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15 Attorneys for Defendant
16 VISA U.S.A. INC.
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18 SUPERIOR COURT OF CALIFORNIA
19 COUNTY OF ALAMEDA

20 SHANNON MATTINGLY and TIMUR)
21 NUSRATTY, On Behalf of Themselves and)
22 All Others Similarly Situated,)
23 Plaintiffs,)
24 v.)
25 VISA U.S.A., INC., VISA)
26 INTERNATIONAL SERVICE)
27 ASSOCIATION, MASTERCARD)
28 INTERNATIONAL INCORPORATED and)
DOES 1-100,)
Defendants.)

Case No.: RG05198142
UNLIMITED JURISDICTION
STIPULATION RE STAYING
ACTION PENDING FINAL
SETTLEMENT APPROVAL
Judge: Hon. Cecilia Castellanos
Dept.: 18
Trial Date: None Set

Heller
Ehrman LLP

1 Plaintiffs Shannon Mattingly and Timur Nusratty (“Plaintiffs”) and defendants Visa
2 U.S.A. Inc., Visa International Service Association (collectively “Visa”) and MasterCard
3 International Incorporated (“MasterCard”) (collectively “Defendants”), collectively the
4 “Parties”, by and through their undersigned counsel, do herewith submit this Stipulation re
5 Staying Action Pending Final Settlement Approval (the “Stay Stipulation”).

6 WHEREAS, on February 14, 2005, plaintiffs filed the complaint in this action
7 against Visa and MasterCard (the “Complaint”);¹

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

12 WHEREAS, plaintiffs purport to represent the following putative class:

13 U.S. credit cardholders who used a Visa-branded credit card to
14 purchase goods and services denominated in a foreign currency after
15 October 23, 2002, and California credit cardholders who used a
16 MasterCard-branded credit card to purchase goods and services
17 denominated in a foreign currency after October 23, 2002. Excluded
18 from the Classes are the Court, its immediate family members and its
19 staff, defendants Visa and MasterCard and their officers, affiliates,
20 directors, employees and the immediate family members of their
21 officers, directors and employees.

22 WHEREAS, plaintiffs have moved to amend the Complaint, but that motion has not
23 yet been heard or ruled upon by the Court;

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

28 WHEREAS, on July 20, 2006, the parties in the MDL Action executed a Stipulation

¹ Other defined terms are set forth in Exhibit 1 hereto and elsewhere in this stipulation.

1 and Agreement of Settlement (including its exhibits, the “MDL Settlement Agreement”), an
2 executed copy of which is attached hereto as Exhibit 1, under which plaintiffs agree to
3 move for, *inter alia*, certification of nationwide MDL Settlement Classes;

4 WHEREAS, the plaintiffs in this action are members of the proposed MDL
5 Settlement Classes, and are named plaintiffs in the proposed Third Amended Complaint in
6 the MDL Action, which plaintiffs have agreed to seek leave to file pursuant to the MDL
7 Settlement Agreement;

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

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

16 WHEREAS, the totality of the circumstances, including the absence of dilatory
17 practices or resulting prejudice, and the potential conservation of judicial and party
18 resources, warrant the equitable grant of the requested stay in this action; and

19 WHEREAS, plaintiffs, by and through their counsel, authorize Defendants or any
20 one of them to file this Stay Stipulation following the filing in the MDL Court of the
21 Motion for Preliminary Approval of the MDL Settlement Agreement pursuant to Paragraph
22 6 thereof.

23 NOW, THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:

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

27 If Final Settlement Approval does not occur or if the MDL Settlement Agreement
28 terminates prior to Final Settlement Approval, the stay contemplated herein shall be

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

18 If Final Settlement Approval does not occur or if the MDL Settlement Agreement
19 terminates prior to Final Settlement Approval, pursuant to Code Civ. Proc. § 583.330 this
20 action may be set for trial and tried after the time period set forth in Code Civ. Proc.
21 § 583.310.

22 If Final Settlement Approval does not occur or if the MDL Settlement Agreement
23 terminates prior to Final Settlement Approval, the discovery cut-off date and motion cut-off
24 date will be extended to dates that allow reasonable time for completion of discovery and
25 motion practice.

26 If Final Settlement Approval does not occur or if the MDL Settlement Agreement
27 terminates prior to Final Settlement Approval, the time elapsed during the stay of this action
28 shall not be considered as a factor in the determination of the pending motion to amend or

1 any motion for class certification or any other motion or issue.

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

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

9

10 It Is So Stipulated:

11

July 20, 2006

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

By

[Signature]
SHELDON H. JAFFE

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

17

_____, 2006

LORD BISSELL & BROOK LLP
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NINA HUERTA

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GARY L. HALLING
THOMAS D. NEVINS
MICHAEL W. SCARBOROUGH

Heller
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11 _____, 2006

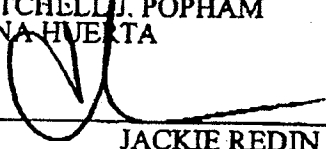
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14 By _____
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15 Attorneys for Defendant
16 VISA U.S.A. INC.

17 July 19, 2006

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10 It Is So Stipulated:

11 _____, 2006

HELLER EHRMAN LLP
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_____, 2006

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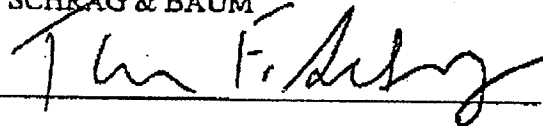
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Timur Nusratty

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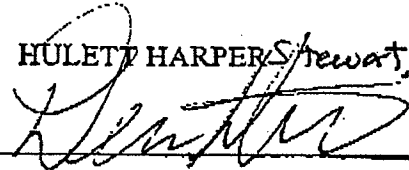
_____, 2006

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

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Definitions

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

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

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

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

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

a) entry of the Final Judgment and Order of Dismissal in all material respects in the form of Exhibit F to the MDL Settlement Agreement; and

b) expiration of the time for further judicial review, or the time to seek permission for further judicial review, of the MDL Court’s approval of the

MDL Settlement Agreement and the settlement contemplated hereby, and the

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 MDL
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