

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re CURRENCY CONVERSION FEE	:	MDL Docket No. 1409
ANTITRUST LITIGATION	:	
	:	
	:	
This Document Relates To:	:	DECLARATION OF HONORABLE
	:	EDWARD A. INFANTE (RET.) IN
	:	SUPPORT OF PLAINTIFFS' MOTION FOR
ALL ACTIONS.	:	FINAL APPROVAL OF SETTLEMENT
	:	
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1. I am the former Chief Magistrate Judge of the United States District Court, Northern District of California. I currently serve as a mediator with JAMS, the nation's largest private provider of alternative dispute resolution services. As a U.S. Magistrate Judge and with JAMS, I have over 30 years of dispute resolution experience, having conducted over 3,000 settlement conferences in all types of litigation, including antitrust, consumer, securities fraud and shareholder class actions.

2. The parties approached me to mediate the settlement negotiations in *In re Currency Conversion Antitrust Litigation*, MDL-1409, *Schwartz v. Visa Int'l, et al.*, and other related litigation and I agreed.

3. Because numerous complex and contentious issues required resolution, the mediation was protracted, encompassing six joint, in-person sessions totaling ten days and spanning sixteen months from February 2005 to May 2006. Five sessions were held in San Francisco and one in Los Angeles. In addition, I had multiple telephonic conversations with the parties.

4. Plaintiffs and Defendants submitted lengthy Mediation Statements with dozens of exhibits setting forth the factual, legal, and procedural issues faced by each in MDL 1409, *Schwartz* and two related California State Court actions, *Shrieve, et al. v. Visa, et al.* and *Mattingly, et al. v. Visa, et al.*

5. The parties' submissions were extensive, and reflected the complex and challenging legal environment, for both plaintiffs and defendants, in which the numerous claims were being litigated. Both parties faced significant risks in pursuing these claims, including, *inter alia*, conflicting views on liability and issues on appeal as well as vastly differing analyses and assertions regarding the scope, dollar amount and legal basis on which to recover potential damages within the context of the various pending cases. These factors made it apparent to me that litigation of these

issues would continue to be highly contested and that both sides would face substantial litigation risk. This was highlighted when soon after the initial two day mediation session in February 2005, this Court issued its March 9, 2005 decision regarding the effect of certain cardholder arbitration provisions which substantially narrowed the class that had been certified in the litigation and hence the potential amount of damages in MDL 1409. The various class certification rulings by the Court in MDL 1409 gave rise to a number of legally and factually complex appeals that were pending at the time the parties agreed to settle the litigation.

### **STRUCTURE OF SETTLEMENT**

6. At the time the parties were negotiating MDL 1409, there were also a number of state court actions pending around the country relating to foreign credit and debit transactions. Defendants understandably wanted to resolve all of these actions. It was recognized that efficiency and practicality militated for MDL 1409 to be the vehicle for distribution of settlement funds to cardholders.

7. The structure of a potential settlement of MDL 1409 was addressed first with contentious, arms' length, good faith negotiations relating to every aspect of the settlement, e.g. scope of the going forward relief, the forms of notice to class members, means by which claims could be filed (on line or only in hard copy), documentation required from claimants, who would bear the cost of administering the settlement and of providing transaction data to cardholders, and, of course the amount of the settlement fund. Sharply divergent opinions existed regarding every one of these issues. For example, discussions relating only to the availability of electronic data held by the defendants and the feasibility of providing it to claimants consumed many hours.

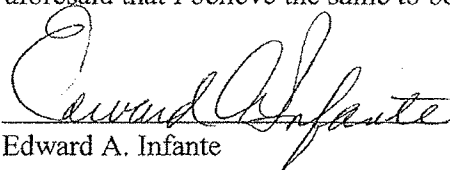
8. Because debit transactions were likely to have become part of MDL 1409, and were already being litigated in state court in the *Shrieve* action, the parties needed to include fees relating to foreign debit transactions in any settlement.

9. The negotiations, which I conducted, of the terms of the *Schwartz* case were also contentious, and arms' length. Defendants wanted not only a dismissal of the *Schwartz* action but also vacature of the Judgment and 125 page Statement of Decision. I am fully satisfied with the results pertaining to *Schwartz* as fair and reasonable. Based on the negotiations and information from counsel, the attorneys' fees and costs paid in the *Schwartz* settlement are not duplicative of the time and effort of counsel in MDL 1409.

10. The going forward relief and \$336 million fund obtained by plaintiffs' counsel in MDL 1409 is in my opinion an excellent result for the class members, and an effective result for all parties, particularly in light of the substantial risk and uncertainty of further litigation in the trial and appellate courts, matters with which I became intimately familiar during the mediation, *e.g.*, the pending appeals of Defendants Chase and Citicorp on the issue of arbitration might have greatly weakened or eliminated the claims of the class.

Under penalties as provided by law, I certify that the statements as set forth in this declaration are true and correct, except as to matters herein stated to be on information and belief, and as to such matters I certify as aforesaid that I believe the same to be true.

Date: 1-28-08

  
Edward A. Infante

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 **DECLARATION OF HONORABLE EDWARD A. INFANTE (RET.) IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT** 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

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