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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

DAVID SHRIEVE, et al., On Behalf of) Case No.: RG04155097
Themselves and All Others Similarly Situated,)
and On Behalf of the General Public,) UNLIMITED JURISDICTION
)
Plaintiffs,) **DECLARATION OF D. SCOTT**
v.) **MACRAE IN SUPPORT OF**
) **STIPULATION RE DISMISSAL**
VISA U.S.A. INC., et al.,)
Defendants.)
) Judge: Hon. Cecilia Castellanos
) Dept.: 18
Trial Date: None Set

||

1 I, D. Scott Macrae, declare as follows:

2 1. I am an attorney at the law firm of Steyer Lowenthal Boodrookas Alvarez &
3 Smith LLP, counsel for plaintiffs David Shrieve, Tara Rado, Anthony Ralphs, Kayta
4 George, David Ultan, Raymond Castro and Sylvia Kieta, (the "Plaintiffs"). I have personal
5 knowledge of the facts set forth in this declaration and, if called as a witness, could and
6 would testify competently thereto.

7 2. On May 10, 2004, the initial complaint in this action was filed on behalf of
8 David Shrive and Tara Rado, and a putative class of similarly situated persons. On May 27,
9 2004, a complaint was filed on behalf of Raymond Castro and Sylvia Kieta entitled *Castro*
10 *et al. v. Visa U.S.A., Inc., et al.*, Alameda Superior Court Case No. WG04158178 ("the
11 *Castro Action*"). On September 20, 2004, a Consolidated Class Action complaint was filed
12 in this action that consolidated the *Castro* action with this action and included Anthony
13 Ralphs, Kayta George and David Ultan as additional Plaintiffs. On April 27, 2005, the
14 Third Amended Class Action Complaint (the "Complaint"), the current operative complaint
15 in this action, was filed naming Visa International Service Association ("Visa
16 International"), Visa U.S.A. Incorporated ("Visa U.S.A.") (collectively "Visa") and
17 MasterCard International Incorporated ("MasterCard") as defendants.

18 3. Mr. Castro and Ms. Kieta are Plaintiffs but are not Class Representatives in
19 the Consolidated Class Action. The Class Representatives are Mr. Shreve, Ms. Rado, Mr.
20 Ralphs, Ms. George and Mr. Ultan who seek to represent the following classes:

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

1 officers, affiliates, directors, employees and the immediate family
2 members of their officers, directors and employees.

3
4 4. Plaintiffs have moved for class certification, but that motion, though fully
5 briefed, has not yet been heard or ruled upon by the Court.

6 5. On July 20, 2006, the parties in In re Currency Conversion Fee Antitrust
7 Litigation, MDL No. 1409 (S.D.N.Y.) (the “MDL Action”) executed a Stipulation and
8 Agreement of Settlement (including its exhibits, the “MDL Settlement Agreement”), an
9 executed copy of which is attached as Exhibit 1 to the concurrently filed Stipulation re
10 Dismissal, under which plaintiffs agree to move for, *inter alia*, certification of nationwide
11 MDL Settlement Classes.¹

12 6. The MDL Action is a federal multidistrict litigation including claims against
13 Defendants and others concerning, *inter alia*, after the filing of the proposed Third Amended
14 Compliant in that action, the same alleged foreign transaction fee as is at issue here.

15 7. The Plaintiffs are members of the proposed MDL Settlement Classes and Mr.
16 Shreve, Ms. Rado, Mr. Ralphs, Ms. George and Mr. Ultan are representative plaintiffs in the
17 proposed Third Amended Complaint in the MDL Action which plaintiffs have agreed to
18 seek leave to file pursuant to the MDL Settlement Agreement.

19 8. The MDL Settlement Agreement defines the released claims to include the
20 claims asserted by Plaintiffs in this action. Consideration to Plaintiffs and the putative class
21 members in this action is being provided as set forth in the MDL Settlement Agreement as
22 part of a global settlement. Plaintiffs’ counsel have analyzed the consideration to be paid to
23 the putative class members in this action pursuant to the MDL Settlement Agreement and
24 determined that it is fair, reasonable and adequate.

25
26
27 _____
28 ¹ Capitalized terms not otherwise defined herein have the meaning assigned in the
MDL Settlement Agreement.

