

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000549-101

(Class Action)
SUPERIOR COURT

9085-4886 QUEBEC INC.

Petitioner

-vs.-

VISA CANADA CORPORATION
and
**MASTERCARD INTERNATIONAL
INCORPORATED**
and
BANK OF AMERICA CORPORATION
and
BANK OF MONTREAL
and
BANK OF NOVA SCOTIA
and
**CANADIAN IMPERIAL BANK OF
COMMERCE**
and
**CAPITAL ONE FINANCIAL
CORPORATION**
and
CITIGROUP INC.
and
**FÉDÉRATION DES CAISSES
DESJARDINS DU QUÉBEC**
and
NATIONAL BANK OF CANADA INC.
and
ROYAL BANK OF CANADA
and
TORONTO-DOMINION BANK

*Respondents and Settled
Respondents*

**RE-RE-AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A
CLASS ACTION & TO DESIGNATE THE PETITIONER AS REPRESENTATIVE
(Art. 574 C.C.P. and following)**



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TO (...) THE HONOURABLE MADAM JUSTICE CHANTAL CORRIVEAU, JUDGE OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) THE ACTION

1. Petitioner wishes to institute a class action on behalf of the following group, of which it is a member, namely:
 - all residents in Quebec who, during some or all of the period commencing March 28, 2001 and continuing through to the present (the “Class Period”), accepted as a method of payment for the sale of a good or service, Visa (the “Visa Class Members”) or MasterCard (the “MasterCard Class Members”) credit cards pursuant to the terms of merchant agreements, or any other group to be determined by the Court;
2. The Respondents include some of the largest credit card issuing financial institutions in Canada (the “Issuers” and/or “Issuing Banks”) as well as the two largest credit card networks in Canada, Visa Canada Corporation (“Visa”) and MasterCard International Incorporated (“MasterCard”). (...) Together, Visa and MasterCard process (...) more than 90% of all general-purpose credit card transactions in Canada, in 2009, representing approximately \$240 billion in purchases, the whole as appears more fully from a copy of the Notice of Application in *The Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated*, CT-2010-010, including Schedule A thereto, produced herein as **Exhibit R-1**;
3. Every time a cardholder customer uses one of the Respondents’ credit cards to pay a merchant for a good or service, that merchant must pay a fee, commonly referred to as a “Merchant Discount (...). The Merchant Discount is the difference between the price that a merchant charges for a good or service and the amount that the merchant ultimately receives for that transaction when payment is made by credit card. The Interchange Fee is the largest component of the Merchant Discount. In aggregate, Merchant Discounts are a significant cost for Canadian merchants. In 2009 alone and continuing since then, merchants in Canada have been paying approximately \$5 billion per year in Merchant Discounts (...), the whole as appears more fully from a copy of a Vancouver Sun article titled “Merchants up in arms over credit card fees” dated November 23, 2012, and a copy of an Open Letter to Visa Canada dated November 21, 2012, produced herein en liasse as **Exhibit R-3**;
4. Visa and MasterCard were each founded as associations of Issuing Banks, and continued as such until 2008 and 2006 respectively. Each of Visa and MasterCard have established credit card networks which operate pursuant to



a series of agreements and contractual relationships as between each of Visa and MasterCard and their respective Issuing Banks, including the Respondents. These agreements or contractual arrangements impose significant restrictions on the terms upon which credit card network services may be supplied to merchants, including the setting of default interchange rates. In addition, other (...) restrictions impede or constrain competition for credit card network services, and in particular, with respect to Interchange Fees, (...) as they prevent merchants from effectively encouraging cardholder customers to use lower-cost methods of payment and from declining to accept certain Visa and MasterCard credit cards, including those with higher Interchange Fees;

5. (...) This Application for Authorization, including the various amendments thereto, raises allegations of collusion, price-fixing, and related anti-competitive acts within two separate, yet substantially similar, arrangements relating either to the Visa and/or the MasterCard credit cards – the majority of merchants are members of both Classes;

6. The Petitioner contends that the Respondents' conduct has violated sections 45 49 and 61 of the (...) Competition Act and ss. 21 and 22 of the Criminal Code and that said conduct is continuing;

6.0.1 Contrary to s.45 of the Competition Act, the Respondents conspired, agreed, and/or arranged to fix, maintain, increase or control Interchange Fees. The Interchange Fee is a charge for a service provided to the Class by the Issuing Banks, being the provision of credit card network services and in particular the credit card and access to the cardholder, and the provision of a payment guarantee from the Issuing Banks to the merchants;

6.0.2 Contrary to former s.45 of the Competition Act, the Respondents conspired, combined, agreed and/or arranged to limit unduly competition in the provision of credit card network services to merchants;

6.0.3 Contrary to s.61 of the Competition Act, the Respondents directly or indirectly, by agreement or by other like means, influenced upward and/or discouraged the reduction of the price at which the Issuing Banks supplied credit card network services to merchants;

6.1. Contrary to s. 49 of the Competition Act, the Respondents agreed with each other with respect to the amount and/or kind of Interchange Fee charges to be imposed on their merchant customers in the Class for the provision of credit card network services (...);

7. Petitioner also contends that the Respondents' conduct has caused (...) the charging to the Visa and MasterCard Class Members of (...) Interchange Fees at a supracompetitive rate;



B) THE RESPONDENTS AND THE SETTLED RESPONDENTS

8. Respondent Visa Canada Corporation (“Visa”) is incorporated under the laws of Nova Scotia with its principal place of business in Toronto, Ontario. Visa operates the largest credit card network in Canada and processed approximately 1.6 billion credit card transactions in 2009, representing approximately (...). Visa is a subsidiary of Visa Inc., a publicly-traded corporation incorporated under the laws of the State of Delaware, USA. Visa has entered into a settlement agreement with the Petitioner and the plaintiffs in the related Canadian proceedings, which remains subject to court approval;
- 8.1 Respondent Bank of Nova Scotia (“Scotiabank”) is a chartered bank incorporated pursuant to the *Bank Act*, SC 1991, c 46 (the “*Bank Act*”). During the Class Period, Scotiabank issued Visa-branded credit cards throughout Canada, including the province of Quebec;
- 8.2 Settled Respondent Fédération des caisses Desjardins du Québec (“Desjardins”) is an organization overseeing the Desjardins Group, including its caisses populaires and credit unions. During the Class Period, Desjardins issued Visa- and MasterCard-branded credit cards throughout Canada, including the province of Quebec. During the Class Period, Desjardins owned and operated Desjardins Payment Services, one of the leading Acquirers¹ in Canada. Pursuant to the settlement agreement dated December 23, 2015 and this Honourable Court’s judgments dated February 26, 2016 and May 30, 2016, Desjardins has obtained a release from Class Members regarding the allegations set out herein;
- 8.3 Respondent Toronto-Dominion Bank (“TD”) is a chartered bank incorporated pursuant to the *Bank Act*. During the Class Period, TD issued Visa- and MasterCard-branded credit cards throughout Canada, including the province of Quebec. During the Class Period, TD owned and operated TD Merchant Services, one of the leading Acquirers in Canada. In or about August 2011, TD purchased Bank of America Corporation’s Canadian credit card issuing business;
- 8.4 Respondent Canadian Imperial Bank of Commerce (“CIBC”) is a chartered bank incorporated pursuant to the *Bank Act*. During the Class Period, CIBC issued Visa and MasterCard-branded credit cards throughout Canada, including the province of Quebec. During the Class Period, CIBC had a marketing alliance with Global Payments Inc. (“Global”);
9. Respondent MasterCard International Incorporated (“MasterCard”) is incorporated under the laws of the State of Delaware. MasterCard operates the second-largest credit card network in Canada and processed approximately 1 billion credit card transactions in 2009, representing approximately \$79 billion in purchases. MasterCard is a subsidiary of MasterCard Incorporated, a

¹ See para. 16 for a definition of “Acquirers”.

publicly-traded corporation incorporated under the laws of the State of Delaware, USA. MasterCard has entered into a settlement agreement with the Petitioner and the plaintiffs in the related Canadian proceedings, which remains subject to court approval;

9.1 Settled Respondent Bank of America Corporation (“MBNA”) is a publicly traded company under the laws of the State of Delaware, USA, doing business in Canada as MBNA Bank Canada. During the Class Period, MBNA issued MasterCard-branded credit cards throughout Canada, including the province of Quebec. MBNA sold its Canadian credit card issuing business to TD in or about August 2011. Pursuant to the settlement agreement dated August 16, 2013 (including the amendments thereto) and this Honourable Court’s judgments dated November 4, 2014, February 16, 2015, and December 7, 2015, MBNA has obtained a release from Class Members regarding the allegations set out herein;

9.2 Respondent Bank of Montreal (“BMO”) is a chartered bank incorporated pursuant to the *Bank Act*. During the Class Period, BMO issued MasterCard-branded credit cards throughout Canada, including the province of Quebec. During the Class Period, BMO was, along with the Royal Bank of Canada, one of the founding partners behind Moneris Solutions Inc. (“Moneris”), one of the leading Acquirers (as defined in paragraph 16 below) in Canada; Moneris was created in 2000 as a joint investment between BMO and RBC, which continue to be in partnership with Moneris;

9.3 Settled Respondent Capital One Financial Corporation (“Capital One”) is a publicly traded company under the laws of the State of Delaware, USA. During the Class Period, Capital One issued MasterCard-branded credit cards throughout Canada, including within the province of Quebec. Pursuant to the settlement agreement dated April 1, 2015 and this Honourable Court’s judgments dated August 7, 2015 and December 7, 2015, Capital One has obtained a release from Class Members regarding the allegations set out herein;

9.4 Respondent National Bank of Canada Inc. (“National”) is a chartered bank incorporated pursuant to the *Bank Act*. During the Class Period, National issued MasterCard-branded credit cards throughout Canada, including the province of Quebec. During the Class Period, National had a marketing alliance with Global. National has entered into a settlement agreement with the Petitioner and the plaintiffs in the related Canadian proceedings, which remains subject to court approval;

9.5 Respondent Royal Bank of Canada (“RBC”) is a chartered bank incorporated pursuant to the *Bank Act*. During the Class Period, RBC issued both Visa and MasterCard-branded credit cards throughout Canada, including the province of Quebec. During the Class Period, RBC was, along with BMO, one of the founding partners behind Moneris;



- 9.6 Settled Respondent Citigroup Inc. (“Citi”) is a publicly traded company under the laws of the State of Delaware, USA. During the Class Period, Citi issued MasterCard-branded credit cards throughout Canada, including the province of Quebec. Pursuant to the settlement agreement dated April 22, 2015 and this Honourable Court’s judgments dated August 7, 2015 and December 7, 2015, Citi has obtained a release from Class Members regarding the allegations set out herein;
- 9.7 Collectively, BMO, (...) CIBC, (...) RBC, Scotiabank, TD, and National are known as the “Respondent Banks”. Collectively, Capital One, Citi, Desjardins, and MBNA are known as the “Settled Respondents” and/or the “Settled Respondent Banks”;

C) THE SITUATION

I. Overview of the Operation of the Credit Card Industry

10. (...) Respondents Visa and MasterCard operate the two largest credit card networks in Canada, including within the province of Quebec. In 2009, Visa had approximately 31 million credit cards in circulation and MasterCard had approximately 44 million. In 2009, approximately 670,000 merchants across Canada accepted Visa or MasterCard credit cards. In 2009, the Canadian credit card market had \$265 billion in purchase transactions. Visa’s share of these transactions was approximately 60% and MasterCard’s share approximately 30%, the whole as appears more fully from a copy of the Library of Parliament document titled “Payment Systems: The Credit Card Market in Canada” dated September 24, 2009, produced herein as **Exhibit R-4**;
- 10.1 (...)
11. (...)
12. (...)
13. (...)
14. (...)
15. (...)
16. Each credit card network involves contracts with issuing banks that are authorized by the Respondents Visa and MasterCard to issue credit cards to consumers bearing the trademarks Visa and/or MasterCard (“Issuing Banks”) and acquiring financial institutions that function as payment processors to merchants (“Acquirers”). The Respondent Banks are all Issuing Banks. Some of the Respondent Banks are also Acquirers, or have (or have had) an ownership interest in Acquirers;



16.0.1 There are five (5) participants in each credit card network:

- a) The Issuing Banks that issue credit cards to cardholders and provide a payment guarantee to merchants;
- b) The networks (Visa and/or MasterCard);
- c) The Acquirers that enter into arrangements with merchants that permit the merchants to accept various Visa and/or MasterCard credit cards and receive payment for goods and services provided to cardholders;
- d) The merchant Class Members (...) who accept Visa and/or MasterCard credit cards; and
- e) The cardholders;

The whole as appears more fully from a copy of a Canadian Bankers Association document titled "Understanding the credit card transaction process" produced herein as **Exhibit R-5**, from a copy of the Commission of European Communities' decision in COMP/34.579 MasterCard/COMP/36.518 EuroCommerce and COMP/38.580 Commercial Cards dated December 19, 2007, produced herein as **Exhibit R-6**, and from a copy of the Reasons for Judgment of the Supreme Court of British Columbia in *Watson v. Bank of America Corporation*, 2014 BCSC 532, produced herein as **Exhibit R-7**;

16.0.2 Within each credit card network, the Issuing Banks compete with each other with respect to issuing credit cards to cardholders, and but for the alleged conspiracy, the Issuing Banks would compete with each other with respect to merchants by reducing Interchange Fees in order to increase and maintain their merchant market share. The Default Interchange Rule and the Merchant Restraints, as described below, eliminate competition among the Issuing Banks in relation to Interchange Fees and allow the Issuing Banks to profit from supracompetitive Interchange Fees;

16.1 The credit card network services market is characterized by contractual relationships amongst and between Visa, its Issuing Banks, the Acquirers, and merchants, and amongst and between MasterCard, its Issuing Banks, the Acquirers, and merchants, giving each credit card network market power in the Canadian credit card network services market;

16.1.1 Credit card network services are supplied to merchants by the networks, the Issuing Banks, and the Acquirers. The networks provide the network infrastructure, the Issuing Banks issue credit cards to cardholders and provide a payment guarantee to merchants (...), and the Acquirers provide point-of-sale services (Exhibit R-6);



- 16.2 The agreements and contractual relationships that govern the Visa and MasterCard credit card networks constitute two separate, but interrelated conspiracies in operation by way of contracts which are between and among:
- a) The Visa network and its member banks (which are Issuing Banks and Acquirers); and
 - b) The MasterCard network and its member banks (which are Issuing Banks and Acquirers);
- 16.3 In essence, the Visa and MasterCard networks are organizations that facilitate credit and debit card transactions. They do so by setting standards for the exchange of transaction data and funds among merchants, Issuing Banks, and Acquirers. The networks also provide authorization, clearance and settlement services for all Visa- and MasterCard-branded payment transactions;
- 16.4 Certain Issuing Banks, such as (...) CIBC, Settled Respondent Desjardins, RBC, and TD, and all Acquirers participate in both credit card networks. Certain Issuing Banks, including (...) BMO, Settled Respondent Desjardins, RBC, and TD are also Acquires or own large stakes in Acquirers, and in some cases, control the operations of those Acquirers. TD and Settled Respondent Desjardins are both Issuing Banks and Acquirers. BMO and RBC own and control Moneris as partners in a joint investment. CIBC and National have marketing alliances with Global, the whole as appears more fully from a copy of an extract from Respondent Visa's website at www.visa.ca and from a copy of an extract from Respondent MasterCard's website at www.mastercard.ca, produced herein en liasse as Exhibit R-8;
- 16.5 In order to accept payments by Visa or MasterCard credit cards, a merchant must enter into an agreement (...) with an Acquirer. Pursuant to Visa and MasterCard rules, these agreements include standard terms and conditions that are required to be in each contract between a merchant and an Acquirer (...). These agreements (...) are required to incorporate the terms of the Visa International Operating Regulations (the "Visa Rules") and the MasterCard Worldwide MasterCard Rules (the "MasterCard Rules") (collectively, the "Network Rules"), the whole as appears more fully from a copy of the Visa International Operating Regulations dated April 15, 2012 and from a copy of the MasterCard Rules updated August 1, 2012, produced herein en liasse as Exhibit R-9;
- 16.5.1 Visa and MasterCard were founded as joint ventures of issuing banks. Acting through the then-joint-venture networks, the Issuing Banks set the terms of contracts among themselves and to be imposed on merchants, including the Network Rules, the Merchant Restraints and the levels of Interchange Fees, and including the requirement that each Acquirer require each card-accepting merchant to abide by the Network Rules, the whole as



appears more fully from a copy of a undated document entitled “Maintaining Competition in the Canadian Credit Card Industry” produced herein as **Exhibit R-10** and from a copy of the decision in *Osborn et al. v. Visa Inc. et al.*, United States Court of Appeals for the District of Columbia Circuit, No. 14-7004, dated August 4, 2015, produced herein as **Exhibit R-11**;

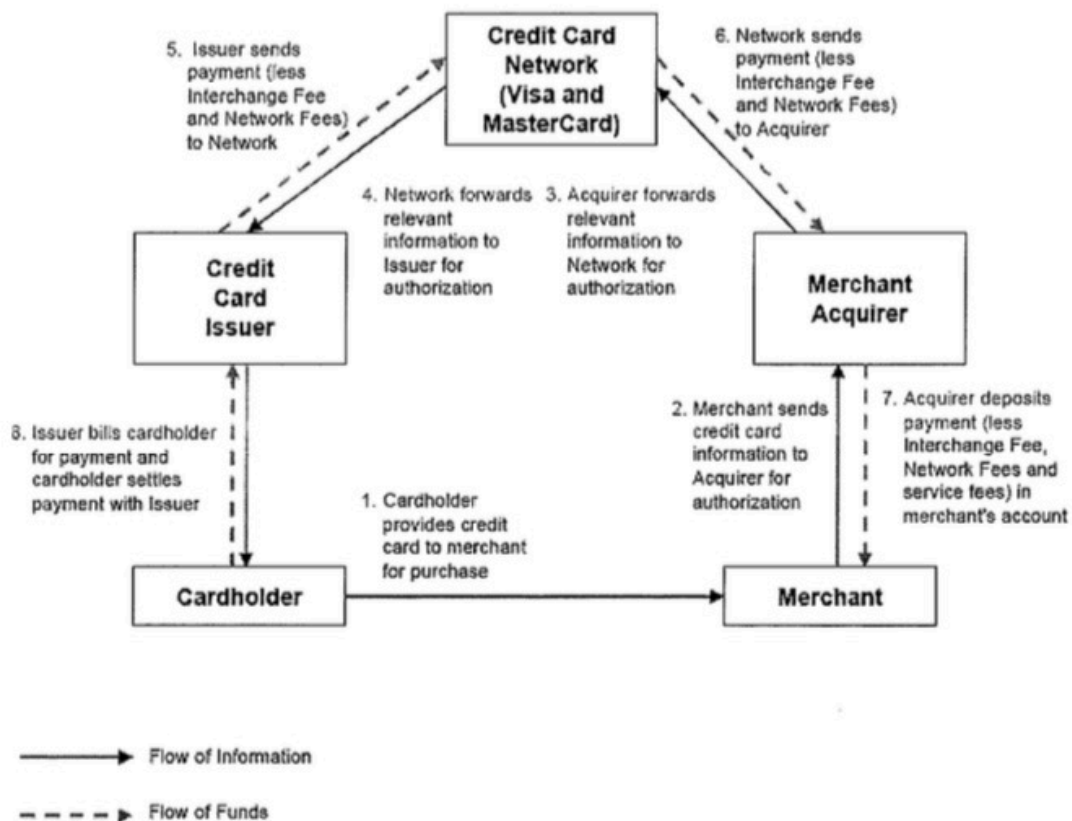
16.5.2 In response to competition litigation in the United States and Europe, first MasterCard and then Visa conducted Initial Public Offerings (“IPOs”), in a failed attempt to exempt the Interchange Fees and Network Rules that were agreed to by the banks from competition laws in Canada, the United States, Europe and other jurisdictions;

16.5.3 Despite the IPOs, however, the Network Rules remain essentially unchanged and the Issuing Banks continued to use Visa and MasterCard to enforce the pre-existing agreements, including agreements between the Issuing Banks, to impose and maintain Interchange Fees and the Network Rules. The Issuing Banks and the networks knew and understood that each member of the relevant network would continue to adhere to the unlawful agreements to impose and maintain Interchange Fees and the Network Rules both before and after the IPOs. At no time after the IPOs, have the Issuing Banks or the networks taken affirmative action to withdraw from the relevant agreements or end their acceptance of benefits, primarily supracompetitive Interchange Fees, under the agreements (Exhibit R-11), the whole as appears more fully from a copy of the judgment of the European Court of Justice in *European Commission v. MasterCard Inc.*, case C-382/12 P, dated September 11, 2014, produced herein as **Exhibit R-12**;

16.6 (...)

16.7 The Merchant Discount (...) is made up of three parts: the “Interchange Fee” paid to the Issuing Bank associated with the cardholder customer’s particular Visa or MasterCard credit card, the “Service Fee” paid to the Acquirer, and (...) “Network Fees” paid to either Visa or MasterCard. The Interchange Fee is typically 80% of the Merchant Discount (...) the whole as appears more fully from the “Reasons for Order and Order Dismissing the Commissioner’s Application” in the *Commission of Competition v. Visa Canada Corporation and MasterCard International Incorporated*, 2013 Comp. Trib. 10 dated July 23, 2013, produced herein as **Exhibit R-13**;



Figure 1 – Credit Card Network

17. (...) In the typical Visa or MasterCard transaction, funds flow from the Issuing Bank through the Acquirer or transaction processing company to the merchant. As part of this process, the Interchange Fee is deducted by the Acquirer along with other components of the Merchant Discount. The calculation of the Merchant Discount incorporates the Interchange Fee and Network Fee. Although there are several models for the flow of funds between the parties, the invariable end result is that the merchant pays the Merchant Discount and in particular the Interchange Fee, whether by way of a separate payment or by a direct deduction from the amount paid through the Acquirer with whom the merchant has contracted. During the Class Period, the allocation of the Merchant Discount into Interchange Fees, Network Fees, and Service Fees was not set out in the statements to merchants, the whole as appears more fully from a copy of the Chase Paymentech Merchant Application and Agreement and "Important Notice to all Paymentech Canada Customers Processing Visa and/or MasterCard" dated January 24, 2005, produced herein en liasse as Exhibit R-14:

18. In order to accept customer payments by Visa or MasterCard credit cards, merchants must enter into written agreements with Acquirers. These



agreements include standard terms and conditions imposed by the Issuing Banks and Visa or MasterCard through their respective agreements with the Acquirers. These agreements include the terms of the Visa International Operating Regulations (the “Visa Rules”) and the MasterCard International MasterCard Rules (the “MasterCard Rules”) (Exhibit R-9), which, in turn, Acquirers are required to impose upon all merchants through their respective merchant agreements, and to enforce;

19. (...) As of 2010, the major Issuing Banks in Canada are the Respondent Banks (including Settled Respondent Desjardins) and a list of the top six with the largest roles in Canada’s market for credit card network services follows (listed in order of the size of the outstanding credit card loan balances from 2010):

- i. CIBC
- ii. Scotia Bank
- iii. RBC
- iv. TD
- v. Desjardins
- vi. BMO

The whole as appears more fully from a copy of a document titled “The Nilson Report” dated April 2013, produced herein as **Exhibit R-15**;

20. (...)

II. The Collusion

20.1 During the Class Period, (...) the Issuing Banks, along with the relevant network with whom the Issuing Bank was associated, and the associated Acquirers with the relevant networks, agreed and did set default rates for the calculation of Interchange Fees for use by Acquirers and Issuing Banks within their respective credit card networks (the “Default Interchange Fees”). Typically, the Default Interchange Fees are set as a percentage of the price of the good or service supplied. The Visa Rules and MasterCard Rules require that the Default Interchange Fees be paid absent a specific agreement as between the Issuers and Acquirers establishing different Interchange Fees (the “Default Interchange Rule”). As a result, the Default Interchange Fees applied to virtually all purchase transactions within the Visa and MasterCard credit card networks, the whole as appears more fully from a copy of the Commerce Commission of New Zealand Media Release entitled “Commission alleges price-fixing in credit card interchange fees” dated November 10, 2006, produced herein as **Exhibit R-16**, and from a copy of the MasterCard document entitled “Mastercard Canada Interchange Programs” dated December 15, 2016 and a copy of the Visa document entitled “Visa Canada Interchange Reimbursement Fees”, produced herein *en liasse* as **Exhibit R-17**;



- 20.2 Interchange Fees vary from card to card depending on the services and incentives bundled with the credit card. If a cardholder customer uses a so-called "premium" credit card, such as the Visa Infinite or MasterCard World Elite, which offer consumers additional incentives such as reward points, the merchant typically pays higher fees than if a cardholder customer uses a basic credit card, such as a Visa Classic or a basic MasterCard. Merchants are not made aware of the exact Interchange Fee that will apply to any particular purchase with any particular card until the Acquirer reimburses or invoices the merchant;
- 20.3 Visa and MasterCard, and their respective Issuing Banks and Acquirers agreed and set their Interchange Fees as prices to merchants, not Acquirers. Interchange Fees are also structured to impose different rates on different types of merchants. For instance, Interchange Fees on grocery store and gas station transactions are lower than (...) Interchange Fees on most other retailers. The Respondents' market power gives them the ability to price discriminate in this manner (Exhibits R-14, R-16, and R-17);
- 20.4 Despite increases to the cost to merchants of accepting Visa and MasterCard credit cards, the Respondents' market power is such that the number of merchants who accept Visa and MasterCard credit cards has not decreased, the whole as appears more fully from a copy of a Canadian Bankers Association document entitled "Credit Card Statistics – Visa and MasterCard", dated April 21, 2016, produced herein as Exhibit R-18;
- 20.5 By enforcing adherence to the Visa Rules and/or the MasterCard Rules, (...) the Respondents, through the Visa network and MasterCard network, have created agreements and/or arrangements that impose significant restrictions on the terms upon which credit card network services are provided to merchants. Both the Visa Rules and the MasterCard Rules impose substantially the same restraints (...), including:
- a) the Default Interchange Rule;
 - b) the requirement that merchants must honour all credit cards of the same network (the "Honour All Cards Rule");
 - c) the requirement that merchants must not impose surcharges on purchases made using any credit card of the same network, regardless of the Merchant Discount (...), and in particular the Interchange Fee, associated with use of a particular credit card (the "No Surcharge Rule"); and
 - d) the requirement that merchants must not make it more difficult to pay by Visa or MasterCard credit cards, or offer preferential treatment for paying by any particular method (the "No Discrimination Rule"),



20.6 The Honour All Cards Rule, the No Surcharge Rule and the No Discrimination Rule are collectively referred to as the “Merchant Restraints”;

20.6.1 (...)

20.6.2 (...)

20.7 Acquirers are contractually obliged to enforce the Network (...) Rules against merchants, including the Default Interchange Rule and the Merchant Restraints;

20.8 The Merchant Restraints prevent merchants from (...) steering cardholder customers to (...) lower cost methods of payment and from declining to accept certain Visa and MasterCard credit cards, including Visa and MasterCard credit cards with higher Interchange Fees, (...) such as premium cards. The effect of the Merchant Restraints is to impede or constrain competition for credit card network services, including competition between Issuing Banks with respect to Interchange Fees (Exhibit R-13);

20.9 As a consequence of the Merchant Restraints, consumers pay the same price to merchants in exchange for goods and services supplied (...) regardless of mode of payment, despite the higher cost to merchants of Visa and MasterCard credit card transactions (particularly so with premium cards) as compared to Interac or cash transactions;

20.10 While the Merchant Restraints eliminate or neutralize advantages offered by lower-cost methods of payment, the structure of the Visa and MasterCard credit card network schemes allows Issuing Banks to create powerful incentives for cardholder (...) customers to use Visa or MasterCard credit cards for as many transactions as possible. Issuing Banks bundle credit cards with various consumer features such as rewards and points for each dollar spent on premium credit cards;

20.10.1 By maintaining Interchange Fees at an artificially high level, Visa and MasterCard Class Members effectively pay some or all of the costs of these features, essentially subsidizing the Issuing Banks’ promotional schemes (Exhibit R-4);

20.10.2 The Merchant Restraints enable Issuing Banks to offload the costs of these promotional schemes onto merchants, who must accept whatever fees are charged or choose to not accept credit cards at all. The Honour All Cards Rule forces merchants to accept any and all Visa and MasterCard credit cards, no matter how high the fees are for using that particular card. The No Surcharge Rule prevents merchants from passing this additional expense along to cardholder customers who pay with premium credit cards (Exhibit R-13);



- 20.11 The effect of the Merchant Restraints is that in Canada, including Quebec, Interchange Fees are far in excess of similar fees in other jurisdictions where the Default Interchange Rule and Merchant Restraints are not applied or are applied differently, the whole as appears more fully from a copy of the Reserve Bank of Australia's Payments System Board Annual Report dated 2016, produced herein as Exhibit R-19;
- 20.12 (...)
- 20.13 Visa, MasterCard, the Issuing Banks, and the Acquirers seek to maximize the aggregate (...) Interchange Fees (...) paid by the Visa and MasterCard Class Members (...) to the (...) Issuing Banks;
- 20.14 Under the Visa and MasterCard Rules (Exhibit R-9), Acquirers are prohibited from suing Visa, MasterCard, or Issuing Banks over the level of Interchange Fees or for any other matter;
- 21.(...)
- 21.1 (...)
- 21.2 (...)
22. The result of the Default Interchange Rule and Merchant Restraints is to allow Interchange Fees to be maintained at supracompetitive levels by restricting the pressures that, in a competitive market, would drive lower Interchange Fees (...);

III. The Market Structure in which the Collusion Originated and Operated

22.0.1 For at least as long as the Class Period, the credit card industry has demonstrated numerous characteristics that have served to facilitate and to perpetuate the Respondents' unlawful and anticompetitive conduct. By way of illustration and not limitation, the industry has exhibited (1) high market concentration among a limited number of participants; (2) high barriers to entry for new market participants; (3) lack of substitutes, and (4) inelasticity of demand (Exhibit R-1);

i) The Market for Credit Card Services is Highly Concentrated

22.0.2 Market concentration facilitates collusion as the fewer firms that dominate the market, the more power they maintain. In a concentrated industry, a greater share for a colluding firm in future cartel profits tips the balance in favor of continued collusion, and away from any short-term, transitory bump in profits that could be achieved by undercutting the cartel price and gaining a transitory increase in market share;



22.0.3 Respondents Visa and MasterCard, together control approximately 90% of all general-purpose credit card transactions in Canada forming a duopoly (Exhibit R-4):

22.0.4 The Respondent Issuing Banks (including the Settled Respondents) include the largest banks in Canada (Exhibit R-15):

ii) High Barriers to Entry for New Entrants

22.0.11 A collusive agreement which would reap large profits to the market players would, under basic economic principles, attract new entrants seeking to benefit from the supracompetitive pricing. Where, however, there are significant barriers to entry, new entrants are less likely. Thus, barriers to entry help to facilitate the formation and maintenance of a cartel to establish and to maintain price overcharges:

22.0.12 Any company seeking to become involved in the credit card industry or the banking industry faces various significant barriers to entry (Exhibit R-1):

22.0.13 Both the credit card industry and the banking industry are mature and dominated by established corporations that cardholders trust. A new entrant would not only face astronomical costs in competing with the largest financial institutions in the world, but in gaining cardholders' trust to use their financial services:

22.0.14 The nature of networks is that the value to an individual member of the network depends on the number of others in the network. In other words, it is worthwhile to the consumer to have a credit card, as merchants accept it as a form of payment. It is hard to start a small network – few consumers would want a credit card that was only honoured by a few merchants and few merchants would incur to cost of joining a network with few consumers in it:

22.0.15 As such and, as mentioned above, there have been no significant new entrants in the market for credit card network services over the past 25 years:

22.0.16 The Merchant Restraints serve to further perpetuate these barriers to entry as merchants are required to Honour All Cards on a particular network, which gives certain cards, which would otherwise not be widely accepted, an advantage over potential competitors (Exhibit R-1):

iii) Lack of Available Substitutes/ Unequal Bargaining Power

22.0.17 There are no good or reasonably interchangeable substitutes for credit cards. In particular, credit cards offer the unique feature of credit service, which means that cardholders do not have to worry about having enough cash on hand

or in their bank account to pay for a transaction. Furthermore, credit cards offer cardholders an interest-free period between the time of purchase and the date that payment is due or alternatively, the extension of credit for a longer period through the payment of interest;

22.0.19 This meant that merchants could not negotiate with the Respondents. When Interchange Fees were being raised (in order to fund higher credit card benefits), the merchant must absorb the higher cost, the whole as appears more fully from a copy of the Canadian Federation of Independent Business' policy brief entitled "Principles for a Fair and Low-Cost Payments System" dated September 2010, produced herein as **Exhibit R-20**;

22.0.20 Visa and MasterCard are not competing to attract merchants, they are only competing to attract Issuing Banks by offering the highest possible Interchange Fees (Exhibit R-20). the cost of which is imposed on merchants, the whole as appears more fully from a copy of the Retail Council of Canada's brief entitled "The Merchant Perspective on Canada's Payments System" dated September 17, 2010, produced herein as **Exhibit R-21**;

iv) Inelastic Demand

22.0.22 "Elasticity" is a term used to describe the sensitivity of supply and demand to changes in one or the other. Demand is said to be inelastic where customers have nowhere to turn to for an alternative, cheaper product of similar quality and must continue to purchase an item despite price increases. Because of the lack of substitute methods of payment for merchants to offer to its customers, the credit cards market should not see a large decrease in demand as the prices rise. The market is inelastic in that an increase in Interchange Fees does not result in a drop in revenue or in merchant demand;

22.0.24 Because merchants' demand for credit card processing services is inelastic, it is a market favourable for collusive activity. When there are few or no substitutes, merchants have little choice other than to pay higher prices in order to purchase their products and services;

22.0.25 Allowing for consumer payments by credit cards are becoming more and more of a necessity for a business owner. While payments in the form of cash are still possible, credit cards are the backbone of a business. Accordingly, most merchants cannot choose to not accept credit card payments from consumers;

22.0.26 Accordingly, despite the Merchant Discounts, merchants were forced to continue to utilize the Respondents' services in order to maintain their business (Exhibit R-18);



IV. The Visa Conspiracy

- 22.1 Various Issuing Banks, including the Respondents CIBC, (...) RBC, Scotiabank, and TD, along with others who have not been named as Respondents, participated as co-conspirators in the alleged unlawful conduct and entered into anti-competitive agreements, including agreements (...) through Visa, each other, and other Issuing Banks regarding the rates of Interchange Fees paid to Issuing Banks by Acquirers within the Visa credit card network. (...) Visa, CIBC, (...) RBC, Scotiabank, and TD are solidarily liable for the actions of, and damages allocable to, each other and the co-conspirator Issuing Banks;
- 22.2 Acquirers, including Acquirers not named as Respondents or owned or controlled by Respondents, participated as co-conspirators in the alleged unlawful conduct and entered into anti-competitive agreements, including agreements with each other, (...) the Issuing Banks, and through Visa. These agreements include, but are not limited to, the Visa Rules. Pursuant to these agreements, the Acquirers entered into merchant agreements with merchants across Canada, including the Visa Class Members, which imposed standard anti-competitive terms and conditions, including the Networks' Rules and the Merchant Restraints. The agreements resulted in the imposition of supracompetitive (...) Merchant Discount (...) rates by the establishment and imposition of supracompetitive Interchange Fees, paid by the Visa Class Members. Visa, CIBC, (...) RBC, Scotiabank, and TD are solidarily liable for the actions of, and damages allocable to, the co-conspirator Acquirers. These co-conspirator Acquirers include, without limitation, Moneris Solutions, TD Merchant Services, Global, Peoples Trust, First Data, Elavon, (...) and Chase Paymentech Solutions. Respondents who are Issuing Banks and also own, operate, or control Acquirers, being Settled Respondent Desjardins, and RBC and TD, participated in the conspiracy in both capacities;
- 22.3 During the Class Period, senior executives and employees of Visa, CIBC, (...) RBC, Scotiabank, and TD and other co-conspirators, acting in their capacities as agents for the Respondents and co-conspirators, engaged in communications, conversations and attended meetings with each other. As a result of the communications and meetings, and through the imposition of the Visa Rules, Visa, CIBC, (...) RBC, Scotiabank, and TD and their co-conspirators unlawfully conspired or agreed to:
- a) Impose the Default Interchange Rule, Merchant Restraints, and other restraints set out in the Visa Rules on merchants including the Visa Class Members and to thereby unreasonably increase the rates of Merchant Discounts (...), including Interchange Fees, paid by merchants including the Visa Class Members for payments made



using Visa credit cards in Canada, including within the province of Quebec;

- b) Fix, maintain, increase or control the rates of Interchange Fees in Canada, including within the province of Quebec; and
- c) Exchange information in order to monitor and enforce adherence to the agreed upon Default Interchange Rule, Merchant Restraints, and other restraints set out in the Visa Rules in Canada, including within the province of Quebec;

22.4 In furtherance of the conspiracy, during the Class Period, Visa, CIBC, (...) RBC, Scotiabank, and TD, their co-conspirators, and their servants and agents:

- a) Increased or maintained the default rates for (...) Interchange Fees (...) in Canada, including within the province of Quebec;

a.1) Controlled the supply of credit card network services by imposing the Visa Rules, including the Default Interchange Rule and the Merchant Restraints, on merchants in Canada, including within the province of Quebec;

- b) Imposed the Visa Rules including the Default Interchange Rule and the Merchant Restraints on merchants in Canada, including within the province of Quebec;
- c) Communicated, in person, in writing, and by telephone, to discuss and fix the Default Interchange Fees in Canada, including within the province of Quebec;
- d) Exchanged information regarding the rates for Interchange Fees and the volume of transactions using Visa credit cards for the purposes of monitoring and enforcing adherence to the agreed upon Merchant Restraints;
- e) Took active steps to, and did, conceal the rates of the constituent elements of Merchant Discounts (...) from all merchants; and
- f) Disciplined any Acquirer which failed to impose the Default Interchange Rules or enforce the Merchant Restraints or any merchant which failed to comply with the Merchant Restraints;

22.5 (...)

22.6 The overt acts alleged in this claim to have been done by Visa, CIBC, (...) RBC, Scotiabank, and TD were authorized, ordered and done by the respective officers, directors, agents, employees or representatives of each



while engaged in the management, direction, control or transaction of its business affairs;

V. The MasterCard Conspiracy

- 22.7 Various Issuing Banks, including the Respondents BMO, (...) CIBC, (...), National, RBC, and TD, along with other Issuing Banks not named as Respondents, participated as co-conspirators in the alleged unlawful conduct and entered into anti-competitive agreements, including agreements (...) through MasterCard, each other, and other Issuing Banks regarding the rates of Interchange Fees paid to Issuing Banks by Acquirers within the MasterCard credit card network. These agreements include, but are not limited to, the MasterCard Rules. MasterCard, BMO, (...) CIBC, (...), National, RBC, and TD are solidarily liable for the actions of, and damages allocable to, each other and the other co-conspirator Issuing Banks;
- 22.8 Acquirers, including Acquirers not named as Respondents or owned or controlled by Respondents, participated as co-conspirators in the alleged unlawful conduct and entered into anti-competitive agreements, including agreements with each other, (...) the Issuing Banks, and through MasterCard. These agreements include, but are not limited to, the MasterCard Rules. Pursuant to these agreements, the Acquirers entered into merchant agreements with merchants across Canada, including the MasterCard Class Members, which imposed standard anti-competitive terms and conditions, including (...) agreements with MasterCard, each other, and the Issuing Banks. The agreements resulted in the imposition of supracompetitive rates for Merchant Discounts (...), including Interchange Fees, paid by the MasterCard Class Members. MasterCard, BMO, (...) CIBC, (...) National, RBC, and TD are solidarily liable for the actions of, and damages allocable to, the co-conspirator Acquirers. These co-conspirator Acquirers include, without limitation, Moneris Solutions, TD Merchant Services, Global, Peoples Trust, First Data, Elavon, (...) and Chase Paymentech Solutions. Respondents who are Issuing Banks and also own, operate, or control Acquirers, being BMO, (...) RBC, and TD, participated in the conspiracy in both (...) capacities;
- 22.9 During the Class Period, senior executives and employees of MasterCard, BMO, (...) CIBC, (...) National, RBC, TD, and their co-conspirators, acting in their capacities as agents for (...) MasterCard and the co-conspirators, engaged in communications, conversations and attended meetings with each other. As a result of the communications, conversations, and meetings, (...) MasterCard and the co-conspirators did and unlawfully conspired or agreed to:
- a) Impose the Default Interchange Rule, Merchant Restraints, and other restraints set out in the MasterCard Rules on merchants including the MasterCard Class Members and to thereby unreasonably



increase the rates of Merchant Discounts (...), including Interchange Fees, paid by merchants, including the MasterCard Class Members, for payments made using MasterCard credit cards in Canada, including within the province of Quebec;

- b) Fix, maintain, increase or control the rates of Interchange Fees in Canada, including within the province of Quebec; and
- c) Exchange information in order to monitor and enforce adherence to the agreed upon Default Interchange Rule, Merchant Restraints, and other restraints set out in the MasterCard Rules in Canada, including within the province of Quebec;

22.10 In furtherance of the conspiracy, during the Class Period, MasterCard, BMO, (...) CIBC, (...) National, RBC, TD, and their co-conspirators, and their servants and agents:

- a) Increased or maintained the default rates for (...) Interchange Fees in Canada, including within the province of Quebec;
- a.1) Controlled the supply of credit card network services by imposing the MasterCard Rules including the Default Interchange Rule and the Merchant Restraints on merchants in Canada, including within the province of Quebec;
- b) Imposed the Default Interchange Rule, Merchant Restraints and other restraints set out in the MasterCard Rules (...) on merchants in Canada, including within the province of Quebec;
- c) Communicated, in person, in writing, and by telephone, to discuss and fix the Default Interchange Fees in Canada, including within the province of Quebec;
- d) Exchanged information regarding the rates for Interchange Fees and the volume of transactions using MasterCard credit cards for the purposes of monitoring and enforcing adherence to the agreed upon Merchant Restraints;
- e) Took active steps to, and did, conceal the rates of the constituent elements of Merchant Discounts (...) from all merchants; and
- f) Disciplined any Acquirer which failed to impose the Default Interchange Rules or enforce the Merchant Restraints or any merchant which failed to comply with the Merchant Restraints;

22.11 (...)



22.12 The overt acts alleged in this claim to have been done by MasterCard, BMO, (...) CIBC, (...) National, RBC, and TD were authorized, ordered and done by their respective officers, directors, agents, employees or representatives of each while engaged in the management, direction, control or transaction of its business affairs;

D) THE BRITISH COLUMBIA LITIGATION

23. (...) On March 28, 2011, a parallel proceeding was filed in the Supreme Court of British Columbia against the same Respondents;

23.1 On March 27, 2014, the B.C. Action was certified in the Supreme Court of British Columbia (Exhibit R-7);

23.2 On August 19, 2015, the Court of Appeal for British Columbia upheld the certification of the B.C. Action, the whole as appears more fully from a copy of the Written Reasons in *Watson v. Bank of America Corporation*, 2015 BCCA 362, produced herein as **Exhibit R-22**;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

24. The company, 9085-4886 Quebec Inc., has had no more than fifteen (15) employees since the institution of these proceedings (...);

25. It operates as a restaurant and uses the credit card processing services of TD Merchant Services, which as noted above is owned and operated by the Respondent TD. Those services are provided pursuant to an agreement (the "Petitioner's Merchant Agreement"), which in turn incorporates each of the Visa Rules and MasterCard Rules, including the Merchant Restraints;

26. (...) In 2010, the Petitioner was charged Merchant Discounts (...) set at 1.61% of the value of the transaction when cardholder customers use their regular Visa cards, and 2.10% of the value of the transaction when cardholder customers use their regular MasterCard cards, the whole as appears more fully from a copy of its November 2010 statement, produced herein as **Exhibit R-2**;

27. As can be seen from Exhibit R-2, the Petitioner is also charged increased Merchant Discounts (...) when cardholder customers use a premium card put onto the marketplace directly or indirectly by the Respondents;

28. Notwithstanding the lower transaction costs associated with payments by cash or Interac debit cards, the Petitioner's Merchant Agreement prohibits the Petitioner from imposing a surcharge on those cardholder customers that pay by using credit cards;

29. The Petitioner's Merchant Agreement also prohibits the Petitioner from refusing premium credit cards which attract higher Interchange Fees;



30. Further, by the Respondents' conduct, the Petitioner is deprived of being charged (...) Interchange Fees that would reflect an open competitive market (...) and is instead paying supracompetitive (...) Interchange Fees;
31. (...)
32. Petitioner's damages are a direct and proximate result of the Respondents' conduct;
33. In consequence of the foregoing, Petitioner is justified in claiming damages equivalent to the difference between the artificially inflated price that it paid to the Issuing Banks for credit card network services and the Interchange Fee that it would have paid in a competitive market;
34. (...)
35. (...)
36. (...)
37. (...)
38. (...)

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

39. Every Visa and MasterCard Class Member accepted credit cards that were put onto the marketplace directly or indirectly by the Respondents as payment for goods and services;
40. Each Visa and MasterCard Class Member has paid supracompetitive (...) Interchange Fees due to the Respondents' unlawful and anticompetitive conduct;
41. (...) Every member of the Visa and/or MasterCard Classes has suffered damages equivalent to the difference between the artificially inflated price that they paid to the Issuing Banks for credit card network services and the Interchange Fee that they would have paid in a competitive market;
42. (...)
43. All of the damages to the Visa and MasterCard Class Members are a direct and proximate result of the Respondents' conduct;
44. In consequence of the foregoing, Visa and MasterCard Class Members (...) are justified in claiming damages;



IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

- A) The composition of the Class makes it (...) difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings
45. The use of credit cards by consumers and the acceptance of these credit cards by merchants is extremely widespread in Quebec;
46. The Petitioner is unaware of the specific number of (...) merchants that accept (...) credit cards; however, given their tremendous popularity, it is safe to estimate that it is in the (...) hundreds of thousands;
47. Visa and MasterCard Class Members are numerous and are scattered across the entire province;
48. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the Visa and MasterCard Class Members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the court system;
49. Also, a multitude of actions instituted in the same or different (...) judicial districts (...), risks having contradictory judgements on issues of fact and law that are similar or related to all members of the proposed Classes;
50. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Visa and MasterCard Class Member to obtain mandates and to join them in one action;
51. In these circumstances, a class action is the only appropriate procedure for all of the members of the Classes to effectively pursue their respective rights and have access to justice;
- B) The claims of the members of the Classes raise (...) identical, similar, or related issues of law or fact
52. Individual issues, if any, pale by comparison to the numerous common issues that predominate and are significant to the outcome of the litigation;
53. The damages sustained by the Visa and MasterCard Class Members flow, in each instance, from a common nucleus of operative facts, namely, the Respondents' misconduct;
54. The claims of the Visa and MasterCard Class Members raise identical, similar or related issues of fact or law, namely:



- a) (...) Did the Respondents conspire, combine, agree, or arrange to restrain or injure competition unduly in, or to unreasonably enhance the price of, credit card network services by imposing supracompetitive Interchange Fees during the Class Period?
- a.1) Were the Respondents competitors with respect to the provision of credit card network services and did they conspire, agree, or arrange to fix, maintain, increase or control the price for the supply of that product by imposing supracompetitive Interchange Fees during the Class Period?
- a.2) Did the Respondents engage in conduct that is contrary to sections 45, 49 or 61 of the *Competition Act* or sections 21 and 22 of the *Criminal Code* during the Class Period?
- b) If so, are the Respondents, or any of them, liable to pay damages to the Visa or MasterCard Class Members under section 36 of the *Competition Act*, including the costs of the investigation of the Respondents' misconduct?
- c) (...)
- d) (...) Were members of the Classes harmed by the Respondents' conduct, and, if so, what is the appropriate measure of these damages?
- e) (...)
- f) (...)
- g) (...)
- h) Are the Respondents, or any of them, liable to the Visa or MasterCard Class Members (...) under article 1457 of the *Civil Code of Quebec*?
- i) (...)
- j) (...)
- k) (...)
- l) (...)
- m) (...)
- n) Were the Merchant Discounts (...) and, in particular, Default Interchange Fees, (...), charged to Visa or MasterCard Class Members during the Class Period set at a supracompetitive rate? If so, what would the rate have been in a competitive environment?
- o) (...)



- p) Are the Respondents solidarily liable for damages?
- q) Should the Court grant an injunction enjoining the Respondents from conspiring or agreeing with each other, or others, to raise, maintain, fix and/or stabilize the rates of Merchant Discounts (...), including Default Interchange Fees?
- r) Should the Court grant an injunction enjoining the Respondents from conspiring or agreeing with each other, or others, to impose the Networks' Rules, or any of them?

55. The interests of justice favour that this application be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

56. The action that the Petitioner wishes to institute on behalf of the Visa and MasterCard Class Members is an action in damages, (...) injunctive relief and declaratory judgment;

57. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioner and each of the Visa and MasterCard Class Members (...);

DECLARE that the Defendants have engaged in an agreement, combination, collusion, and/or conspiracy to impose supracompetitive Interchange Fees on merchants;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the Visa and MasterCard Class Members;

ORDER the Defendants to permanently cease conspiring or agreeing with each other, and/or others, to raise, maintain, fix and/or stabilize the rates of Merchant Discounts, including Interchange Fees (...);

CONDEMN the Defendants to pay to each Visa or MasterCard Class Member a sum equal to the supracompetitive portion of the Interchange Fee plus costs (...), and ORDER collective recovery of these sums;

(...)

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the present application (...);



ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Visa or MasterCard Class Members (...) be the object of collective recovery if the proof permits and alternately, by individual recovery;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Classes;

A) The Petitioner requests that it be designated as (...) representative of the Visa Class and of the MasterCard Class

58. The Petitioner is a member of the Visa Class and of the MasterCard Class;

59. The Petitioner is ready and available to manage and direct the present action in the interest of the members of the Visa Class and of the MasterCard Class that it wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Visa Class and of the MasterCard Class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the *Fonds d'aide aux actions collectives*, as the case may be, and to collaborate with its attorneys;

60. The Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the Visa and MasterCard Class Members (...);

61. The Petitioner has given the mandate to its attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

62. The Petitioner, with the assistance of its attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other Visa and MasterCard Class Members and to keep them informed;

62.1 Petitioner has given instructions to its attorneys to put information about this class action on its website and to collect the coordinates of those Visa and MasterCard Class Members that wish to be kept informed and to participate in any resolution of the present matter, the whole as will be shown at the authorization hearing;

63. The Petitioner is in good faith and has instituted this action for the sole goal of having its rights, as well as the rights of other Visa and MasterCard Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;



64. The Petitioner understands the nature of the action;

65. The Petitioner's interests are not in conflict with those of other Visa and MasterCard Class Members;

65.1 The Petitioner is prepared to be examined on its allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;

65.2 The Petitioner has spent time researching this issue and meeting with its attorneys to prepare this file. In so doing, it is convinced that the problem is widespread;

65.3 The Petitioner, with the assistance of its attorneys, has maintained a webpage at www.clg.org wherein other Visa and MasterCard Class Members can and have entered their coordinates to join the class action to be kept up-to-date on its progress and development, the whole as appears more fully from a copy of a redacted chart of potential Visa and MasterCard Class Members who have inputted their information through the webpage, produced herein as **Exhibit R-23**;

B) The Petitioner suggests that this class action be exercised before the Superior Court of Justice in the district of Montreal

66. A great number of the members of the Visa and MasterCard Classes reside in the judicial district of Montreal and in the appeal district of Montreal;

67. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

68. The present application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of an application to institute proceedings in damages, (...) injunctive relief and declaratory judgment;

APPOINT the Petitioner as (...) representative of the persons included in the Class herein described as:

- all residents in Quebec who, during some or all of the period commencing March 28, 2001 and continuing through to the present (the "Class Period"), accepted as a method of payment for the sale of a good or service Visa (the "Visa Class Members") or MasterCard (the "MasterCard Class Members") credit cards pursuant to the terms of



merchant agreements, or any other group to be determined by the Court;

IDENTIFY the principle issues of fact and law to be treated collectively as the following:

- a) (...) Did the Respondents conspire, combine, agree, or arrange to restrain or injure competition unduly in, or to unreasonably enhance the price of, credit card network services by imposing supracompetitive Interchange Fees during the Class Period?
- a.1) Were the Respondents competitors with respect to the provision of credit card network services and did they conspire, agree, or arrange to fix, maintain, increase or control the price for the supply of that product by imposing supracompetitive Interchange Fees during the Class Period?
- a.2) Did the Respondents engage in conduct that is contrary to sections 45, 49 or 61 of the *Competition Act* or sections 21 and 22 of the *Criminal Code* during the Class Period?
- b) If so, are the Respondents, or any of them, liable to pay damages to the Visa or MasterCard Class Members under section 36 of the *Competition Act*, including the costs of the investigation of the Respondents' misconduct?
- c) (...)
- d) (...) Were members of the Classes harmed by the Respondents' conduct, and, if so, what is the appropriate measure of these damages?
- e) (...)
- f) (...)
- g) (...)
- h) Are the Respondents, or any of them, liable to the Visa or MasterCard Class Members (...) under article 1457 of the *Civil Code of Quebec*?
- i) (...)
- j) (...)
- k) (...)
- l) (...)
- m) (...)



- n) Were the Merchant Discounts (...) and, in particular, Default Interchange Fees, (...), charged to Visa or MasterCard Class Members during the Class Period set at a supracompetitive rate? If so, what would the rate have been in a competitive environment?
- o) (...)
- p) Are the Respondents solidarily liable for damages?
- q) Should the Court grant an injunction enjoining the Respondents from conspiring or agreeing with each other, or others, to raise, maintain, fix and/or stabilize the rates of Merchant Discounts (...), including Default Interchange Fees?
- r) Should the Court grant an injunction enjoining the Respondents from conspiring or agreeing with each other, or others, to impose the Networks' Rules, or any of them?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Petitioner and each of the Visa and MasterCard Class Members (...);

DECLARE that the Defendants have engaged in an agreement, combination, collusion, and/or conspiracy to impose supracompetitive Interchange Fees on merchants;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the Visa and MasterCard Class Members;

ORDER the Defendants to permanently cease conspiring or agreeing with each other, and/or others, to raise, maintain, fix and/or stabilize the rates of Merchant Discounts, including Interchange Fees (...);

CONDEMN the Defendants to pay to each Visa or MasterCard Class Member a sum equal to the supracompetitive portion of the Interchange Fee plus costs (...), and ORDER collective recovery of these sums;

(...)

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the present application (...);

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;



ORDER that the claims of individual Visa or MasterCard Class Members (...) be the object of collective recovery if the proof permits and alternately, by individual recovery;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Classes;

DECLARE that all members of the Classes that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Classes that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

ORDER the publication of a notice to the members of the Classes in accordance with article 579 C.C.P. (*formerly art. 1006 C.C.P.*) within sixty (60) days from the judgment to be rendered herein in LA PRESSE PLUS, LE SOLEIL, and the MONTREAL GAZETTE;

ORDER that said notice be available on the various Respondents' websites with a link stating "Notice to Merchants that Accept Payment by Visa and/or MasterCard Credit Cards (...)"

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Classes;

THE WHOLE with costs, including publication fees.

Montreal, June 28, 2017

(s) Andrea Grass

CONSUMER LAW GROUP INC.

Per: Me Andrea Grass

Attorneys for the Petitioner



N°: 500-06-000549-101

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

9085-4886 QUEBEC INC.

Petitioner

-vs.-

VISA CANADA CORPORATION et al.

Respondents

**RE-RE-AMENDED APPLICATION TO
AUTHORIZE THE BRINGING OF A CLASS
ACTION & TO DESIGNATE THE PETITIONER
AS REPRESENTATIVE**

(Art. 574 C.C.P. and following)

COPY

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