



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

FILED
ALAMEDA COUNTY

OCT 31 2003

CLERK OF THE SUPERIOR COURT
By Charlotte Marie
Deputy

Case No.: 822404-4

ADAM A. SCHWARTZ, on behalf of the General)
Public,)
)
Plaintiff,)
)
v.)
)
VISA INTERNATIONAL CORP., VISA)
INTERNATIONAL SERVICE ASSOCIATION,)
INC., VISA U.S.A., INC., and MASTERCARD)
INTERNATIONAL INCORPORATED,)
)
Defendants.)

JUDGMENT

1. Based on the Court's April 7, 2003 Statement of Decision, and September 18, 2003 Order Regarding Means of Effecting Restitution, judgment is hereby entered in favor of Plaintiff against Defendant Visa U.S.A. Inc. and Visa International Service Association (collectively "Visa") and Defendant MasterCard International Incorporated (MasterCard).

2. As used in this Judgment "Visa Cardholders" means those persons who, at the relevant time, had a U.S. issued Visa branded credit card with a billing address located in the United States, including individual consumers and businesses.

3. As used in this Judgment "MasterCard California Cardholders" means those persons who, at the relevant time, had a U.S. issued MasterCard branded credit card with a billing address located in the State of California, including individual consumers and businesses.

OCT 31 2003

1 AS TO VISA:

2 4. Visa is hereby ordered to amend its operating rules, regulations and
3 member agreements to require all of its U.S. members who issue Visa branded credit
4 cards, and who bill their cardholders Visa's currency conversion fee, to make full and
5 effective disclosure of Visa's currency conversion fee to Visa cardholders. For purposes
6 of this judgment, Visa can meet the full and effective disclosure standard by requiring its
7 U.S. members to disclose the amount of the currency conversion fee in cardholder
8 billing statements (also known as periodic statements), solicitations, applications, and
9 cardholder agreements. The required disclosures in the billing statements must include
10 the amount of the currency conversion fee assessed by Visa in each billing statement and
11 enable the cardholder to determine the amount of fees incurred during the billing cycle
12 either in gross or on a per transaction basis. It is in the discretion of Visa to determine the
13 specific nature and extent of amendments necessary to comply with this Judgment.

14 5. Visa must amend its operating rules, regulations and member agreements
15 not later than 90 days after the Start Date. Visa must serve copies of the amendments on
16 Plaintiff not later than 100 days after the Start Date. The amendments must take effect
17 not later than 180 days after the Start Date. The "Start Date" is defined as the date 70
18 days after the date Judgment is entered.

19 6. Visa's compliance with the injunctive relief in paragraphs 4 and 5 may be
20 enforced by motions for civil contempt under C.C.P. 1209 filed in this action. Any
21 member of the general public may move to intervene in this action and file a motion for
22 civil contempt to enforce the judgment. Prior to filing any motion for civil contempt, the
23 moving party must serve by certified or registered mail, return receipt requested, at the
24 corporate headquarters of Visa U.S.A., Inc., a written demand on both Visa entities
25 seeking enforcement of the disclosure obligations of the judgment herein. The written
26 demand must reference this judgment, identify the member bank, and attach a copy of the
27 solicitation, application or billing statement that fails to make disclosure of currency

1 conversion fees. No motion for civil contempt may be filed until 90 days after service of
2 the written demand on Visa. During the 90 day period, Visa may investigate and remedy
3 the alleged violation, if any. The actions of Visa following service of the written notice
4 may serve as a defense to any such motion.

5 7. Visa is ordered to restore the one percent currency conversion fee to all
6 Visa cardholders who were charged and who paid the currency conversion fee from
7 February 15, 1996 through October 22, 2002. Visa must restore the 1% currency
8 conversion fee through a Notice and Claims process as described below.

9 8. The Court orders Visa to pay prejudgment simple interest on all restitution
10 made to cardholders at the rate of 2% per year from 30 days after the billing date on
11 which a currency conversion fee was charged to the cardholder.

12 9. Plaintiff and/or Plaintiff's counsel may apply for an order for reasonable
13 attorneys fees and costs from Visa.

14 10. The Court retains jurisdiction of this matter to effectuate the judgment.
15 The Court also retains jurisdiction to consider ordering restitution to cardholders who are
16 charged and pay the currency conversion fee during the pendency of an appeal.

17

18 AS TO MASTERCARD:

19 11. MasterCard is hereby ordered to amend its operating rules, regulations and
20 member agreements to require all of its U.S. members who issue MasterCard branded
21 credit cards to MasterCard California cardholders, and who bill their California
22 cardholders MasterCard's currency conversion fee, to make full and effective disclosure
23 of MasterCard's currency conversion fee to MasterCard's California cardholders. For
24 purposes of this judgment, MasterCard can meet the full and effective disclosure standard
25 by requiring its U.S. members to disclose the amount of the currency conversion fee in
26 cardholder billing statements (also known as periodic statements), solicitations,
27 applications, and cardholder agreements. The required disclosures in the billing

1 statements must include the amount of the currency conversion fee assessed by
2 MasterCard in each billing statement and enable the California cardholders to determine
3 the amount of fees incurred during the billing cycle either in gross or on a per transaction
4 basis. It is in the discretion of MasterCard to determine the specific nature and extent of
5 amendments necessary to comply with this Judgment.

6 12. MasterCard must amend its operating rules, regulations and member
7 agreements not later than 90 days after the Start Date. MasterCard must serve copies of
8 the amendments on Plaintiff not later than 100 days after the Start Date. The
9 amendments must take effect not later than 180 days after the Start Date. The "Start
10 Date" is defined as the date 70 days after the date Judgment is entered.

11 13. MasterCard's compliance with the injunctive relief in paragraphs 11 and
12 12 may be enforced by motions for civil contempt under C.C.P. 1209 filed in this action.
13 Any member of the general public may move to intervene in this action and file a motion
14 for civil contempt to enforce the judgment. Prior to filing any motion for civil contempt,
15 the moving party must serve by certified or registered mail, return receipt requested, at
16 the corporate headquarters of MasterCard, a written demand on MasterCard seeking
17 enforcement of the disclosure obligations of the judgment herein. The written demand
18 must reference this judgment, identify the member bank, and attach a copy of the
19 solicitation, application or billing statement that fails to make disclosure of currency
20 conversion fees. No motion for civil contempt may be filed until 90 days after service of
21 the written demand on MasterCard. During the 90 day period, MasterCard may
22 investigate and remedy the alleged violation, if any. The actions of MasterCard following
23 service of the written notice may serve as a defense to any such motion.

24 14. MasterCard is ordered to restore the one percent currency conversion fee
25 to all MasterCard California cardholders who were charged and who paid the currency
26 conversion fee from February 15, 1996 through October 22, 2002. MasterCard must
27 restore the 1% currency conversion fee through a Notice and Claims process as described

1 below.

2 15. The Court orders MasterCard to pay prejudgment simple interest on all
3 restitution made to California cardholders at the rate of 2% per year from 30 days after
4 the billing date on which a currency conversion fee was charged to the California
5 cardholder.

6 16. Plaintiff and/or Plaintiff's counsel may apply for an order for reasonable
7 attorneys fees and costs from MasterCard.

8 17. The Court retains jurisdiction of this matter to effectuate the judgment.
9 The Court also retains jurisdiction to consider ordering restitution to cardholders who are
10 charged and pay the currency conversion fee during the pendency of an appeal.

11

12 THE NOTICE AND CLAIMS PROCEDURE:

13 18. Notice by Publication - Single Form of Notice. Defendants must provide
14 notice to Visa cardholders and MasterCard California cardholders in a single notice.

15 19. Content of Notice and Claim Form. The content of the Notice must be as
16 set forth in Exhibit A to this Judgment. The Claim Form must be as set forth in Exhibit B
17 to this Judgment. The Court retains jurisdiction to order any changes to the content of
18 the Notice and/or Claims Form.

19 20. Notice and Claims Website. Defendants must set up a website within 60
20 days after the Start Date to provide notice and claims information. This website must
21 remain in operation until 60 days after the close of the claims period.

22 21. Toll Free Line. Defendants must set up a toll-free line to answer questions
23 about the claims process. The toll free line must be set up within 60 days after the Start
24 Date and must remain in operation until 60 days after the close of the claims period.

25 22. Notice by Publication - Venues. The Court incorporates by reference the
26 Kinsella notice plan submitted by Defendants on May 13, 2003. The Court hereby orders
27 Defendants to provide notice by publication as set forth in the Kinsella plan with the

1 following modifications: (1) Defendants must use a single form of notice; (2) in addition
2 to the publications addressed in the Kinsella plan, Defendants must provide notice in
3 Conde Nast Traveler, Travel & Leisure, and the in-flight magazines of American
4 Airlines, Continental Airlines, Delta Air Lines, Southwest Airlines, US Airlines, and
5 United Airlines.

6 23. Notice by Publication - Frequency. Defendants must provide notice by
7 publication so that the members of the public are informed twice per periodical in a two
8 month period. Therefore, publication in monthly magazines must be in two consecutive
9 months whereas publication in weekly magazines and newspapers must be once in one
10 month and once approximately 28 days later.

11 24. Timing - Notice by Publication. The Notice by Publication mechanisms
12 described in ¶ 22 herein must commence within 60 days of the Start Date, or as soon
13 thereafter as is practicable.

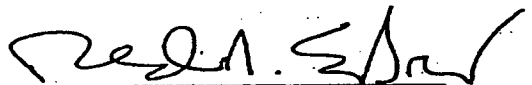
14 25. Timing - Claims Period. The claims mechanism must be in effect so that
15 claimants can make claims during a claims period that runs from the date of the first
16 publication of the notice through 120 days after the final publication of the notice ("the
17 Claims Period"). Defendants must pay, deny, or request information to substantiate each
18 claim based on billings of less than \$10,000 in cross-currency transactions within 45 days
19 after it is received. Defendants must pay, deny, or request information to substantiate
20 each claim for billings of \$10,000 or more in cross-currency transactions within 90 days
21 after it is received.

22 26. Claims Administration. Defendants are responsible for implementing
23 restitution, but must do so through an independent Claims Administrator. Defendants
24 may select a single Claims Administrator or two separate Claims Administrators. The
25 claims process must have clear guidelines and be subject to review and audit. There must
26 also be a procedure and criteria for resolving contested claims as well as an appeals
27 process.

1 27. Cost-of Notice and Claims Procedure. Visa and MasterCard are to divide
2 the direct costs of the claims procedure in proportion to the total amount of money that
3 each returns to cardholders. Defendants are to divide the direct costs of the notice
4 procedure such that Visa pays two-thirds of the costs and MasterCard pays one-third of
5 the costs.

6 28. Accounting. The Claims Administrator(s) must provide monthly status
7 reports during the Claims Period to Plaintiff, Defendants, and the Court. Defendants
8 must provide a final accounting to the Court 150 days after the close of the claims period.
9 The accounting must state the number of claims submitted, the amount of restitution
10 claimed, the number of claims where additional information was requested from
11 cardholders and the circumstances of the requests, the total amount of restitution paid, the
12 length of time it took to process claims, the incidence of unsubstantiated claims, the
13 incidence of denied claims, and other information that will enable Plaintiff and the Court
14 to ensure that Defendants have complied with this Judgment.

15
16 Dated: 10/31/03


RONALD M. SABRAW,
JUDGE OF THE SUPERIOR COURT

17
18
19
20
21
22
23
24
25
26
27

1 **Refund of VISA and MasterCard Charges for Currency Conversion**

2 **Refund Notice**

3 VISA and MasterCard may owe you money. If you used a VISA or MasterCard credit
4 card to make charges in a foreign currency between February 15, 1996, and October 22,
5 2002, then you may be entitled to a refund of a 1% currency conversion fee. Not all
6 foreign currency transactions are eligible for the refund.

7 VISA cardholders must have been residents of the United States when they made the
8 charges in a foreign currency.

9 MasterCard cardholders must have been residents of California when they made the
10 charges in a foreign currency.

11 **Legal Background**

12 On April 7, 2003, the Superior Court of California (*Schwartz v. VISA Int'l, et al*) decided
13 that VISA and MasterCard had violated consumer protection laws because they did not
14 disclose adequately a 1% currency conversion fee on most credit card charges made in
15 foreign currencies. As a result, the Court ordered VISA and MasterCard to refund the 1%
16 fee they charged from February 15, 1996, through October 22, 2002.

17 **Claims Process to Get a Refund**

18 To get a refund, you must file a claim by MONTH ____, 2004.

19 To file a claim, go to: currencyconversionclaim.com, OR call: 1-800-XXX-XXXX.

20 If the total of your charges in foreign currencies is \$10,000 or more, you must submit
21 copies of your credit card billing statements with your claim. You can get copies of your
22 statements from the bank that issued your credit card. Your bank may charge you for
23 these statements.

24 If the total of your charges in foreign currencies is less than \$10,000, you do not need to
25 submit supporting documentation with your claim. All claims are subject to verification.

26 **Acknowledgement and Effect on Other Litigation**

27 If you accept the refund in this case, then you will acknowledge having received a refund
28 of the 1% foreign currency conversion fees you paid. Your receipt of this refund may
29 affect your ability to recover damages in other lawsuits concerning the currency
30 conversion practices of VISA, MasterCard, and their member banks.

31 **EXHIBIT A**

1 **VISA MasterCard Refund Claim Form**
2 **You must mail this by MONTH __, 2004**

3 VISA-//////////

Note any changes to your name

4 or address here:

5 NAME _____

6 ADDRESS LINE 1 _____

7 ADDRESS LINE 2 _____

8 CITY, STATE ZIP _____

9
10 If you used a VISA or MasterCard credit card to make charges in a foreign currency
11 between February 15, 1996, and October 22, 2002, then you may be entitled to a refund of
12 a 1% currency conversion fee. Not all foreign currency transactions are eligible for the
13 refund.

VISA cardholders must have been residents of the United States when they made the
14 charges in a foreign currency.

15 MasterCard cardholders must have been residents of California when they made the
16 charges in a foreign currency.

17 1. Your daytime phone # () _____ Your evening phone # () _____

18 2. If you are a business, what is your tax ID number? _____

19 3. State your billing address at the time the charges were made:

20 Street

21 City State Zip

22 4. If the total of your charges in foreign currencies is \$10,000 or more, you must submit
23 copies of your credit card billing statements with your claim. You can get copies of your
24 statements from the bank that issued your credit card. Your bank may charge you for
25 these statements.

26 5. List your charges in foreign currency on the last page of this form. Attach additional
27 pages if necessary.

EXHIBIT B

1 6. I understand that this claim is subject to verification. I grant permission to my issuing
2 bank to release my account information to MasterCard, VISA, and any claims
3 administrator, and grant them permission to review my account records to verify the
accuracy of my claim.

4 7. I understand that there is a class action lawsuit pending in the United States District
5 Court for the Southern District of New York against MasterCard and VISA (as well as
6 other defendants) involving their currency conversion practices, entitled *In re Currency*
7 *Conversion Fee Antitrust Litigation*, Case No. MDL 1409. I further understand that no
8 class has been certified, nor has there been any finding that any of the defendants is liable
9 for any alleged violation of law. I acknowledge that if I accept the payment requested in
10 this Claim Form in this case, that amount will be offset against any recovery to which I
11 may be entitled in MDL 1409. I understand that up to triple damages are being sought in
MDL 1409. In addition, the defendants in MDL 1409 will likely assert that acceptance of
a payment for the 1% currency conversion fee in this case eliminates my ability to recover
anything in MDL 1409 regarding MasterCard or VISA's 1% currency conversion fee. I
understand that the judge in MDL 1409 will decide this question.

12 9. I understand that by accepting the refund I get in this case, I acknowledge having
13 received full payment of the foreign currency conversion "fees" I paid and am entitled to
14 in this case.

15 I swear under penalty of perjury that the information on this form is true.

16 Sign here X _____ Today*s Date:
17 ____ / ____ / ____

18 Questions? See: www.currencyconversion.com Or, call: 1-800-XXX-XXXX

19
20
21
22
23
24
25
26
27

EXHIBIT B

(RCD-11/00)

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served a copy of this Order by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States Mail at Alameda County, California, following standard court practices.

SEE ATTACHED MAILING LIST

Dated: October 31, 2003

ARTHUR SIMS
Executive Officer/Clerk of the Superior Court

By

Charlotte Marin

Charlotte Marin, Clerk of Dept. 22

SERVICE LIST

**ADAM A. SCHWARTZ vs. VISA INTERNATIONAL CORP. et al.,
Alameda County Superior Court No. 822404-4**

Thomas F. Schrag, Esq.
James S. Baum, Esq.
Michael L. Schrag, Esq.
SCHRAG & BAUM, PC
280 Panoramic Way
Berkeley, CA 94704

Allan Steyer, Esq.
D. Scott Macrae, Esq.
**STEYER, LOWENTHAL,
BOODROOKAS, ALAVAREZ &
SMITH, LLP**
One California Street, Suite 300
San Francisco, CA 94111

Christopher M. Burke, Esq.
**MILBERG, WEISS, BERSHAD, HYNES
& LERACH, LLP**
401 B Street, Suite 1700
San Diego, CA 92101

Dennis Stewart, Esq.
HULETT HARPER STEWART, LLP
550 West C Street, Suite 1770
San Diego, CA 92101

Brian P. Brosnahan, Esq.
Robert P. Mahnke, Esq.
Peter J. Crosby, Esq.
**HELLER, EHRMAN, WHITE
& McAULIFFE**
333 Bush Street
San Francisco, CA 94104-2878

Gary L. Halling, Esq.
Thomas D. Nevins, Esq.
Michael W. Scarborough, Esq.
**SHEPPARD, MULLIN, RICHTER
& HAMPTON, LLP**
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111

Jay N. Fastow, Esq.
Bruce A. Colbath, Esq.
WEIL, GOTSHAL & MANGES, LLP
767 Fifth Avenue
New York, NY 10153-0119