

U.S. Merchants Enter into Landmark Class Action Settlement with Visa and Mastercard to Eliminate Anti-Competitive Restraints and Reduce Swipe Fees

Settlement Includes Rate Roll Back and Five-Year Rate Cap that Will Deliver Close to \$30 Billion in Near-Term Swipe Fee Savings

Settlement Eliminates Anti-Steering Restrictions, Providing Merchants with Ability to Competitively Price at the Network and Card Level and Discount at the Issuer Level, and Facilitates the Formation of Buying Groups to Empower Small Merchants

NEW YORK, March 26, 2024 /PRNewswire/ -- A landmark antitrust class action settlement has been reached between U.S. merchants and Visa Inc. ("Visa") and Mastercard Incorporated ("Mastercard") to resolve claims for injunctive relief in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*. The settlement, which is among the largest in U.S. antitrust history, is subject to approval by the U.S. District Court for the Eastern District of New York. The class includes all merchants who accepted Visa or Mastercard debit or credit cards in the United States at any time during the period between December 18, 2020 and the date of entry of final judgment by the court. The class is represented by Steve Shadowen of Hilliard Shadowen LLP; Robert Eisler of Grant & Eisenhofer PA; Michael Freed of Freed Kanner London & Millen LLC; and Linda Nussbaum of Nussbaum Law Group, P.C.

The settlement eliminates anti-competitive restraints that will deliver U.S. merchants billions of near- and long-term savings. At least \$29.79 billion in savings will be realized in the five years following approval of the settlement from agreed upon caps and rollbacks on credit card processing fees, or "swipe fees." Experts expect substantially greater additional savings as the agreed upon policy changes provide merchants of all sizes with new negotiating leverage against Visa and Mastercard. Under the proposed settlement terms, the amount of transactions eligible to be competitively priced by merchants will increase from less than 20% of transactions to 96%.

Steve Shadowen, co-lead counsel, said, "This settlement is the culmination of eight years of hard-fought litigation and detailed, painstaking negotiations. It provides comprehensive market-based solutions to too-high swipe fees, while providing immediate fee relief to merchants as they make these new competitive tools work for them."

Robert Eisler, co-lead counsel, said, "This settlement achieves our goal of eliminating anti-competitive restraints and providing immediate and meaningful savings to all U.S. merchants, small and large."

Michael Freed, co-lead counsel, said, "This is about securing policy changes that empower merchants over the long term, promote competition and restore balance to the market."

Linda Nussbaum, co-lead counsel, said, "This settlement implements tools that will benefit merchants, big and small, while ensuring that the ecosystem remains conducive to the innovation that serves both merchants and consumers. In addition to rollbacks and caps, a merchant education program will facilitate merchant understanding of the rules changes and the benefits that can be achieved."

"The Settlement Agreement opens competitive doors that have been closed for decades, while providing rate relief to every merchant that accepts Visa or Mastercard credit cards," said Nobel laureate economist Dr. Joseph Stiglitz, who submitted a declaration on the settlement and its effects.

The settlement represents a major improvement upon the original agreement that was overturned by the Second Circuit in 2016. Key terms of the settlement include:

- 1) Applying three separate brakes to swipe fees, putting an end to their 25-year relentless upward spiral and delivering merchants at least \$29.79 billion in savings over the next five years.**

- **Brake 1:** Visa and Mastercard will roll back the posted swipe fee of every merchant by at least four basis points for at least three years.
- **Brake 2:** For a period of five years, Visa and Mastercard will not raise the swipe fees of any merchant above the posted rates that existed as of December 31, 2023.
- **Brake 3:** For a period of five years, the average effective systemwide swipe fee for Visa and Mastercard must be at least seven basis points below the current average rate. An independent auditor will verify the calculations.

2) Removing anti-steering restrictions and enabling competitive pricing.

- Merchants can charge for using a Visa or Mastercard credit card, regardless of whether they can charge for using American Express, whose rules for merchants were upheld by the Supreme Court in 2018.
- Merchants can discount at the issuer level thereby steering consumers to more preferred cards and promoting increased competition among the networks and the numerous credit card issuers.
- Merchants will be able to adjust prices based on the costs associated with accepting different credit cards, promoting efficient price signaling and enhancing transparency for consumers.
- Merchants will be permitted to provide customers truthful information as to why they are applying a charge for credit card use.

3) Increasing small merchants' ability to negotiate lower swipe fees from Visa and Mastercard.

- Visa and Mastercard must negotiate swipe fees in good faith with merchant buying groups, and the agreement provides a streamlined process for resolving disputes.

4) Allocating \$15 million for a merchant education program to advise and inform merchants on the settlement and effectively utilizing the rule changes.

- This will be the first independent merchant education program, available free of charge to all merchants of every size and category.

Importantly, the settlement prohibits Visa and Mastercard from circumventing the injunctive relief, providing strong anti-circumvention provisions and independent verification and calculations on swipe fees.

The settlement stems from a 2005 lawsuit which alleged that merchants paid excessive fees to accept Visa and Mastercard credit cards, and that Visa and Mastercard and their member banks acted in violation of antitrust laws. This injunctive relief follows the \$5.54 billion financial settlement for all U.S. merchant class members which was finalized and approved by the Second Circuit Court of Appeals in March 2023.

For more information, please visit www.gelaw.com/settlements/interchange-antitrust-litigation-settlement-information for a copy of the court filing of the settlement and the declaration by Dr. Joseph Stiglitz.

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