

12-4671-cv(L)

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2015

(Argued: September 28, 2015 Decided: June 30, 2016)

Docket Nos. 12-4671-cv(L); 12-4708(CON); 12-4765(CON); 13-4719(CON);
13-4750(CON); 13-4751(CON); 13-4752(CON); 14-32(CON); 14-117(CON);
14-119(CON); 14-133(CON); 14-157(CON); 14-159(CON); 14-192(CON);
14-197(CON); 14-219(CON); 14-241(CON); 14-250(CON); 14-266(CON);
14-303(CON); 14-331(CON); 14-349(CON); 14-404(CON); 14-422(CON);
14-443(CON); 14-480(CON); 14-497(CON); 14-530(CON); 14-567(CON);
14-584(CON); 14-606(CON); 14-663(CON); 14-837(CON)

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IN RE PAYMENT CARD INTERCHANGE FEE
AND MERCHANT DISCOUNT ANTITRUST
LITIGATION

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Before: WINTER, JACOBS, and LEVAL, Circuit Judges.

This antitrust class action was brought on behalf of approximately 12 million merchants against Visa and MasterCard, which are the two largest credit card issuing networks in the United States, as well as against various issuing and acquiring banks, alleging a conspiracy in violation of Section 1 of the Sherman

Act. After nearly ten years of litigation, the parties agreed to a settlement that released all claims in exchange for disparate relief to each of two classes: up to \$7.25 billion would go to an opt-out class, and a non-opt-out class would get injunctive relief. The district court certified these two settlement-only classes, and approved the settlement as fair and reasonable. On this appeal, numerous objectors and opt-out plaintiffs argue that this class action was improperly certified and that the settlement was unreasonable and inadequate. We conclude that the class plaintiffs were inadequately represented in violation of Rule 23(a)(4) and the Due Process Clause. Accordingly, we vacate the district court's certification of this class action and reverse the approval of the settlement.

Vacated, reversed, and remanded.

Judge Leval concurs in a separate opinion.

THOMAS C. GOLDSTEIN (Eric F. Citron, on the brief), Goldstein & Russell P.C., Washington, DC; Stephen R. Neuwirth, Sanford I. Weisburst, Steig D. Olson, and Cleland B. Welton II, Quinn Emanuel Urquhart & Sullivan, LLP, New York, NY; Jeffrey I. Shinder, Gary J. Malone, and A. Owen Glist, Constantine Cannon LLP, New York, NY; Michael J. Canter, Robert N. Webner, and Kenneth J. Rubin, Vorys, Sater, Seymour and Pease LLP, Columbus