

1 M. LAURENCE POPOFSKY (Bar No. 33946)
2 BRIAN P. BROSNAHAN (Bar No. 112894)
3 SHELDON H. JAFFE (Bar No. 200555)
4 HELLER EHRMAN LLP
5 333 Bush Street
6 San Francisco, CA 94104-2878
7 Telephone: (415) 772-6000
8 Facsimile: (415) 772-6268

9 ROBERT J. VIZAS (Bar No. 56187)
10 ARNOLD & PORTER
11 90 New Montgomery Street, Suite 600
12 San Francisco, CA 94105
13 Telephone: (415) 495-2767
14 Facsimile: (415) 495-2703

15 Attorneys for Defendant
16 VISA U.S.A. INC.
17 [Additional Counsel on Signature Page]

18 SUPERIOR COURT OF CALIFORNIA
19 COUNTY OF ALAMEDA

20 DAVID SHRIEVE, et al., On Behalf of) Case No.: RG04155097
21 Themselves and All Others Similarly Situated,)
22 and On Behalf of the General Public,) UNLIMITED JURISDICTION
23)
24 Plaintiffs,) **STIPULATION RE DISMISSAL**
25 v.)
26)
27 VISA U.S.A. INC., et al.,) Judge: Hon. Cecilia Castellanos
28 Defendants.) Dept.: 18
29)
30) Trial Date: None Set

1 Plaintiffs David Shrieve, Tara Rado, Anthony Ralphs, Kayta George, David Ultan,
2 Raymond Castro and Sylvia Kieta, and defendants Visa U.S.A. Inc., Visa International
3 Service Association (collectively “Visa”) and MasterCard International Incorporated
4 (“MasterCard”) (collectively “Defendants”), collectively the “Parties”, by and through their
5 undersigned counsel, do herewith submit this Stipulation re Dismissal (the “Dismissal
6 Stipulation”).

7 WHEREAS, on May 10, 2004 plaintiffs filed the first complaint in this action against
8 Visa and MasterCard, and on April 27, 2005 plaintiffs filed the Third Amended Class
9 Action Complaint (the “Complaint”), the current operative complaint in this action;¹

10 WHEREAS, the Complaint alleges claims under California Business and Professions
11 Code §§ 17200 *et seq.*, based on assertions that Defendants charged a 1% fee with respect to
12 transactions denominated in a foreign currency effected by using a Visa- or MasterCard-
13 branded debit card, and that the alleged fee was not adequately disclosed;

14 WHEREAS, plaintiffs David Shrieve, Tara Rado, Anthony Ralphs, Kayta George,
15 and David Ultan seek to represent the following putative class:

16 (1) a class of all U.S. cardholders of Visa-branded debit cards who
17 used their debit card to purchase goods or services or to make an ATM
18 withdrawal denominated in a foreign currency and were charged a 1%
19 foreign transaction fee from May 10, 2000 through March 31, 2005
20 (“Visa Class”) and (2) a class of all California cardholders of
21 MasterCard-branded debit cards who used their debit cards to purchase
22 goods or services or to make an ATM withdrawal denominated in a
23 foreign currency and were charged a 1% foreign transaction fee from
24 May 10, 2000 through March 31, 2005 (“MasterCard Class”).
25 Excluded from the Classes are the Court, its immediate family
26 members and its staff, defendants Visa and MasterCard and their
27 officers, affiliates, directors, employees and the immediate family
28 members of their officers, directors and employees.

25 WHEREAS, plaintiffs have moved for class certification, but that motion, though
26

27 ¹ Other defined terms are set forth in Exhibits A and 1 hereto and elsewhere in this
28 stipulation.

1 fully briefed, has not yet been heard or ruled upon by the Court;

2 WHEREAS, In re Currency Conversion Fee Antitrust Litigation, MDL No. 1409
3 (S.D.N.Y.) (the “MDL Action”) is a federal multidistrict litigation including claims against
4 Defendants and others concerning, inter alia, the same alleged foreign transaction fee as is
5 at issue here;

6 WHEREAS, on July 20, 2006, the parties in the MDL Action executed a Stipulation
7 and Agreement of Settlement (including its exhibits, the “MDL Settlement Agreement”), an
8 executed copy of which is attached hereto as Exhibit 1, under which plaintiffs agree to
9 move for, *inter alia*, certification of nationwide MDL Settlement Classes;

10 WHEREAS, the plaintiffs in this action are members of the proposed MDL
11 Settlement Classes, and named plaintiffs David Shrieve, Tara Rado, Anthony Ralphs, Kayta
12 George, and David Ultan are named plaintiffs in the proposed Third Amended Complaint in
13 the MDL Action, which plaintiffs have agreed to seek leave to file pursuant to the MDL
14 Settlement Agreement;

15 WHEREAS, upon entry of the Preliminary Approval Order by the MDL Court,
16 plaintiffs will be ordered stayed and enjoined by the MDL Court from pursuing their claims
17 in this action pending Final Settlement Approval, and, upon Final Settlement Approval,
18 their claims will be ordered finally and fully dismissed, compromised, settled and released;

19 WHEREAS, within five court days of Final Settlement Approval plaintiffs will
20 dismiss this case with prejudice in accordance with California Rule of Court 1860 (or such
21 other applicable, rules, statutes, and law as may then exist), and use their best efforts to
22 effectuate that dismissal.

23 ///

24

25 ///

26

27

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
28

NOW, THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:

This putative class action is dismissed in its entirety with prejudice as to all Defendants, each party to bear its own costs.

It Is So Stipulated:

July 20, 2006

HELLER EHRMAN LLP
M. LAURENCE POPOFSKY
BRIAN P. BRORNAHAN
SHELDON H. JAFFE

By 
SHELDON H. JAFFE

Attorneys for Defendant
VISA U.S.A. INC.

_____, 2006

LORD BISSELL & BROOK LLP
JACKIE REDIN KLEIN
MITCHELL J. POPHAM
NINA HUERTA

By _____
JACKIE REDIN KLEIN
MITCHELL J. POPHAM
NINA HUERTA

Attorneys for Defendant
VISA INTERNATIONAL SERVICE
ASSOCIATION

_____, 2006

SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP
GARY L. HALLING
THOMAS D. NEVINS
MICHAEL W. SCARBOROUGH

Heller
Ehrman LLP

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
28

NOW, THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:

This putative class action is dismissed in its entirety with prejudice as to all Defendants, each party to bear its own costs.

It Is So Stipulated:

_____, 2006


HELLER EHRMAN LLP
M. LAURENCE POPOFSKY
BRIAN P. BRORNAHAN
SHELDON H. JAFFE

By _____
SHELDON H. JAFFE

Attorneys for Defendant
VISA U.S.A. INC.

July 19, 2006

LORD BISSELL & BROOK LLP
JACKIE REDIN KLEIN
MITCHELL J. POPHAM
NINA HUERTA

By  _____
JACKIE REDIN KLEIN
MITCHELL J. POPHAM
NINA HUERTA

Attorneys for Defendant
VISA INTERNATIONAL SERVICE
ASSOCIATION

_____, 2006

SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP
GARY L. HALLING
THOMAS D. NEVINS
MICHAEL W. SCARBOROUGH

Heller
Ehrman LLP

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

NOW, THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:

This putative class action is dismissed in its entirety with prejudice as to all Defendants, each party to bear its own costs.

It Is So Stipulated:

_____, 2006

HELLER EHRMAN LLP
M. LAURENCE POPOFSKY
BRIAN P. BROSNAHAN
SHELDON H. JAFFE

By _____
SHELDON H. JAFFE

Attorneys for Defendant
VISA U.S.A. INC.

_____, 2006

LORD BISSELL & BROOK LLP
JACKIE REDIN KLEIN
MITCHELL J. POPHAM
NINA HUERTA

By _____
JACKIE REDIN KLEIN
MITCHELL J. POPHAM
NINA HUERTA

Attorneys for Defendant
VISA INTERNATIONAL SERVICE
ASSOCIATION

July 20, 2006

SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP
GARY L. HALLING
THOMAS D. NEVINS
MICHAEL W. SCARBOROUGH

Heller
Ehrman LLP

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

WEIL, GOTSHAL & MANGES LLP
BRUCE A. COLBATH
DENISE K. PLUNKETT

By *Bruce A. Colbath*
BRUCE A. COLBATH

Attorneys for Defendant
MASTERCARD INTERNATIONAL
INCORPORATED

_____, 2006

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP

By _____
CHRISTOPHER M. BURKE

_____, 2006

SCHRAG & BAUM

By _____

_____, 2006

STEYER, LOWENTHAL, BOODROOKAS
ALVAREZ & SMITH LLP

By _____

_____, 2006

HULETT HARPER

By _____

Attorneys for Plaintiffs David Shrieve; Tara Rado,
Anthony Ralphs, Kayta George, David Ultan,
Raymond Castro and Sylvia Kieta

Heller
Ehrman LLP

28

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

WEIL, GOTSHAL & MANGES LLP
BRUCE A. COLBATH
DENISE K. PLUNKETT

By _____
BRUCE A. COLBATH

Attorneys for Defendant
MASTERCARD INTERNATIONAL
INCORPORATED

July 19, 2006

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP

By  _____
CHRISTOPHER M. BURKE

_____, 2006

SHRAG & BAUM

By _____

_____, 2006

STEYER, LOWENTHAL, BOODROOKAS
ALVAREZ & SMITH LLP

By _____

_____, 2006

HULETT HARPER

By _____

Attorneys for Plaintiffs David Shrieve, Tara Rado,
Anthony Ralphs, Kayta George, David Ultan,
Raymond Castro and Sylvia Kieta

Heller
Ehman LLP

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
28

WEIL, GOTSHAL & MANGES LLP
BRUCE A. COLBATH
DENISE K. PLUNKETT

By _____
BRUCE A. COLBATH

Attorneys for Defendant
MASTERCARD INTERNATIONAL
INCORPORATED

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP

By _____
CHRISTOPHER M. BURKE

7/20, 2006

SHRAG & BAUM

By _____
[Handwritten Signature]

STEYER, LOWENTHAL, BOODROOKAS
ALVAREZ & SMITH LLP

By _____

_____, 2006

HULETT HARPER

By _____

Attorneys for Plaintiffs David Shrieve, Tara Rado,
Anthony Ralphs, Kayta George, David Ultan,
Raymond Castro and Sylvia Kieta

Heller
Ehrman LLP

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
28

WEIL, GOTSHAL & MANGES LLP
BRUCE A. COLBATH
DENISE K. PLUNKETT

By _____
BRUCE A. COLBATH

Attorneys for Defendant
MASTERCARD INTERNATIONAL
INCORPORATED

_____, 2006

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP

By _____
CHRISTOPHER M. BURKE

_____, 2006

SCHRAG & BAUM

By _____

June 20, 2006

STEYER, LOWENTHAL, BOODROOKAS
ALVAREZ & SMITH LLP

By Allen Steyer

_____, 2006

HULETT HARPER

By _____

Attorneys for Plaintiffs David Shrieve, Tara Rado,
Anthony Ralphs, Kayta George, David Ultan,
Raymond Castro, and Sylvia Kieta

Höller
Ehman LP

HULETT HARPER STEWART

07/19/2006 17:03 FAX 619 338 1130

- 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
- 28

WEIL, GOTSHAL & MANGES LLP
BRUCE A. COLBATH
DENISE K. PLUNKETT

By _____
BRUCE A. COLBATH

Attorneys for Defendant
MASTERCARD INTERNATIONAL
INCORPORATED

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP

By _____
CHRISTOPHER M. BURKE

SHRAG & BAUM

By _____

STEYER, LOWENTHAL, BOODROOKAS
ALVAREZ & SMITH LLP

By _____

HULETT HARPER STEWART LLP

By _____

Attorneys for Plaintiffs David Shrieve, Tara Rado,
Anthony Ralphs, Kayta George, David Ultan,
Raymond Castro and Sylvia Kieta

Heller
Ehrman LLP

1 **Exhibit A to The Dismissal Stipulation**

2 **Definitions**

3
4 The following capitalized words and terms shall have the meanings specified below
5 for purposes of this Stipulation re Dismissal only.

6 1. The “MDL Action” means those actions consolidated pursuant to the Court’s December 13,
7 2001 Order in MDL No. 1409 or by any subsequent orders, and not remanded to state court. For
8 avoidance of doubt, the MDL Action does not include the following cases: Ross et al. v. American
9 Express Co. et al., No. 04-CV-05723 (S.D.N.Y.) (WHP); and Ross et al. v. Bank of America, N.A.
10 (USA) et al., No. 05-CV-7116 (S.D.N.Y.) (WHP).

11
12 2. “MDL Court” means the United States District Court for the Southern District of New York,
13 the Honorable William H. Pauley III, presiding.

14 3. “Final Judgment and Order of Dismissal” means the entry by the MDL Court of an order
15 and final judgment in all material respects in the form attached as Exhibit F to the MDL Settlement
16 Agreement. For avoidance of doubt, and without limitation, each of the items listed in Section
17 8(a)(iii) through (xi) shall be considered material to all Parties, and Section 8(a)(i) shall be
18 considered material to Defendants in the MDL Action.

19
20 4. “Final Settlement Approval” means the occurrence of all of the following events without
21 prior termination of the MDL Settlement Agreement;

- 22
23 a) entry of the Final Judgment and Order of Dismissal in all material
24 respects in the form of Exhibit F to the MDL Settlement Agreement; and
25 b) expiration of the time for further judicial review, or the time to seek
26 permission for further judicial review, of the MDL Court’s approval of the
27 MDL Settlement Agreement and the settlement contemplated hereby, and the
28 MDL Court’s entry of the Final Judgment and Order of Dismissal, without

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
28

the filing of a request for further judicial review or an effort to seek permission for further judicial review, or, if such further judicial review or effort to seek permission for such further judicial review is sought, (i) such further judicial review or effort to seek permission for such further judicial review has been dismissed and the time to seek any further judicial review has expired, or (ii) approval of the MDL Settlement Agreement and the settlement contemplated thereby, and the Final Judgment and Order of Dismissal, have been affirmed in their entirety by the court of last resort from which further judicial review has been sought and such affirmance has become no longer subject to the possibility of further judicial review. For avoidance of doubt, Final Settlement Approval may occur notwithstanding the actual or potential filing of any request for further judicial review that concerns: (a) only an award of attorneys' fees and expenses by the MDL Court; (b) the issue of the allocation of the Net Settlement Fund in the MDL Settlement Agreement among Authorized Claimants thereunder; and (c) any request by Settlement Classes Counsel for an award by the MDL Court to the Representative Plaintiffs.

5. "Preliminary Approval" and "Preliminary Approval Order" means the entry by the MDL Court of an order preliminarily approving the MDL Settlement Agreement in all material respects in the form attached as Exhibit E to the MDL Settlement Agreement. For avoidance of doubt, each of the items listed therein in Section 6(b) of the MDL Settlement Agreement shall be considered material.