

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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IN RE	:	
VISA CHECK/MASTERMONEY ANTITRUST	:	MASTER FILE NO.
LITIGATION	:	CV-96-5238
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This Document Relates to: All Actions	:	
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**DECLARATION OF DAVID C. BROWNSTEIN**

I, David C. Brownstein, declare:

1. I am a shareholder in the law firm Heller Ehrman LLP, counsel for defendant Visa U.S.A. Inc. (“Visa”) in the above-captioned litigation. I have personal knowledge of the matters set forth in this declaration, and if called upon to do so, could and would testify competently thereto.

2. On April 13, 2006, I received a telephone message from Amy Roth of Constantine Cannon, lead counsel for the class in this matter, seeking from Visa a copy of the Visa/United States Postal Service agreement (“USPS Agreement”), settling any claims the USPS might have had had it not opted out of the Wal-Mart litigation.

3. I told Ms. Roth that Visa was prepared to produce a redacted version of the agreement, but that Visa considers the business terms of the agreement to be highly sensitive information. The business terms would be competitively sensitive with respect to other large merchants, who could gain an advantage by learning the terms of the USPS Agreement, or by competing networks, such as Discover, which is represented in separate litigation against Visa by Constantine Cannon.

4. Ms. Roth told me that lead counsel would like to see the entire USPS Agreement, but that they were particularly interested in knowing whether the agreement was forward looking

only, or whether it also included some form of retrospective relief (such as a cash payment from Visa to the USPS). Ms. Roth did not explain why lead counsel had this particular interest.

5. I told Ms. Roth that I would discuss with Visa the possibility of providing to her more information about the USPS Agreement – particularly whether the agreement was forward-looking only -- but that I would also quickly get her a redacted version of the agreement, showing the date it was signed, those who signed it, and the release language. Attached as Exhibit 1 to this declaration is a true and correct copy of the letter and redacted form of the USPS Agreement I sent to Ms. Roth via e-mail on April 13, 2006.

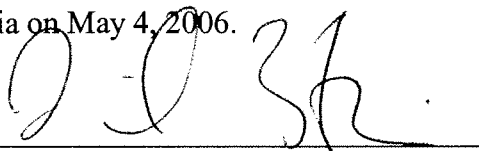
6. By the afternoon of Monday, April 17, I had not heard back from Ms. Roth about plaintiffs' willingness to accept a representation regarding the components of the transaction – forward looking or retrospective – so I phoned her. I asked Ms. Roth whether plaintiffs would be satisfied with a representation about whether the USPS Agreement was forward looking only, or whether it was forward looking and contained retrospective relief. Ms. Roth told me that she wasn't sure and she wanted to confer with other lawyers at Constantine Cannon regarding the issue and that she would get back to me.

7. I did not speak to Ms. Roth about this issue again. On Wednesday, April 19, 2006, at 8:32 a.m., I received a voicemail message from Ms. Roth telling me that plaintiffs were requesting nothing further regarding the USPS Agreement. The voicemail message remains on my message machine, and a complete and accurate transcription of the message is as follows:

“Oh, hi David, it's Amy Roth from Constantine Cannon. I'm sorry I didn't get back to you yesterday, but uh we're fine, we do not need the additional information or need you to see if you can get the additional information on the agreement. If you have any other questions for me, I'm at 202.204.3505. Thank you. Bye.”

8. Attached as Exhibit 2 to the declaration is a true and correct copy of one of the subpoenas (and letters) Lead Counsel sent to acquirers in 2002 to develop a list of class members in this litigation. It is substantively identical to all of the other such subpoenas sent.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was signed in San Francisco, California on May 4, 2006.

  
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DAVID C. BROWNSTEIN