

Received
ZHVM
571593
OCT 21 2009

File No: 3-256-1247

1 ARNOLD & PORTER LLP
Robert J. Vizas (SBN 56187)
2 Sharon D. Mayo (SBN 150469)
275 Battery Street, Suite 2700
3 San Francisco, CA 94111-3823
Telephone: (415) 356-3000
4 Facsimile: (415) 356-3099

5 ARNOLD & PORTER LLP
Robert C. Mason (admitted *pro hac vice*)
6 399 Park Avenue
New York, NY 10022-4690
7 Telephone: (212) 715-1000
Facsimile: (212) 715-1399

8 Attorneys for Defendants
9 Visa U.S.A. Inc. and Visa International Service Association

10 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
Gary L. Halling (SBN 66087)
11 Michael W. Scarborough (SBN 203524)
Four Embarcadero Center, 17th Floor
12 San Francisco, CA 94111-4106
Telephone: (415) 434-9100
13 Facsimile: (415) 434-3947

14 Attorneys for Defendant
MasterCard International Incorporated

15 [Additional Counsel for Defendants on Signature Page]

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF SAN FRANCISCO

19 COORDINATION PROCEEDINGS SPECIAL) J.C.C.P. No. 4335
TITLE (Rule 1550(b)))

20 CREDIT/DEBIT CARD TYING CASES) CLASS ACTION

21 _____) DEFENDANTS' RESPONSE TO *ATTRIDGE*
22 This document relates to:) PLAINTIFF'S AMICUS BRIEF
23 All Actions) REGARDING PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

24) Honorable Richard A. Kramer
25) Coordination Trial Judge

26) Date: October 26, 2009
27) Time: 9:30 a.m.
28) Dept.: 304

TABLE OF CONTENTS

Page

I.	INTRODUCTION	1
II.	ATTRIDGE FAILS TO SHOW THAT THE SETTLEMENT RELEASE DOES NOT PROPERLY ENCOMPASS HIS CLAIMS	1
III.	ATTRIDGE FAILS TO SHOW THAT THE SETTLEMENT IS COLLUSIVE	3
IV.	ATTRIDGE FAILS TO SHOW THAT THE SETTLEMENT IS A "REVERSE AUCTION" TO RESOLVE HIS CLAIMS	5
V.	CONCLUSION	9

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

TABLE OF AUTHORITIES

Page

CALIFORNIA CASES

Colgan v. Leatherman Tool Group, Inc.,
135 Cal. App. 4th 663 (2006) 6

Dunk v. Ford Motor Co.,
48 Cal. App. 4th 1794 (1996) 4-5

Global Minerals & Metals Corp. v. Superior Court,
113 Cal. App. 4th 836 (2003) 6-7

Korea Supply Co. v. Lockheed Martin Corp.,
29 Cal. 4th 1134 (2003) 5

OTHER CASES

Class Plaintiffs v. City of Seattle,
955 F.2d 1268 (9th Cir. 1992) 3

Discover Financial Services v. Visa U.S.A. Inc.,
598 F. Supp. 2d 394 (S.D.N.Y. 2008) 8

United States v. Visa U.S.A. Inc.,
163 F. Supp. 2d 322 (S.D.N.Y. 2001),
aff'd, 344 F.3d 229 (2d Cir. 2003),
cert. denied, 543 U.S. 811 (2004) 1-2, 5, 8

TBK Partners, Ltd. v. Western Union Corp.,
675 F.2d 456 (2d Cir. 1982) 3

Weinberger v. Kendrick,
698 F.2d 61 (2d Cir. 1982) 4

1 **I. INTRODUCTION**

2 Defendants Visa U.S.A. Inc. and Visa International Service Association (“Visa”), and
3 defendant MasterCard International Incorporated (“MasterCard”), submit this memorandum in
4 response to the *Attridge* Plaintiff’s Amicus Brief in Opposition to Motion for Preliminary Approval
5 of Class Action Settlement, dated October 7, 2009 (“Amicus Br.”). Non-party Attridge’s Amicus
6 Brief offers no basis for rejecting preliminary approval of the parties’ proposed settlement.

7
8 **II. ATTRIDGE FAILS TO SHOW THAT THE SETTLEMENT
RELEASE DOES NOT PROPERLY ENCOMPASS HIS CLAIMS**

9 Attridge principally argues that this Court should not preliminarily approve the settlement
10 release because it includes claims that he asserts in his separate, five-year old individual action, in
11 which no class has been certified and no class certification motion has been filed. *See* Amicus Br.
12 at 1. However, because Attridge would be afforded exclusion rights under the settlement, he may
13 opt out and continue to pursue his individual claims in his action regardless of the settlement
14 release. *See* Corbitt Decl. Ex. B (Settlement Agreement) at ¶¶ 18(e), 24.

15 Attridge asserts that the settlement release nevertheless should exclude his claims, since he
16 asserts a “far broader set of unrelated claims,” which “have nothing to do with the operative claims”
17 in this case because “plaintiffs do not challenge Visa’s unlawful By-law 2.10(e) or MasterCard’s
18 unlawful C[P]P.” Amicus Br. at 1, 4; *see also id.* at 10. All of those assertions are false.

19 Plaintiffs here do challenge Visa’s By-law 2.10(e) and MasterCard’s CPP — defendants’
20 respective and so-called “exclusionary” rules — which allegedly limited the ability of bank
21 members of the Visa and MasterCard associations to issue American Express and Discover cards.
22 Plaintiffs’ complaint specifically alleges that those “exclusionary” rules restrained competition and
23 were unlawful:

24 both Visa and MasterCard, on behalf of and in collaboration with the banks
25 that govern them, have adopted rules and policies that restrict the ability of all
26 member banks to do business with American Express, Discover/Novus, or any
27 other network the controlling banks deem to be ‘competitive.’ . . . These
28 exclusionary rules and policies eliminate certain forms of competition among
the Visa and MasterCard member banks, and have effectively precluded
American Express and Discover/Novus from competing to enlist banks in the
U.S. to issue their cards. In *United States v. Visa U.S.A., Inc., et al.*, 344 F.3d
229, 234 (2d Cir. 2003), the Court or Appeals affirmed the holding of the

1 United States District Court for the Southern District of New York that “Visa
2 U.S.A. and MasterCard violated the [Sherman Antitrust] Act by enforcing
3 their respective versions of the exclusionary rule, barring member banks from
4 issuing Amex or Discover cards. The Court further held that Visa
5 International, which owns the Visa brand, licenses it to Visa U.S.A., and
6 exercises certain governance powers over Visa U.S.A., was liable for
7 participating in Visa U.S.A.’s violation. The court ordered the exclusionary
8 rules revoked and permanently enjoined all three defendants from
9 promulgating similar rules in the future.”

10 Corbitt Decl. Ex. A (07/09/04 Cons. Am. Compl.) ¶ 23; *see also id.* ¶ 53. Plaintiffs then further
11 allege that “[t]he aforementioned conduct by defendants” — including their “exclusionary” rules —
12 violated the Unfair Competition Law and allowed Visa and MasterCard to “to unjustly enrich
13 themselves at the expense of” the consumer-plaintiffs. *Id.* ¶¶ 135, 137, 141, 143, 147, 148.

14 Those claims clearly encompass the claims that Attridge asserts. In sustaining defendants’
15 demurrer in *Attridge*, the court allowed Attridge to proceed only with Unfair Competition Law
16 claims, and only on a theory that defendants’ “exclusionary” rules allowed them to unjustly enrich
17 themselves at the expense of consumers who paid finance charges for credit card loans. As the
18 court in the *Attridge* case made clear:

19 THE COURT: . . . The wrong that is alleged is the alleged conspiracy
20 among the Visa members, among the MasterCard members, and between Visa
21 and MasterCard to shut out competition at the network service level, thereby
22 driving up network service costs beyond what they would have been had
23 Discover and American Express or others been permitted to enter the market,
24 thereby increasing . . . the finance charge that banks are able to charge their
25 customers, some portion of which the banks’ charge is a direct result of this
26 conspiracy and then [is] passed back on to Visa and MasterCard.

27 Again, that may not be true, but let me ask Mr. Winters, is that the case
28 we’re talking about?

MR. WINTERS [Plaintiff’s counsel]: Yes, Your Honor.

THE COURT: And I’m prepared to say in my order overruling the
demurrer, . . . that that is the case that we are trying and then the parties are
going to be held to that case.

Vizas Decl. ¶ 4 & Ex. A, 05/19/09 Order at attached 04/19/06 Hr’g Tr. 19:20-20:08.

Thus, contrary to what Attridge asserts, his remaining claims in his action are narrower than
plaintiffs’ claims in this case. Plaintiffs’ claims are premised not only on defendants’
“exclusionary” rules, but also their asserted “tying” of credit and debit card services, purported fee
price-fixing, and other alleged practices, and plaintiffs claim all that conduct resulted in overcharges

1 to consumers who purchased all types of products or services, and not just those consumers who
2 purchased credit card loans. *See* Corbitt Decl. Ex. A (07/09/04 Cons. Am. Compl.).

3 Attridge nowhere disputes defendants' showing that as a matter of law, such claims that fall
4 within the scope of a complaint may be settled and resolved under well-established principles of
5 release and *res judicata*. *See* Amicus Br. at 1-15; Defs.' Memo. Regarding Pls.' Mtn. for
6 Preliminary Approval ("Defs.' Memo.") at 7-8. Regardless of whether plaintiffs specifically allege
7 the precise narrower claim that Attridge asserts, Attridge's claims are based on the same factual
8 predicate that plaintiffs allege of a claimed overcharge to consumers resulting from defendants'
9 "exclusionary" rules. In approving a settlement, a "court may release not only those claims alleged
10 in the complaint, but also a claim 'based on the identical factual predicate as that underlying the
11 claims in the settled class action, even though the claim was not presented *and might not have been*
12 *presentable in the class action.*'" *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1287 (9th Cir.
13 1992) (emphasis in original) (quoting *TBK Partners, Ltd. v. W. Union Corp.*, 675 F.2d 456, 460 (2d
14 Cir. 1982)).

15 Attridge also does not dispute that the settlement and notice to prospective settlement class
16 members should inform them of potential claims in other actions — like his action — that the class
17 members would be releasing in the settlement. *See* Amicus Br. at 1-15. Here, the settlement itself
18 and the proposed publication and long-form website notices would expressly inform settlement
19 class members that the settlement releases claims that they potentially might have in the *Attridge*
20 case. *See* Corbitt Decl. Ex. B (Settlement Agreement) ¶¶ 14, 18(f) & Appendices D-E; Rosenthal
21 Decl. Ex. I. The notices also would direct settlement class members to a website and toll-free
22 telephone number from which they could obtain a copy of Attridge's complaint. *See* Corbitt Decl.
23 Ex. B (Settlement Agreement) ¶¶ 20(h), 23 & Appendices D-E; Rosenthal Decl. Ex. I. Attridge
24 raises no objection to those proposed notices. *See* Amicus Br. at 1-15.

25 **III. ATTRIDGE FAILS TO SHOW THAT THE SETTLEMENT IS COLLUSIVE**

26 Attridge further objects that the settlement is collusive. *See* Amicus Br. at 1, 6-11. That
27 objection is disingenuous, since Attridge does not dispute that the parties repeatedly provided him
28 with the opportunity to participate in the settlement negotiations and the settlement. *See id.*; Vizas

1 Decl. ¶ 5; Corbitt Decl. ¶ 14. Nor is that objection accurate, since none of the parties conditioned
2 the settlement of this action on the settlement of Attridge’s individual action, which Attridge will
3 remain free to pursue if he chooses to opt out of the proposed settlement class. See Supplemental
4 Declaration of Robert J. Vizas (“Vizas Supp. Decl.”) ¶¶ 2-3; Declaration of Kenneth A. Gallo ¶ 2;
5 Supplemental Declaration of Craig C. Corbitt ¶¶ 2-5. In fact, the parties engaged in many months
6 of arm’s-length negotiations in order to arrive at the settlement. See Corbitt Decl. ¶¶ 10-12. Not
7 surprisingly, Attridge proffers no evidence of collusion.

8 Attridge reasons that the claims in this action “differ so substantially from the operative
9 *Attridge* claims” that the parties must be settling “in exchange for overbroad protection for
10 Defendants from . . . unrelated *Attridge* claims.” Amicus Br. at 6; see also Declaration of
11 Dr. Andrew Safir (“Safir Decl.”) ¶¶ 13-15 (independent *Attridge* claims provide an “economic
12 incentive” for collusion). But as shown above, the claims in this action do not differ substantially
13 from Attridge’s claims; they encompass them. The *Attridge* case presents no independent claims to
14 subsume that could have incited any collusion. To the contrary, in order to settle the broader
15 claims in this action, the parties necessarily had to resolve the narrower claims asserted in *Attridge*.

16 Attridge also claims to find collusion based on “differences” between the class definition in
17 plaintiffs’ complaint and Attridge’s complaint, and the fact that plaintiffs’ proposed settlement class
18 definition would “subsume *Attridge*.” Amicus Br. at 6, 8, 9. Because plaintiffs’ claims encompass
19 the *Attridge* case claims, however, there is no reason why the settlement class definition should not
20 also subsume those claims. And although the settlement class definition does broaden the
21 complaint’s class definition, in order to make clear that it encompasses all claims based on the
22 defendant rules and fees that the complaint alleges led to overcharges to the consumer-plaintiffs,
23 there is nothing wrong with that. “[T]here is no rigid rule against the addition of new claims shortly
24 before the submission of a proposed settlement provided that proper notice and opportunity for
25 opting out are afforded.” *Weinberger v. Kendrick*, 698 F.2d 61, 77 (2d Cir. 1982) (approving
26 settlement class that was “expanded to include persons holding state as well as federal claims”); see
27
28

1 also, e.g., *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1805-07 (1996) (approving expanded
2 settlement class of nationwide rather than just California claimants).¹

3
4 **IV. ATTRIDGE FAILS TO SHOW THAT THE SETTLEMENT**
5 **IS A “REVERSE AUCTION” TO RESOLVE HIS CLAIMS**

6 Attridge further contends that the settlement is a “reverse auction” that improperly uses this
7 case “as a mechanism for . . . disposing of the stronger *Attridge* case.” Amicus Br. at 1, 12-13.
8 But again, because the claims in the *Attridge* case fall within the scope of plaintiffs’ claims in this
9 case, the *Attridge* case claims cannot be stronger than those in this case, and there could have been
10 no such “reverse auction.” Moreover, Attridge fails to offer any legitimate basis for asserting that
11 his claims are strong.

12 Attridge argues that his “expert economist has already preliminarily valued the *Attridge*
13 damages at \$386 million,” and so the \$31 million settlement in this case “is a far cry from an
14 adequate settlement of any class that would include the claims in *Attridge*.” Amicus Br. at 12; *see*
15 *also id.* at 11. That argument is premised on the economist’s preliminary valuation of aggregate
16 damages to Attridge’s proposed class. *See* Safir Decl. ¶ 6 (“I was asked . . . to provide a review of
17 the preliminary opinion I have formed regarding damages to the Attridge plaintiffs”), ¶ 8 (“I was
18 asked to calculate the damages due Attridge plaintiffs”). However, Attridge is pursuing claims only
19 under the Unfair Competition Law, for which the California Supreme Court has held that “damages
20 cannot be recovered.” *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1144 (2003).
21 A monetary recovery under the Unfair Competition Law is “generally limited to . . . restitution.” *Id.*
22 (internal quotation omitted). The preliminary opinion of Attridge’s economist on damages is
23 therefore irrelevant, and he does not purport to have developed any opinion at all on restitution. *See*
24 Safir Decl. ¶¶ 6-12. Proving restitution would, in fact, be far more difficult and speculative than

25 ¹ Attridge also notes that a Visa SEC filing describes this action “in a separate section” from the *Attridge*
26 case (Amicus Br. 7), but that cannot evidence collusion with plaintiffs regarding the settlement. Nor can
27 Attridge’s assertion that the settlement is anticompetitive because it “seeks to extend that conspiracy” found
28 in the DOJ case by agreeing “to release and suppress” Attridge’s claims. Amicus Br. at 13. The court in the
DOJ case ended any purported conspiracy regarding “exclusionary” rules when it ordered defendants to
repeal those rules and enjoined defendants from enacting or enforcing such rules. *See United States v. Visa*
U.S.A. Inc., 163 F. Supp. 2d 322, 408 (S.D.N.Y. 2001). And the settlement does not require the release or
suppression of Attridge’s claims, since it provides opt out rights allowing Attridge to pursue his claims.

1 proving aggregate damages. It would require, among other things, a determination of the amount of
2 the asserted overcharge that each of millions of individual consumers supposedly paid to hundreds
3 of different banks, when revolving credit card loans each month over more than a decade, and then
4 tracing how each bank applied each asserted overcharge to its thousands of different operating
5 expenses, and what portion of each such overcharge, if any, each of those hundreds of banks
6 purportedly passed on to Visa or MasterCard in an excessive portion of fees that Visa or
7 MasterCard charged the bank for network services. *See, e.g., Colgan v. Leatherman Tool Group,*
8 *Inc.*, 135 Cal. App. 4th 663, 698 (2006) (reversing judgment for class on Unfair Competition Law
9 claims because restitution “must be of a measurable amount to restore to the plaintiff what has been
10 acquired by violations of the [Unfair Competition Law], and that measurable amount must be
11 supported by evidence”).

12 Furthermore, Attridge’s economist concludes that the \$31 million settlement in this case is
13 “a very poor return” on Attridge’s claims based on his mistaken assumption that *Attridge* is “a *class*
14 *action* on which the defendants have already *admitted some antitrust liability*.” Safir Decl. ¶ 16
15 (emphasis added). Of course, defendants have not “admitted some antitrust liability” in the *Attridge*
16 case. To the contrary, the court in *Attridge* sustained defendants’ demurrer to Attridge’s antitrust
17 claims, and dismissed those claims in their entirety as a as a matter of law. *See Vizas Decl.* ¶ 4 &
18 Ex. A, 05/19/09 Order at attached 04/19/06 Hr’g Tr. 3:15-4:05, 12:10-15. The preliminary
19 valuation of Attridge’s economist thus fails to account for the significant risk that Attridge could not
20 prove defendants’ liability. *See Safir Decl.* ¶¶ 6-16.

21 Likewise, *Attridge* is not a “class action” because the court has not certified any class in that
22 case. Nor is the court likely to do so. Unlike a typical “indirect purchaser,” Attridge did not
23 purchase through an intermediary the defendants’ allegedly overcharged product or service.
24 Instead, he claims to have purchased from intermediary retail banks credit card loans that are
25 entirely different from the network services for which he claims defendants overcharged banks due
26 to the “exclusionary” rules. The California Court of Appeal has rejected class certification where
27 “the subject product was substantially altered or added to when it was received by a middleman
28 from the manufacturer,” and “the effects of any price-fixing by the manufacturer [were] obscured.”

1 *Global Minerals & Metals Corp. v. Super. Ct.*, 113 Cal. App. 4th 836, 855 (2003). In his
2 preliminary valuation, Attridge's economist ignores entirely the substantial risk that no class may be
3 certified that could support any class-wide claim for restitution. See Safir Decl. ¶¶ 6-16.

4 In fact, it is highly unlikely that Attridge could obtain certification of his proposed class.
5 Even putting aside the problems Attridge would face in attempting to prove any basis for restitution,
6 much less a class-wide basis for restitution, to obtain certification Attridge would need to prove a
7 common impact from defendants' "exclusionary" rules on his proposed class of revolving credit
8 cardholders. Attridge first would have to establish that the Visa and MasterCard "exclusionary"
9 rules led each of them to charge supra-competitive network service fees to banks, and that the
10 overcharge was common, over more than a decade, to each of the hundreds of banks that issued
11 Visa- or MasterCard-branded credit cards in California. Attridge then would need to establish that
12 each of those hundreds of banks recovered the inflated portion of any network service fees:

- 13 • in a common manner from the bank's consumer credit card program, as opposed
14 to its commercial credit card, debit card, or other payment card programs not at
15 issue in Attridge's case, or the bank's other retail banking operations;
- 16 • in a common manner from the bank's credit card loan charges, as opposed to
17 annual fees, over-limit fees, and other fees that the bank charged its credit
18 cardholders; and
- 19 • in a common manner from each of the bank's new or existing individual
20 revolving credit cardholders, regardless of differing credit histories, payment
21 histories, annual incomes, or other factors that affected the finance charge that
22 the individual paid for the credit card loan.

23 Attridge's economist admits that he has not been able to determine such an impact in the first place,
24 much less on a common basis that could support class certification. He states that he has
25 "requested" — and apparently never found after almost five years of litigation in *Attridge* —
26 "material which will allow me to calculate the specific extent of 'pass on' of network fee value from
27 the bank to the retail card level, and specifically that amount which should be appropriately
28 allocated to revolving charge customers." Safir Decl. ¶ 12.

Attridge also argues that his claims are strong because he is entitled to collateral estoppel
based on the trial court's decision in the Department of Justice ("DOJ") action that challenged
defendants' "exclusionary" rules. See Amicus Br. at 11, 13. Citing to a single page from that

1 decision, Attridge claims that the court found “Defendants excluded competition, driving up
2 network services fees beyond what they would have been,” which “resulted in inflated network
3 service charges to revolving credit cardholders such as Plaintiff Attridge.” Amicus Br. at 3, citing
4 *United States v. Visa U.S.A. Inc.*, 163 F. Supp. 2d 322, 406 (S.D.N.Y. 2001). But the page that
5 Attridge cites says absolutely nothing of the sort. *See id.* at 406. In fact, the court in the DOJ case
6 never decided whether defendants’ “exclusionary” rules resulted in revolving credit cardholders like
7 Attridge overpaying for credit card loans. *See id.* at 327-407. The court found only that
8 defendants’ “exclusionary” rules led to “fewer and less varied credit card products to the
9 consumer.” *Id.* at 379; *see also id.* at 379-99.

10 Indeed, when Discover sued defendants before the same judge that decided the DOJ case,
11 the judge specifically held that collateral estoppel could not be used to show that defendants’
12 “exclusionary” rules affected their network service fees to banks. Discover sought collateral
13 estoppel on two statements in the DOJ case decision to the effect that defendants’ “exclusionary”
14 rules reduced price competition for network services. *See Vizas Supp. Decl.* ¶¶ 4-5 & Ex. B
15 (02/15/08 Memo. of Law in Support of Discover’s Mtn., Att. A at 7-8). The judge specifically
16 “decline[d] to give collateral estoppel effect” to those statements. *See id.*; *Discover Fin. Servs. v.*
17 *Visa U.S.A. Inc.*, 598 F. Supp. 2d 394, 401 (S.D.N.Y. 2008). The same judge that decided the DOJ
18 case thus concluded in Discover’s case that collateral estoppel could not be used to establish that
19 defendants’ “exclusionary” rules resulted in higher network service fees to banks, much less higher
20 credit card loan finance charges to credit cardholders, as Attridge asserts.

21 Finally, Attridge misleadingly suggests that his claims are strong because the court in his
22 case “entered an Order Denying Summary Judgment and Vacating Defendants’ Motion for
23 Summary Adjudication.” Amicus Br. at 3. Attridge fails to disclose that the court’s order simply
24 denied summary judgment on a technical ground, and did not decide defendants’ motion for
25 summary adjudication. *See Vizas Suppl. Decl.* ¶¶ 6-7 & Ex. C, 07/01/09 Order at 5-11. The court
26 subsequently made clear that it would address defendants’ motion for summary adjudication, which
27 could dispose of each of Attridge’s remaining causes of action, as well as defendants’ renewed
28 request for summary judgment. *See Vizas Supp. Decl.* ¶ 8 & Ex. D, 08/03/09 Hr’s Tr. 3:04-07,

1 10:15-13:21. The court recently asked defendants to withdraw their motion pending this Court's
2 hearing on preliminary approval of the settlement, but without prejudice to defendants' later
3 renewal of their motion. *See* Vizas Supp. Decl. ¶ 9 & Ex. E, 09/25/09 Hr'g Tr 6:07-6:15.

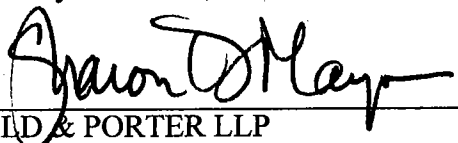
4 As defendants' motion papers in the *Attridge* case demonstrate, each of Attridge's remaining
5 claims are subject to summary disposition. Among other flaws, Attridge's claims are preempted by
6 the National Bank Act, since they are based on alleged lending overcharges of national banks that
7 issued credit cards to Attridge. *See* Vizas Supp. Decl. ¶ 6. Attridge's claims also are barred by the
8 Unfair Competition Law's four-year statute of limitations, since Visa and MasterCard adopted their
9 respective "exclusionary" rules in 1991 and 1996, more than eight years before Attridge filed his
10 action in December 2004. *See id.* Attridge thus faces a further substantial risk — likewise ignored
11 in his economist's preliminary valuation (*see* Safir Decl. ¶¶ 6-16) — that his claims will be
12 dismissed and that he and his proposed class will recover nothing in his case.

13 **V. CONCLUSION**

14 Attridge's Amicus Brief offers no legitimate reason why this Court should not grant
15 plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

16
17 Dated: October 20, 2009.

Respectfully submitted,

18
19 By: 
20 ARNOLD & PORTER LLP
21 Robert J. Vizas (SBN 56187)
22 Sharon D. Mayo (SBN 150469)
23 275 Battery Street, Suite 2700
24 San Francisco, CA 94111-3823
25 Telephone: (415) 356-3000
26 Facsimile: (415) 356-3099

27 ARNOLD & PORTER LLP
28 Robert C. Mason (admitted *pro hac vice*)
399 Park Avenue
New York, NY 10022-4690
Telephone: (212) 715-1000
Facsimile: (212) 715-1399

Attorneys for Defendants
Visa U.S.A. Inc. and Visa International Service
Association

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

By: Michael W. Scarborough / son
SHEPPARD, MULLIN, RICHTER & HAMPTON
LLP
Gary L. Halling (SBN 66087)
Michael W. Scarborough (SBN 203524)
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4106
Telephone: (415) 434-9100
Facsimile: (415) 434-3947

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
Kenneth A. Gallo (admitted *pro hac vice*)
Patricia Crowley Corcoran (admitted *pro hac vice*)
2001 K Street, NW
Washington, DC 20006-1047
Telephone: (202) 223-7300
Facsimile: (202) 223-7420

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
Gary R. Carney (admitted *pro hac vice*)
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990

Attorneys for Defendant
MasterCard International Incorporated