

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE VISA CHECK/MASTERMONEY
ANTITRUST LITIGATION

ORDER
CV-96-5238 (JG)

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JOHN GLEESON, United States District Judge:

In an application filed on October 21, 2004, absent class members Armenta's Mexican Food, Inc. and Lupita Llamas Martinez, d/b/a/ Del Yaqui Restaurant (collectively, "Applicants"), requested that I require (1) a Spanish language banner to be added to all claims forms mailed to class members; (2) the Claims Administrator to have Spanish speaking operators and a Spanish language option for directions to obtain a Spanish language claim form at the toll free number; (3) the damages calculation and the procedure for filing a claim to be printed and disseminated in both English and Spanish; (4) Lead Counsel to disseminate the four mandated nationwide press releases, "as well as all other information that the Settlement Agreements require to be publicly disseminated," in Spanish to Spanish language print, voice and television media; and (5) any other action I deem appropriate to ensure that Latino and Hispanic class members "are provided with an opportunity to participate in" the distributions from the settlement agreements. By order dated October 28, 2004, I referred this application to Special Master Robin M. Wilcox for a report and recommendation.

Lead Counsel responded to the Applicants' request by letter dated November 2, 2004. They objected only to the requests that they be required to "provide in Spanish certain press releases and 'other information' required by the Settlement Agreements to be 'publicly disseminated,'" primarily because that request was "exceptionally vague" and would "unnecessarily tax the resources of the Class." (Letter to Special Master dated Nov. 2, 2004 at 1-

2.) Applicants responded by letter dated November 12, 2004, restating their original requests, and further requesting that:

1. the Court review the claims form for content and format prior to the mailing;
2. the Court pre-approve the Spanish language telephone voice instruction to be used in the toll free line;
3. the Court review every "form of communication" planned for the class to determine whether a Spanish translation of that communication would be appropriate; and
4. the Court require Lead Counsel to copy Applicants' counsel on any submissions made to the Court with respect to the issue of Spanish language notice and translation, and allow Applicants' counsel to comment on the submissions before their distribution.

By letter dated November 23, 2004, Lead Counsel objected to those requests and reiterated their objection to the application for Spanish-language media publications.

On December 12, 2004, the Special Master issued her report and recommendation. First, she recommends that, because the parties appear to be in agreement on the following applications, Lead Counsel should be ordered to:

1. include a Spanish language banner on all claim forms sent to individual class members (as directed by the report);
2. print recovery amounts in all notices sent to individuals both in English and in Spanish;
3. require the Claims Administrator to employ Spanish language operators for their toll free number to receive inquiries concerning claims from Spanish-speaking class members;
4. ensure that the Spanish language operators are available to speak with class members during the same hours English-speaking operators are available;
5. ensure that the Claims Administrator's toll free number offers the option of accessing (a) Spanish language translations of all pre-recorded English voice

messages; and (b) complete instructions in Spanish for the procedure to obtain a Spanish language form.

(See R&R at 10.) Based on my review of the application and correspondence, I agree.

Accordingly, I adopt the Special Master's report recommending the above Spanish language notification requirements.

The first disputed issue relates to the Applicants' request that Lead Counsel submit both to the Court and to their counsel for review, the Spanish language translations of claim forms, notices, and pre-recorded voice instructions, if those translations are required by the Court. The Special Master recommends that I decline to require such pre-approval because Lead Counsel has "given this Court no reason to suspect that . . . they would circumvent" an order by disseminating inadequate Spanish translations and, therefore, pre-approval "would only serve to waste time and Class Member money." (R&R at 11.) I agree. I adopt the Special Master's recommendation that no review or pre-approval of mandated translations be required.

The Applicants also request that the Court review "each and every additional" communication between Lead Counsel or the Claims Administrator and the class for a determination of whether such communication should be translated and disseminated in Spanish. (See R&R at 14-15.) The Special Master recommends that I decline to order this request, but that I (1) require Lead Counsel to serve Applicants "with advance notice of any future class-wide communications that they intend to transmit to Class Members by mail and/or via print, television or radio media prior to the dissemination of such communications;" and (2) require Applicants, "within ten business days following such service, to file with the Court their request, if any, that such communications be made in Spanish as well." (*Id.* at 15.) I amend the

recommendation only to require Lead Counsel to serve such notice at least twenty business days in advance of dissemination, and to require Applicants to file their request for Spanish-language translation and dissemination, if any, with the Special Master, in the first instance. In all other respects regarding this issue, I adopt the Special Master's report.

The final disputed issue relates to the Applicants' request to include media releases in Spanish. As the Special Master correctly notes, after final settlement approval, the plan of allocation requires Lead Counsel to issue at least four nationwide press releases announcing the final approval of the settlement. Applicants request parallel releases in Spanish language print, voice and television media. Lead Counsel object, arguing that due process does not require Spanish-language press releases, and that they would be an unnecessary cost to the class. Based on her review of the data presented by the Applicants, both here and in the process leading up to my approval of this settlement, and of the objections of Lead Counsel, the Special Master recommends that I order (1) Lead Counsel to file with the Court and to serve upon the Applicants, within twenty business days, "a plan for Spanish language publication that is reasonably calculated to reach those Spanish-speaking Class Members who would not be reached by English-only publication;" and (2) Applicants to file with the Court and to serve upon Lead Counsel, within fifteen days, "their objections, if any, to Lead Counsel's plan for Spanish language publication." (R&R at 14; *see also id.* at 13-14 n.5 (stating that Lead Counsel's plan for the English language press releases is not known, and that the Spanish language releases may be less extensive because they will target only a minority of the class.))

As I have previously held, due process does not require the publication of notices in Spanish. *Visa Check/Mastermoney Antitrust Litigation*, 297 F.Supp. 2d 503, 522-23 (E.D.N.Y.

2003). However, I agree with the Special Master that some subset of the “sizeable minority of merchants in the Class [who] are Latino- or Hispanic-owned businesses. . . . relies primarily or exclusively on the Spanish media.” (R&R at 13.) Accordingly, I adopt the Special Master’s report with respect to this issue, and order Lead Counsel and the Applicants to make their submissions to the Special Master, in the first instance. I refer to the Special Master, for a report and recommendation, the issue of whether Lead Counsel’s proposed plan is reasonable and sufficient to reach the targeted class members.

So Ordered.

JOHN GLEESON, U.S.D.J.

Dated: February 11, 2005
Brooklyn, New York