

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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IN RE VISA CHECK/MASTERMONEY
ANTITRUST LITIGATION
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ORDER
CV-96-5238 (JG)

JOHN GLEESON, United States District Judge:

In an application dated September 5, 2005, Lead Counsel Constantine Canon requested an order to show cause why declaratory and injunctive relief should not be granted against Spectrum Settlement Recovery LLC (“Spectrum”), a claim filing and fund recovery service for commercial class actions. (Unsigned order to show cause by Lead Counsel Constantine Cannon, dated September 9, 2005, Docket No. 1187). According to Lead Counsel, Spectrum “is using fraudulent and misleading solicitations to entice Class Members to retain Spectrum and to prepare and file their Claim Forms,” and is “intentionally spreading misinformation to confuse Class Members and complicate the allocation process in an attempt to create a need for its services.” (Mem. Law Supp. App. at 1).

Lead counsel seeks, among other things, a declaration that contracts made between Spectrum and class members are void and injunctions prohibiting Spectrum from soliciting class members and requiring it to correct any misstatements it has made to class members. By order dated September 12, 2005, I referred Lead Counsel’s applications to Special Master Robin M. Wilcox for a Report and Recommendation.

In a report dated November 2, 2005, she found several statements made by Spectrum in its communications with Class Members to be incorrect or misleading. Special Master Wilcox concluded that Spectrum’s statements regarding the purported failure of the Visa Transactional Database to distinguish between credit card and off-line transactions were incorrect

and misleading. As Spectrum concedes, its “assert[ion] that because (unlike the Visa Transactional Database) Spectrum is able to differentiate between credit card transactions and the more valuable off-line debit transactions, Class Members that retain Spectrum will obtain a higher recovery than Class Members that do not,” was incorrect. (Nov. 2, 2005 R&R at 24).

Similarly, the Special Master found that Spectrum’s assertions that Class Members “may be eligible to collect significant top line revenue from \$100,000 to \$6,000,000” is misleading because it “represents that any merchant that accepted Visa or MasterCard during the Class Period is entitled to recover an amount equal to or exceeding \$100,000 but no more than \$6,000,000” while in fact the Plan of Allocation does not create either a floor or a ceiling. (Nov. 2, 2005 R&R at 25-26). Special Master Wilcox also found that two of the statements made by Spectrum about the role of the Claims Administrator are predicated on an inaccurate portrayal of the Plan of Allocation. Specifically, she recommended that I find the statements indicating that the role of the Claim Administrator “becomes adversarial” and that “[t]he settlement administrator is obligated to rely only on the questionable information provided by MasterCard and Visa” are materially misleading.

Finally, Special Master Wilcox determined that Spectrum’s description of the Estimated Cash Payment as an “offer” or “partial offer” “misleadingly suggests that the Estimated Cash Payment set forth on the Class Member’s Claim Form is merely the first -- and therefore lowest -- offer in a negotiation between the Class Member and Visa and MasterCard, its former adversaries.” Because “the Plan of Allocation also makes clear that this estimate is not a subject of negotiation, but rather will be revised -- either up *or down* -- only if the Class Member is able to convincingly demonstrate that it is inaccurate,” Special Master Wilcox recommended

that I find this statement to be misleading. (Nov. 2, 2005 R&R at 29.)

In order to remedy these inaccuracies, Special Master Wilcox recommended that I require Lead Counsel to (1) publish a corrective notice on the website correcting certain of Spectrum's statements that she found to be inaccurate, and (2) send the same corrective notice to all Class Members with whom Spectrum has communicated. To effectuate this recommendation, Special Master Wilcox ordered that Spectrum file a draft of such notice, that Lead Counsel file its written objections, if any, to the draft corrective notice, and that Spectrum provide to Lead Counsel "a list of all of the Class Members to whom it has sent promotional materials, along with sufficient information to ensure that Lead Counsel is able to serve those Class Members with the corrective notice." (Nov. 2, 2005 R&R at 3).

On November 18, 2005, Lead Counsel and Spectrum both filed objections to the Special Master's report. I have considered the objections set forth in these submissions, and I do not find them persuasive. Notably, Spectrum argues that corrective notice should be publicized only to those Class Members who have already contracted with Spectrum, since no other Class Members stand to be harmed. This argument is without merit. The "solicitees," *i.e.*, those Class Members who have received Spectrum's materials but have not yet decided whether to contract with Spectrum, may be relying on the false and misleading statements in deciding whether to do so, and so thus are in need of the information in the corrective notice.

Accordingly, I hereby adopt the Special Master's recommendations in their entirety. However, the adoption of these recommendations is without prejudice to a renewed application by Lead Counsel for the costs of the corrective notice to be shared with or paid by

Spectrum, provided that such application be made only after the mailing has been completed and only upon a demonstration of the actual costs incurred.

So Ordered.

JOHN GLEESON, U.S.D.J.

Dated: December 13, 2005
Brooklyn, New York