

Duff on Hospitality Law

Visa, MasterCard Propose 6+ Billion Dollar Settlement in Merchant Class Action Litigation Over Interchange Fees

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Several clients have lately been asking about notices they've received that look like [this](#). If they come from the Eastern District court in New York, they're legitimate, and if you are a merchant who accepted Visa or MasterCard or both between January 1, 2004 and November 28, 2012, you are probably a member of the class and should have received one too. If you didn't, the lawsuit and proposed settlement are discussed in detail [here](#). Take a look; the settlement could affect your legal rights. You have until May 28, 2013 to exclude yourself from the settlement (opt-out) or object to its terms; the final hearing on the proposed settlement will be September 12, 2013. Assuming the court approves the settlement, with or without changes that may occur as the result of objections, claim forms will be issued after that date to class members and a claim deadline will be set.

The settlement is the result of several years of litigation beginning when a number of merchants sued Visa, MasterCard and several member banks, and received permission from the court to have the litigation treated as a class action. On behalf of the class, the plaintiffs alleged, among other things, that the card brands (then just associations of member banks) conspired together to charge interchange fees, to set those fees higher than a purely competitive market would set them, set anti-competitive rules for accepting Visa and MasterCard making it harder for merchants to accept or direct consumers to other card brands or pay cash, and continued this behavior even after the member banks reorganized themselves into Visa, Inc. and MasterCard, Inc.—the separate companies that we all know and love today.

The proposed settlement is still subject to final court and class member approval; rather than have the settlement appealed by the majority of objecting named plaintiffs (10 of the original 19), the court decided, with the parties' approval, to send the proposed settlement out to class members first, which is why these notices have started popping up. In addition to the objecting named plaintiffs, other large trade associations oppose the proposed settlement, including the National Retail Federation and Retail Industry Leaders Association, as well as the National Restaurant Association. In essence, these associations allege that the proposed agreement doesn't do enough to fix the problems, particularly the allegedly anti-competitive rules. The

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AH&LA does not appear to have released an official position statement as of the writing of this article, nor were we able to locate any statements in favor or in opposition to the proposed settlement made by local or regional lodging associations.

To be clear, this is a proposed *settlement*; Visa, MasterCard and the other defendants have admitted no wrongdoing, nor has the court heard or adjudicated the merits of the class's claims. And keep in mind that if you are a class member, the named plaintiffs are speaking for you, so it's worth a look at what the court will decide you've agreed to if the proposed settlement is accepted.

Tags: anti-competitive, anti-trust, anticompetitive, antitrust, credit card, fees, interchange, lawsuit, litigation, Mastercard, payment card, visa