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18 SUPERIOR COURT OF CALIFORNIA
19 COUNTY OF ALAMEDA

20 DAVID SHRIEVE, et al., On Behalf of)
21 Themselves and All Others Similarly Situated,)
22 and On Behalf of the General Public,)
23)
24) Plaintiffs,)
25)
26) v.)
27)

28 VISA U.S.A. INC., et al.,)
Defendants.)

Case No.: RG04155097
UNLIMITED JURISDICTION
**STIPULATION RE STAYING
ACTION PENDING FINAL
SETTLEMENT APPROVAL**
Judge: Hon. Cecilia Castellanos
Dept.: 18
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 Staying Action Pending Final
6 Settlement Approval (the “Stay 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

27 ¹ Other defined terms are set forth in Exhibit 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 WHEREAS, the totality of the circumstances, including the absence of dilatory
24 practices or resulting prejudice, and the potential conservation of judicial and party
25 resources, warrant the equitable grant of the requested stay in this action; and

26 WHEREAS, plaintiffs, by and through their counsel, authorize Defendants or any
27 one of them to file this Stay Stipulation following the filing in the MDL Court of the
28 Motion for Preliminary Approval of the MDL Settlement Agreement pursuant to Paragraph

1 6 thereof.

2 NOW, THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:

3 This action and all proceedings therein, including, without limitation, any discovery
4 obligations, are stayed in their entirety until Final Settlement Approval or termination of the
5 MDL Settlement Agreement, as defined therein, whichever occurs earlier.

6 If Final Settlement Approval does not occur or if the MDL Settlement Agreement
7 terminates prior to Final Settlement Approval, the stay contemplated herein shall be
8 terminated and the parties shall return to the status quo ante, without prejudice to the right
9 of Plaintiffs and Defendants to assert any right or position that they could have asserted if
10 this Stipulation re Staying Action Pending Final Settlement Approval had never been
11 proposed or entered. Neither this Stay Stipulation, the granting of the requested stay, nor
12 any other act relating to the negotiation, execution or implementation of the MDL
13 Settlement Agreement or the stay requested herein, shall, (A) be considered as a factor in
14 connection with any class certification issue(s) if the MDL Settlement Agreement
15 terminates or Final Settlement Approval does not occur, or (B) result in the waiver of rights,
16 if any, that Defendants may have to require or seek to require arbitration of any Claim with
17 respect to any Person who timely and properly opts out of the Settlement Damages Class, as
18 permitted by the MDL Court or (C) in the event there is no Final Settlement Approval or the
19 MDL Settlement Agreement terminates, result in any waiver of the rights of any Defendant
20 to enforce or seek to enforce applicable arbitration rights, if any, or prejudice plaintiffs'
21 ability, if any, to oppose or challenge any claim of arbitration rights on any grounds other
22 than any claim of waiver relating to certification of the Settlement Classes or any other act
23 relating to the negotiation, execution or implementation of the MDL Settlement Agreement;

24 If Final Settlement Approval does not occur or if the MDL Settlement Agreement
25 terminates prior to Final Settlement Approval, pursuant to Code Civ. Proc. § 583.330 this
26 action may be set for trial and tried after the time period set forth in Code Civ. Proc.
27 § 583.310.

28 If Final Settlement Approval does not occur or if the MDL Settlement Agreement

1 terminates prior to Final Settlement Approval, the discovery cut-off date and motion cut-off
2 date will be extended to dates that allow reasonable time for completion of discovery and
3 motion practice.

4 If Final Settlement Approval does not occur or if the MDL Settlement Agreement
5 terminates prior to Final Settlement Approval, the time elapsed during the stay of this action
6 shall not be considered as a factor in the determination of the motion for class certification
7 or any other motion or issue.

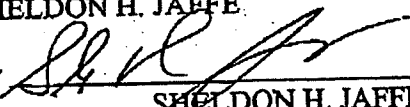
8 Immediately upon Final Settlement Approval, plaintiffs will dismiss this action in its
9 entirety with prejudice as to all Defendants.

10 Within five business days of Final Settlement Approval, Plaintiffs or, at Defendants'
11 option, Defendants, shall file the Stipulation re Dismissal, the Declaration in Support of
12 Dismissal of Putative Class Action, and the [Proposed] Order re Dismissal attached hereto
13 (without their exhibits) as Exhibits 2-4. Plaintiffs shall use their best efforts to obtain the
14 entry of the [proposed] Order re Dismissal.

15
16 IT IS SO STIPULATED:

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18 July 20, 2006

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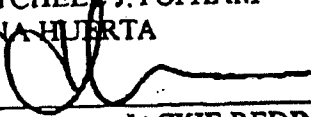
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7/19, 2006

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Raymond Castro and Sylvia Kieta

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By Allan Steyer

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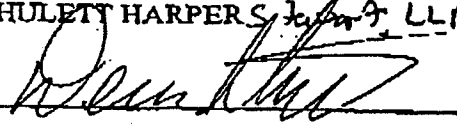
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9 7/19, 2006

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1 **Exhibit A to the**
2 **Stipulation re Staying Action Pending Final Approval**

3 **Definitions**
4

5 The following capitalized words and terms shall have the meanings specified below
6 for purposes of this Stipulation re Staying Case Pending Final Approval only.

7 1. The “MDL Action” means those actions consolidated pursuant to the Court’s December 13,
8 2001 Order in MDL No. 1409 or by any subsequent orders, and not remanded to state court. For
9 avoidance of doubt, the MDL Action does not include the following cases: Ross et al. v. American
10 Express Co. et al., No. 04-CV-05723 (S.D.N.Y.) (WHP); and Ross et al. v. Bank of America, N.A.
11 (USA) et al., No. 05-CV-7116 (S.D.N.Y.) (WHP).
12

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

15 3. “Final Judgment and Order of Dismissal” means the entry by the MDL Court of an order
16 and final judgment in all material respects in the form attached as Exhibit F to the MDL Settlement
17 Agreement. For avoidance of doubt, and without limitation, each of the items listed in Section
18 8(a)(iii) through (xi) shall be considered material to all Parties, and Section 8(a)(i) shall be
19 considered material to Defendants in the MDL Action.
20

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

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

1 MDL Court's entry of the Final Judgment and Order of Dismissal, without
2 the filing of a request for further judicial review or an effort to seek
3 permission for further judicial review, or, if such further judicial review or
4 effort to seek permission for such further judicial review is sought, (i) such
5 further judicial review or effort to seek permission for such further judicial
6 review has been dismissed and the time to seek any further judicial review
7 has expired, or (ii) approval of the MDL Settlement Agreement and the
8 settlement contemplated thereby, and the Final Judgment and Order of
9 Dismissal, have been affirmed in their entirety by the court of last resort from
10 which further judicial review has been sought and such affirmance has
11 become no longer subject to the possibility of further judicial review. For
12 avoidance of doubt, Final Settlement Approval may occur notwithstanding
13 the actual or potential filing of any request for further judicial review that
14 concerns: (a) only an award of attorneys' fees and expenses by the MDL
15 Court; (b) the issue of the allocation of the Net Settlement Fund in the
16 Settlement Agreement among Authorized Claimants thereunder; and (c) any
17 request by Settlement Classes Counsel for an award by the MDL Court to the
18 Representative Plaintiffs.
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22 5. "Preliminary Approval" and "Preliminary Approval Order" means the entry by the MDL
23 Court of an order preliminarily approving the MDL Settlement Agreement in all material respects
24 in the form attached as Exhibit E to the MDL Settlement Agreement. For avoidance of doubt, each
25 of the items listed therein in Section 6(b) of the MDL Settlement Agreement shall be considered
26 material.
27