

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-000549-101

(Class Action)  
SUPERIOR COURT

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**9085-4886 QUEBEC INC.**

(...)

*Petitioner*

-vs.-

**VISA CANADA CORPORATION**

and

**MASTERCARD INTERNATIONAL  
INCORPORATED**

and

**BANK OF AMERICA CORPORATION,**  
legal person duly incorporated, having its  
principal place of business at 101 South  
Tryon Street, Charlotte, North Carolina,  
28255, USA

and

**BANK OF MONTREAL,** legal person  
duly incorporated, having its principal  
place of business at 100 King Street  
West, 1 First Canadian Place, 19<sup>th</sup> Floor,  
Toronto, Ontario, M5X 1A1

and

**BANK OF NOVA SCOTIA,** legal person  
duly incorporated, having its principal  
place of business at 44 King Street West,  
Scotia Plaza, Toronto, Ontario, M5H 1H1

and

**CANADIAN IMPERIAL BANK OF**  
**COMMERCE,** legal person duly  
incorporated, having its principal place of  
business at Commerce Court West, 199

Bay Street, 44<sup>th</sup> Floor, Toronto, Ontario,  
M5L 1A2

and

**CAPITAL ONE FINANCIAL  
CORPORATION**, legal person duly  
incorporated, having its principal place of  
business at 1680 Capital One Drive,  
McLean, Virginia, 22102, USA

and

**CITIGROUP INC.**, legal person duly  
incorporated, having its principal place of  
business at 399 Park Avenue, New York,  
New York, 10043, USA

and

**FÉDÉRATION DES CAISSES  
DESJARDINS DU QUÉBEC**, legal  
person duly incorporated, having its  
principal place of business at 2  
Complexe Desjardins, P.O. Box 9000,  
Desjardins Station, Montreal, Quebec,  
H5B 1H5

and

**NATIONAL BANK OF CANADA INC.**,  
legal person duly incorporated, having its  
principal place of business at 600 de la  
Gauchetière St. West, Montreal, Quebec,  
H3B 4L2

and

**ROYAL BANK OF CANADA**, legal  
person duly incorporated, having its  
principal place of business at 200 Bay  
Street, Toronto, Ontario, M5J 2J5

and

**TORONTO-DOMINION BANK**, legal person duly incorporated, having its principal place of business at P.O. Box 1, Toronto Dominion Centre, Toronto, Ontario, M5K 1A2

*Respondents*

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**AMENDED MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION**  
**&**  
**TO ASCRIBE THE STATUS OF REPRESENTATIVE**  
**(Art. 1002 C.C.P. and following)**

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TO ONE OF THE HONOURABLE MADAME 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, Visa Canada Corporation ("Visa") and MasterCard International Incorporated ("MasterCard"), operate the two largest credit card networks in Canada, including in Quebec. In 2009, the Respondents processed more than 90% of all general purpose credit card transactions in Canada, representing approximately \$240 billion in purchases;
3. Every time a 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 Fee" (...). In aggregate, Merchant Discount Fees are a significant cost for Canadian merchants. In 2009 alone, merchants in Canada paid approximately \$5 billion in Merchant Discount Fees;

4. 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 member 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 (...). These restrictions impede or constrain competition for credit card network services, and in particular, with respect to Interchange Fees, as defined in paragraph 16.7 below, as they prevent merchants from effectively encouraging 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. (...)
6. The Petitioner contends that the Respondents' conduct has violated sections 45 and 61 of the Federal Competition Act (...);
7. Petitioner also contends that the Respondents' conduct has caused:
  - i) the charging to the Visa and MasterCard Class Members of credit card processing fees and associated costs at a supracompetitive rate;
  - ii) (...)

## **B) THE 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 \$159 billion in purchases. Visa is a subsidiary of Visa Inc., a publicly-traded corporation incorporated under the laws of the State of Delaware, USA;
- 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 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 Acquirers in Canada;

- 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 one billion credit card transactions in 2009, representing approximately \$79 billion in purchases. MasterCard is a subsidiary of MasterCard Incorporated, a publicly-traded corporation incorporated under the laws of the State of Delaware, USA;
- 9.1 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;
- 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 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 the province of Quebec;



- 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;
- 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 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;
- 9.7 Collectively, BMO, Capital One, Citi, Desjardins, CIBC, MBNA, RBC, Scotiabank, and TD are known as the “Respondent Banks”;

### **C) THE SITUATION**

10. The Respondents Visa and MasterCard operate the two largest credit card networks in Canada, including 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%;
- 10.1 There are significant barriers to entry in the credit card network service market. There have been no significant new entrants in the market for credit card network services over the past 20 years;
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 an ownership interest in Acquirers;

- 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;
- 16.2 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 Respondents CIBC, Desjardins, RBC, and TD, and all Acquirers participate in both credit card networks. Certain Issuing Banks, including the Respondents BMO, 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 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;
- 16.5 In order to accept payments by Visa or MasterCard credit cards, merchants must enter into 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 Worldwide MasterCard Rules (the “MasterCard Rules”);
- 16.6 For every transaction where a customer uses a Visa or MasterCard credit card to pay a merchant for a good or service, that merchant must pay a fee.



commonly referred to as a “Merchant Discount Fee”. The Merchant Discount Fee is the difference between the price a merchant charges for a good or service and the amount that the merchant ultimately receives for that transaction. In 2009, merchants in Canada paid approximately \$5 billion in Merchant Discount Fees;

16.7 The Merchant Discount Fee is made up of three parts: the “Interchange Fee” paid to the Issuing Bank associated with the customer’s particular Visa or MasterCard credit card, the “Service Fee” paid to the Acquirer, and the “Network Fee” paid to either Visa or MasterCard. The Interchange Fee is typically 80% of the Merchant Discount Fee;

17. (...)

18. (...)

19. (...)

20. Through agreements, Visa, MasterCard and their member banks leverage their market power to earn supracompetitive profits from Canadian merchants, including the Visa and MasterCard Class Members;

20.1 During the Class Period, Visa and MasterCard, along with their respective Issuing Banks and Acquirers, each set and made available 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”). 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;

20.2 Interchange Fees vary from card to card depending on the services and incentives bundled with the credit card. If a 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 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 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;
- 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;
- 20.5 By enforcing adherence to the Visa Rules or the MasterCard Rules, respectively, the Visa network and MasterCard network have created agreements 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 (the "Networks' Rules"), 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 Fee, and in particular the Interchange Fee, associated with use of a particular credit card (the "No Surcharge Rule");
  - 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";
- 20.7 Acquirers are contractually obliged to enforce the Networks' Rules, including the Default Interchange Rule and the Merchant Restraints;
- 20.8 The Merchant Restraints prevent merchants from effectively encouraging customers to use 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, or as compared to other modes of payment such as cash and debit cards. The effect of the Merchant Restraints is to impede or constrain competition for credit card network services, including competition with respect to Interchange Fees;
- 20.9 As a consequence of the Merchant Restraints, consumers pay the same price to merchants for goods and services supplied by merchants regardless of mode of payment, despite the higher cost to merchants of Visa and MasterCard credit card 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 cardholders 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;
- 20.11 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;
- 20.12 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 Merchant Discount Fee is calculated by the Acquirer or transaction processing company the merchant has contracted with for the provision of credit card network services. The calculation of the Merchant Discount Fee incorporates the Interchange Fee and Network Fee, which are established by Visa or MasterCard. 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 Fee and in particular the Interchange Fee, whether by way of a separate payment or a deduction from the amount paid through the Acquirer with whom the merchant has contracted. During the Class Period, the allocation of the Merchant Discount Fee into Interchange Fee, Network Fee, and Service Fee was not set out in the statements to merchants;
- 20.13 Visa, MasterCard, the Issuing Banks, and the Acquirers seek to maximize the aggregate Merchant Discount Fees and in particular the Interchange Fees paid by the Visa and MasterCard Class Members through the two networks;
- 20.14 Under the Visa and MasterCard Rules, Acquirers are prohibited from suing Visa, MasterCard, or Issuing Banks over the level of Interchange Fees or any other matter;
21. (...)
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. The operation of the Visa and MasterCard credit card network schemes by the Defendants are intended to maximize, increase, and maintain the total



Merchant Discount Fees, including Interchange Fees, paid by merchants, including the Visa and MasterCard Class Members;

### **The Visa Conspiracy**

- 22.1 Various Issuing Banks, including the Respondents CIBC, Desjardins, RBC, Scotiabank, and TD, participated as co-conspirators in the alleged unlawful conduct and entered into anti-competitive agreements, including agreements with 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. These agreements include, but are not limited to, the Visa Rules. Visa, CIBC, Desjardins, RBC, Scotiabank, and TD are jointly and severally liable for the actions of, and damages allocable to, e 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, Visa, and the Issuing Banks. 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 rates for Merchant Discount Fees, including Interchange Fees, paid by the Visa Class Members. Visa, CIBC, Desjardins, RBC, Scotiabank, and TD are jointly and severally 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, Desjardins and Chase Paymentech Solutions. Respondents who are Issuing Banks and also own, operate, or control Acquirers, being Desjardins, RBC, and TD, participated in the conspiracy in both capacities;
- 22.3 During the Class Period, senior executives and employees of Visa, CIBC, Desjardins, 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, Desjardins, 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 thereby unreasonably increase the rates of Merchant Discount Fees, including Interchange Fees, paid by merchants including the Visa Class Members for payments, made



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

- b) Fix, maintain, increase or control the rates of Interchange Fees in Canada, including the province of Quebec; and
- c) Exchange information in order to monitor and enforce adherence to the agreed upon Merchant Restraints in Canada, including the province of Quebec;

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

- a) Increased or maintained the default rates for Merchant Discount Fees, including Interchange Fees, in Canada, including the province of Quebec;
- b) Imposed the Visa Rules including the Merchant Restraints on merchants in Canada, including the province of Quebec;
- c) Communicated, in person, in writing, and by telephone, to discuss and fix the Default Interchange Fees in Canada, including 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 Discount Fees 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 Visa, CIBC, Desjardins, RBC, Scotiabank, TD, and their co-conspirators were motivated to conspire and their predominant purpose and predominant concerns were to:

- a) Harm the Petitioner and other Visa Class Members by requiring them to pay supracompetitive rates for Merchant Discount Fees, including Interchange Fees; and
- b) Illegally increase their profits;

22.6 The overt acts alleged in this claim to have been done by Visa, CIBC, Desjardins, 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;

### **The MasterCard Conspiracy**

22.7 Various Issuing Banks, including the Respondents BMO, Capital One, CIBC, Citi, Desjardins, MBNA, 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 with 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, Capital One, CIBC, Citi, Desjardins, MBNA, National, RBC, and TD are jointly and severally 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, MasterCard, and the Issuing Banks. 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 the Networks' Rules and the Merchant Restraints. The agreements resulted in the imposition of supracompetitive rates for Merchant Discount Fees, including Interchange Fees, paid by the MasterCard Class Members. MasterCard, BMO, Capital One, CIBC, Citi, Desjardins, MBNA, National, RBC, and TD are jointly and severally 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, Desjardins and Chase Paymentech Solutions. Respondents who are Issuing Banks and also own, operate, or control Acquirers, being BMO, Desjardins, RBC, and TD, participated in the conspiracy in both those capacities;

22.9 During the Class Period, senior executives and employees of MasterCard, BMO, Capital One, CIBC, Citi, Desjardins, MBNA, National, RBC, TD, and their 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, conversations, and meetings, and through the imposition of the MasterCard Rules, MasterCard, BMO, Capital One, CIBC, Citi,



Desjardins, MBNA, National, RBC, TD, and their 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 thereby unreasonably increase the rates of Merchant Discount Fees, including Interchange Fees, paid by merchants, including the MasterCard Class Members, for payments made using MasterCard credit cards in Canada, including the province of Quebec;
- b) Fix, maintain, increase or control the rates of Interchange Fees in Canada, including the province of Quebec; and
- c) Exchange information in order to monitor and enforce adherence to the agreed upon Merchant Restraints in Canada, including the province of Quebec;

22.10 In furtherance of the conspiracy, during the Class Period, MasterCard, BMO, Capital One, CIBC, Citi, Desjardins, MBNA, National, RBC, TD, and their co-conspirators, and their servants and agents:

- a) Increased or maintained the default rates for Merchant Discount Fees, including Interchange Fees, in Canada, including the province of Quebec;
- b) Imposed the MasterCard Rules including the Merchant Restraints on merchants in Canada, including the province of Quebec;
- c) Communicated, in person, in writing, and by telephone, to discuss and fix the Default Interchange Fees in Canada, including 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 Discount Fees 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 MasterCard, BMO, Capital One, CIBC, Citi, Desjardins, MBNA, National, RBC, TD, and their co-conspirators were motivated to conspire and their predominant purposes and predominant concerns were to:



- a) Harm the Petitioner and other MasterCard Class Members by requiring them to pay supracompetitive rates for Merchant Discount Fees, including Interchange Fees; and
- b) Illegally increase their profits;

22.12 The overt acts alleged in this claim to have been done by MasterCard, BMO, Capital One, CIBC, Citi, Desjardins, MBNA, 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;

23. (...)

## **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 over the last twelve (12) month period;
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 Acquirer Agreement"), which in turn incorporates each of the Visa Rules and MasterCard Rules, including the Merchant Restraints;
26. It is charged 7 (seven) cents per transaction when customers use their Interac debit cards. By contrast, it is charged Merchant Discount Fees set at 1.61% of the value of the transaction when customers use their regular Visa cards, and 2.10% of the value of the transaction when 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 Discount Fees when 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 Acquirer Agreement prohibits the Petitioner from imposing a surcharge to those customers that pay by using credit cards;
29. The Petitioner's Acquirer Agreement also prohibits the Petitioner from refusing premium credit cards which attract Interchange Fees;
30. Further, by the Respondents' conduct, the Petitioner is deprived of being charged credit card processing fees and costs that would reflect an open competitive market in this area and is instead paying supracompetitive rates for its credit card processing, and in particular, for 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;

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 processed credit cards that were put onto the marketplace directly or indirectly by the Respondents;

40. Each Visa and MasterCard Class Member has paid supracompetitive credit card processing fees and costs due to the Respondents' unlawful and anticompetitive conduct;

41. (...)

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 of the class are justified in claiming damages;

### **IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical

45. The use of credit cards by consumers and the processing of these credit cards by merchants is extremely widespread in Quebec (...);

46. The Petitioner is unaware of the specific number of residents who used credit cards and/or process credit cards, however, given their tremendous popularity, it is safe to estimate that it is in the millions;





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 different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgements on questions of fact and law that are similar or related to all members of the proposed class;
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 class to effectively pursue their respective rights and have access to justice;
- B) The questions of fact and law which are identical, similar, or related with respect to each of the Visa and MasterCard Class members with regard to the Respondents and that which the Petitioner wishes to have adjudicated upon by this class action;
52. Individual questions, if any, pale by comparison to the numerous common questions that predominate;
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 recourses of the Visa and MasterCard Class Members raise identical, similar or related questions of fact or law, namely:
- a) Did the Respondents, the co-conspirator Acquirers, or any of them engage in conduct that is contrary of sections 45 or 61 of the Competition Act? If so, what was the duration of that conduct?
  - 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) Did the Respondents, the co-conspirator Acquirers, or any of them enter conspire to impose and maintain the Networks' Rules, Merchant Discount Fees and in particular default Interchange Fees, or any component thereof during the Class Period?
- d) Did the Respondents, co-conspirator Acquirers, or any of them enter into unlawful agreements regarding the Networks' Rules, Merchant Discount Fees and in particular default Interchange Fees, or any component thereof, during the Class Period?
- e) Did the Respondents, the co-conspirator Acquirers, or any of them conspire to harm the Visa or MasterCard Class Members?
- f) Did the Respondents know, or should they have known, that the acts found in the determination of common issues c), d), or e) (individually or collectively, the "Conspiracy Acts") were, in the circumstances, likely to cause injury to the Visa or MasterCard Class Members?
- g) Was the predominant purpose of the Conspiracy Acts to injure the Visa or MasterCard Class Members?
- h) Are the Respondents, or any of them, liable to the Visa or MasterCard Class Members for civil liability under article 1457 of the Civil Code of Quebec?
- i) Are the Respondents, or any of them, liable to the Visa or MasterCard Class Members for unlawful interference with economic interests as a result of the Conspiracy Acts?
- j) Have the Respondents, or any of them, been unjustly enriched during the Class Period by receipt of supracompetitive Merchant Discount Fees and in particular default Interchange Fees, or any component thereof?
- k) Have the Visa or MasterCard Class Members suffered a corresponding deprivation by paying supracompetitive Merchant Discount Fees and in particular default Interchange Fees, or any component thereof, during the Class Period?
- l) Is there any juristic reason justifying the retention by the Respondents, or any of them, of some or all of the supracompetitive portion of Merchant Discount Fees, and in particular default Interchange Fees, or any component thereof (the "Overcharge") paid by the Visa or MasterCard Class Members?
- m) Do equity and good conscience require that the Respondents, or any of them, hold the Overcharge in trust for the Petitioner and the

other Visa or MasterCard Class Members and to disgorge that amount to the Petitioner or other Visa and MasterCard Class Members?

- n) Were the Merchant Discount Fees and in particular default Interchange Fees, or any component thereof, 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) Does the Respondents' conduct entitle the Visa or MasterCard Class Members to punitive damages?
- 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 Discount Fees, including 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 motion 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 and injunctive relief;

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 of the class;

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 from continuing or maintaining to engage in unlawful and anticompetitive conduct as alleged herein;

CONDEMN the Defendants to pay to each Visa or MasterCard Class Member a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;



CONDEMN the Defendants to pay to each of the Visa or MasterCard Class Members punitive damages, 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 motion to authorize a class action;

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, if any, be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

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 class;

A) The Petitioner request that they be attributed the status of representative of the Visa Class and of the MasterCard Class

58. 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 recours collectifs*, as the case may be, and to collaborate with its attorneys;

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

61. 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. 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;

63. 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. Petitioner understands the nature of the action;

65. Petitioner's interests are not antagonistic to those of other Visa and MasterCard Class Members ;

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 Class 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 motion is well founded in fact and in law.

### **FOR THESE REASONS, MAY IT PLEASE THE COURT**

**GRANT** the present motion;

**AUTHORIZE** the bringing of a class action in the form of a motion to institute proceedings in damages and injunctive relief;

**ASCRIBE** the Petitioner the status of representative of the residents 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 questions of fact and law to be treated collectively as the following:

- a) Did the Respondents, the co-conspirator Acquirers, or any of them engage in conduct that is contrary of sections 45 or 61 of the Competition Act? If so, what was the duration of that conduct?



- 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) Did the Respondents, the co-conspirator Acquirers, or any of them enter conspire to impose and maintain the Networks' Rules, Merchant Discount Fees and in particular default Interchange Fees, or any component thereof during the Class Period?
- d) Did the Respondents, co-conspirator Acquirers, or any of them enter into unlawful agreements regarding the Networks' Rules, Merchant Discount Fees and in particular default Interchange Fees, or any component thereof, during the Class Period?
- e) Did the Respondents, the co-conspirator Acquirers, or any of them conspire to harm the Visa or MasterCard Class Members?
- f) Did the Respondents know, or should they have known, that the acts found in the determination of common issues c), d), or e) (individually or collectively, the "Conspiracy Acts") were, in the circumstances, likely to cause injury to the Visa or MasterCard Class Members?
- g) Was the predominant purpose of the Conspiracy Acts to injure the Visa or MasterCard Class Members?
- h) Are the Respondents, or any of them, liable to the Visa or MasterCard Class Members for civil liability under article 1457 of the Civil Code of Quebec?
- i) Are the Respondents, or any of them, liable to the Visa or MasterCard Class Members for unlawful interference with economic interests as a result of the Conspiracy Acts?
- j) Have the Respondents, or any of them, been unjustly enriched during the Class Period by receipt of supracompetitive Merchant Discount Fees and in particular default Interchange Fees, or any component thereof?
- k) Have the Visa or MasterCard Class Members suffered a corresponding deprivation by paying supracompetitive Merchant Discount Fees and in particular default Interchange Fees, or any component thereof, during the Class Period?
- l) Is there any juristic reason justifying the retention by the Respondents, or any of them, of some or all of the supracompetitive portion of Merchant Discount Fees, and in particular default

Interchange Fees, or any component thereof (the “Overcharge”) paid by the Visa or MasterCard Class Members?

- m) Do equity and good conscience require that the Respondents, or any of them, hold the Overcharge in trust for the Petitioner and the other Visa or MasterCard Class Members and to disgorge that amount to the Petitioner or other Visa and MasterCard Class Members?
- n) Were the Merchant Discount Fees and in particular default Interchange Fees, or any component thereof, 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) Does the Respondents’ conduct entitle the Visa or MasterCard Class Members to punitive damages?
- 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 Discount Fees, including 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 of the class;

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 from continuing or maintaining to engage in unlawful and anticompetitive conduct as alleged herein;

CONDEMN the Defendants to pay to each Visa or MasterCard Class Member a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the Visa or MasterCard Class Members punitive damages, 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 motion to authorize a class action;

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, if any, be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

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 class;

**DECLARE** that all members of the class that have not requested their exclusion, be bound by any judgement 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 class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

**ORDER** the publication of a notice to the members of the class in accordance with article 1006 C.C.P. within sixty (60) days from the judgement to be rendered herein in LA PRESSE and the THE GAZETTE;

**ORDER** that said notice be available on the various Respondents' websites with a link stating "Notice to Visa and MasterCard users";

**RENDER** any other order that this Honourable court shall determine and that is in the interest of the members of the class;

**THE WHOLE** with costs including publications fees.

Montreal, March 30, 2012

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CONSUMER LAW GROUP INC.  
Per: Me Jeff Orenstein  
Attorneys for the Petitioner



NOTICE OF PRESENTATION

TAKE NOTICE that the present motion will be presentable for adjudication before The Superior Court, at the Palais de Justice in Montreal, located at 1 Notre Dame East (Quebec, Canada), in **room 2.16** on the **31<sup>st</sup> day of May, 2012** at **9h00** in the morning, or as soon as the Court so decides.

Montreal, March 30, 2012

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CONSUMER LAW GROUP INC.  
Per: Me Jeff Orenstein  
Attorneys for the Petitioner