UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TARGET CORPORATION, et al., **Plaintiffs,** **v.** **VISA INC., VISA U.S.A. INC., VISA INTERNATIONAL SERVICE ASSOCIATION, MASTERCARD INCORPORATED, and MASTERCARD INTERNATIONAL INCORPORATED,** **Defendants.**	**No. 13-CV-03477 (AKH)** **ORAL ARGUMENT REQUESTED**

REPLY MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANTS' MOTION TO DISMISS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

PRELIMINARY STATEMENT

Defendants MasterCard and Visa submit this reply memorandum in further support of their motion to dismiss. Defendants' opening memorandum ("Defs.' Mem.") demonstrated that plaintiffs' claims are barred by the class settlement releases approved by this Court in *In re Visa Check/MasterMoney Antitrust Litigation*, 297 F. Supp. 2d 503 (E.D.N.Y. 2003), *aff'd sub nom. Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96 (2005) (the "*Visa Check*" action).[1] Plaintiffs' opposition ("Pls.' Opp'n") concedes the dispositive facts regarding the releases, and plaintiffs' arguments why the releases do not apply lack merit.

Plaintiffs first argue that this Court and the Second Circuit determined in *Visa Check* that the releases permit post-settlement claims like plaintiffs' that are related to MasterCard and Visa network rules existing prior to January 1, 2004. That is incorrect. This Court and the Second Circuit did not confront such claims or address the applicability of the releases to such claims.

Second, plaintiffs argue that the settlement notice in *Visa Check* violated due process because it failed to inform class members that the releases encompassed claims like those plaintiffs assert here. In fact, the notice quoted the terms of the releases, which the Second Circuit has held is sufficient to provide due process.

Third, plaintiffs argue that the applicability of the *Visa Check* releases cannot be determined on a motion to dismiss because plaintiffs' complaint alleges some MasterCard and Visa activities since January 1, 2004. Those activities are irrelevant to this motion because they

[1] After the filing of defendants' motion to dismiss and opening memorandum, the Judicial Panel on Multidistrict Litigation on October 16, 2013 ordered that this action be transferred for coordinated or consolidated pretrial proceedings in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, No. 05-MD-01720 (E.D.N.Y.) (Gleeson, J.) (Orenstein, M.J.) (the "*Payment Card*" action). Defendants are filing this brief in the Southern District of New York, where the docket for this action is currently pending, but do so on the understanding that the case has been transferred and that this motion will be considered in *Payment Card*. Accordingly, references herein to "this Court" are to Judge Gleeson and the Eastern District of New York.

either relate to Visa or MasterCard network rules that existed prior to January 1, 2004, and thus are released, or are activities that plaintiffs do not allege give rise to an antitrust claim.

Finally, plaintiffs argue that the *Visa Check* releases should not bar their claims under maxims of contract interpretation and to prevent the releases from violating public policy. Those contract interpretation maxims, however, support application of the releases to bar plaintiffs' claims. And the Second Circuit has approved class releases of claims based on pre-settlement conduct that continues in the future, as plaintiffs assert here.

Plaintiffs' complaint should therefore be dismissed in its entirety.

ARGUMENT

I. PLAINTIFFS CANNOT DISPUTE THAT THEY ASSERT OPT OUT CLAIMS BASED ON THE SAME FACTUAL PREDICATE THAT THIS COURT HELD IN *PAYMENT CARD* WAS RELEASED IN THE *VISA CHECK* CLASS SETTLEMENTS

Plaintiffs' opposition does not dispute the grounds that require dismissal of their claims. Plaintiffs concede that they assert claims for damages as opt outs from the class settlement in *Payment Card*. *See* Pls.' Opp'n at 5. As opt outs, plaintiffs assert claims based on the same MasterCard and Visa network rules challenged in *Payment Card*. *See* Defs.' Mem. at 10.

Plaintiffs' opposition does not dispute that in *Payment Card*, this Court held that claims based on those network rules are barred by the settlement releases in *Visa Check*, insofar as the claims seek damages incurred before January 1, 2004. *See Payment Card*, No. 05-MD-01720, 2008 WL 115104, at *10-11 (E.D.N.Y. Jan 8, 2008). Indeed, plaintiffs acknowledge that they may not seek damages incurred before January 1, 2004 in this case. *See*, *e.g.*, Pls.' Opp'n at 19 (stating that plaintiffs seek damages "for injury only [f]rom 2004 to the present") (internal quotation omitted). Accordingly, it is undisputed that plaintiffs' claims in this case should be dismissed to the extent that they seek damages incurred before January 1, 2004.

Furthermore, plaintiffs' opposition does not dispute that in *Payment Card*, this Court concluded that the MasterCard and Visa network rules on which the claims there (and here) are based "plainly relate to the factual predicate of the *Visa Check* litigation" that was in existence prior to January 1, 2004. *Payment Card*, 2008 WL 115104, at *11. Damages claims based on those network rules are therefore released regardless of when the damages were incurred, since the *Visa Check* releases extend to all claims that any class member "ever had, now has or ***hereafter can, shall or may have, relating in any way to*** any conduct prior to January 1, 2004 . . . ." Settlement Agreement ¶ 30, *Visa Check*, 2005 WL 6054266 [MasterCard Settlement]; Settlement Agreement ¶ 28, *Visa Check*, 2005 WL 6054267 [Visa Settlement] (emphasis added). Accordingly, plaintiffs' claims in this case also should be dismissed to the extent that they seek damages incurred since January 1, 2004.

II. PLAINTIFFS' ARGUMENTS WHY THE RELEASES SHOULD NOT APPLY TO THEIR CLAIMS LACK MERIT

Ignoring these dispositive grounds for dismissal, plaintiffs try to evade the *Visa Check* releases with a hodge-podge of arguments regarding decisions in the *Visa Check* case, due process, supposed fact issues, and contractual interpretation. All of those arguments lack merit.

A. In *Visa Check*, This Court and the Second Circuit Did Not Hold That the Releases Permit Claims Like Plaintiffs' Claims Here

First, plaintiffs assert that in approving the class settlements in *Visa Check*, "both the district court and the Second Circuit addressed the temporal scope of the release and stated that it does *not* bar claims arising from post-2003 conduct." Pls.' Opp'n at 6. In fact, neither this Court nor the Second Circuit addressed that issue and plaintiffs mischaracterize the courts' statements.

Plaintiffs argue that in *Visa Check*, this Court "stated that the release barred only those 'claims arising out of the conduct at issue in the action prior to January 1, 2004.'" Pls.' Opp'n at 6 (quoting *Visa Check*, 297 F. Supp. 2d at 508). But this Court made that statement in a

fragment of a sentence describing the releases, not in the section of its decision addressing the scope of the releases, and did not state that "only" those claims were released. *See Visa Check*, 297 F. Supp. 2d at 508, 512-16. In any event, plaintiffs here *do* assert claims arising out of "the conduct at issue in the [*Visa Check*] action prior to January 1, 2004" — *i.e.*, MasterCard and Visa network rules that existed prior to January 1, 2004.

Plaintiffs also argue that on appeal, the Second Circuit made two statements: (1) that "'[c]onduct occurring after December 31, 2003 is not precluded from being the subject of a future suit,'" and (2) that "the class representatives 'did not agree to preclude lawsuits arising out of similar conduct in the future.'" Pls.' Opp'n at 6 (quoting *Visa Check*, 396 F.3d at 110, 113); *see also* Pls.' Opp'n at 3, 8, 9, 11, 21, 22. But the Second Circuit made those two statements not in addressing the scope of the releases, but in considering whether class members were adequately represented. *See Visa Check*, 396 F.3d at 109-113. Moreover, neither statement can be read as an endorsement by the Second Circuit of claims like those that plaintiffs assert here.

With respect to the first statement, plaintiffs here do not assert claims based on "conduct occurring after December 31, 2003." *Id.* at 110. Plaintiffs instead assert claims based on MasterCard and Visa network rules in existence and "occurring" prior to January 1, 2004. Moreover, the Second Circuit made that statement in distinguishing a prior decision that found representation inadequate for class members who "had not yet manifested injury," but whose currently unknowable injury could develop for the first time in the future. *Id.* Plaintiffs here do not assert claims based on injuries that, at the time of the *Visa Check* settlement, were unknowable and could develop for the first time only in the future. Instead, plaintiffs assert claims based on MasterCard and Visa network rules that existed prior to January 1, 2004, that were known to the *Visa Check* class representatives, and from which they already claimed injury.

The Second Circuit's second statement — that the *Visa Check* class representatives "did not agree to preclude lawsuits arising out of similar conduct in the future" — likewise provides no support for plaintiffs' claims here. *Id.* at 113. Plaintiffs do not assert claims arising out of "similar conduct in the future," but claims arising out of the *very same* MasterCard and Visa network rules that *already* existed, and formed the basis for the *Visa Check* class representatives' claims, prior to January 1, 2004. In addition, the Second Circuit made that statement when citing favorably an Eighth Circuit decision that had found class representation to be adequate where the class representatives *had* precluded lawsuits arising out of similar conduct in the future. *See id.* at 112-13. Accordingly, the statement was not necessary for the Second Circuit to find adequate representation in *Visa Check*.

In short, in *Visa Check*, neither this Court nor the Second Circuit either addressed or decided that the settlement releases in *Visa Check* permit claims like those that plaintiffs assert in this case.

Moreover, and for the same reasons, there is no basis for plaintiffs' contention that the *Visa Check* decisions either collaterally or judicially estop MasterCard and Visa from seeking dismissal of plaintiffs' claims in this case. *See* Pls.' Opp'n at 6-9. As plaintiffs acknowledge, collateral estoppel would apply only if "'the identical issue was raised'" and "'actually litigated and decided in'" *Visa Check*, which is not the case. *Id.* at 6 (quoting *Boguslavsky v. Kaplan*, 159 F.3d 715, 720 (2d Cir. 1998) (internal quotation omitted)). As support for judicial estoppel, plaintiffs point to a single statement about the releases in defendants' appeal brief in *Visa Check*. *See* Pls.' Opp'n at 7. But that statement is not "'clearly inconsistent'" with the release of plaintiffs' claims in this case, and nothing in the Second Circuit's decision shows that defendants "'persuaded [the] court to accept [that] earlier position'" as a basis for affirming final approval of the *Visa Check* settlements, which plaintiffs' concede would be required to establish judicial

estoppel. *Id.* at 6-7 (quoting *Intellivision v. Microsoft Corp.*, 484 F. App'x 616, 619 (2d Cir. 2012)).

B. The Settlement Notice in *Visa Check* Satisfied Due Process Because It Quoted the Terms of the Releases

Second, plaintiffs argue that "[t]he Due Process Clause requires that class members be given adequate notice of the terms of a class action settlement," that a class notice must "indicate the full scope of the claims released," and that nothing in the *Visa Check* "class notice alerted class members to the possibility that they were releasing" the claims that plaintiffs assert here. Pls.' Opp'n 9-11. That argument fails because, as plaintiffs concede, the settlement notice mailed to class members "quoted the language of the release." Pls.' Opp'n at 11; *see also id.* at Ex. C (class notice) at 4 (quoting releases).

Notice of the actual terms of a release fully satisfies due process. As the court held in *O'Brien v. National Property Analysts Partners*, 739 F. Supp. 896 (S.D.N.Y. 1990) (Leisure, J.):

> The Court does not believe that due process requires further explanation of the effects of the release provision in addition to the clear meaning of the words of the release. In a situation such as at bar, movants had the responsibility to study the release, to determine its effects on their personal affairs, and to decide whether to opt out from the settlement agreement.

Id. at 902.

Indeed, in the *Visa Check* case itself, this Court rejected an objection that the settlement notice provided inadequate notice of the releases, finding that because the notice "recited the releases, word for word . . . the expansive reach of the releases could not have been clearer." *Visa Check*, 297 F. Supp. 2d at 516. On appeal, the Second Circuit affirmed. Noting that "the settlement notice quoted verbatim" the settlement releases, the Second Circuit concluded that "[w]e agree with the district court and 'do not believe that due process requires further

explanation of the effects of the release provision in addition to the clear meaning of the words of the release.'" *Visa Check*, 396 F.3d at 115-16 (quoting *O'Brien*, 739 F. Supp. at 902).

Plaintiffs note that the settlement releases in *Payment Card* contain additional language not found in the *Visa Check* releases, which plaintiffs say "makes clear to putative class members that the proposed release would have forward-looking application." Pls.' Opp'n at 12; *see also id.* at 21. But that does not mean that the *Visa Check* releases were unclear about their forward-looking application. To the contrary, the Visa Check releases were explicit that that they cover claims that any class member "ever had, now has or ***hereafter can, shall or may have, relating in any way to*** any conduct prior to January 1, 2004 . . . ." *Visa Check*, 2005 WL 6054266 [MasterCard Settlement] ¶ 30 and 2005 WL 6054267 [Visa Settlement] ¶ 28 (emphasis added).

C. Application of the Releases Can Be Determined on a Motion to Dismiss and Does Not Raise Fact Issues

Third, plaintiffs argue that the application of the *Visa Check* settlement releases to their claims cannot be decided on a motion to dismiss. *See* Pls.' Opp'n at 13-19. Plaintiffs initially assert that "[d]efendants recognize the fact-intensive nature of this inquiry" in a letter recently filed in the *Payment Card* case. *Id.* at 13. Yet as plaintiffs concede, that letter merely describes "'the well-established *legal* framework'" in which the class settlement releases in *Payment Card* should be applied to future claims. *Id.* (quoting *id.* at Ex. J) (emphasis added). Nothing in the letter suggests that legal framework cannot be applied to a complaint on a motion to dismiss. *See id.* at 13-14 and Ex. J (letter). Indeed, this Court and other courts within the Second Circuit have granted motions to dismiss based on a prior settlement release. *See, e.g.*, *Payment Card*, 2008 WL 115104, at *8 (noting that settlement agreements "fall well within the range of materials that a court may consider on a motion to dismiss"); *Smith v. Dada Entm't, LLC*, No. 11-CV-7066, 2012 WL 4711414, at *2 n.1, *6-7 (S.D.N.Y. Sept. 27, 2012) (Oetken, J.) (same); *Willsea v.*

Theis, No. 98-CV-6773, 1999 WL 595629, at *11-12 (S.D.N.Y. Aug. 6, 1999) (Jones, J.); Defs.' Mem. at 4 n.2.

Plaintiffs next assert that there are "factual questions" that cannot be decided on a motion to dismiss, because "[t]wenty-four of the [plaintiffs] were not formed until after June 21, 2003, and thus are not subject to the *Visa Check* release." Pls.' Opp'n at 14 (footnote omitted). That is incorrect. The "Releasing Parties" covered by the *Visa Check* releases include not only class members formed by June 21, 2003, but also "any of their past, present, or ***future*** . . . ***parents***, associates, ***affiliates, subsidiaries***, [and] divisions." *Visa Check*, 2005 WL 6054266 [MasterCard Settlement] ¶ 1(x) and 2005 WL 6054267 [Visa Settlement] ¶ 1(v). Plaintiffs' complaint alleges that each of the twenty-four plaintiffs identified is a parent, subsidiary, or affiliate of *another* plaintiff that is not claimed to be outside the scope of the releases. *See* Compl. ¶¶ 25-28, 32, 35-41; Pls.' Opp'n at 1 n.1. That those twenty-four plaintiffs were not formed until after June 21, 2003 thus raises no fact question that could preclude application of the releases to bar all plaintiffs' claims.

Plaintiffs further assert that their complaint alleges "many activities that occurred *after* January 1, 2004 . . . [that] preclude [d]efendants' motion to dismiss." Pls.' Opp'n at 14. But the activities that plaintiffs identify either relate to Visa or MasterCard network rules that existed prior to January 1, 2004, and thus are released, or are activities that plaintiffs do not allege give rise to an antitrust claim.

For example, plaintiffs assert that "[d]efendants have engaged in new price-fixing by regularly adopting interchange fee schedules *after* December 31, 2003." Pls.' Opp'n at 15. However, MasterCard and Visa each adopt those interchange fees pursuant to their respective network "default interchange" rules, which existed prior to January 1, 2004, and on which plaintiffs base their antitrust claims. *See*, *e.g.*, Compl. ¶¶ 6, 12, 141, 152, 164, 175. As this

Court already stated in *Payment Card*, the "interchange fees [MasterCard and Visa] charged . . . plainly relate to the factual predicate of the *Visa Check* litigation" in existence prior to January 1, 2004. *Payment Card*, 2008 WL 115104, at *11. Claims that "the [interchange] fee increase was an artificial result of the defendants' illegal concerted activity and that the fee increase had anticompetitive effects . . . are 'virtual clone[s] of the centerpiece' of *Visa Check.*" *Id.* (quoting *Visa Check*, 297 F. Supp. 2d at 513).

Plaintiffs also assert that MasterCard and Visa "frequently updated operating regulations" in "post-2003 conduct." Pls.' Opp'n at 15-16. Yet plaintiffs themselves characterize that updating as "*continued* actions to impose and enforce the Competitive Restraints" (*id*. at 16) — *i.e.*, the same MasterCard and Visa network rules already in existence and found in *Payment Card* to be part of the factual predicate of the *Visa Check* case. Plaintiffs do not allege that any new and different operating regulation adopted for the first time after 2003 gives rise to an antitrust claim. *See* Compl. ¶¶ 132-77.

Finally, plaintiffs say that they allege "changes in MasterCard's and Visa's ownership structures in 2006 and 2008," whereby MasterCard and Visa "engaged in post-2003 conduct by acting as managers of combinations after [their respective] initial public offerings." Pls.' Opp'n at 16. Plaintiffs' complaint, however, alleges that "the IPOs *did not change* the essential character of the[] combination or the Competitive Restraints" in existence prior to January 1, 2004. Compl. ¶ 58 (emphasis added); *see also*, *e.g.*, *id.* ¶ 60 ("[a]fter the IPOs, as before, Visa and MasterCard serve as facilitators and coordinators of horizontal agreements among their member banks to continue to adhere to and enforce 'default' interchange fees and the Competitive Restraints"). Moreover, plaintiffs do not allege that the IPOs are post-2003 conduct that themselves give rise to an antitrust claim. *See id.* ¶¶ 132-77.

For these reasons, plaintiffs fail to distinguish the cases discussed in defendants' opening memorandum that apply settlement releases to bar challenges to pre-settlement conduct that continues in the future. *See* Defs.' Mem. at 12-14. Plaintiffs assert that unlike in those cases, they allege activities that "could not have existed at the time of the release," "new anti-competitive conduct that occurred after the release date," and "post-2003 conduct." Pls.' Opp'n at 18-19. But as shown above, the activities that plaintiffs identify either relate to MasterCard or Visa network rules that existed prior to January 1, 2004, and thus are released, or are activities that plaintiffs do not allege give rise to an antitrust claim.

D. The Terms of the Releases Cover Plaintiffs' Claims in this Case and Are Not Contrary to Public Policy

Fourth, plaintiffs argue that the *Visa Check* releases should not bar their claims under maxims of contract interpretation and to prevent the releases from violating public policy. *See* Pls.' Opp'n at 19-22. Those arguments fail as well.

With respect to the terms of the releases, plaintiffs say that the releases cover "claims . . . relating in any way to *conduct prior to January 1, 2004*, . . . thereby placing a clear temporal limit on the scope of released *claims*." Pls.' Opp'n at 21 (internal quotation and citation omitted) (latter emphasis added). Plaintiffs then say that defendants' interpretation "reads that limitation out of the release and thus violates the fundamental maxim that courts must construe a contract to give each term meaning." *Id.* But the temporal limitation is not on "claims," as plaintiffs say; rather, it is on "conduct" prior to January 1, 2004. The releases apply to "claims" that any class member "***ever had, now has or hereafter can, shall or may have***, ***relating in any way to*** any conduct prior to January 1, 2004." *Visa Check*, 2005 WL 6054266 [MasterCard Settlement] ¶ 30 and 2005 WL 6054267 [Visa Settlement] ¶ 28 (emphasis added). It is *plaintiffs* who try to read language out of the release.

Plaintiffs argue that courts evaluating releases nevertheless "distinguish between pre- and post-effective-date conduct," and that "[c]laims arising from new, post-settlement conduct thus are not barred by a prior release involving similar claims." Pls.' Opp'n at 20-21. The Second Circuit recently rejected that argument in *In re Literary Works in Electronic Databases Copyright Litigation*, 654 F.3d 242 (2d Cir. 2011). There, a class of freelance authors complained that publishers had infringed copyrights of the authors' works when they either published the works in electronic format or sublicensed others to do so. *See id.* at 245. The class settlement provided compensation to the class of authors, and the release prohibited the authors from barring future use of their works for electronic publication. *See id.* at 246. Objectors argued that the release was improper insofar as it released future rather than past damages claims arising from subsequent third-party sublicensing of the authors' works. *See id.* at 247-48. The Second Circuit rejected that argument, holding that "regardless of whether future infringements would be considered independent injuries, the [s]ettlement's release of claims regarding future infringements is not improper." *Id.* at 248; *see also*, *e.g.*, *id.* at 249 ("the [s]ettlement's release pertaining to future uses by publishers and their sublicensees was permissible"); *Smith*, 2012 WL 4711414, at *6 (class member could not relitigate "whether the charges that were the subject matter of the previous lawsuit [settled in 2009], even those that continued to accrue after January 7, 2010, were fraudulently billed"); Defs.' Mem. at 12-14.[2]

Plaintiffs also argue that "[d]efendants' proposed interpretation flies in the face of public policy that proscribes any construction of a release that would confer indefinite prospective

[2] The only Second Circuit case that plaintiffs cite as support for their argument is not to the contrary. In *Remington Rand Corp. v. Amsterdam-Rotterdam Bank, N.V.*, 68 F.3d 1478 (2d Cir. 1995), the Second Circuit did not reject application of a release to prior conduct continuing post-release, but rather remanded for the district court to determine "whether, after their release, the Banks committed any wrongful acts upon which liability could be based." 68 F.3d at 1485.

antitrust immunity." Pls.' Opp'n at 22. But here, defendants are not interpreting the *Visa Check* releases to confer "indefinite" prospective immunity, only prospective immunity from claims relating to MasterCard and Visa network rules that existed prior to January 1, 2004. As shown above, courts in the Second Circuit have concluded that a release may properly provide prospective immunity for pre-settlement conduct.

In addition, the "public policy" to which plaintiffs refer bars a release from providing prospective immunity for *new and different* future conduct that did not exist prior to the settlement. For example, plaintiffs refer to *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955), in which the Supreme Court suggested that "a partial immunity from civil liability for future violations" would be "consistent with neither the antitrust laws nor the doctrine of res judicata." *Id.* at 329; *see* Pls.' Opp'n at 22. But the conduct at issue there — unlike the conduct for which plaintiffs seek damages here — was conduct "all subsequent to the . . . judgment" and "which did not even then exist and which could not possibly have been sued upon in the previous case." *Id.* at 328. The cases in the Second Circuit that plaintiffs cite are to the same effect.[3]

CONCLUSION

For the foregoing reasons, plaintiffs' complaint in this action should be dismissed in its entirety.

[3] *See In re Am. Express Merchants' Litig.*, 554 F.3d 300, 319-20 (2d Cir. 2009) (finding unenforceable arbitration clause because it would effectively waive antitrust liability for *all* future conduct), *vacated*, 130 S. Ct. 2401 (2010); *Hunter Douglas, Inc. v. Comfortex Corp.*, No. 98-CV-0479, 1999 U.S. Dist. LEXIS 10906, at *21 (N.D.N.Y. Mar. 11, 1999) (concluding release *did* bar future claim challenging ongoing policy that had "not been altered materially since the parties executed" the release).

Dated: October 18, 2013.

WILLKIE FARR & GALLAGHER LLP

By: /s/ Keila D. Ravelo
Keila D. Ravelo
Wesley R. Powell
Matthew Freimuth
787 Seventh Avenue
New York, NY 10019-6099
(212) 728-8000
kravelo@willkie.com

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Kenneth A. Gallo
2001 K Street, NW
Washington, DC 20006-1047

Andrew C. Finch
Gary R. Carney
1285 Avenue of the Americas
New York, NY 10019-6064

Attorneys for Defendant MasterCard Incorporated and MasterCard International Incorporated

HOLWELL SHUSTER & GOLDBERG LLP

Richard J. Holwell
Michael S. Shuster
125 Broad Street, 39th Floor
New York, NY 10004
(646) 837-5151
mshuster@hsgllp.com

ARNOLD & PORTER LLP

Robert C. Mason
399 Park Avenue
New York, NY 10022-4690
(212) 715-1000
robert.mason@aporter.com

Robert J. Vizas
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024

Mark R. Merley
Matthew A. Eisenstein
555 12th Street, NW
Washington, DC 20004-1206

Attorneys for Defendants Visa Inc., Visa U.S.A. Inc., and Visa International Service Association[4]

[4] Arnold & Porter LLP is counsel to Visa as to all plaintiffs in this action except for J.C. Penney Corporation and The TJX Companies, Inc. and related entities.