

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

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UNITED STATES OF AMERICA,)	
STATE OF CONNECTICUT,)	
STATE OF IOWA,)	
STATE OF MARYLAND,)	
STATE OF MICHIGAN,)	
STATE OF MISSOURI,)	Civil Action
STATE OF OHIO, and)	No. CV-10-4496
STATE OF TEXAS,)	
)	
Plaintiffs,)	(Garaufis, J.)
)	(Pollak, M.J.)
v.)	
)	
AMERICAN EXPRESS COMPANY,)	
AMERICAN EXPRESS TRAVEL)	
RELATED SERVICES COMPANY, INC.,)	
MASTERCARD INTERNATIONAL)	
INCORPORATED, and VISA INC.,)	
)	
Defendants.)	
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STIPULATION

It is stipulated by and between MasterCard International Incorporated (“MasterCard”), Visa Inc. (“Visa”), the United States, and the States of Connecticut, Iowa, Maryland, Michigan, Missouri, Ohio, and Texas (collectively the “Stipulating Parties”), by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over MasterCard and Visa, and venue of this action is proper in the United States District Court for the Eastern District of New York.

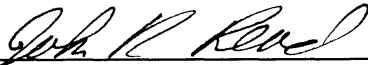
2. The Stipulating Parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any Stipulating Party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any Stipulating Party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on MasterCard and Visa and by filing that notice with the Court. Defendants MasterCard and Visa agree to arrange, at their expense, publication as quickly as possible of the newspaper notices required by the APPA. The publication shall be arranged no later than five (5) calendar days after they receive from the United States the text of the notices and the identity of the newspapers within which the publication shall be made. Defendants MasterCard and Visa shall promptly send to the United States (1) confirmation that publication of the newspaper notices has been arranged, and (2) the certification of the publication prepared by the newspapers within which the notices were published.

3. Defendants MasterCard and Visa shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the Stipulating Parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the Stipulating Parties and submitted to the Court.

5. In the event (1) the United States has withdrawn its consent, as provided in Paragraph 2 above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the Stipulating Parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any Stipulating Party in this or any other proceeding.

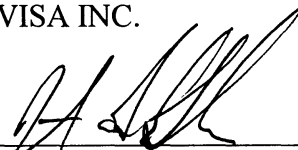
FOR PLAINTIFF
UNITED STATES OF AMERICA



John R. Read
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450 5th Street, NW., Suite 4000
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(202) 305-9969

Dated: October 1, 2010

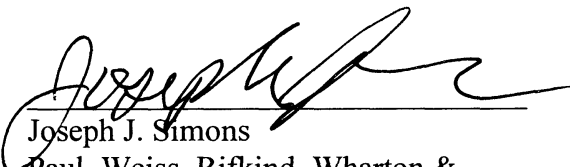
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FOR DEFENDANT
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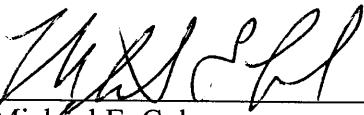
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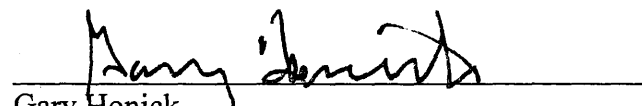
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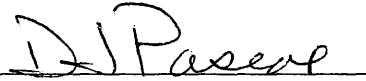
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A handwritten signature in black ink, appearing to read "Chris Koster", with a long horizontal stroke extending to the right.

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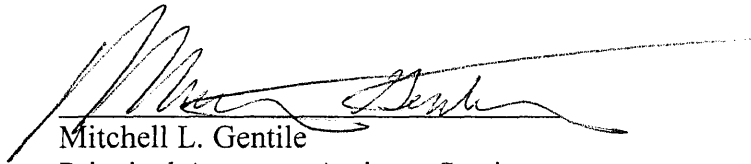
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A handwritten signature in black ink, appearing to read "Mitchell L. Gentile", is written over a horizontal line. The signature is fluid and cursive.

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EXHIBIT A

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

_____)	
UNITED STATES OF AMERICA,)		
STATE OF CONNECTICUT,)		
STATE OF IOWA,)		
STATE OF MARYLAND,)		
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STATE OF OHIO, and)		No. CV-10-4496
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Plaintiffs,)		(Garaufis, J.)
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AMERICAN EXPRESS COMPANY,)		
AMERICAN EXPRESS TRAVEL)		
RELATED SERVICES COMPANY, INC.,)		
MASTERCARD INTERNATIONAL)		
INCORPORATED, and VISA INC.,)		
)		
Defendants.)		
_____)	

[PROPOSED] FINAL JUDGMENT AS TO DEFENDANTS MASTERCARD INTERNATIONAL INCORPORATED AND VISA INC.

WHEREAS, Plaintiffs, the United States of America and the States of Connecticut, Iowa, Maryland, Michigan, Missouri, Ohio, and Texas filed their Complaint on October 4, 2010, alleging that Defendants each adopted rules that restrain Merchants from encouraging consumers to use preferred payment forms, harming competition and consumers in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Plaintiffs and Defendants MasterCard International Incorporated and Visa Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

WHEREAS, Defendants MasterCard and Visa have not admitted and do not admit either the allegations set forth in the Complaint or any liability or wrongdoing;

AND WHEREAS, Defendants MasterCard and Visa agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, without this Final Judgment constituting any evidence against or admission by Defendants MasterCard or Visa regarding any issue of fact or law, and upon consent of MasterCard and Visa, it is ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over MasterCard and Visa. The Complaint states a claim upon which relief may be granted against MasterCard and Visa under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1.

II. DEFINITIONS

As used in this Final Judgment:

1. “Acquiring Bank” means a Person authorized by MasterCard or Visa to enter into agreements with Merchants to accept MasterCard’s or Visa’s General Purpose Cards as payment for goods or services.

2. “American Express” means American Express Company, a New York corporation with its principal place of business in New York, New York, and American Express Travel Related Services Company, Inc., a Delaware corporation with its principal place of business in New York, New York, their successors and assigns, and their subsidiaries (whether

partially or wholly owned), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

3. “Brand” means the brand or mark of a General Purpose Card Network.

4. “Customer” means a Person that pays for goods or services.

5. “Department of Justice” means the United States Department of Justice, Antitrust Division.

6. “Discover” means Discover Financial Services, a Delaware corporation with its principal place of business in Riverwoods, Illinois, its successors and assigns, and its subsidiaries (whether partially or wholly owned), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

7. “Form of Payment” means cash, a check, a debit card, a prepaid card, or any other means by which Customers pay for goods or services, and includes particular brands (*e.g.*, Star, NYCE) or types (*e.g.*, PIN debit) of debit cards or other means of payment.

8. “General Purpose Card” means a credit or charge card issued pursuant to Rules of a General Purpose Card Network that enables consumers to make purchases from unrelated Merchants without accessing or reserving funds, regardless of any other functions the card may have.

9. “General Purpose Card Network” means any Person that directly or indirectly assembles a group of unrelated Merchants to accept and a group of unrelated consumers to make purchases with General Purpose Cards bearing the Person’s Brand, and includes General Purpose Card Networks such as Visa, MasterCard, American Express, and Discover.

10. “Issuing Bank” means a Person authorized by MasterCard or Visa to enter into agreements with cardholders for the use of that Defendant’s General Purpose Cards for payment at a Merchant.

11. “MasterCard” means MasterCard International Incorporated, a Delaware corporation with its principal place of business in Purchase, New York, its successors and assigns, and its subsidiaries (whether partially or wholly owned), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

12. “Merchant” means a Person that accepts MasterCard’s or Visa’s General Purpose Cards as payment for goods or services.

13. “Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

14. “Plaintiff States” means the States of Connecticut, Iowa, Maryland, Michigan, Missouri, Ohio, and Texas.

15. “Rule” means any rule, bylaw, policy, standard, guideline, or practice applicable to Merchants in the United States.

16. “Type” means a category of General Purpose Cards, including but not limited to traditional cards, rewards cards, or premium cards (*e.g.*, a “Visa Signature Card” or a “World MasterCard”).

17. “Visa” means Visa Inc., a Delaware corporation with its principal place of business in San Francisco, California, its successors and assigns, and its subsidiaries (whether partially or wholly owned), divisions, groups, affiliates, partnerships, and joint ventures, and

their directors, officers, managers, agents, and employees, but shall not include Visa Europe Limited and its wholly owned affiliates.

18. The terms “and” and “or” have both conjunctive and disjunctive meanings.

III. APPLICABILITY

This Final Judgment applies to MasterCard and Visa and all other Persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. PROHIBITED CONDUCT

A. The purpose of this Section IV is to allow Merchants to attempt to influence the General Purpose Card or Form of Payment Customers select by providing choices and information in a competitive market. This Final Judgment should be interpreted to promote such efforts and not limit them. Accordingly, neither MasterCard nor Visa shall adopt, maintain, or enforce any Rule, or enter into or enforce any agreement that directly or indirectly prohibits, prevents, or restrains any Merchant in the United States from

1. offering the Customer a discount or rebate, including an immediate discount or rebate at the point of sale, if the Customer uses a particular Brand or Type of General Purpose Card, a particular Form of Payment, or a Brand or Type of General Purpose Card or a Form of Payment other than the General Purpose Card the Customer initially presents;

2. offering a free or discounted product if the Customer uses a particular Brand or Type of General Purpose Card, a particular Form of Payment, or a Brand or Type of General Purpose Card or a Form of Payment other than the General Purpose Card the Customer initially presents;

3. offering a free or discounted or enhanced service if the Customer uses a particular Brand or Type of General Purpose Card, a particular Form of Payment, or a Brand or Type of General Purpose Card or a Form of Payment other than the General Purpose Card the Customer initially presents;

4. offering the Customer an incentive, encouragement, or benefit for using a particular Brand or Type of General Purpose Card, a particular Form of Payment, or a Brand or Type of General Purpose Card or a Form of Payment other than the General Purpose Card the Customer initially presents;

5. expressing a preference for the use of a particular Brand or Type of General Purpose Card or a particular Form of Payment;

6. promoting a particular Brand or Type of General Purpose Card or a particular Form or Forms of Payment through posted information, through the size, prominence, or sequencing of payment choices, or through other communications to a Customer;

7. communicating to a Customer the reasonably estimated or actual costs incurred by the Merchant when a Customer uses a particular Brand or Type of General Purpose Card or a particular Form of Payment or the relative costs of using different Brands or Types of General Purpose Cards or different Forms of Payment; or

8. engaging in any other practices substantially equivalent to the practices described in Sections IV.A.1 through IV.A.7 of this Final Judgment.

B. Subject to compliance with the antitrust laws, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and any other applicable state or federal law, nothing in this Final Judgment shall prohibit MasterCard or Visa from

1. enforcing existing agreements or entering into agreements pursuant to which a Merchant selects General Purpose Cards bearing the Defendant's Brand as the only General Purpose Cards the Merchant will accept as payment for goods and services;

2. enforcing existing agreements or entering into agreements pursuant to which a Merchant agrees that it will encourage Customers to use co-branded or affinity General Purpose Cards bearing both the Defendant's Brand and the co-brand or affinity partner's name, logo, or brand as payment for goods and services and will not encourage Customers to use General Purpose Cards bearing the Brand of any other General Purpose Card Network;

3. enforcing existing agreements or entering into agreements pursuant to which a Merchant agrees (i) that it will encourage Customers, through practices enumerated in Sections IV.A.1 through IV.A.8 of this Final Judgment, to use General Purpose Cards bearing the Defendant's Brand as payment for goods and services, and (ii) that it will not use one or more practices enumerated in Sections IV.A.1 through IV.A.8 of this Final Judgment to encourage Customers to use General Purpose Cards bearing any other Person's Brand as payment for goods and services; *provided that* (a) any such agreement is individually negotiated with the Merchant and is not a standard agreement or part of a standard agreement generally offered by the Defendant to multiple Merchants, and (b) the Merchant's acceptance of the Defendant's General Purpose Cards as payment for goods and services is unrelated to and not conditioned upon the Merchant's entry into any such agreement;

4. adopting, maintaining, and enforcing Rules that prohibit Merchants from encouraging Customers to pay for goods or services using one of its General Purpose Cards

issued by one particular Issuing Bank rather than by another of its General Purpose Cards issued by any other Issuing Bank.

C. Subject to Section IV.A of this Final Judgment, nothing in this Final Judgment shall prohibit MasterCard or Visa from adopting, maintaining, and enforcing Rules that prohibit Merchants from disparaging its Brand.

D. Neither MasterCard nor Visa shall adopt, maintain, or enforce any Rule, or enter into or enforce any agreement, that prohibits, prevents, restrains, deters, or inhibits an Acquiring Bank from supplying a Merchant, on a transaction-by-transaction or other basis, information regarding the costs or fees the Merchant would incur in accepting a General Purpose Card, including a particular Type of General Purpose Card, presented by the Customer as payment for that Customer's transaction.

V. REQUIRED CONDUCT

A. Within five business days after entry of this Final Judgment, MasterCard and Visa shall each delete, discontinue, and cease to enforce in the United States any Rule that it would be prohibited from adopting, maintaining, or enforcing pursuant to Section IV of this Final Judgment.

B. Within five business days after entry of this Final Judgment, Visa shall modify the following portion of its Visa International Operating Regulations "Discount Offer – U.S. Region 5.2.D.2" as follows:

Current language:

Discount Offer – U.S. Region 5.2.D.2

In the U.S. Region, any purchase price advertised or otherwise disclosed by the Merchant must be the price associated with the use of a Visa Card or Visa Electron Card.

A U.S. Merchant may offer a discount as an inducement for a Cardholder to use a means of payment that the Merchant prefers, provided that the discount is:

- Clearly disclosed as a discount from the standard price
- Non-discriminatory, as between a Cardholder who pays with a Visa Card and a cardholder who pays with a “comparable card”

A “comparable card” for purposes of this rule is any other branded, general purpose payment card that uses the cardholder’s signature as the primary means of cardholder authorization (e.g., MasterCard, Discover, American Express). Any discount made available to cardholders who pay with “comparable cards” must also be made available to Cardholders who wish to pay with Visa Cards. Any discount made available to a Cardholder who pays with a Visa Card is not required to be offered to cardholders who pay with “comparable cards.”

Modified language:

Discount Offer – U.S. Region 5.2.D.2

A U.S. Merchant may request or encourage a Cardholder to use a means of payment other than a Visa Card or a Visa Card of a different product type (e.g., Visa Classic Card, Visa Traditional Rewards Card, Visa Signature Card) than the Visa Card the consumer initially presents. Except where prohibited by law, the Merchant may do so by methods that include, but are not limited to:

- Offering the consumer an immediate discount from the Merchant’s list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the consumer uses a particular general purpose payment card with an acceptance brand other than a Visa Card or other particular means of payment
- Offering the consumer an immediate discount from the Merchant’s list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the consumer, who initially presents a

Visa Card, uses instead another general purpose payment card or another means of payment

- Expressing a preference for the use of a particular general purpose payment card or means of payment
- Promoting the use of a particular general purpose payment card with an acceptance brand other than Visa or means of payment through posted information, through the size, prominence, or sequencing of payment choices, or through other communications to consumers
- Communicating to consumers the reasonably estimated or actual costs incurred by the Merchant when a consumer uses a particular general purpose payment card or means of payment or the relative costs of using different general purpose payment cards or means of payment.

C. Within five business days after entry of this Final Judgment, MasterCard shall modify its *MasterCard Rules*, Rule 5.11.1 “Discrimination” in the United States as follows:

Current language:

A Merchant must not engage in any acceptance practice that discriminates against or discourages the use of a Card in favor of any other acceptance brand.

Modified language:

A Merchant may request or encourage a customer to use a payment card with an acceptance brand other than MasterCard or other form of payment or a Card of a different product type (*e.g.*, traditional cards, premium cards, rewards cards) than the Card the consumer initially presents. Except where prohibited by law, it may do so by methods that include, but are not limited to: (a) offering the customer an immediate discount from the Merchant’s list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the customer uses a particular payment card with an acceptance brand other than MasterCard or other particular form of payment; (b) offering the customer an immediate discount from the Merchant’s list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the customer, who initially presents a MasterCard, uses instead another payment card or another form of payment; (c) expressing a preference for the use of a particular payment card or form of payment; (d) promoting the use of a particular general purpose payment card with an acceptance brand other than MasterCard or the use of a particular form or forms of payment through posted information, through the size, prominence, or sequencing of payment choices, or through other

communications to customers (provided that merchants will abide by MasterCard's trademark standards relating to the display of its marks); or (e) communicating to customers the reasonably estimated or actual costs incurred by the Merchant when a customer uses particular payment cards or forms of payment or the relative costs of using different general purpose payment cards or forms of payment.

D. Within ten business days after entry of this Final Judgment, MasterCard and Visa shall each furnish to the Department of Justice and the Plaintiff States an affidavit affirming that it has made the specific changes to its Rules required by Sections V.B (for Visa) and V.C (for MasterCard) of this Final Judgment and describing any additional changes, if any, it made pursuant to Section V.A of this Final Judgment.

E. MasterCard and Visa shall each take the following actions to ensure that Merchants that accept its General Purpose Cards as payment for goods or services (i) are notified of this Final Judgment and the Rules changes MasterCard and Visa make pursuant to this Final Judgment; and (ii) are not restricted, discouraged, or prevented from engaging in any of the practices enumerated in Sections IV.A.1 through IV.A.8 of this Final Judgment:

1. Within ten business days after entry of this Final Judgment, MasterCard and Visa shall each furnish to the Department of Justice and the Plaintiff States, for the approval of the Department of Justice, a proposed form of written notification to be provided to Acquiring Banks for distribution to Merchants:

- a. describing the Rules changes each made pursuant to this Final Judgment; and
- b. informing Merchants that they are permitted to engage in any of the practices enumerated in Sections IV.A.1 through IV.A.8 of this Final Judgment.

Within five business days after receiving the approval of the Department of Justice, the Defendant shall direct its Acquiring Banks to furnish to each of the Merchants in the United States with which the Acquiring Banks have entered an agreement to accept the Defendant's General Purpose Cards as payment for goods or services (i) a paper or electronic copy of the approved notification and (ii) a paper or electronic copy of this Final Judgment (or an Internet link to this Final Judgment). MasterCard and Visa shall direct the Acquiring Banks to provide such information in their next billing statement or within thirty days of their receipt of MasterCard's or Visa's direction, whichever is shorter.

2. Within five business days after entry of this Final Judgment, MasterCard and Visa shall each adopt a Rule forbidding its Acquiring Banks from adopting, maintaining, or enforcing Rules with respect to MasterCard or Visa General Purpose Cards that the Defendant would be prohibited from adopting, maintaining, or enforcing pursuant to Section IV of this Final Judgment.

F. MasterCard and Visa shall each notify the Department of Justice and the Plaintiff States, within five business days of such adoption or modification, if it adopts a new Rule that limits or restrains, or modifies an existing Rule in a manner that limits or restrains how Merchants accept, process, promote, or encourage use of Forms of Payment other than General Purpose Cards or of General Purpose Cards bearing the Brand of another General Purpose Card Network.

VI. COMPLIANCE INSPECTION

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department of Justice, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to MasterCard or Visa, be permitted:

1. access during the Defendant's office hours to inspect and copy, or at the option of the United States, to require the Defendant to provide to the United States and the Plaintiff States hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of the Defendant, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, the Defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by the Defendant.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, MasterCard and/or Visa shall submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested. Written reports authorized under this paragraph may, at the sole discretion of the United States, require a Defendant to conduct, at its

cost, an independent audit or analysis relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of (i) the executive branch of the United States or (ii) the Plaintiff States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a Defendant to the United States and the Plaintiff States, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and the Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States and Plaintiff States shall give the Defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

VIII. NO LIMITATION ON GOVERNMENT RIGHTS

Nothing in this Final Judgment shall limit the right of the United States or of the Plaintiff States to investigate and bring actions to prevent or restrain violations of the antitrust laws concerning any Rule of MasterCard or Visa, including any current Rule and any Rule adopted in the future.

IX. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

X. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures set forth in the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge