1502
619/687-6611
619/687-6610 (Fax)

Timothy D. Battin
Straus & Boies, LLP
10513 Braddock Road
Fairfax, VA 22032
703/764-8700
703/764-8704 (Fax)

VISA ANTITRUST (MDL)

Service List

Page 7 of 10

Aaron Brody
Stull, Stull & Brody
6 East 45th Street
4th Floor
New York, NY 10017
212/687-7230
212/490-2022 (Fax)

Jayne Arnold Goldstein
Mager White & Goldstein, LLP
1640 Town Center Circle, Suite 216
Weston, FL 33326
954-515-0123
954-515-0124 (Fax)

VISA ANTITRUST (MDL)

Service List - 1/23/2008 (201-093)

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Appearance Entered

Michael Andrew Fischer
Fischer Law Firm, PLLC
233 Broadway, Suite 2201
New York, NY 10279
212/393-1510
212/393-1513(Fax)

Objectors

- * Ira E. Stoll
553 8th Street, Apartment 1R
Brooklyn, NY 11215
- * Shrenik Bavishi
P.O. Box 5
Colonia, NJ 07067-0005
- * Jacob K. Jou
1306 Massachusetts Ave., Apt. 401
Cambridge, MA 02138
- * Erin Anderson
1982 W. Bayshore Road, #336
East Palo Alto, CA 94303
- * John Moriarty
P.O. Box 54884
Irvine, CA 92619
- * Timothy Leatherman
P.O. Box 30687
Portland, OR 97294
- * Raymond Santangelo
5824 Irvine Avenue
North Hollywood, CA 91601-1019
- * Betsy Jasinski
1533 Mt. Isle Harbor Drive
Charlotte, NC 28214
- * Gayle C Buss
1163 St Rt 15
Venedy, IL 62214
- * Whitney P. Sunderland
9727 Sagamore Road
Leawood, KS 66206
- * Sharon L. Taylor
5570 North Lake Road
Columbiaville, MI 48421
- * Kenny Delafange
29 Cedar Street
Champlain, NY 12919
- * Harvey S. Shapiro
Attorney-At-Law
77 Central Street, 2nd Floor
Boston, MA 02109
- * William M. Borgia
Laura B. Borgia
318 South Jefferson Street
Hanover, PA 17331
- * Christopher L. Graeser
3600 Cerrillos Road, Suite 201 D
Santa Fe, NM 87507
- * Jeremy Jacobsohn
6917 Race Horse Lane
Rockville, MD 20852
- * Stacy L. Gage
2550 Marquette Pl.
Dubuque, IA 52001-0606
- * David H. Wright, Ph.D.
1573 49th St.
Sacramento, CA 95819-4402
- * Russ Barnes
Wildwood Lamps & Accents, Inc.
P.O. Box 672
Rocky Mount, NC 27802-0672
- * Victoria M. Bhavsar, Ph.D.
890 Citrus Lane
Pomona, CA 91768
- * Larry Paletz
1493 Caminito Solidago
La Jolla, CA 92037
- * Kenneth L. Willeford, MD
Coastal Carolinas Integrated Medicine
10 Doctors Circle, Suite 2
Supply, NC 28462
- * Stanford Ress
P.O. Box 1250
Jackson, WY 83001-1250

* Vaughn R. Walker
P.O. Box 36100
San Francisco, CA 94102

* Kelby Scott Koenig
P.O. Box 31153
Cincinnati, OH 45231

* Jeffrey B. Ehney
P.O. Box 02100362
Sioux Falls, SD 57186

* David S. Brown
70 East 10th St., Apt. 12L
New York, NY 10003

* Christopher Leddy
5851 Padua Dr.
Huntington Beach, CA 92649

* Benjamin Cohen
8510 Rayburn Rd.
Bethesda, MD 20817

* Robert Shattuck
3812 Spring Valley Circle
Birmingham, AL 35223

* Cliff Bamford
70 East Sunset Way
Issaquah, WA 98027

* Karen Curry
1349 Cascade Drive
Grand Prairie, TX 75050

Counsel for Objectors Lawrence E. Schneider and Anne Cochran:

* Edward Siegel
27600 Chagrin Boulevard, #340
Cleveland, OH 44122

* Edward W. Cochran
Law Office of Edward W. Cochran
20030 Marchmont Road
Shaker Heights, OH 44122

Counsel for Objector William Rae Caldwell:

* Lynda Kae Stewart
1710 S. Baden Oaks Dr.
Pearland, TX 77581

Counsel for Objector Dennis D. Gibson:

* Alani Golanski
Law Offices of Alani Golanski
25 Washington Street, Suite 547
Brooklyn, NY 11201

Counsel for Objectors Thomas Carder, Dylan Whisenhunt, Gloria Whisenhunt and Judy Sargeant:

* R. Stephen Griffis
R. Stephen Griffis, PC
2100 Riverhaven Drive, Suite 1
Hoover, AL 35244

Counsel for Objectors Amy Carrigan, Edward A. Tarquinios and Peter G. Desimone:

* Barry M. Altman
Altman & Altman
404 Main Street, Suite 3
Wilmington, MA 01887-3631

Counsel for Objector Joel Shapiro:

* John J. Pentz
Class Action Fairness Group
2 Clock Tower Place, Suite 260G
Maynard, MA 01754

Counsel for Objector Bernd Bildstein:

* Irving Bizar
Ballon, Stoll, Bader & Nadler, PC
1450 Broadway, 14th Floor
New York, NY 10018-2268

Counsel for Objector Shrank:

* Sheldon V. Burman, P.C.
110 E. 59th Street, 23rd Floor
New York, NY 10022