

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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IN RE : **MASTER FILE NO.**
 : **CV-96-5238**
VISA CHECK/MASTERMONEY ANTITRUST : **(Gleeson, J.) (Mann, M.J.)**
LITIGATION :
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This Document Relates To :
All Actions: :
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**SEPTEMBER 18, 2003 STATUS REPORT CONCERNING
NOTICE OF SETTLEMENT TO MEMBERS OF THE CERTIFIED CLASS**

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Dated: New York, New York
September 18, 2003

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**SEPTEMBER 18, 2003 STATUS REPORT CONCERNING
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This Status Report is respectfully submitted to “describe the activities undertaken to provide Notice of Class Action Settlement to the class, including the dates on which mailings of notice took place and the dates on which notice was published” in accordance with paragraph 10 of the Stipulation and Order for Providing Notice of Settlement of Class Action to Members of the Certified Class, dated June 13, 2003 (the “Settlement Notice Order”). Plaintiffs and the court-approved Administrator, The Garden City Group, Inc. (“GCG”), have fully satisfied all of their obligations under the Settlement Notice Order.¹ In sum, Plaintiffs and the Administrator mailed more than 8.1 million notices to absent class members, implemented a publication notice in general circulation and trade press periodicals with total circulation of over 151 million, and established, maintained and communicated with absent class members through dedicated post office boxes, telephone hot-lines, a website and e-mail links.

¹ A detailed description of these efforts are set forth in the accompanying declarations of Mitchell C. Shapiro, Esq. Constantine & Partners, Lead Counsel For Plaintiffs, dated September 17, 2003 (“Shapiro Dec.”), Neil L. Zola, Esq., the Executive Vice President and Chief Operating Officer of GCG, dated September 17, 2003 (“Zola Dec.”), Wayne L. Pines, Executive Vice President of GCG Communications, a division of GCG, dated September 17, 2003 (“Pines Dec.”), Libby Holman, Manager, Public Affairs And Litigation Communication For APCO Worldwide, dated September 12, 2003, George Green, Vice President and General Counsel of Food Marketing Institute, dated September 12, 2003 (“Green/FMI Dec.”), Mallory Duncan, Senior Vice President and General Counsel of National Retail Federation, dated September 16, 2003 (“Duncan/NRF Dec.”) and Morrison Cain, Senior Vice President and General Counsel of International Mass Retail Federation, dated September 17, 2003 (“Cain/IMRA Dec.”).

Class Member List and Direct Mail Notice

Pursuant to paragraph 13 of the Settlement Notice Order, GCG updated the original, 7,657,885 record Class Member List that was utilized for the September 2002 Notice of Pendency, in accordance with paragraph 3 of the Settlement Notice Order. *See* Zola Dec. ¶¶ 2-7. The modified Class Member List included the persons and entities who appeared on the original Class Member List (except for those who made timely requests for exclusion, those whose addresses that had been determined to be undeliverable during the Notice of Pendency process, and those with addresses outside the continental United States, Alaska and Hawaii), augmented by the New Merchants (*i.e.*, those persons or entities who began to accept Visa and MasterCard credit cards and debit cards after June 20, 2002, according to lists provided by Visa and MasterCard) and persons or entities who had self-registered with the Administrator after Notice of Pendency. *Id.* The modified Class Member List includes 1,767,122 non-duplicative records that correspond to New Merchants, as supplied by Visa and MasterCard in accordance with paragraph 2 of the Settlement Notice Order. *Id.* at ¶ 3.

GCG then caused a copy of the Court-approved Notice of Class Action Settlement (the “Notice of Settlement”) to be mailed to each of the 8,148,276 names and addressees on the modified Class Member List between June 27 and July 3, 2003. *See* Zola Dec. ¶¶ 8-9, Exh. A. GCG fully complied with the mail handling procedures provided in the Settlement Notice Order (¶ 9) and undertook reasonable efforts to promptly locate proper addresses for, and re-mail notices to, any person or entity whose Settlement Notice was returned as undeliverable. *See* Zola Dec. ¶¶ 10-14.

Publication Notice

Pursuant to paragraph 5 of the Settlement Notice Order, the Court-approved Summary Notice of Class Action Settlement (“Summary Settlement Notice”) appeared in the publications listed in Exhibit 3 of the Settlement Notice Order. Pines Dec. ¶¶ 10-12. The Summary Settlement Notice appeared in the same 12 general circulation publications and 7 merchant trade

publications in which the Summary Notice of Pendency had appeared, reaching a circulation of over 151 million, as follows:

General Circulation Publications

- *Parade Magazine* (circulation: 35,507,036)—July 20, 2003;
- *Parade Magazine* (circulation: 35,507,036)—July 27, 2003;
- *USA Weekend* (circulation: 21,352,002)—July 20, 2003;
- *USA Weekend* (circulation: 21,352,002)—July 27, 2003;
- *The Wall Street Journal* (circulation: 1,820,525)—June 20, 2003;
- *TV Guide* (Digest/Cable) (circulation: 9,061,639)—July 19, 2003;
- *TV Guide* (Digest/Cable) (circulation: 9,061,639)—July 26, 2003;
- *People* (circulation: 3,632,804)—July 28, 2003;
- *People* (circulation: 3,632,804)—August 4, 2003;
- *Time* (circulation: 4,109,962)—July 28, 2003;
- *Sports Illustrated* (circulations: 3,245,940)—July 28, 2003; and
- *Newsweek* (circulation: 3,125,151)—July 28, 2003.

Merchant Trade Publications

- *Chain Store Age* (circulation: 35,488)—July 2003;
- *DSN Retailing Today* (circulation: 29,855)—July 21, 2003;
- *MMR/Mass Market Retailers* (circulation: 20,597)—July 28, 2003;
- *RIS/Retail Info Systems News* (circulation: 20,029)—July 2003;
- *Retail Merchandiser* (circulation: 26,500)—July 2003;
- *Stores* (circulation: 33,063)—July 2003; and
- *Supermarket News* (circulation: 39,965)—July 21, 2003.

Pines Dec. ¶¶ 10-12. Tear sheets that show exactly how the Summary Notice of Settlement appeared in each of the publications are attached to the Pines Dec. as Exhibits B through T.

According to the leading notice expert who designed the Notice Plan, “78% of ‘Business Owners/Partners’ in the United States were exposed to the Summary Settlement Notice, and each of these adults was exposed to the Summary Settlement Notice an average of 2.95 times.” Pines Dec. ¶ 20. The expert concluded that the Notice Plan implemented “was not only the most practicable under the circumstances, but was also extremely comprehensive and effectively reached members of the class.” Pines Dec. ¶ 21.

Additional Circulation of Notice – PR Newswire

Pursuant to paragraph 5 of the Settlement Notice Order, plaintiffs caused the Summary Notice to be published over the PR newswire on two separate occasions (July 22, 2003 and August 4, 2003) to more than 2,400 media outlets, including newspapers, magazines, national wire services, television and radio broadcast media, websites and Internet portals. Holman Dec. ¶ 2. Copies of the Summary Notice and C&P’s press releases regarding the Settlement Notice procedures that were issued along with the Summary Notice are attached to the Holman Dec. as Exhibits A, B and C, respectively.

At least 366 news stories -- including those run in periodicals such as the Wall Street Journal, New York Times, Fortune, Dow Jones News Service, Reuters News, Financial Times Newsday, Corporate and Legal Times, The Washington Post, Bloomberg News, BusinessWeek, Chicago Sun Times and The Atlanta Journal -- that summarized the settlement, referenced the notice or cited the case website were published from April 28 through September 5. Of those, 264 were published from June 14 through August 4. Shapiro Dec. ¶ 3.

Additional Circulation/Dissemination of Notice – Merchant Trade Associations

Pursuant to paragraph 5 of the Settlement Notice Order, plaintiffs caused the Summary Settlement Notice to be placed in the publications of the three plaintiff merchant trade associations. *See* Green/FMI Dec., Duncan/NRF Dec. and Cain/IMRA Dec. In addition, the three plaintiff merchant trade associations also disseminated notice of the settlement by distributing either the Settlement Notice or Summary Settlement Notice directly to members and by posting either the Settlement Notice or links to the Settlement Notice on each of their websites throughout the Settlement Notice period. *Id. See also* Shapiro Dec. ¶ 9 (describing distribution of open letter from Lead Counsel to merchant trade association members, a copy of which is attached as Shapiro Dec. Exh. F).

Case Website

Pursuant to paragraph 6 of the Settlement Notice Order, GCG established and maintained throughout the Settlement Notice period a website that contained all of the materials specified in the Settlement Notice Order: the Settlement Notice, the Summary Settlement Notice, the Settlement Agreements, the papers submitted to the Court by Plaintiffs in support of preliminary approval of the Settlement, the April 1, 2003 Order of the Court denying defendants' motions for summary judgment and granting in part and denying in part plaintiffs' motions for summary judgment, the November 15, 2002 Status Report Concerning Notice to the Members of the Certified Class, the June 21, 2002 Notice of Pendency Order (and attachments, including the Notice of Pendency and Summary Notice), the October 17, 2001 Circuit Court Order affirming the District Court Order certifying the class, the February 22, 2000 District Court Order certifying the Class and the Second Amended Consolidated Class Action Complaint. Zola Dec. ¶

16. All of these materials were posted on June 20, 2003, the date of the first publication of the Summary Settlement Notice. *Id.*

The Settlement Notice and the Summary Settlement Notice informed class members that Class Counsel's Fee Petition and Plan of Allocation would be filed on August 18, 2003, and that details about the Fee Petition and Plan of Allocation would be posted on the website beginning on that day. At the direction of C&P, on August 18 GCG posted the entire Fee Petition and Plan of Allocation, along with all of the supporting materials that had been filed with the Court. Zola Dec. ¶ 16; Shapiro Dec. ¶ 4.

GCG also posted a list of Frequently Asked Questions (FAQs), with answers, that C&P had prepared, to provide additional information about the Plan of Allocation and the claims process. Zola Dec. ¶ 16; Shapiro Dec. ¶ 4; Exh. B. This was consistent with C&P's longstanding intention to utilize the case website to keep the class members informed of the status and development of the Settlement, the Plan, the potential securitization of the payments and the distribution/disposition of claims. Shapiro Dec. ¶ 4. Inquiring class members were told that the case website would be updated for that purpose, in the future, and that they should monitor such developments on the website. *Id.* at ¶¶ 4, 5.

GCG utilized the same website address/url as for Notice of Pendency -- www.InReVisaCheck-MasterMoneyAntitrustLitigation.com. Zola Dec. ¶16. The website url/address was not case sensitive and could be reached by class members who neglected to insert the dash or the www prefix. *Id.*

The case website address/url appeared in the more than 8 million copies of Settlement Notice that were mailed, each of the versions of the Summary Settlement Notice that were included in the general circulation and trade press periodicals, with total circulation of more than

151 million. There were 15,829 hits to the website from June 21 through September 15, of which 5,197 took place on or after August 18, 2003, the date when Class Counsel's Fee Petition and Plan of Allocation (and all of the supporting materials) were posted on the website in their entirety. Zola Dec. ¶ 16.

The case website was checked on a daily basis by staff members at GCG and C&P to confirm that the site was operating properly and that the materials could be easily located, accessed, downloaded or printed by visitors to the site. See Zola Dec. ¶ 16; Shapiro Dec. ¶ 4. C&P and GCG spent considerable time posting the various components of the Fee Petition and Plan of Allocation and all supporting materials as separate documents on the website so as to make the site more user friendly and easily navigated, and to facilitate visitors' ease of access, viewing, downloading and printing the materials. Zola Dec. ¶ 16; Shapiro Dec. ¶ 4.

Additionally, the C&P website, www.cpony.com was included in the Summary Notice and is easily located using a search engine on the world wide web. Zola Dec. ¶ 15; Shapiro Dec. ¶ 3. Throughout the Settlement Notice period, the C&P website included all of the key substantive materials that were posted on the case website and many other informative documents (as well as a link to the case website). Shapiro Dec. ¶ 3. Printouts of the access pages of the C&P website are attached as Exh. A to the Shapiro Dec. From June 20 through August 31, 2003, the C&P website received 15,168 visits, with 5,797 of those taking place from August 18 through August 31. *Id.*

Communications With Absent Class Members

The website also contained the proper links with which absent class members could forward e-mails to both GCG and C&P (admin@InReVisaCheck-MasterMoneyAntitrustLitigation.com and counsel@InReVisaCheck-

MasterMoneyAntitrustLitigation.com, respectively). *See* Zola Dec. ¶ 16. The links utilized the same e-mail addresses that had been utilized for Notice of Pendency. *Id.* at ¶¶ 15, 16.

As required by the Settlement Notice Order, GCG and C&P also established and maintained the telephone numbers dedicated to inquiries from absent class members (1-888-641-4437, toll-free; and 212-350-2799, respectively). Zola Dec. ¶ 15; Shapiro Dec. ¶ 5. The telephone numbers appeared in the more than 8.1 million copies of Settlement Notice that were mailed, each of the versions of the Summary Settlement Notice that were included in the general circulation and trade press periodicals, with total circulation of more than 151 million, and on the case website. Zola Dec. ¶ 15. More than 11,732 telephone calls were received by GCG and C&P from June 21 through September 15, 2003. Zola Dec. ¶ 17.

C&P personnel received and promptly responded to inquiries from absent class members in the forms of letters, telephone calls and emails from potential class members, including questions regarding the Settlement Notice, address changes, requests for inclusion and requests for exclusion and the rights of absent class members (*i.e.*, to opt-out, object, appear at the fairness hearing, participate in the settlement funds). *See* Shapiro Dec. ¶ 5. Through September 16, 2003, C&P had received and responded to hundreds of inquiries from absent class members (including at least 333 emails and 807 telephone calls). *Id.* Inquiring class members were informed of C&P's longstanding intention to utilize the case website to keep the class members apprised of the status and development of the Settlement, the Plan, the potential securitization of the payments and the distribution/disposition of claims in the future and were told that the case website would be updated for those purposes and that they should monitor such developments on the website. Shapiro Dec. ¶¶ 4-5.

All requests for exclusion (whether timely made by New Merchants or belated requests filed by merchants who had previously received Notice of Pendency) and requests for copies of the Settlement Notice or address/contact changes were forwarded to GCG. Shapiro Dec. ¶6. GCG promptly responded to all such inquiries. See Zola Dec. ¶ 14.

New Merchant Requests for Exclusion

GCG has compiled a list of all New Merchants whose timely requests for exclusion from the class had been received by GCG through September 16, 2003, a copy of which is submitted as Exh. B to the Zola Declaration. See Zola Dec. ¶ 18. This number totals 154 New Merchants, a small number considering the total number of 1,767,122 new, non-duplicative records that were provided by Visa and MasterCard to assist in identifying and providing notice to New Merchants. See Shapiro Dec. ¶ 6; Zola Dec. ¶¶ 3, 18. A list of these persons or entities is attached as Exh. C to the Zola Dec. The total number of timely requests for exclusion is 6,195 (6,041 of which were filed during the 2002 Notice of Pendency process and 154 of which were mailed by New Merchants prior to September 5, 2003). Zola Dec. ¶ 18. A copy of the original list of timely opt-outs was previously submitted to the Court on November 26 and then again with the February 13, 2003 final Status Report regarding Notice of Pendency. Zola Dec. ¶ 6. There have been a total of 863 untimely requests for exclusion that were received following the deadline for exclusions provided in the Notice of Pendency and which have not been deemed effective by the Administrator or C&P. Zola Dec. ¶ 19; Shapiro Dec. ¶ 6. A list of the 787 untimely requests for exclusion that were received after the filing of the February 13, 2003 Final Status Report on Notice of Pendency is attached as Exh. C to the Zola Dec. A list of the 92 initial untimely requests for exclusion was previously submitted to the Court. *Id.*

C&P and GCG also received correspondence from 2 entities, Ford Motor Company and AT&T Wireless Services, Inc., seeking to rescind or withdraw their prior, timely requests for exclusions so as to participate in the Settlement. *See* Zola Dec. ¶ 20, Exh. D; Shapiro Dec. ¶ 7. (Each of these entities had filed timely requests for exclusion during the Notice of Pendency process in 2002. Zola Dec. ¶ 20.) By letters dated September 11, 2003, C&P informed these class members that their requests to rescind or withdraw their exclusions were not being deemed effective. Shapiro Dec. ¶ 7; Exh. F.

Objections

The Administrator and C&P have received a total of 17 different objections covering 34 objectors, some of which appeared to be related entities (*i.e.*, owned by the same individual or located at the same address). *See* Zola Dec. Exh. E; Shapiro Dec. ¶ 10.

Of the 34 objectors, 17 appeared on the original Class Member List and were mailed a Notice of Pendency (and a Settlement Notice). *Id.* Three of the objectors are New Merchants who were mailed Settlement Notice. Two of the objectors are listed at addresses that were listed in the original Class Member List database under different corporate names, and are owned by an individual (Ali Bazzi) who is listed as the owner of a third objector that was mailed Notice of Pendency and Settlement Notice. *Id.* Two additional objectors are listed at addresses that correspond with other corporations that were mailed Notice of Pendency and Settlement Notice, and a third objector is owned by the same objector as the other two (George Jreij). *Id.* One additional objector is listed at an address that was listed in the original Class Member List under different corporate names (and to which were mailed Notice of Pendency and Settlement Notice) and is owned by the same individual who received Settlement Notice on behalf of another entity that is listed as a New Merchant. *Id.*

According to the Administrator's records, copies of Settlement Notice or Notice of Pendency were mailed directly to 26 of the 34 objectors (or to other corporations at their addresses), and 8 did not receive Notice by direct mail. *Id.* None of the 34 objectors filed timely requests for exclusion from the Class. *Id.*

Compliance with Settlement Notice Order

C&P, plaintiffs and the Administrator have fully complied with the provisions of the Settlement Notice Order and have properly implemented the Notice Plan which the parties stipulated, and the Court so-ordered, constitutes the best means practicable of providing notice and satisfies the requirements of Fed. R. Civ. P. 23 and due process. *See* Settlement Notice Order, ¶ A.

Dated: New York, New York
September 18, 2003

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