

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

_____)	
IN RE VISA CHECK/MASTERMONEY)	
ANTITRUST LITIGATION)	
_____)	MASTER FILE NO. CV-96-5238
_____)	
This Document Relates To:)	(Gleeson, J.) (Orenstein, M.J.)
_____)	
ALL ACTIONS)	
_____)	

DECLARATION OF JOHN R. READ

I, John R. Read, hereby declare that:

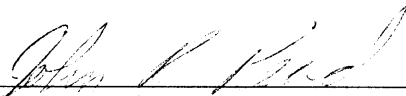
1. Since approximately August 2004, I have served as Chief of the Litigation III Section of the Antitrust Division of the United States Department of Justice. This Section successfully challenged Visa's and MasterCard's exclusionary rules for member banks. *See United States v. Visa, U.S.A., Inc., et al.*, 344 F.3d 229 (2d Cir. 2003), *cert. denied*, 543 U.S. 811 (2004). The Section is also responsible for the antitrust issues arising out of the instant class action against Visa and MasterCard.
2. I submit this declaration in connection with the United States' Reply Memorandum in Support of Government Merchants' Participation in the Distribution of the Net Settlement Funds.
3. In October 2005, several Government Merchants called the Antitrust Division stating that they had received claims forms that indicated that they would receive compensation as a result of the settlements of the instant action. They wanted to know how to proceed.
4. I assigned Erika Meyers, an attorney, to learn the facts and make recommendations on how to deal with the issues presented. Ms. Meyers no longer works with the Antitrust Division. We first assumed that Lead Counsel had made one minor mailing mistake. She called Lead Counsel to inform them of the mistake and remind them of the November 14, 2002 Civil Division Letter. Apparently because Lead Counsel could not locate it, Ms. Meyers had to resend the Civil Division Letter to Lead Counsel.
5. Ms. Meyers, others, and I went forward gathering information and working with Lead Counsel, Defendants, and the Government Merchants. In doing so, we learned the facts that have led to the filing of the instant Memorandum by the United States. In particular, we learned far more about Lead Counsel's treatment of the claims of the Government Merchants throughout the litigation and the details surrounding the settlements between

Lead Counsel and Defendants. In the process of learning those facts, we determined that the appropriate course of action would be to seek a ruling from the Court regarding the United States' participation in the settlement funds' distribution.

6. Ms. Meyers, Allen Grunes, others, and I personally met Lloyd Constantine on December 1, 2005. At that meeting, Mr. Constantine gave an overview of his strategy in litigating the case and his plans for securitizing and distributing the settlement funds. But Mr. Constantine did not recount at the meeting any steps Lead Counsel took to inform the Court or Defendants of the Civil Division Letter, nor any significant steps Lead Counsel took to exclude the Government Merchants from the Class – either by extricating them from the damages claim or from the mailing lists.
7. At the December 1, 2005 meeting, even though we brought up and discussed with Mr. Constantine the *Cooper* decision, he did not take the position that *Cooper* barred the Government Merchants from participating in the settlement funds' distribution. To the contrary, he expressed the view that he was “agnostic” whether the Government Merchants were class members or could participate in the settlement. He closed the meeting by saying that he would be willing to help us with the Court: “Just let me know what you want.” However, Mr. Constantine also spent a good portion of the meeting recounting his interactions with the United States Postal Service (“USPS”) and indicating it might need to be treated differently from the rest of the Government Merchants.
8. After discussions with Defendants regarding how to deal with the Settlement Agreements' Release provisions to ensure that those provisions could not be construed to restrict any United States' law enforcement efforts, I (and others) spoke to Mr. Constantine and Amy Roth by phone on Friday, December 23, 2005. In that conversation, I told Mr. Constantine that the Department would like to proceed with a stipulated filing to the Court by all parties (Lead Counsel, Defendants, and the United States) that would explain the circumstances surrounding the issue and jointly ask that the United States be allowed to participate in the settlement proceeds.
9. I told Mr. Constantine that I had talked to counsel for Defendants and they seemed open to exploring a stipulated filing. I stated that the issue of whether the USPS would ultimately be included or excluded in the stipulated filing would need to be left for another day after we had had time to gather and review all the relevant facts.
10. During this December 23 telephone call, Mr. Constantine seemed to appreciate putting aside the USPS issue for the moment and indicated that he was amenable to the idea of a stipulated filing that would allow, with the Court's permission, the Government Merchants to participate in the Net Settlement Funds' distribution on the same terms as the other Class Members. Mr. Constantine did say, however, that he wanted to see the exact language of the stipulation and proposed order before finally signing off.

11. In mid-January, the Section sent Mr. Constantine a proposed stipulation and order (*see* Exhibit A of the Supplemental Declaration of Allen P. Grunes). We continued to work on the issue until the week of January 23, 2006. Not until that week did Lead Counsel indicate their current position that the Government Merchants are legally barred under *Cooper* from participating in the settlements.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of May 2006 in Washington, D.C.



John R. Read