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November 20, 2009

VIA ECF

The Honorable John Gleeson
United States District Court Judge
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Visa Check/MasterMoney Antitrust Litigation (CV-96-5238)(JG)(JO)

Dear Judge Gleeson:

We write on behalf of Enterprise Holdings, Inc. f/k/a Enterprise Rent-A-Car Company ("Enterprise") in the above-referenced matter. On November 3, 2009, Special Master Robin Wilcox filed a Report and Recommendation (the "Report") recommending that the Court grant Enterprise's motion to modify the Amended Plan to pay interest in amounts necessary to treat all class members as though their claims were paid on the same date. (Docket # 1537.) In the Report, the Special Master directed Lead Counsel to submit a proposal for calculating and implementing interest payments to eligible class members, which Lead Counsel did on November 10, 2009. (Docket # 1547.) While Enterprise takes no position with respect to several aspects of Lead Counsel's proposal, Enterprise writes to respectfully request that the Court reject Lead Counsel's proposed method for calculating the interest rate applicable to the interest payments, which would deprive the affected class members of a significant portion of the relief that Special Master Wilcox deemed appropriate.

The purpose of the interest payment requested in Enterprise's motion, and recommended by the Special Master, is to treat all class members as though they were paid on the same day—*i.e.*, to compensate later-paid class members for the economic harm they suffered as a result of being paid substantially later than earlier-paid class members. Accordingly, the interest payments should reflect the benefit that earlier-paid class members received from having had use of their settlement funds earlier. In other words, if all class members truly were treated as through they were paid on the same day, they would be indifferent from an economic standpoint as to whether they were the first or last paid class member.

Notwithstanding the Special Master's direction, Lead Counsel's November 10, 2009 appears to answer a different question. Lead Counsel proposes to apply "the actual rates earned by the Class on the settlement funds that were deposited in the Qualified Settlements Accounts held at JPMorgan and CitiGroup for the period from January 1, 2006 to October 31, 2009," which range from a high of 4.62% to a low of .23%. However, those rates necessarily are ultra-conservative because Lead Counsel had an obligation to preserve absolutely all of the pre-distribution principal and not subject class funds to any risk. Interest earned on Lead Counsel's no-risk investment of the pre-distribution settlement funds is the wrong measure for determining the detriment to later-paid class members who, unlike earlier paid class members, could not reduce their costs of borrowed capital by the amount of their settlement payments for a period of time after December 2005. In other words, the interest rate schedule proposed by Lead Counsel likely would be insufficient to make any class member economically indifferent as to the timing of its payment.

Lead Counsel justifies its proposed measure of interest on the basis that it is "preferable to attempting to match interest rates to different Class Members based on credit worthiness or their individual financial circumstances." While that justification explains the sensible choice to apply a single rate schedule to all class members, it does not explain why the *particular* rate schedule selected by Lead Counsel is appropriate. Moreover, differences in credit worthiness among class members and their individual financial circumstances historically have not precluded Lead Counsel or its expert from calculating costs and benefits of earlier versus later payments to class members using average class member costs of capital, as discussed below.

Enterprise submits that the Court or the Special Master should select an interest rate that would render the average class member economically indifferent as to: (1) early payment with no interest, or (2) later payment with interest. Accordingly, Enterprise believes that the most appropriate rate would be either the average class member's cost of capital or the Class Prepayment Internal Rate of Return ("IRR"). Notably, those metrics not only reflect Enterprise's view but, as discussed below, also reflect the opinion of Lead Counsel and its expert.

Lead Counsel and its expert consistently have relied on the average cost of capital to measure the detriment to class members when considering the timing of payment of benefits to the class. For example:

- in an October 9, 2009 letter to Your Honor requesting that the Court expeditiously resolve issues related to the residual distribution, Lead Counsel relied upon Independent Expert Professor Black's reasonable assumption as to "the average marginal Class cost of capital" and utilized that figure to determine the "lost opportunity cost" to class members for delays in receiving their residual distribution. (Docket # 1526 at 1.)

- in the Supplemental Report of Independent Expert (on proposal for MasterCard prepayment) dated July 14, 2009, Professor Black utilized the cost of capital to determine the present value of proposed deferred payments to class members when he concluded that earlier but reduced payment to class members through securitization would be advantageous for class members. (Docket # 1501 at 3.)
- in his Report of Independent Expert on Visa prepayment proposal dated September 14, 2009, Professor Black again relied on the "average marginal Class cost of capital" to measure the effect of a delay in the distribution on the present value of the securitization proceeds. (Docket # 1516 at 6.)

In his September 14, 2009 report, Professor Black stated "[i]t seems reasonable to me to assume that a 1% monthly cost of capital, or 12.30% bond-equivalent yield, is a reasonable average marginal Class cost of capital for the current Visa stream of payments." (*Id.*) In that same report, Professor Black noted that his use of the weighted average cost of capital for class members was an assumption, but one that he and Lead Counsel considered to be reasonable. (*Id.* at 3.)

Besides the average cost of capital, Professor Black's September 14, 2009 report measured and relied upon the Class Prepayment IRR, which "can be understood as the effective interest rate that the Class members would receive, by retaining the status quo of annual payments instead of accepting the Prepayment." (*Id.* at 8.) Professor Black estimated the Class Prepayment IRR to approximate 7.11% and to be within a range of 6.75% - 7.5%. This rate is in line with Lead Counsel's communication to class members in August 2009 that Visa prepayment with an effective cost to the class somewhat "below 8%" was appropriate and in the interests of the class, a courtesy copy of which is enclosed with this letter.

These submissions demonstrate that Lead Counsel and its expert consistently have valued the premium for earlier payment at significantly higher rates than those proposed in its November 10, 2009 letter. Specifically, submissions by Lead Counsel and its expert support the use of a rate equivalent to the average class member's cost of capital or the Class Prepayment IRR. Thus, Enterprise respectfully requests that the Court issue an order consistent with the Special Master's Report and apply an interest rate between 6.75% and 8% or 12.30%, rather than the schedule of rates proposed by Lead Counsel that reflect interest earned on class funds through Lead Counsel's necessarily ultra-conservative investments.

Finally, we note that Lead Counsel's submissions to the Court reflect a $52.8 million reserve in connection with Enterprise's motion for interest payments. Based on our calculations, this reserve would be insufficient in the event that the Court grants Enterprise's request for an interest rate based on the average class member's cost of capital or Class Prepayment IRR. Therefore, Enterprise respectfully requests that the Court direct Lead Counsel to ensure that

sufficient funds are reserved to provide for interest as may be ordered by this Court.

Respectfully submitted,

Michael S. Kraut

cc: Special Master Robin Wilcox (via email)

MERCHANT ADVISORY ON THE VISA AGREEMENT TO PREPAY FUTURE PAYMENTS AT A DISCOUNT

New York City, August 31, 2009

Dear Merchants,

Constantine Cannon LLP and Hagens Berman Sobol Shapiro LLP, together Lead Counsel for United States merchants in the *In re Visa Check/MasterMoney Antitrust Litigation*, CV 96-5238, advise Class Members as follows:

On August 31, 2009, Lead Counsel reached an agreement with Visa U.S.A. Inc. ("Visa") whereby, subject to the approval of the United States District Court for the Eastern District of New York (the "Court"), Visa will prepay the remaining payments agreed to in the June 2003 Settlement Agreement by making a single payment of $682 million by the later of September 30, 2009, or the day after Court approves the agreement (the "Visa Prepayment Agreement"), in lieu of making the remaining four annual $200 million payments due through 2012.

While Lead Counsel will formally move the Court for approval of the Visa Prepayment Agreement, Lead Counsel advised the Court on August 31, 2009, that it believes that the Visa Prepayment Agreement will be more beneficial to Class Members than proceeding with the previously contemplated securitization of Visa's remaining payment obligations. The Visa Prepayment Agreement equates to completing the securitization at a discount rate of below 8.0% on an annual basis and it eliminates all market risk, while offering numerous other advantages not available in the context of a securitization. As with a securitization, if the Court approves the Visa Prepayment Agreement, Lead Counsel will be able to make lump-sum distributions of the Visa residual payments to Class Members with approved claims instead of making installment payments over the next four years of any residual amounts.

The Visa Prepayment Agreement and Lead Counsel's August 31, 2009 submission to the Court are available by clicking on the link provided here or at the case website at www.inrevisacheckmastermoneyantitrustlitigation.com by clicking on the sidebar option entitled "Visa Agreement To Prepay Future Payments At A Discount." The papers are also available at Lead Counsel's website at www.constantinecannon.com.

Details concerning merchant rights under the Settlement are available on the case website by clicking on the sidebar option entitled "Merchant/Class Member Rights Under the Settlement." Additional assistance is also available by calling 1-888-641-4437.

Sincerely,

CONSTANTINE CANNON LLP (formerly Constantine & Partners)
Co-Lead Counsel for the Class
Counsel@InReVisacheckMastermoneyAntitrustLitigation.com

HAGENS BERMAN SOBOL SHAPIRO LLP
Co-Lead Counsel for the Class