

CONSTANTINE | CANNON

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NEW YORK | WASHINGTON

July 2, 2009

**VIA HAND DELIVERY AND ECF**

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

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

Dear Judge Gleeson:

I am pleased to be able to advise the Court of a significant development in connection with the remaining settlement account payments from MasterCard International Incorporated (“MasterCard”), the securitization of which this Court has approved (the “Securitization”). Specifically, Lead Counsel and MasterCard have entered into the enclosed Agreement To PrePay Future Payments At A Discount, dated July 1, 2009 (the “Agreement”), whereby, subject to this Court’s approval, MasterCard has agreed to pay \$335,000,000.00 by September 30, 2009, in full satisfaction of all of its payment obligations to Plaintiffs.

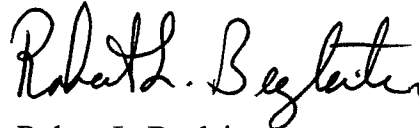
Lead Counsel entered into this Agreement only after the Independent Expert and the financial advisor for Plaintiffs informed Lead Counsel that they believed the Agreement would be more beneficial to plaintiffs than proceeding with the Securitization. In that regard, not only does the payment under the Agreement equate to a discount rate well below the maximum discount rate in the memorandum in support of Lead Counsel’s motion seeking approval for the Securitization and already authorized by the Court, it also eliminates all market risk and the need for a large residual distribution to Plaintiffs of the MasterCard Future Payments at the conclusion of the Securitization in 2012. In addition, this prepayment offers the advantage of (i) eliminating the need to establish reserve accounts totaling in excess of \$8.0 million; (ii) reducing certain transaction costs associated with closing the Securitization, and (iii) eliminating the costs associated with administering the Securitization going forward. While Lead Counsel commenced the marketing of the Securitization, this Agreement was reached before the Securitization was complete.

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July 2, 2009  
Page 2

In short, Lead Counsel believes that the Agreement is in the best interests of the Plaintiffs. Because the terms of the Agreement fall well within the financial parameters already authorized by the Court in its order approving the Securitization (the "Securitization Order"), in addition to having the further benefits set forth above, Lead Counsel believes that an amendment to the Securitization Order addressing the option of essentially effecting the result of the Securitization by virtue of the Agreement is appropriate. Accordingly, also enclosed is a [Proposed] Amended Order Approving Securitization Of MasterCard Settlement Account Payments for the Court's consideration.

Respectfully submitted,



Robert L. Begleiter

Enclosures

cc: Robin Wilcox, Esq. (*via electronic mail*)  
Special Master

George W. Sampson, Esq. (*via electronic mail*)  
Co-Lead Counsel for the Plaintiffs

Bernard Black (*via electronic mail*)  
Independent Expert

Joseph F. Tringali, Esq. (*via electronic mail*)  
Counsel for MasterCard International Incorporated

## AGREEMENT TO PREPAY FUTURE PAYMENTS AT A DISCOUNT

This Agreement to Prepay Future Payments at a Discount (the "Agreement") is dated as of July 1, 2009, by and between Co-Lead Counsel (as defined below), acting collectively as binding representative and agent of the Plaintiffs and MasterCard International Incorporated ("MasterCard"). Terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement (as defined below).

### WITNESSETH

WHEREAS, Constantine Cannon LLP (formerly, Constantine & Partners) and Hagens Berman Sobol Shapiro LLP (formerly, Hagens Berman), together serve as co-lead counsel ("Co-Lead Counsel") to the Plaintiffs in the In Re Visa Check/MasterMoney Antitrust Litigation, No. 96-CV-5238 (JG/JO), a class action filed in the U.S. District Court for the Eastern District of New York (the "Court") against MasterCard; and

WHEREAS, the Plaintiffs and MasterCard filed with the Court an executed settlement agreement (the "Settlement Agreement") on June 4, 2003, that the Court approved on December 19, 2003, and that became final on June 1, 2005, after the denial of or expiration of all time for appeals; and

WHEREAS, MasterCard is obligated under Section 3(a) of the Settlement Agreement to make four additional payments of \$100 million each (the "Future Payments") into the Settlement Fund Account on or before the following dates: December 22, 2009, December 22, 2010, December 22, 2011, and December 22, 2012; and

WHEREAS, in connection with the Settlement Agreement, Co-Lead Counsel established the MasterCard Qualified Settlement Fund bearing Employer Identification Number 20-0065872 (the "MasterCard Qualified Settlement Fund"); and

WHEREAS, Section 3(b) of the Settlement Agreement provides that MasterCard may request that Plaintiffs work with MasterCard to establish a mutually agreeable discount rate to apply to any prepayment(s) in the event that MasterCard desires to make one or more payments on an accelerated basis; and

WHEREAS, MasterCard and Co-Lead Counsel now desire to enter into this Agreement to evidence their mutual agreement and specify the terms with respect to the prepayment by MasterCard of the Future Payments at a discount.

NOW THEREFORE, the parties hereto agree as follows:

Section 1. Payment. The parties hereby agree that MasterCard shall make a payment of \$335,000,000 (the "Payment") on September 30, 2009 (the "Payment Date") into the existing MasterCard Qualified Settlement Fund account established pursuant to and in compliance with the terms of the Settlement Agreement, which are incorporated herein. The Payment shall be in full satisfaction of all of MasterCard's remaining payment obligations to the Plaintiffs under the Settlement Agreement upon Final Approval as defined in Section 4 below.

Section 2. Future Payments. Except as provided in Section 4, upon making the Payment, MasterCard shall no longer be obligated to make the Future Payments.

Section 3. Event of Default. Failure of MasterCard to make the Payment on the Payment Date, shall constitute an event of default hereunder and shall entitle the Plaintiffs to seek from the Court immediate recovery of the Payment and any and all additional relief they believe appropriate including immediately payable post-judgment interest.

Section 4. Court Approval. Co-Lead Counsel agrees to seek approval of the Court and will use reasonable efforts to secure that approval as promptly as possible. Upon Court approval and the exhaustion of all available appeals from said approval, this Agreement will become final ("Final Approval"). Except as provided below, no disbursement from the Payment will be made unless and until Final Approval has occurred and the Court has approved such disbursement. MasterCard shall make the Payment on the Payment Date regardless of whether Final Approval of the Agreement occurs on or before the Payment Date. In the event that Final Approval of this Agreement does not occur on or before December 22, 2009 or the subsequent dates for such settlement payments under the Settlement Agreement, then MasterCard's December 22, 2009 payment obligation of \$100 million pursuant to Section 3(a) of the Settlement Agreement or such subsequent payment(s) under the Settlement Agreement that become due under Section 3(a) of the Settlement Agreement shall be deemed to have been made and the \$100 million settlement payment for such year may be withdrawn from the MasterCard Qualified Settlement Fund by Co-Lead Counsel on or after the date that such settlement payment was to be paid under Section 3(a) of the Settlement Agreement in full satisfaction of MasterCard's obligation to make a settlement payment for such year. In the event that Final Approval of this Agreement is not obtained as a result of a rejection of the Agreement by the Court or, if approved, rejected as a result of an appeal of said Court approval, then and only then, shall this Agreement become null and void and Plaintiffs shall return the Payment with any accrued interest less any reductions that were made to the Payment pursuant to MasterCard's payment obligations under Section 3(a) of the Settlement Agreement. Should this Agreement so become null and void, all the terms of the Settlement Agreement shall remain in full force and effect.

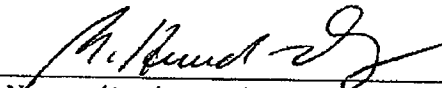
Section 5. Choice of Law; Jurisdiction of the Court. All terms of this Agreement shall be governed and interpreted according to the substantive laws of the State of New York without regard to its choice of law or conflict of laws principles. Co-Lead Counsel and MasterCard agree to hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to this Agreement.

Section 6. Requisite Authority. MasterCard represents and warrants that it has the requisite power and authority to enter into this Agreement, and that no additional actions or approvals are required or necessary to evidence such authority.

[Signature page follows]

IN WITNESS WHEREOF, the signatories have read and understood this Agreement, have executed it, represent that the undersigned are authorized to execute this Agreement on behalf of the represented parties, have agreed to be bound by its terms and have entered into this Agreement as of the day and year first above written.

**MASTERCARD INTERNATIONAL INCORPORATED**

By:   
Name: Martina Bond-Njean  
Title: CFO

**CONSTANTINE CANNON LLP,**  
Co-Lead Counsel, as binding representative and agent of the  
Plaintiffs

By: \_\_\_\_\_  
Name:  
Title:

**HAGENS BERMAN SOBOL SHAPIRO LLP,**  
Co-Lead Counsel, as binding representative and agent of the  
Plaintiffs

By: \_\_\_\_\_  
Name:  
Title:

<b>MasterCard Law Department</b>	
<b>Approved as to Legal Form</b>	
Lawyers Initials:	<u>J.P.M.</u>
Date:	<u>7/1/09</u>

IN WITNESS WHEREOF, the signatories have read and understood this Agreement, have executed it, represent that the undersigned are authorized to execute this Agreement on behalf of the represented parties, have agreed to be bound by its terms and have entered into this Agreement as of the day and year first above written.

**MASTERCARD INTERNATIONAL INCORPORATED**

By: \_\_\_\_\_  
Name:  
Title:

**CONSTANTINE CANNON LLP,**  
Co-Lead Counsel, as binding representative and agent of the  
Plaintiffs

By: Robert L. Begleiter  
Name: Robert L. Begleiter  
Title: Partner

**HAGENS BERMAN SOBOL SHAPIRO LLP,**  
Co-Lead Counsel, as binding representative and agent of the  
Plaintiffs

By: George W. Sampson  
Name: George W. Sampson  
Title: Partner

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
IN RE : MASTER FILE NO.  
 : CV-96-5238  
VISA CHECK/MASTERMONEY ANTITRUST : (Gleeson, J.) (Orenstein M.J.)  
LITIGATION :  
-----X  
This Document Relates To: :  
All Actions :  
 :  
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**[PROPOSED AMENDED] ORDER APPROVING SECURITIZATION OF  
MASTERCARD SETTLEMENT ACCOUNT PAYMENTS**

Upon the motion of Constantine Cannon LLP and Hagens Berman Sobol Shapiro LLP, Lead Counsel, on behalf of the Plaintiff Class to approve the securitization of the MasterCard International Incorporated (“MasterCard”) settlement payments, the Court, having considered all matters submitted to it at the hearing held on April 24, 2009, and the supporting papers filed with the Court with respect to the motion, including the Declaration of Robert L. Begleiter, Esq., dated March 5, 2009, and exhibits attached thereto (“Begleiter Declaration”), the Declaration of Joshua J. Slovik, dated March 4, 2009, the Declaration of Neil L. Zola, dated October 6, 2008, Lead Counsel’s memorandum supporting the motion, the report of the Court appointed Independent Expert, Professor Bernard Black, dated March 6, 2009, and upon all other papers and proceedings had herein, hereby **GRANTS** the motion.

**WHEREAS** the Court possesses jurisdiction over this matter and the Plaintiff Class and MasterCard in this matter, including jurisdiction to grant the motion and enter this order;

**WHEREAS** the Plaintiff Class and MasterCard filed with the Court an executed settlement agreement (“Settlement Agreement”) on June 4, 2003 that the Court approved on December 19, 2003, and which became final on June 1, 2005, after the denial of or expiration of

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all time for appeals;

**WHEREAS** the Amended Plan of Allocation was submitted to the Court on August 16, 2005, as directed by the Court's August 2, 2005 Order;

**WHEREAS** the Settlement Agreement and the Amended Plan of Allocation provide for the securitization of the MasterCard Settlement Fund Account payments ("Securitization") and the proposed Securitization is consistent with the provisions set forth therein;

**WHEREAS**, under the terms of the Settlement Agreement, the Plaintiff Class has agreed to the following restrictions:

(i) "[p]laintiffs shall look solely to the Settlement Agreement for settlement and satisfaction against MasterCard of all claims that are released" thereunder, (Settlement Agreement at ¶ 29);

(ii) "[e]ach Class Member ... covenants and agrees that it shall not, hereafter, seek to establish liability against any Released Party based, in whole or in part, upon any of the released claims," (Settlement Agreement at ¶ 30);

(iii) "[t]he Settling Parties ... irrevocably submit to the exclusive jurisdiction of the United States District Court for the Eastern District of New York for any suit, action, proceeding or dispute arising out of or relating to [the] Settlement Agreement or the applicability of [the] Settlement Agreement and exhibits hereto," (Settlement Agreement at ¶ 41(a));

(iv) "[i]n the event that the provisions of [the] Settlement Agreement are asserted by MasterCard as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any other suit, action or proceeding by a Plaintiff, it is hereby agreed that MasterCard shall be entitled to a stay of that suit, action or proceeding until the United States Court for the Eastern District of New York has entered a final judgment determining any issues

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related to the defense or objection based on such provisions. Solely for the purposes of such suit, action or proceeding, to the fullest extent they may effectively do so under applicable law, the Settling Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of such court, or that such court is, in anyway, an improper venue or an inconvenient forum,” (Settlement Agreement at ¶ 41(b));

(v) “[i]n the event that any party does not fulfill any of its obligation under the Settlement Agreement, Plaintiff’s Co-Lead Counsel or MasterCard may seek from the Court any and all relief they believe appropriate,” (Settlement Agreement at ¶ 42);

(vi) “[i]n the Event that MasterCard does not fulfill its obligations relating to payments to the Settlement Fund Account as specified in paragraph 3 [of the Settlement Agreement], both Plaintiffs’ Co-Lead Counsel or any purchaser, assignee, or entity involved with securitization or financing of the Settlement Fund as provided for in paragraph 3(f) [of the Settlement Agreement], may seek from the Court any and all relief they believe appropriate,” (Settlement Agreement at ¶ 43).

Each of the restrictions agreed to by the parties in the MasterCard Settlement Agreement, including, but not limited to, those set forth above, remain in full force and effect and nothing in this Order is intended to or does amend, modify or extinguish any of said restrictions;

**WHEREAS** the Plaintiff Class has no obligations to fulfill under the Settlement Agreement, except that pursuant to paragraph 34 of the Settlement Agreement, “[t]he Settling Parties and their respective counsel agree[d] that, except as otherwise required by law, within sixty (60) days after MasterCard has complied with all of its obligations under the Settlement Agreement, all materials produced by, or information discovered of, or records of information

discovered of, the Settling Parties (including their past, present and former parents, subsidiaries, divisions, affiliates...) that contain Confidential Information or Outside Counsel Eyes Only Information...shall be destroyed or returned to the producing party”;

**WHEREAS** MasterCard is obligated under the Settlement Agreement to make four additional payments of \$100 million each into the Settlement Fund Account on or before the following dates: December 22, 2009, December 22, 2010, December 22, 2011, and December 22, 2012 (the “Future Payments”);

**WHEREAS** paragraph 3(b) of the Settlement Agreement provides that MasterCard may request that Plaintiffs work with MasterCard to establish a mutually agreeable discount rate to apply to any Future Payments due under the Settlement Agreement and the Amended Plan of Allocation in the event that MasterCard desires to make one or more payments on an accelerated basis (“Prepayment”); and

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**WHEREAS** MasterCard is prohibited from making a Prepayment once the Securitization is completed; and

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**WHEREAS** notice of the motion was made available to the public on the case website at <http://www.inrevisacheckmastermoneyantitrustlitigation.com> and was mailed to all parties appearing in this case, it is hereby

**ORDERED** that the motion is **GRANTED**;

**ORDERED** that Lead Counsel on behalf of the Plaintiff Class may proceed with the Securitization as proposed in the Begleiter Declaration, supporting memorandum, and other papers submitted in support of the motion or a Prepayment within the same financial parameters as set forth therein;

**ORDERED** that Lead Counsel is authorized and has all requisite power and authority to

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act as binding representative and agent of the Plaintiff Class for all matters related to the Prepayment or Securitization and to execute (through the signatures of either Robert L. Begleiter or Jeffrey I. Shinder on behalf of Constantine Cannon LLP and of George W. Sampson on behalf of Hagens Berman Sobol Shapiro LLP), deliver and perform on behalf of the Plaintiff Class all documents necessary or advisable to complete the Prepayment or Securitization, including but not limited to the authorization to create the Trust (as defined in the supporting memorandum) and all matters related thereto, and upon such execution and delivery by Lead Counsel, all documents relating to the Prepayment or Securitization to which Lead Counsel is party shall constitute legal, valid, and binding obligations of and be enforceable against the Plaintiff Class in accordance with their terms;

**ORDERED** that the conveyance of the Plaintiff Class' rights to receive all Future Payments and all rights and interests relating will, when effectuated, constitute an absolute sale in that the Plaintiff Class will transfer immediately all rights and interests to receive the Future Payments upon the completion of the Securitization;

**ORDERED** that the transfer by Lead Counsel to the Trust of control over withdrawals from the Settlement Fund Account in accordance with the documents relating to the Securitization does not conflict with the requirement of Paragraph 3 of the Settlement Agreement that all requests for withdrawals from the Settlement Fund Account be signed by Lead Counsel;

**ORDERED** that the Trust will, effective as of the conveyance of the Plaintiff Class' rights described above, have the right to enforce all rights and powers related to the Future Payments granted to the Plaintiff Class under the Settlement Agreement and the Amended Plan of Allocation, including but not limited to the power to seek relief from this Court pursuant to Paragraph 43 of the Settlement Agreement to compel MasterCard to fulfill its payment

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obligations into the Settlement Fund;

**ORDERED** that Lead Counsel is authorized to complete the Prepayment or Securitization at a rate equal to or lesser than the maximum discount rate set forth in the memorandum supporting the motion, but if, after consulting with the Independent Expert, Lead Counsel determines the Prepayment or Securitization should not be completed despite obtaining a discount rate for the Securitization notes equal to or lesser than the maximum rate set forth in the memorandum supporting the motion, Lead Counsel shall not complete the transaction and shall so notify the Court; and

**ORDERED** that, other than this order and according to the relief set forth herein, notice provided to the Plaintiff Class on the case website and to the parties appearing in this action by mail is sufficient and adequate such that no additional consent, approval, order, or authorization by this Court, filing with this Court, or notice to this Court, the Plaintiff Class, or the parties appearing in this action is required in connection with the execution, delivery, or performance by Lead Counsel of the documents necessary to complete the Prepayment or Securitization.

Dated: \_\_\_\_\_  
Brooklyn, New York

\_\_\_\_\_  
HONORABLE JOHN GLEESON  
UNITED STATES DISTRICT JUDGE