

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	)
STATE OF ARIZONA,	)
STATE OF CONNECTICUT,	) Civil Action
STATE OF HAWAII,	) No. CV-10-4496
STATE OF IDAHO,	)
STATE OF ILLINOIS,	) (Garaufis, J.)
STATE OF IOWA,	) (Pollak, M.J.)
STATE OF MARYLAND,	)
STATE OF MICHIGAN,	)
STATE OF MISSOURI,	)
STATE OF MONTANA,	)
STATE OF NEBRASKA,	)
STATE OF NEW HAMPSHIRE,	)
STATE OF OHIO,	)
STATE OF RHODE ISLAND,	)
STATE OF TENNESSEE,	)
STATE OF TEXAS,	)
STATE OF UTAH, and	)
STATE OF VERMONT,	)
	)
Plaintiffs,	)
	)
v.	)
	)
AMERICAN EXPRESS COMPANY,	)
AMERICAN EXPRESS TRAVEL RELATED	)
COMPANY, INC., MASTERCARD	)
INTERNATIONAL INCORPORATED, and	)
VISA, INC.	)
	)
Defendants.	)

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**DECLARATION OF BRAD TOMCHEK**

I, BRAD TOMCHEK, under penalty of perjury and based on my own personal knowledge, declare as follows:

1. I am employed by MasterCard International Incorporated (“MasterCard”) as Business Leader of Global Network Products.

2. I submit this Declaration in support of the United States’ motion for entry of the Proposed Final Judgment as to Defendants MasterCard International Incorporated and Visa Inc.

3. I have been employed by MasterCard since 2006. My responsibilities include global responsibility for the development and launch of new authorization and clearing processing services.

4. MasterCard offers a variety of MasterCard-branded programs that banks can issue to consumers. With respect to general purpose consumer credit cards in the United States, these programs include MasterCard Standard Card, Gold MasterCard Card, Platinum MasterCard Card, World MasterCard Card, and World Elite MasterCard Card. MasterCard assigns a specific three letter Product Code and applicable Account Category indicator (if any) to each of these programs.

5. MasterCard currently has five interchange rate structures that are applicable to these general purpose consumer credit programs in the United States: (i) Consumer Credit Core Value; (ii) Consumer Credit Enhanced Value; (iii) Consumer Credit World; (iv) Consumer Credit World High Value; and (v) Consumer Credit World Elite. Attached as Exhibit A is a list of the MasterCard-branded programs along with their corresponding product codes and applicable Account Category indicators for each of these rate structures.

6. A list of MasterCard product codes and Account Category indicators associated with each product or program type, as well as MasterCard's interchange rate schedule, is available to all acquirers in a variety of MasterCard publications including the Customer Interface Specification Manual and U.S. Interchange Bulletins.

7. MasterCard is currently developing a new "Product Validation" service that acquirers could make available to their U.S. merchants. MasterCard plans to introduce this service by August 1, 2011 and does not anticipate any delay in offering the service absent unanticipated coding or processing issues.

8. MasterCard will not charge any MasterCard-initiated acquirer fees for the Product Validation service at its launch on August 1, 2011. MasterCard reserves the right to adjust the fee based on demand and other factors.

9. The Product Validation service will provide acquirers with electronic information that they could use as a basis for providing merchants with the identity of the product code and applicable Account Category indicator (if any) associated with a particular MasterCard credit card before the merchant accepts and completes a MasterCard transaction at the point of sale.

10. In particular, the Product Validation service will enable a merchant's acquirer to send a product validation authorization request message to MasterCard. As part of the product validation authorization response to the acquirer, MasterCard will supply the acquirer with the product code associated with the particular MasterCard card number. Because the product codes for MasterCard Standard Card, Gold MasterCard Card, Platinum MasterCard Card, or World MasterCard Card programs potentially fall under different possible interchange

rate structures, MasterCard will also populate the authorization response message with the applicable Account Category indicator (as indicated in Exhibit A) when the card qualifies for the either the Consumer Credit Enhanced Value or Consumer Credit World High Value interchange structures.

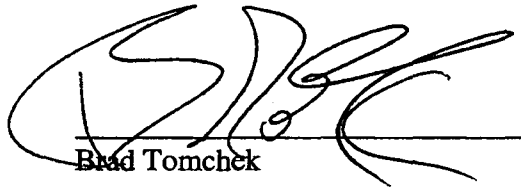
11. The information received by the acquirer in connection with a product validation request, together with MasterCard's published interchange rate schedule and rate criteria, could be utilized by an acquirer and merchant to determine the interchange rate that may be applied to the product and/or transaction.

12. In order to protect sensitive cardholder information and reduce fraud, MasterCard requires participants in the MasterCard system to comply with the Payment Card Industry Data Security Standard ("PCI DSS" or "PCI"). The PCI standard provides that cardholder data may be retained only as long as necessary for business, legal, or regulatory purposes. (PCI Standard 3.1.) For sensitive authentication data (including the full magnetic stripe data that is gathered when a card is swiped), the PCI standard provides that such data may not be stored after authorization of the transaction. (PCI Standard 3.2.) The Product Validation service would be used before a transaction is authorized, and therefore the magnetic stripe data would not need to be stored subsequent to authorization for a merchant to obtain an authorization without swiping the card a second time. A merchant would be required, of course, not to retain the magnetic stripe data from the Product Validation service swipe if the merchant was able to steer to another card and therefore no longer had a business, legal or regulatory purpose for retaining the magnetic stripe data from the MasterCard card.

13. I am aware that some merchants have raised a concern about the time required to use the Product Validation service. The MasterCard Worldwide Network returns an authorization message to a U.S. acquirer in an average of 130 milliseconds (or .13 seconds). MasterCard anticipates that its Product Validation authorization service would result in similar response times.

14. I am also aware that some merchants have raised a concern that use of the Product Validation service could result in disqualification for preferred interchange categories because the transaction amount authorized would not match the value of the settled transaction. Use of the Product Validation service will not result in a variance between the authorized transaction amount and the settlement amount. Indeed, the dollar value of the transaction is not even submitted to MasterCard when seeking a Product Validation response message.

Executed on: May 31, 2011



Brad Tomchek

**EXHIBIT A**

**Consumer Credit Core Value**

MasterCard Standard Card (MCS)

MasterCard Credit Card (MCC)

Gold MasterCard Card (MCG)

Platinum MasterCard Card (MPL)

**Consumer Credit Enhanced Value**

MasterCard Standard Card (MCS) with an Account Category indicator = B or M

MasterCard Credit Card (MCC) with an Account Category indicator = B

Gold MasterCard Card (MCG) with an Account Category indicator = B or M

Platinum MasterCard Card (MPL) with an Account Category indicator = B or M

**Consumer Credit World**

World MasterCard Card (MCW)

World MasterCard Card (MCW) with an Account Category indicator = P

**Consumer Credit World High Value**

World MasterCard Card (MCW) with an Account Category indicator = S or T

**Consumer Credit World Elite**

MasterCard World Elite (MWE)