

**CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made on June 2, 2017

(the "Execution Date")

Between

**COBURN AND WATSON'S METROPOLITAN HOME DBA METROPOLITAN HOME,
HELLO BABY EQUIPMENT INC., JONATHON BANCROFT-SNELL,
1739793 ONTARIO INC., 9085-4886 QUEBEC INC., PETER BAKOPANOS,
MACARONIES HAIR CLUB AND LASER CENTER INC. OPERATING AS
FUZE SALON**

(the "Plaintiffs")

and

VISA CANADA CORPORATION

(**"Visa"**)

TABLE OF CONTENTS

SECTION 1 - DEFINITIONS	3
SECTION 2 - SETTLEMENT APPROVAL.....	12
2.1 Motions Certifying or Authorizing the Canadian Proceedings and Approving Notice ...	12
2.2 Motions Approving the Settlement Agreement	12
2.3 Agreement on Form of Orders	13
2.4 Sequence of Motions	14
2.5 Best Efforts	14
SECTION 3 - SETTLEMENT BENEFITS.....	14
3.1 Payment of Settlement Amount.....	14
3.2 Taxes and Interest.....	15
3.3 Visa Network Rules.....	16
3.4 Cooperation	17
SECTION 4 - DISTRIBUTION OF SETTLEMENT AMOUNT AND INTEREST	21
4.1 Distribution Protocol.....	21
4.2 No Responsibility for Administration or Fees.....	21
SECTION 5 RELEASES AND DISMISSALS.....	22
5.1 Release of Releasees.....	22
5.2 Covenant Not To Sue	22
5.3 No Further Claims.....	23
5.4 Dismissal of the Canadian Proceedings.....	24
5.5 Dismissal of the Additional Class Proceedings.....	24
5.6 Settlement of Quebec Proceeding	25
5.7 Claims Against Other Entities Reserved	25
SECTION 6 - BAR ORDER AND OTHER CLAIMS.....	25
6.1 British Columbia, Alberta, Saskatchewan and Ontario Bar Order.....	25
6.2 Quebec Waiver or Renunciation of Solidarity Order.....	28
SECTION 7 - EFFECT OF SETTLEMENT.....	29
7.1 No Admission of Liability	29
7.2 Agreement Not Evidence	29
7.3 No Further Litigation & No Assistance to Other Plaintiffs.....	29
SECTION 8 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT PURPOSES ONLY	30
8.1 Settlement Class and Common Issue	30
8.2 Certification or Authorization Without Prejudice	30
SECTION 9 - NOTICE TO SETTLEMENT CLASS	31

9.1	Form and Distribution of Notices	31
9.2	Notice of Distribution.....	31
SECTION 10 - ADMINISTRATION AND IMPLEMENTATION		31
10.1	Mechanics of Administration	31
SECTION 11 - CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES		31
SECTION 12 - TERMINATION OF SETTLEMENT AGREEMENT		32
12.1	Right of Termination.....	32
12.2	If Settlement Agreement Is Terminated.....	34
12.3	Allocation of Monies in the Trust Account Following Termination	35
12.4	Survival of Provisions After Termination.....	35
SECTION 13 - MISCELLANEOUS		35
13.1	Releasees Have No Liability for Administration	35
13.2	Motions for Directions	36
13.3	Further Acts	36
13.4	Publicity	36
13.5	Headings, etc.....	37
13.6	Computation of Time.....	37
13.7	Ongoing Jurisdiction	38
13.8	Governing Law.....	38
13.9	Entire Agreement	38
13.10	Amendments and Waivers	39
13.11	Binding Effect	39
13.12	Counterparts	39
13.13	Negotiated Agreement.....	39
13.14	Language	39
13.15	Transaction	40
13.16	Recitals	40
13.17	Schedules	40
13.18	Notice	40
13.19	Acknowledgements	41
13.20	Authorized Signatures	41

SCHEDULES

**CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

A. WHEREAS the Plaintiffs have commenced the Canadian Proceedings in the Courts and allege that the Defendants, including Visa, participated in the Alleged Conduct, and the Plaintiffs claim class-wide damages allegedly caused as a result of the Alleged Conduct, as well as equitable relief;

B. AND WHEREAS Visa believes that it is not liable in respect of the Alleged Conduct, and believes it has good and reasonable defences in respect of the claims advanced in the Canadian Proceedings;

D. AND WHEREAS Visa does not admit through the execution of this Settlement Agreement any allegation of unlawful conduct as alleged in the Canadian Proceedings or at all;

E. AND WHEREAS the Parties agree that neither this Settlement Agreement nor any statement made in the negotiations thereof shall be deemed or construed to be an admission by or evidence against Visa or evidence of the truth of any of the Plaintiffs' allegations against Visa, or of the impropriety of the Alleged Conduct, which Visa expressly denies;

F. AND WHEREAS, despite its belief that it is not liable in respect of the Alleged Conduct and that it has good and reasonable defences in respect of the claims advanced in the Canadian Proceedings, Visa has negotiated and entered into this Settlement Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation of the Canadian Proceedings and any other present or future litigation arising out of the facts that gave rise to them (including the expenses to be incurred in document production), to avoid the risks inherent in uncertain, complex and protracted litigation and to achieve final resolutions of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs on their own behalf and on behalf of the classes they seek to represent in relation to the Alleged Conduct;

G. AND WHEREAS Visa expressly reserves its rights to contest or appeal certification or authorization of other related or unrelated proceedings (and recognizing that the BC Proceeding has been certified), and to assert that the Canadian Proceedings other than the BC Proceeding would not be appropriately certified or authorized in the absence of this Settlement Agreement;

H. AND WHEREAS this Settlement Agreement does not constitute in any way a precedent to support the certification or authorization of classes of this nature;

I. AND WHEREAS counsel for the Releasees have engaged in extensive arm's-length settlement discussions and negotiations with Class Counsel in respect of this Settlement Agreement, including with the aid of an experienced mediator;

J. AND WHEREAS as a result of these settlement discussions and negotiations, Visa and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of settlement between Visa and the Plaintiffs, both individually and on behalf of the Settlement Class, subject to approval of all Courts;

K. AND WHEREAS as part of this resolution, Visa has agreed to pay the Settlement Amount for the benefit of the Settlement Class and has agreed to modify its No-Surcharge Rule as set out in Schedule C;

L. AND WHEREAS the agreement by the Plaintiffs to accept the Settlement Amount is based, in part, on the value of the Settlement Amount paid under this Settlement Agreement, the value to the Plaintiffs of the modification to Visa's No-Surcharge Rule which Visa agrees to make and the value of the cooperation Visa agrees to render or make available to the Plaintiffs and/or Class Counsel pursuant to this Settlement Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by Visa;

M. AND WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the proposed dismissal of the Canadian Proceedings against Visa, the value of the Settlement Amount, the modification to Visa's No-Surcharge Rule and the cooperation to be provided by Visa, the burdens and expense associated with prosecuting the Canadian Proceedings, including the risks and uncertainties associated with motions, trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement and the consideration provided therein are fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent in each of the Canadian Proceedings;

N. AND WHEREAS the Plaintiffs and the Settlement Class intend to fully and completely settle and resolve the claims advanced or which could have been advanced in the Canadian

Proceedings as against the Releasees on the Effective Date pursuant to this Settlement Agreement;

O. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a nationwide basis, without admission of liability, all of the Canadian Proceedings as against the Releasees;

P. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification or authorization of the Canadian Proceedings, other than the BC Proceeding, as class proceedings and have consented to the Settlement Class and the Common Issue in each of such Canadian Proceedings;

Q. AND WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs in their respective Canadian Proceedings;

R. AND WHEREAS for the purposes of settlement only and conditional on approvals by the Courts as provided for in this Settlement Agreement, the Plaintiffs have consented to a dismissal of the Canadian Proceedings as against Visa;

S. AND WHEREAS Mastercard is settling the Canadian Proceedings by entering into the Mastercard Settlement Agreement;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Canadian Proceedings as against Visa be settled and dismissed with prejudice and without costs, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

(1) ***Additional Class Proceedings*** means the proceeding commenced by 1023926 Alberta Ltd., in the form of an action filed in the Alberta Court, File No. 1203 10620 (Edmonton

Registry); the proceeding commenced by The Crown & Hand Pub Ltd., in the form of an action filed in the Saskatchewan Court, Court File No. 1206 of 2012; the proceeding commenced by Kondiman Foods Inc., in the form of an action filed in the Saskatchewan Court, File No. 834 of 2014 (the “**Kondiman Action**”), unless these proceedings have already been discontinued by court order against the Releasees by the date Settlement Approval is sought pursuant to section 2; and any future proceeding commenced prior to the Effective Date in respect of the Alleged Conduct or relating to any conduct alleged, or which could have been alleged, against Visa by the Plaintiffs in the Canadian Proceedings.

(2) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of Notices and claims administration, including payments to the Fonds d’aide aux actions collectives in Quebec, but excluding Class Counsel Fees.

(3) **Alberta Court** means the Alberta Court of Queen’s Bench.

(4) **Alberta Visa Settlement Class** means all Merchants resident in Alberta who, during the Class Period, accepted payments for the supply of goods and services by way of Visa Credit Cards, except the Excluded Persons.

(5) **Alberta Proceeding** means the proceeding commenced by Macaronies Hair Club and Laser Center Inc., operating as Fuze Salon, in the form of an action filed in the Alberta Court, File No. 1203 18531 (Edmonton Registry).

(6) **Alleged Conduct** means all conduct that has been alleged or could have been alleged as against any Defendant in the Canadian Proceedings, including conduct in respect of or relating in any way to the payment of Merchant Discount Fees, Interchange Fees, the Visa Network Rules or any combination of the foregoing.

(7) **Approval Hearings** means the hearings of the motions brought by Class Counsel for the approval of the terms provided for in this Settlement Agreement in each of the Courts.

(8) **BofA Settlement** means the settlement between the Plaintiffs and Bank of America Corporation which has been approved by the Courts in the Canadian Proceedings.

(9) **BC Court** means the Supreme Court of British Columbia.

(10) **BC Proceeding** means the proceeding commenced by Coburn and Watson's Metropolitan Home dba Metropolitan Home in the form of an action filed in the BC Court (Vancouver Registry), Court File No. VLC-S-S-112003.

(11) **BC Protective Order** means the Consent Order dated September 17, 2012 made in the BC Proceeding.

(12) **BC Visa Settlement Class** means all Merchants resident in British Columbia who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards, except the Excluded Persons.

(13) **Canadian Proceedings** means the BC Proceeding, the Alberta Proceeding, the Saskatchewan Proceeding, the Ontario Proceeding and the Quebec Proceeding.

(14) **Capital One Settlement** means the settlement between the Plaintiffs and Capital One Financial Corporation and Capital One Bank (Canada Branch) which has been approved by the Courts in the Canadian Proceedings.

(15) **Citi Settlement** means the settlement between the Plaintiffs and Citigroup Inc., Citi Cards Canada Inc., Citibank Canada and Citibank N.A. which has been approved by the Courts in the Canadian Proceedings.

(16) **Class Counsel** means Camp Fiorante Matthews Mogerman, Branch MacMaster LLP and Consumer Law Group Inc.

(17) **Class Counsel Fees** means the fees, disbursements, costs, and other applicable taxes or charges of Class Counsel, including any applicable GST, HST, PST or QST.

(18) **Class Period** means March 23, 2001 to the latest date of the last final judgment or order issued with respect to the claims against any of the Defendants in the Canadian Proceedings, including an order approving final settlement of those claims, or any end date of the Class Period provided therein.

(19) **Common Issue** means: Did Visa conspire with others to fix, maintain, increase or control Merchant Discount Fees and/or Interchange Fees in Canada during the Class Period?

(20) **Courts** means the BC Court, the Alberta Court, the Saskatchewan Court, the Ontario Court and the Quebec Court (each a “**Court**”).

(21) **Credit Card** means any card, plate or other payment code, device or service, even where no physical card is issued and the code or device is used for only one transaction (including, without limitation, a plastic card, a mobile telephone, a fob, or any other current or future code, device or service by which a person, business or other entity can pay for goods or services) that is issued or approved for use through a payment network and that may be used to defer payment of debt or incur debt and defer its payment, including cards commonly known as credit cards, charge cards, commercial credit cards, corporate credit cards, fleet cards, or purchasing cards. For greater certainty, Credit Card also includes any process or electronic device or application linked to or supported by, or both, a credit card account permitting payment for the supply of goods or services from a Merchant, but does not include debit cards.

(22) **Defendant(s)** means, individually or collectively, the individuals or entities now or in the future named as a defendant or respondent in the Canadian Proceedings.

(23) **Desjardins Settlement** means the settlement between the Plaintiffs and Fédération des Caisses Desjardins du Québec which has been approved by the Courts in the Canadian Proceedings.

(24) **Distribution Protocol** means a plan to be developed by Class Counsel for distributing the Settlement Amount and accrued interest, in whole or part, as approved by the Courts.

(25) **Document(s)** has the meaning given to that term in Rule 1-1(1) of the *British Columbia Supreme Court Civil Rules*.

(26) **Effective Date** means the day that is the earliest day when each of the Courts has pronounced an order approving this Settlement Agreement and each such order has become a Final Order.

(27) **Excluded Person(s)** means each Defendant and its subsidiaries or affiliates, and the legal representatives, heirs, successors and assigns of each of the foregoing, but does not include Merchants who are affiliates of Excluded Person(s).

(28) **Execution Date** means the date the Parties execute this Settlement Agreement.

(29) **Final Order** means a final order made by a Court approving this Settlement Agreement that either (i) has not been appealed before the time to appeal such order has expired, if an appeal lies, or (ii) has been affirmed upon a final disposition of all appeals. For further certainty, any order made by a Court approving this Settlement Agreement will not become a Final Order until the time to appeal such an order has expired without any appeal having been taken or until the order has been affirmed upon a final disposition of all appeals.

(30) **Interchange Fees** means interchange reimbursement fees collected by Issuers arising from transactions made under the terms of the Visa Network Rules in Canada.

(31) **Issuers** means the banks or other financial institutions which have issued Visa Credit Cards.

(32) **Mastercard** means Mastercard International Incorporated.

(33) **Mastercard Settlement Agreement** means any settlement agreement in relation to the Canadian Proceedings which has been, or will be, entered into by Mastercard with the Plaintiffs.

(34) **Mastercard Termination** means the termination or purported termination of the Mastercard Settlement Agreement.

(35) **Merchant Discount Fees** means fees paid by Merchants arising from the acceptance by them of payments for the supply of goods and services by way of Visa Credit Cards in Canada.

(36) **Merchants** means all persons or entities resident or operating in Canada who accept payments for the supply of goods and services by way of Visa Credit Cards.

(37) **Non-Settling Defendant(s)** means any Defendant that is not a Settled Defendant.

(38) **No Surcharge Rule** means the prohibition in the Visa Network Rules against Merchants imposing surcharges on Visa transactions including purchases made using Visa Credit Cards, regardless of the Merchant Discount Fee or Interchange Fee associated with the use of a particular credit card.

(39) **Notice of Claims Procedure** means any form or forms of notice, agreed to by the Plaintiffs and Visa, or such other form or forms as may be approved by the Courts, which

informs the Settlement Class of: (i) the approval of this Settlement Agreement; and (ii) the process by which the Settlement Class Members may apply to obtain compensation from the Settlement Amount.

(40) **Notices** means (i) Pre-Approval Notice; (ii) Notice of Claims Procedure; (iii) notice of termination of this Settlement Agreement if it is terminated after the notice provided for in (i) above or otherwise ordered by the Courts; and (iv) any other notice that may be required by the Courts.

(41) **Ontario Court** means the Ontario Superior Court of Justice.

(42) **Ontario Proceeding** means the proceeding commenced by Jonathon Bancroft-Snell and 1739793 Ontario Inc., in the form of a Statement of Claim filed in the Ontario Court (Toronto Registry), Court File No. CV-11-426591CP (Toronto).

(43) **Ontario Visa Settlement Class** means all Merchants who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards, except the BC Visa Settlement Class, the Alberta Visa Settlement Class, the Saskatchewan Visa Settlement Class, the Quebec Visa Settlement Class, and Excluded Persons. For greater certainty, any legal person established for a private interest and any partnership resident in Quebec, which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment, and any legal person established for a public interest resident in Quebec, shall be included in this Ontario Visa Settlement Class.

(44) **Parties** means the Plaintiffs and Visa.

(45) **Party** means a Plaintiff or Visa.

(46) **Person(s)** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives or assignees.

(47) **Plaintiff(s)** means the plaintiffs in the Canadian Proceedings, and any other Person who may in the future be added or substituted as a plaintiff to any of the Canadian Proceedings.

(48) **Pre-Approval Notice** means the form or forms of notice, agreed to by the Plaintiffs and Visa, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the principal elements of this Settlement Agreement; (ii) the certification or authorization of the Canadian Proceedings, other than the BC Proceeding, for settlement purposes; and (iii) the dates and locations of the Approval Hearings.

(49) **Proportionate Liability** means the proportion of any judgment that, had they not settled, the Courts and/or an arbitration tribunal would have apportioned to the Releasees and shall also be deemed to include any amount that a Releasee would have been liable to pay to a Non-Settling Defendant as indemnification or contribution in the absence of this Settlement Agreement and the bar orders contained herein.

(50) **Quebec Court** means the Superior Court of Quebec.

(51) **Quebec Opt-Out Excluded Person(s)** means any member of the Quebec Visa Settlement Class who was included in the Ontario settlement class pursuant to the order of the Ontario Court pronounced August 6, 2015 in the Ontario Proceeding and, for greater certainty, includes any legal person established for a private interest and any partnership resident in Quebec, which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment, and any legal person established for a public interest resident in Quebec.

(52) **Quebec Proceeding** means the proceeding commenced by 9085-4886 Quebec Inc. and Peter Bakopanos, in the form of a Motion to authorize the bringing of a class action and to ascribe the status of representative in the Quebec Court, Court File No. 500-06-000549-101 (District of Montreal).

(53) **Quebec Visa Settlement Class** means all natural persons, legal persons established in the private interest and partnerships, resident in Quebec, who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards, except the Excluded Persons and Quebec Opt-Out Excluded Person(s).

(54) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, collective, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs,

expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, in law, under statute or in equity, that the Releasors or any of them whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, with respect to or relating to any of the Alleged Conduct occurring anywhere, from the beginning of time through the pendency of the Canadian Proceedings, including, without limitation, any such claims which have been asserted, would have been asserted or could have been asserted, or any future claims related to past, current or future conduct to the extent alleged in the Canadian Proceedings whether in Canada or elsewhere, including continued adherence to the Visa Network Rules. Notwithstanding the generality of the foregoing, the Parties expressly acknowledge and agree that nothing in this Settlement Agreement restricts the ability of United States or other non-Canadian affiliates or related entities or businesses of the Releasors from pursuing any claims relating to non-Canadian interchange in jurisdictions outside Canada, including the United States.

(55) **Releasee(s)** means, jointly and severally, individually and collectively, Visa and all of its respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of its respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives (subject to such particular inclusions or exclusions of individuals as may be specified in writing by Visa in its sole discretion prior to the Execution Date; and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants and any affiliates of the Non-Settling Defendants, and any Issuers.

(56) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective present, former, and future direct and indirect parents, affiliates, subsidiaries, officers, directors, attorneys, servants, predecessors, successors, trustees, representatives, heirs, executors, liquidators, administrators, insurers, and assigns of the foregoing.

(57) **Saskatchewan Court** means the Saskatchewan Court of Queen's Bench.

(58) **Saskatchewan Proceeding** means the proceeding commenced by Hello Baby Equipment Inc. in the form of a Statement of Claim filed in the Saskatchewan Court of Queen's Bench, Court File No. 133 of 2013.

(59) **Saskatchewan Visa Settlement Class** means all Merchants resident in Saskatchewan who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards, except the Excluded Persons.

(60) **Settled Defendants** means the Defendants released under the BofA Settlement, Capital One Settlement, Citi Settlement, Desjardins Settlement and any other Defendant released pursuant to any other settlement agreement entered into between the Plaintiffs and a Defendant and approved by the Courts as of the Effective Date.

(61) **Settlement Agreement** means this agreement, including the Recitals and Schedules.

(62) **Settlement Amount** means the all-inclusive sum of CAD \$19.5 million.

(63) **Settlement Class** means all Persons included in the BC Visa Settlement Class, the Alberta Visa Settlement Class, the Saskatchewan Visa Settlement Class, the Ontario Visa Settlement Class and the Quebec Visa Settlement Class.

(64) **Settlement Class Member(s)** means a member of the Settlement Class except the Visa Opt Outs.

(65) **Tribunal Documents** means the Documents already produced by Visa in *The Commissioner of Competition v. Visa Canada Corporation and MasterCard et al.*, Case No. CT-2010-010.

(66) **Trust Account** means an interest bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel for the benefit of the Settlement Class Members.

(67) **US Documents** means documents or records received by US Plaintiffs' Counsel in the course of the US Proceedings, but shall not include any such documents the production of which would require third party notice or consent.

(68) **US Plaintiffs' Counsel** means any law firm representing a plaintiff in the US Proceedings.

(69) **US Proceedings** means all actions consolidated for pretrial proceedings in the United States District Court for the Eastern District of New York in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, Docket No. MDL 1720.

(70) **Visa** means Visa Canada Corporation.

(71) **Visa Documents** means any Documents provided by Visa to Class Counsel pursuant to section 3.4 of this Settlement Agreement.

(72) **Visa Settlement Confidential Opt Out Threshold** means the threshold agreed to by the Parties, as set out in Schedule D to this Settlement Agreement and signed prior to or contemporaneously with the execution of this Settlement Agreement, which Schedule shall be kept confidential, and filed and maintained under seal in any filings in the Courts, and may be shown to judges of the Courts but shall not otherwise be disclosed. Once met, the Visa Settlement Confidential Opt Out Threshold shall give rise to a right of termination pursuant to section 12.1 of this Settlement Agreement.

(73) **Visa Credit Cards** means Credit Cards bearing the trademark "Visa" and authorized by Visa to be issued by Issuers.

(74) **Visa Network Rules** means the Visa Canada Operating Regulations, Visa International Operating Regulations, Visa Core Rules, Visa Product and Service Rules in effect as of the Effective Date or as modified pursuant to section 3.3 of this Settlement Agreement or as amended or modified in future to the extent that they are substantially similar to the foregoing, and for further certainty includes the determination and setting of Interchange Fees by Visa, as a default rate or otherwise, pursuant to the Visa Network Rules, the Visa Canada Operating Regulations and Visa International Operating Regulations.

(75) **Visa Opt Out** means any Person who has validly opted out of any of the Canadian Proceedings within the time permitted for doing so.

SECTION 2 - SETTLEMENT APPROVAL

2.1 Motions Certifying or Authorizing the Canadian Proceedings and Approving Notice

(1) At a time mutually agreed to by the Plaintiffs and Visa after this Settlement Agreement is executed, the Plaintiffs shall bring a motion before each of the Courts for orders certifying or

authorizing each of the Canadian Proceedings as a class proceeding as against Visa for settlement purposes (except in B.C.) and approving the Pre-Approval Notice.

(2) The Ontario order referred to in section 2.1(1) shall be substantially in the form set out in Schedule A.

(3) The Quebec, B.C., Alberta and Saskatchewan orders referred to in section 2.1(1) shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order referred to in section 2.1(2), taking into account the prior certification of the BC Proceeding, the rules and practices of each province and any changes required by the Courts of each province that are acceptable to the parties.

2.2 Motions Approving the Settlement Agreement

(1) Following the pronouncement of the orders referred to in sections 2.1(2) and 2.1(3) and the expiration of any applicable opt-out period, and at a time mutually agreed to by the Parties, the Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.

(2) The BC order approving this Settlement Agreement referred to in section 2.2(1) shall be substantially in the form set out in Schedule B.

(3) The Quebec, Ontario, Alberta and Saskatchewan orders approving this Settlement Agreement referred to in section 2.2(1) shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the BC order referred to in section 2.2(2), taking into account the rules and practices of each province and any changes required by the Courts of each province that are acceptable to the parties.

2.3 Agreement on Form of Orders

(1) It is a fundamental term of this Settlement Agreement that the Plaintiffs and Visa must agree on the form and content of the orders to be sought pursuant to sections 2.1 and 2.2 (collectively, the "**Certification and Approval Orders**"), including the form of Pre-Approval Notice, and that the issued Certification and Approval Orders and the Pre-Approval Notice must be consistent with the terms of this Settlement Agreement.

(2) At least ten days in advance of the motions referred to in sections 2.1(1) and 2.2(1), Class Counsel shall provide Visa with an opportunity to review and approve drafts of the Notices

of Application and any supporting materials which are intended to be filed with the Courts in support of those motions.

2.4 Sequence of Motions

(1) At any time as mutually agreed to by the Plaintiffs and Visa after this Settlement Agreement is executed, the Plaintiffs may bring motions before the Courts to request that the Courts hold joint hearings to consider any of the motions required by this Settlement Agreement pursuant to the *Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions*.

(2) If no such request is made, or if the Courts do not agree to hold joint hearings, the Parties agree that, unless they agree otherwise, or unless any Court orders or decides otherwise, any motions required by this Settlement Agreement shall be heard first by the BC Court. The Parties may take steps to schedule parallel motions in Quebec, Ontario, Alberta and Saskatchewan before any BC hearing, but, if necessary, Class Counsel may seek before the hearings in other Courts an adjournment of these hearings to permit the BC Court to render its decision on the motions.

2.5 Best Efforts

The Parties shall use their best efforts and take all necessary steps to secure, in a prompt and timely manner, the orders, approvals, notices and other outcomes that are contemplated by this Settlement Agreement and are required to carry it into effect.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Within sixty (60) days of the Execution Date, Visa agrees to pay the Settlement Amount to Class Counsel in trust for the Releasers in full satisfaction of: (i) all payment obligations under this Settlement Agreement; and (ii) the Released Claims against the Releasees.

(2) None of the Releasees shall have any obligation to pay any amount, for any reason, pursuant to or in furtherance of this Settlement Agreement, other than Visa's obligation to pay the Settlement Amount as described in section 3.1(1).

(3) Once the Settlement Amount is paid by Visa to Class Counsel in accordance with section 3.1(1), that sum will be received by Class Counsel in trust in full satisfaction of all

payment obligations under this Settlement Agreement and in full satisfaction of the Released Claims against the Releasees.

(4) Class Counsel shall establish and maintain the Trust Account as provided for in this Settlement Agreement and shall pay the Settlement Amount into the Trust Account immediately on receipt from Visa. Class Counsel shall not pay out all or part of the monies in the Trust Account except in accordance with this Settlement Agreement or in accordance with an order of the Courts obtained after written notice to Visa, and in any event:

- (a) no amount shall be paid out of the Trust Account until after the Effective Date, except as permitted pursuant to section 3.1(5) or required pursuant to section 3.2(2), and
- (b) except as permitted by section 3.1(5) or section 11(1) or required pursuant to section 3.2(2), no amount shall be paid out until the Additional Class Proceedings have been dismissed as required by section 5.5.

(5) Class Counsel may pay out all or part of the monies in the Trust Account for the purpose of purchasing one or more guaranteed investment certificates (“GICs”) issued by a Canadian Schedule 1 bank or such other secure investments as the Parties may agree in writing, provided that any GICs or investments so purchased will be held in trust for the Parties by Class Counsel and shall be deemed to form part of the Trust Account and any proceeds of redemption or sale shall immediately be repaid to the Trust Account.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.

(2) Subject to section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Class. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Amount shall be paid from the Trust Account.

(3) Visa shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to Visa who, in such case, shall be responsible for the payment of all taxes on such interest.

3.3 Visa Network Rules

(1) Subject to any applicable notice requirements and any delays associated with technological or other technical requirements, Visa shall implement a modification to Visa's Canadian No Surcharge Rule in accordance with Schedule C hereto no later than the day which is eighteen (18) months after the Effective Date. Visa's obligation to maintain this rule modification shall expire five years after its implementation. Visa shall start planning to implement the modification after the Effective Date and will provide Class Counsel with updates on implementation, on demand, every six months after the Effective Date.

(2) The rule modification referred to in section 3.3(1) is not required to apply to any Visa Opt Out.

(3) Subject to section 3.3(4), the Plaintiffs shall not continue to assert or pursue in the Canadian Proceedings any claim for modification or abrogation of any of the Visa Network Rules in effect as at the Effective Date or as modified or to be modified pursuant to this Settlement Agreement or seek any declaratory or other relief asserting that the Visa Network Rules are illegal, unlawful or unenforceable and further agree to promptly amend the pleadings in the Canadian Proceedings to remove any such claim and further agree to expressly advise the trial court in any Canadian Proceeding both orally and in writing that no such claim is being asserted. Notwithstanding the foregoing, nothing in this Settlement Agreement will prevent the Plaintiffs from continuing to seek damages from the Non-Settling Defendants. For clarity, this section does not bar the Plaintiffs from seeking findings on the required elements of the existing causes of action for damages against the Non-Settling Defendants.

(4) Notwithstanding the release provided for in section 5.1(1) and the covenant provided for in section 5.2(1), if Visa, at any point in time after the Effective Date, reinstates the No Surcharge Rule or an equivalent provision that purports to bar a Merchant's right to impose a surcharge based on the Merchant Discount Fee or Interchange Fee associated with the use of a

particular Credit Card ("**Reinstated Rule**"), then any Releasor shall be at liberty to pursue a claim for damages, injunctive, or declaratory relief against the Releasees with respect to the Reinstated Rule.

3.4 Cooperation

(1) To the extent not previously provided to the Plaintiffs, and subject to the limitations set forth in this Settlement Agreement, Visa agrees to cooperate with Class Counsel in the manner specifically set forth below.

(2) Within sixty (60) days after the Effective Date, or at a time mutually agreed upon in writing by Class Counsel and Visa, Visa shall provide the Tribunal Documents to Class Counsel in the form produced to the Commissioner of Competition, subject to appropriate confidentiality protections and Visa's ability to obtain consent from third parties, where required, to the disclosure of such documents.

(3) Only after having reviewed the Tribunal Documents, Class Counsel may request that Visa authorize US Plaintiffs' Counsel to release certain of the US Documents to Class Counsel ("**US Document Request**"), provided that Class Counsel have determined that those documents are not included in the Tribunal Documents, and further, that any US Document Request shall:

- (a) be reasonable;
- (b) be targeted and identify specific US Documents;
- (c) relate solely to the US Documents (and be subject to necessary confidentiality restrictions stipulated in the US Proceedings or otherwise, including that Visa may at its discretion exclude or redact Visa's US Documents containing confidential third party information or data);
- (d) relate only and specifically to matters relevant to the Canadian Proceedings; and
- (e) be subject to refusal by Visa, in whole or in part, in the event and to the extent that any US Document request does not meet the requirements of this section 3.4(3)(a)-(d), subject to the right of a Party to seek the assistance of the BC

Court in accordance with section 3.4(13) hereof in the event of any dispute with respect to any US Document Request.

(4) Following receipt and review by Plaintiffs of documentary productions from all other defendants (including Settled Defendants), Plaintiffs may request further, reasonable production of specific documents from Visa, ("**Additional Document Request**"), expressly excluding Tribunal Documents and US Documents, on the express understanding that, unless otherwise agreed, any Additional Document Request shall be limited to samples or examples of the types of Documents requested. Visa shall not be requested by Plaintiffs, nor required to search for or produce "all" or "substantially all" Documents in response to any Additional Document Request and while Visa may, where necessary, use some electronic searching processes to respond to an Additional Document Request, resort to such electronic searching processes shall not be necessary or required where other reasonable means of collecting the requested Documents are available and in no event shall Visa be requested by Plaintiff or required to conduct extensive, comprehensive searches (electronic or otherwise) to respond to any Additional Document Request.

(5) If any request for Document production expressly permitted by this Settlement Agreement would otherwise require the production by Visa of any third party Document that cannot be disclosed pursuant to confidentiality obligations, court orders, or third party consent rights, Visa will reasonably consider making any request necessary to obtain consent or authorization for the release of such Documents. If Visa decides to make the request and the third party withholds consent or authorization, Visa will allow the Plaintiffs to, at their own expense, assert any rights Visa has to permit production of such Documents to the Plaintiffs, provided that in no case shall Visa be required to advance or respond to any such contested proceedings, unless there is a legitimate commercial reason preventing the granting of such consent.

(6) In connection with any Documents produced by Visa pursuant to this Settlement Agreement (including pursuant to a bar order which grants a Non-Settling Defendant an ability to apply for: (i) documentary or oral discovery from Visa; (ii) service of a request or notice to admit on Visa; or (iii) production of a witness at a hearing or trial), Visa acting reasonably shall be at liberty to designate such Documents as "Confidential" or "Highly Confidential" pursuant to the BC Protective Order or any other order which may be obtained. Prior to, or at the same time as the approval of this Settlement Agreement, Class Counsel shall make best efforts to obtain,

23143763.3

in each of the other Canadian Proceedings, a protective/confidentiality order in substantially the same form as the BC Protective Order. To the extent that it is not possible to obtain a protective order in the form of the BC Protective Order at the time of approval of this Settlement Agreement and Documents produced by Visa are later required for use in the Canadian Proceedings other than the BC Proceeding, Class Counsel shall seek at that time, on a contested basis if necessary and on written notice to Visa, protective orders similar in substance to the BC Protective Order, so that any Documents produced by Visa to Class Counsel under this Settlement Agreement, for use in the Canadian Proceedings, which qualify as Confidential or Highly Confidential, will be produced subject to a protective order. This Settlement Agreement shall be contingent on Class Counsel obtaining, in each of the other Canadian Proceedings, a protective/confidentiality order in substantially the same form as the BC Protective Order or such other form as the parties may agree. It is understood that this condition is for the sole benefit of Visa and may be waived by Visa.

(7) It is understood and agreed that the Plaintiffs and Class Counsel shall not, without the express written consent of Visa, directly or indirectly, use or disclose any information or Documents provided by Visa for any purpose other than the investigation or prosecution of the claims in the Canadian Proceedings, nor, except as expressly permitted herein, share with any other Persons, including, but not limited to, any Settlement Class Members or any counsel or plaintiffs in any other action on behalf of Merchants, any information or Visa Documents obtained in connection with this Settlement Agreement, except in the event that a court in Canada expressly orders such information or Documents to be disclosed. In no circumstances; however, may the Plaintiffs, Settlement Class Members and/or Class Counsel apply for or consent to such an order, and promptly upon becoming aware of an application for such an order, Class Counsel shall immediately notify Visa of the application so that Visa may intervene in such proceedings. The disclosure restrictions set forth in this section 3.4(7) do not apply to otherwise publicly available Documents and information.

(8) It is understood and agreed that any Visa Documents may be confidential and may be designated as confidential in accordance with and subject to the terms of any protective/confidentiality order(s) issued in the Canadian Proceedings, and the Plaintiffs, Settlement Class Members and Class Counsel agree to comply with the terms of such order(s).

(9) Upon the final judgment or order being entered by a Court in the Canadian Proceedings, including an order denying the certification or authorization of any of the Canadian Proceedings

as class proceedings, if requested by Visa, the Plaintiffs, Class Members and/or Class Counsel shall return to Visa or destroy, and provide Visa with a written confirmation by Class Counsel of such destruction, all Documents or other materials provided to the Plaintiffs or Class Counsel by Visa pursuant to this Settlement Agreement. Nothing contained in this section 3.4(9) shall be construed to require the Plaintiffs or Class Counsel to return any of their work product.

(10) For purposes of document authentication only, Visa agrees to produce at trial, if requested by Class Counsel, and only to the extent reasonably necessary, a single witness.

(11) The provisions set forth in this Settlement Agreement are the exclusive means by which the Plaintiffs, Settlement Class Members and Class Counsel may obtain discovery, information or Documents from Visa or its current or former officers, directors or employees. The Plaintiffs, Settlement Class Members and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel, other than at trial, the evidence of Visa or its current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(12) When and if a motion is granted by the Courts to distribute the Settlement Amount to Settlement Class Members, Visa shall make reasonable efforts to provide to Class Counsel, in machine readable format where available, information that can be produced without undue burden and subject to Visa's confidentiality, privacy or other contractual obligations to third parties, and as is identified by Class Counsel as reasonably necessary to effectuate the Notice Plan and the Plan of Administration and Distribution. Visa shall also provide reasonable cooperation and assistance to Class Counsel and/or the Class Administrator in understanding and utilizing such information for purposes of effectuating the distribution. The Parties shall cooperate to ensure that the information is produced and cooperation given without imposing any undue burden on Visa. In particular, Visa will not be required to restore historical information and Visa makes no warranty as to the quality of the information it will be able to provide. Visa will not delete any information identified to Visa by Plaintiffs as responsive under this section 3.4(12) that is in its possession without the consent of Class Counsel. Visa shall also provide readily available contact information for the largest non-bank acquirers.

(13) The Parties shall make good faith efforts to resolve any disputes with respect to Documents provided for in this Settlement Agreement, on the understanding that the BC Court

shall maintain jurisdiction to resolve any such disputes if the Parties cannot agree. If the Plaintiffs come to the view that Visa has breached the cooperation provisions set out in section 3.4, it may bring an application to the BC Court seeking enforcement of the cooperation provisions, or an order that the lack of cooperation entitles the Plaintiffs to terminate the agreement pursuant to section 12.1(1)(f).

(14) A material factor influencing the decision by Visa to execute this Settlement Agreement is its desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from Visa and to avoid seeking information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue, unreasonable or disproportionate burden or expense on Visa. In interpreting Visa's obligations under this Settlement Agreement to produce documents, any Court shall take into account that a significant reason for Visa agreeing to this Settlement Agreement is to materially limit its burden of documentary discovery.

SECTION 4 - DISTRIBUTION OF SETTLEMENT AMOUNT AND INTEREST

4.1 Distribution Protocol

At a time within the discretion of Class Counsel, Class Counsel will seek orders from the Courts approving a Distribution Protocol.

4.2 No Responsibility for Administration or Fees

(1) The Settlement Class shall bear all risks related to the investment of the monies in the Trust Account. Visa shall not have any responsibility, financial obligation or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees and any responsibility, financial obligation or liability as a result of any decrease or depreciation of the value of the Trust Account, howsoever caused, including but not limited to, a decrease or depreciation in the value of any investments purchased and/or held in the Trust Account.

(2) All funds held by Class Counsel shall be considered to be in *custodia legis* of the Courts, shall be held in Canada, and shall remain subject to the jurisdiction of the Courts until such time as such funds have been distributed pursuant to this Settlement Agreement and/or further order of the Courts.

(3) It is a condition of Visa's payment of the Settlement Amount to Class Counsel in trust that Class Counsel undertakes to indemnify, defend, and hold harmless Visa and its respective directors, officers and employees from and against any harm, injury or liability suffered by reason of the use, misuse, erroneous disbursement, or other action taken or failure to act by Class Counsel with the Settlement Amount or funds in the Trust Account not strictly in accordance with the provisions of this Settlement Agreement or any order of the Courts.

SECTION 5 RELEASES AND DISMISSALS

5.1 Release of Releasees

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors shall be deemed to and do hereby forever and absolutely release, acquit and discharge the Releasees from the Released Claims. The Parties shall use their best efforts to have the terms of the release contemplated herein incorporated into the orders obtained from the Courts approving this Settlement Agreement. The Plaintiffs and Settlement Class Members hereby acknowledge that the payments and other consideration contained in this Settlement Agreement are full and complete compensation for the Released Claims. They also acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Settlement Agreement. It is the Releasors' intention to release fully, finally and forever all Released Claims (including, without limitation, anything that might be based on additional or different facts later discovered), and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

(2) If, subsequent to the Execution Date, the Plaintiffs enter into a settlement with any Non-Settling Defendant which provides for a release that is broader or otherwise more favourable to the Non-Settling Defendant than the release set out in section 5.1(1), then the Releasors will provide Visa with a release on the same terms, effective as of the Execution Date.

5.2 Covenant Not To Sue

(1) Notwithstanding section 5.1(1), for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to sue or make any claim in any way or to threaten, commence, participate in, or continue any proceeding in

any jurisdiction against the Releasees in respect of or in relation to the Released Claims. The Parties agree that the Final Orders entered by the Courts shall also enjoin the Releasors from making or pursuing such additional claims.

(2) The Plaintiffs and Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Settlement Agreement, and that it is their intention to fully, finally and forever covenant and undertake not to sue or make any claim against the Releasees as set out in this section 5.2, and in furtherance of such intention, this covenant not to sue shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

5.3 No Further Claims

(1) The Releasors (i) shall not now or hereafter threaten, institute, prosecute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Persons, any action, suit, cause of action, claim, proceeding, complaint or demand against or collect or seek to recover from any Releasee or any other Persons who will or could bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity, or other relief against any Releasee in respect of any Released Claim, except for the continuation of the Canadian Proceedings against the Non-Settling Defendants or other Persons who are not Releasees, and (ii) are permanently barred and enjoined from doing so.

(2) For further certainty, the intention of the Releasors is to release the Releasees from all Released Claims by Settlement Class Members or those claiming through them up to the later of the date of the last final judgment or order issued with respect to the claims against any of the Defendants in the Canadian Proceedings or any later date of release provided for in any final judgment or order against any of the Defendants in the Canadian Proceedings. The Releasors agree that a confirmation of the release of the Released Claims against the Releasees up to the date of any further settlement agreements with Non-Settling Defendants will be included as a term of any such settlement agreement. The Releasors further agree that if any Notice that provides for an opportunity to opt-out is issued to the Settlement Class in the future with respect to settlement with or judgment against the Non-Settling Defendants, the Releasors will include in any such Notice as further notice to the Settlement Class that the Released Claims have

already been released as against the Releasees and to provide an opportunity for any Persons who commenced accepting Visa Credit Cards after the date of the original Notice, and consequently have become members of the Settlement Class after the date of the original Notice, to opt out.

(3) Before any further steps are taken in the Kondiman Action, Class Counsel shall cause the plaintiff in the Kondiman Action to amend its Statement of Claim to: (i) discontinue the Kondiman Action as against the Releasees; and (ii) reduce or limit its claims against the remaining defendants in the Kondiman Action to not be entitled to claim or recover from said remaining defendants that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the Proportionate Liability of the Releasees to be proven at trial or otherwise and which the remaining defendants might or could seek to claim against the Releasees. If any party to the Kondiman Action at any time purports to commence, maintain or continue a claim against the Releasees, Class Counsel may apply, at their own expense, to strike such claim, and if such application is denied, and after all appeals have been taken, or if no such application is made, Class Counsel shall cause the plaintiff in the Kondiman Action to forthwith discontinue the Kondiman Action in its entirety. The Plaintiffs and Class Counsel shall indemnify the Releasees with respect to any costs incurred by any of the Releasees with respect to any such claim, any application to strike such claim, or any award of costs which may be made against any of the Releasees resulting from any application brought by Class Counsel pursuant to this section 5.3(3), including the costs of any related appeals.

5.4 Dismissal of the Canadian Proceedings

The Final Order of each Court approving this Settlement Agreement as required by sections 2.2(2) and 2.2(3) must provide that the proceeding in which the order is granted shall, upon the Effective Date, be dismissed with prejudice and without costs as against any and all Releasees that are Defendants in that proceeding.

5.5 Dismissal of the Additional Class Proceedings

(1) The Additional Class Proceedings shall be dismissed as against any and all Releasees that are Defendants in the Canadian Proceedings. Moreover, Class Counsel shall bring or oppose any motions that are necessary to dismiss the Additional Class Proceedings prior to

distribution to Class Members of the settlement funds, and the Releasees shall not be responsible for any costs incurred or otherwise ordered in bringing or adjudicating such motions.

(2) If any of the plaintiffs in the Additional Class Proceedings or their counsel takes any step in those proceedings or expresses any intention to proceed with the Additional Class Proceedings or any similar proceeding against Visa, Class Counsel will take immediate steps to seek to secure the dismissal of the Additional Class Proceedings.

(3) Class Counsel undertakes to indemnify, defend, and hold harmless Visa with respect to any and all costs incurred by Visa in association with and prior to the dismissal or discontinuance of the Additional Class Proceedings.

5.6 Settlement of Quebec Proceeding

The Quebec Proceeding shall be settled, without costs and without reservation as against Visa and any and all Releasees that are Defendants in the Quebec Proceeding and the Parties shall sign and file a notice of settlement out of court with the Quebec Court.

5.7 Claims Against Other Entities Reserved

Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Settlement Class Members against any Person other than the Releasees.

SECTION 6 - BAR ORDER AND OTHER CLAIMS

6.1 British Columbia, Alberta, Saskatchewan and Ontario Bar Order

(1) The Plaintiffs in the BC Proceeding, the Alberta Proceeding, the Saskatchewan Proceeding and the Ontario Proceeding shall seek a bar order from the BC Court, the Alberta Court, the Saskatchewan Court and the Ontario Court respectively, providing for the following:

- (a) All claims for contribution, indemnity or other claims over against a Releasee, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes, fees and costs, relating to the Released Claims which were or could have been brought in the Canadian Proceedings or otherwise, by any Non-Settling Defendant, Settled Defendant or any other Person or party, against a Releasee, or by a Releasee against any Non-Settling Defendant or any other Person or party (excepting (i) a claim by a Releasee against any Person

excluded in writing from the definition of Releasees; (ii) a claim by a Releasee pursuant to a policy of insurance, provided any such claim involves no right of subrogation against any Non-Settling Defendant; (iii) a claim by a Visa Opt Out; and (iv) a claim by a Non-Settling Defendant or any Person or party for contribution, indemnity or other claims over relating to Interchange Fees that have not been released pursuant to section 5.1) are barred, prohibited and enjoined in accordance with the terms of the order.

- (b) Also for greater certainty, the bar order in section 6.1(1)(a) deals only with claims over and is not intended to bar *bona fide* independent and direct claims and causes of action between Visa as a settling defendant and any Non-Settling Defendant for relief other than that claimed by the Plaintiffs in the Canadian Proceedings.
- (c) If any one of the BC Court, the Alberta Court, the Saskatchewan Court, the Ontario Court or any appellate court of competent jurisdiction determines that there is a right of contribution, indemnity or any other claims over, whether in equity or in law, by statute, contract, or otherwise:
 - (i) The members of the BC Visa Settlement Class, Alberta Visa Settlement Class, Saskatchewan Visa Settlement Class and Ontario Visa Settlement Class shall reduce or limit their claims against the Non-Settling Defendants (and/or named or unnamed co-conspirators who are not Releasees) to not be entitled to claim or recover from the Non-Settling Defendants and/or named or un-named co-conspirators who are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
 - (ii) the Courts shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other final disposition of the BC Proceeding, the Alberta Proceeding, the Saskatchewan Proceeding or the Ontario Proceeding, whether or not the Releasees remain in the

Canadian Proceedings and appear at the trial or such other final disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the BC Proceeding, Alberta Proceeding, Saskatchewan Proceeding or Ontario Proceeding, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the BC Proceeding, Alberta Proceeding, Saskatchewan Proceeding or Ontario Proceeding and shall not be binding on the Releasees in any other proceedings.

- (d) A Non-Settling Defendant may, on motion to the BC Court, Alberta Court, Saskatchewan Court or Ontario Court brought on at least ten (10) days' notice to counsel for Visa, seek orders for the following:
- (i) documentary discovery and an affidavit or list of documents in accordance with the relevant rules of civil procedure from Visa;
 - (ii) oral discovery of a representative of Visa, the transcript of which may be read in at trial;
 - (iii) leave to serve a request or notice to admit on Visa in respect of factual matters; and/or
 - (iv) the production of a representative of Visa to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

(2) Visa retains all rights to oppose such motion(s) brought under section 6.1(1)(d).

(3) A Non-Settling Defendant may serve the motion(s) referred to in section 6.1(1)(d) on Visa by service on counsel of record for Visa in any of the Canadian Proceedings.

(4) To the extent that an order is made pursuant to section 6.1(1)(d) and rights of discovery are granted to a Non-Settling Defendant, a copy of all discovery evidence obtained pursuant thereto, whether oral or documentary in nature, shall promptly be delivered by Visa to the Plaintiffs and Class Counsel.

6.2 Quebec Waiver or Renunciation of Solidarity Order

The Plaintiffs and Visa agree that the Quebec order approving this Settlement Agreement must include an order providing for the following:

- (a) the Plaintiffs in Quebec and the members of the Quebec Visa Settlement Class expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds of the Releasees, and the Non-Settling Defendants are thereby released with respect to the Proportionate Liability of the Releasees proven at trial or otherwise, if any;
- (b) the Quebec Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Quebec Proceeding, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Quebec Proceeding, and any determination by the Quebec Court in respect of the Proportionate Liability of the Releasees shall only apply in the Quebec Proceeding and shall not be binding on the Releasees in any other proceeding;
- (c) the Plaintiffs in Quebec and the members of the Quebec Visa Settlement Class shall henceforth only be able to claim and recover damages, including punitive damages as the case may be, attributable to the conduct of the Non-Settling Defendants;
- (d) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible, released and void in the context of the Quebec Proceeding, provided that *bona fide* independent and direct claims and causes of action between Visa as a settling defendant and any Non-Settling Defendant are not precluded; and
- (e) any future right by the Non-Settling Defendants to examine for discovery a representative of Visa will be determined according to the provisions of the *Code of Civil Procedure*, and Visa shall reserve its right to oppose such an examination under the *Code of Civil Procedure* as a third party to the Quebec Proceedings.

SECTION 7 - EFFECT OF SETTLEMENT

7.1 No Admission of Liability

The Plaintiffs and Visa expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any fault, omission, wrongdoing or liability by Visa or by any Releasee, or of the truth of any of the claims or allegations contained in the Canadian Proceedings or any other pleading filed by the Plaintiffs or any other Settlement Class Member, including but not limited to those pleadings filed in the Additional Class Proceedings.

7.2 Agreement Not Evidence

Whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except: (a) by the Parties in a proceeding to approve or enforce this Settlement Agreement; (b) by a Releasee to defend against the assertion of a Released Claim; (c) by a Releasee in any insurance-related proceeding; or (d) as otherwise required by law or as provided in this Settlement Agreement.

7.3 No Further Litigation & No Assistance to Other Plaintiffs

(1) Except as provided in sections 7.3(2) and 7.3(4) of this Settlement Agreement, no Plaintiff, no Settlement Class Member, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to the subject matter of or arises from the Released Claims, whether brought in Canada or elsewhere, including by providing any direct or indirect assistance to any plaintiff or any plaintiff's counsel, including without limitation any claims made or actions commenced by Merchants, consumers or other Persons.

(2) Section 7.3(1) of this Settlement Agreement shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia (the “LSBC”) to breach his or her obligations under Rule 4.7 of the LSBC’s Professional Conduct Handbook by refraining from participation or involvement in any claim or action in a BC Court. This section shall not affect or render inoperative any other section or provision of this Settlement Agreement.

(3) No Class Counsel, no Plaintiff, no Settlement Class Member, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel may divulge to any Person for any purpose any information, including, without limitation, any cooperation materials and Documents provided pursuant to section 3.4 of this Settlement Agreement, obtained in the course of the Canadian Proceedings or in connection with this Settlement Agreement or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a court in Canada.

(4) Section 7.3(1) of this Settlement Agreement does not apply to the involvement of any Person in the continued prosecution of the Canadian Proceedings against any Non-Settling Defendant or unnamed co-conspirators who are not Releasees.

SECTION 8 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT PURPOSES ONLY

8.1 Settlement Class and Common Issue

(1) The Parties agree that the Canadian Proceedings, other than the BC Proceeding, shall be certified or authorized as class proceedings against Visa solely for purposes of settlement of the Canadian Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification or authorization of the Canadian Proceedings, other than the BC Proceeding, as class proceedings and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only class that they will assert is the Settlement Class. The Plaintiffs acknowledge that Visa agrees to the definition of the Common Issue for purposes of settlement only.

8.2 Certification or Authorization Without Prejudice

In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect, the Parties agree that any prior certification or authorization of the Canadian Proceedings, or any one of them, as a class proceeding as
23143763.3

against Visa for settlement purposes, including the definition of the Settlement Class and the statement of the Common Issue, shall be without prejudice to any position that any of the Parties or any Releasee may later take on any issue in the Canadian Proceedings or any other litigation.

SECTION 9 - NOTICE TO SETTLEMENT CLASS

9.1 Form and Distribution of Notices

The form and content of the Notices to the Settlement Class and the manner and extent of publication and distribution of such Notices shall be as agreed to by the Plaintiffs and Visa, it being understood and agreed that the cost of distribution of the Notices shall be no more than \$560,000 and the Plan of Dissemination will be similar to that approved by the Courts in relation to the BofA Settlement, the Capital One Settlement, the Citi Settlement and the Desjardins Settlement, but with the following enhancements: (a) a broader scope of trade magazines and newspapers of general circulation; (b) online Banner Notices targeting the Settlement Class Members; (c) online sponsored search ads through Google, Bing, and Yahoo aimed at Settlement Class Members, and (d) a national press release.

9.2 Notice of Distribution

(1) Except to the extent provided for in this Settlement Agreement, the Courts shall determine the form of notice in respect to the administration of this Settlement Agreement and any Distribution Protocol, on motions brought by Class Counsel.

(2) Class Counsel shall notify Visa, in writing, at least ten (10) days prior to the publication of any Notice, of the date on which the Notice will be published.

SECTION 10 - ADMINISTRATION AND IMPLEMENTATION

10.1 Mechanics of Administration

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

SECTION 11 - CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

(1) Class Counsel shall pay any costs of the Notices of this Settlement Agreement from the Trust Account.

(2) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneously with seeking approval of this Settlement Agreement, or at such other time as they shall determine in their sole discretion. Visa will not oppose such motions.

(3) Except as provided in section 11(1), Class Counsel Fees and any Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(4) The Releasees shall not be liable for any fees, disbursements or taxes, including but not limited to any fees, disbursements or taxes of Class Counsel's, the Plaintiffs' or any Settlement Class Member's respective lawyers, experts, advisors, agents, or representatives.

SECTION 12 - TERMINATION OF SETTLEMENT AGREEMENT

12.1 Right of Termination

(1) Visa or the Plaintiffs, each in its sole discretion, shall have the option to terminate this Settlement Agreement in the event that:

- (a) any Court fails to approve the releases contemplated herein;
- (b) any Court fails to approve the orders contemplated herein or the form and content of any of the orders or Notices departs materially from the form and content of the orders and Notices as agreed upon by the Plaintiffs and Visa;
- (c) the form and content of any of the Final Orders approved by the Courts departs materially from the form and content of the orders agreed upon by the Plaintiffs and Visa under section 2.3(1) of this Settlement Agreement;
- (d) any Court declines to approve this Settlement Agreement or any term or part hereof or approves it in a modified form;
- (e) any orders approving this Settlement Agreement made by the Courts do not become Final Orders; or
- (f) there is any material breach of this Settlement Agreement by the other Party.

(2) Visa may terminate this Settlement Agreement, in its sole discretion, if:

- (a) the Visa Settlement Confidential Opt Out Threshold is met;
- (b) Mastercard Termination occurs; or
- (c) the Additional Class Proceedings are not managed in accordance with section 5.5.

(3) Class Counsel shall notify Visa in writing of the occurrence of any of the grounds for termination set out in sections 12.1(1) or 12.1(2) immediately on becoming aware of such occurrence.

(4) Subject to section 12.1(5), in order to exercise a right of termination under section 12.1(1), a terminating party shall deliver a written notice of termination pursuant to this Settlement Agreement within fifteen (15) business days of the fact of the condition being met becoming known to the terminating party, or within such further time as the Parties may agree, such agreement to be evidenced in writing. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in section 12.4, shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(5) Within thirty (30) days of the time specified by any order of the Quebec Court for opting out of the Quebec Proceeding, Class Counsel shall provide Visa with a report in writing specifying the names of each Person who has opted out or purported to opt out of any of the Canadian Proceedings, the reason for the opt-out, if known, and a summary of the information delivered by the Person pursuant to the applicable opt-out provision. In the event that Visa intends to exercise the termination right referred to in section 12.1(2)(a), Visa will provide written notice of that intention to Class Counsel within thirty (30) days following receipt of the report referred to in this section.

(6) Any order, ruling or determination made by any Court that is not substantially in the form and content of the respective Final Orders, as agreed upon by the Plaintiffs and Visa in accordance with section 2.3(1), shall be deemed to be a material modification of this Settlement Agreement and shall provide a basis for the termination of this Settlement Agreement, provided however that Visa may agree in writing to waive this provision.

(7) Any order, ruling or determination made by any Court with respect to Class Counsel Fees or any Distribution Protocol shall not be deemed to be a material modification of all, or a part of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

(8) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Plaintiffs and Visa agree that any prior certification or authorization of a Canadian Proceeding as a class proceeding as against Visa for settlement purposes, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties or any Releasee may later take on any issue in the Canadian Proceedings or any other litigation.

(9) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Plaintiffs and Visa agree that any appearance, attendance, filing or other action or step taken by Visa pursuant to or relating to this Settlement Agreement shall be without prejudice to any position that any Releasee may later take in respect of the jurisdiction of the Courts or any other court, including, without limitation, a motion to stay any of the Canadian Proceedings pursuant to applicable commercial arbitration legislation, a motion to quash service *ex juris* or to otherwise challenge the jurisdiction of the Courts or any other court over any Releasee in the Canadian Proceedings or any other litigation.

12.2 If Settlement Agreement Is Terminated

If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason it shall be null and void, have no further force and effect, shall not be binding, and shall not be used as evidence or otherwise in litigation, and:

- (a) no motion to certify or authorize any of the Canadian Proceedings as a class proceeding on the basis of this Settlement Agreement or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) any order certifying or authorizing any of the Canadian Proceedings as a class proceeding on the basis of this Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise;

- (c) any prior certification or authorization of any of the Canadian Proceedings as class proceedings as against Visa for settlement purposes, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in any of the Canadian Proceedings or any other litigation; and
- (d) the Parties shall negotiate in good faith to determine a new timetable for any of the relevant Canadian Proceedings which continue against any Releasees.

12.3 Allocation of Monies in the Trust Account Following Termination

(1) Class Counsel shall pay to Visa, within sixty (60) business days of any termination in accordance with this Settlement Agreement, the Settlement Amount plus all accrued interest thereon, less any taxes paid from the Trust Account pursuant to section 3.2(2) and, provided that the Settlement Agreement is not terminated by reason of any default on the part of the Plaintiffs or Class Counsel, less any notice costs paid from the Trust Account pursuant to section 11(1).

(2) The Plaintiffs and Visa expressly reserve all of their respective rights if this Settlement Agreement is terminated.

12.4 Survival of Provisions After Termination

If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of section 3.2, sections 3.4(7) and 3.4(8), section 4.2, sections 7.1, 7.2, and 7.3(3), section 8.2, sections 11(1) and 11(4), section 12 and sections 13.1, 13.2, 13.4, 13.7, 13.8, 13.9, 13.13, 13.14, 13.15 and 13.18 shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of these surviving sections within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 13 - MISCELLANEOUS

13.1 Releasees Have No Liability for Administration

The Releasees have no responsibility for and no liability whatsoever with respect to the administration or implementation of this Settlement Agreement or the Distribution Protocol and

shall have no obligation to the Settlement Class with respect to the enforcement of the Settlement Agreement or the Distribution Protocol as against the Plaintiffs or Class Counsel.

13.2 Motions for Directions

- (1) Visa or the Plaintiffs may apply to the Courts for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
- (2) Class Counsel may apply to the Courts for directions in respect of any Distribution Protocol.
- (3) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and Visa, except for those motions concerned solely with the implementation and administration of any Distribution Protocol.

13.3 Further Acts

Without limiting the generality of any other provision of this Settlement Agreement, until such time as the Courts have approved or refused to approve this Settlement Agreement: (i) none of the Plaintiffs, the Releasers or Class Counsel shall take any action or omit to take any action that is inconsistent with the purposes and scope of this Settlement Agreement; and (ii) none of the Releasees or their respective counsel shall take any action or omit to take any action that is inconsistent with the purposes and scope of this Settlement Agreement.

13.4 Publicity

- (1) Subsequent to the Execution Date, except as required for the purposes of approving the settlement or as agreed by Visa, the fact and the terms of this settlement shall be kept in strict confidence and neither the Plaintiffs nor Class Counsel shall communicate any aspect thereof to any third party without Visa's express consent. Without limiting the generality of the foregoing:
 - (a) until the first of the motions required by section 2.1(1) is brought the Parties shall not issue any press releases relating to the settlement, and thereafter any press release related to the settlement shall be consistent with the contents of this Settlement Agreement including its recitals, except as may be agreed to by the Parties in writing;

- (b) the Parties shall not make any public statements, comments or any communications of any kind about any negotiations or information exchanged as part of the settlement process or this Settlement Agreement, except as may be required for the Parties to comply with any order of the Courts or as may be required under any applicable law or regulation or as the Parties may expressly agree in writing; and
- (c) Class Counsel and Visa shall each notify the other, in writing, at least five (5) days prior to the publication by either of them of any press release related to the settlement, of the date on which the press release will be issued.

(2) The Plaintiffs will ensure that the Mastercard Settlement Agreement includes a provision substantially similar to section 13.4(1) with respect to confidentiality and publicity.

(3) On receiving notice from Mastercard pursuant to the Mastercard Settlement Agreement of Mastercard's intention to issue a press release, Class Counsel will notify Visa promptly and in any event will provide notice to Visa no later than two (2) days prior to the date on which Mastercard intends, according to such notice, to issue the press release.

13.5 Headings, etc.

In this Settlement Agreement:

- (a) the division of this Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement", "hereof", "hereunder", "herein" and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

13.6 Computation of Time

In the computation of time in this Settlement Agreement, except where a contrary intention appears:

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens

and including the day on which the second event happens, including all calendar days; and

- (b) only in the case where the time for doing an act expires on a weekend or statutory holiday, the act may be done on the next day that is not a weekend or statutory holiday.

13.7 Ongoing Jurisdiction

(1) Each of the Courts shall retain exclusive jurisdiction over the proceeding commenced in its jurisdiction, the parties thereto, and Class Counsel Fees in that proceeding.

(2) The Plaintiffs and Visa agree that no Court shall make any order or give a direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Courts with which it shares jurisdiction over that matter.

13.8 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein, save for sections 5.6 and 6.2 of this Settlement Agreement which shall be governed by and construed and interpreted in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein.

13.9 Entire Agreement

This Settlement Agreement, including the Recitals herein and the Schedules attached hereto, constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

13.10 Amendments and Waivers

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and the Courts with jurisdiction over the matter to which the amendment relates must approve any such modification or amendment.

(2) The waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party, and any such waiver shall not be deemed or construed as a waiver of any other right, whether prior or subsequent to, or contemporaneous with this Settlement Agreement.

13.11 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Releasers, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasers and each and every covenant and agreement made herein by Visa shall be binding upon all of the Releasees.

13.12 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

13.13 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force or effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, have no bearing whatsoever upon the proper interpretation of this Settlement Agreement.

13.14 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir*

exigé que la présente convention et tous les documents à son soutien soient rédigés en anglais.
In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall be considered.

(2) The cost of translating the Notices, claims forms, or other documents referenced in or flowing from this Settlement Agreement into French and/or any other language shall, in the event such translation is required, be paid by the Plaintiffs.

13.15 Transaction

This Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing to any errors of fact, of law and/or of calculation.

13.16 Recitals

The recitals to this Settlement Agreement are true and form part of this Settlement Agreement.

13.17 Schedules

The Schedules annexed hereto form part of this Settlement Agreement.

13.18 Notice

Any and all notices, requests, directives, or communications required by this Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email PDF files, and shall be addressed as follows:

For the Plaintiffs and for Class Counsel in the Canadian Proceedings:

Reidar Mogerman

CAMP FIORANTE MATTHEWS
MOGERMAN
400 - 856 Homer Street
Vancouver, BC V6B 2W5
Tel: 604-689-7555
Fax: 604-689-7554
Email: rmogerman@cfmlawyers.ca

Ward Branch, Q.C.

BRANCH MACMASTER LLP
1410 - 777 Hornby Street
Vancouver, BC V7G 3E2
Tel: 604-654-2966
Fax: 604-684-3429
Email: wbranch@branmac.com

Jeff Orenstein

CONSUMER LAW GROUP INC.
1030 Berri Street
Montreal, QC H21 4C3
Tel: 514-266-7863, Ext. 2
Fax: 514-868-9690
Email: jorenstein@clg.org

For Visa:

Robert E. Kwinter
BLAKE, CASSELS & GRAYDON LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON M5L 1A9
Tel: 416-863-3283
Fax: 416-863-2653
Email: rob.kwinter@blakes.com

13.19 Acknowledgements

Each of the Parties hereby acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understands this Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of this Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms and conditions of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

13.20 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified below their respective signatures.

Executed in counterparts on June ⁸ 2, 2017.



WARD BRANCH, Q.C. for Branch
MacMaster LLP and the Plaintiffs



REIDAR MOGERMAN for Camp Fiorante
Matthews Mogerman and the Plaintiffs



JEFF ORENSTEIN for Consumer Law
Group Inc. and the Plaintiffs

VASANT PRABHU, Authorized
Representative of Visa Canada Corporation

STACEY MADGE, Director, President &
Country Manager of Visa Canada
Corporation

Executed in counterparts on June 2, 2017.

WARD BRANCH, Q.C. for Branch
MacMaster LLP and the Plaintiffs

REIDAR MOGERMAN for Camp Fiorante
Matthews Mogerman and the Plaintiffs

JEFF ORENSTEIN for Consumer Law
Group Inc. and the Plaintiffs



VASANT PRABHU, Authorized
Representative of Visa Canada Corporation

STACEY MADGE, Director, President &
Country Manager of Visa Canada
Corporation

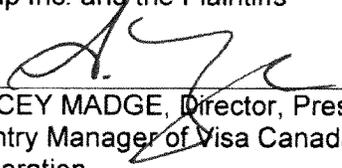
Executed in counterparts on June 2, 2017.

WARD BRANCH, Q.C. for Branch
MacMaster LLP and the Plaintiffs

REIDAR MOGERMAN for Camp Fiorante
Matthews Mogerman and the Plaintiffs

JEFF ORENSTEIN for Consumer Law
Group Inc. and the Plaintiffs

VASANT PRABHU, Authorized
Representative of Visa Canada Corporation



STACEY MADGE, Director, President &
Country Manager of Visa Canada
Corporation

**CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Between

**COBURN AND WATSON'S METROPOLITAN HOME DBA METROPOLITAN HOME,
HELLO BABY EQUIPMENT INC., JONATHON BANCROFT-SNELL,
1739793 ONTARIO INC., 9085-4886 QUEBEC INC., PETER BAKOPANOS,
MACARONIES HAIR CLUB AND LASER CENTER INC. OPERATING AS
FUZE SALON**

(the "Plaintiffs")

and

VISA CANADA CORPORATION

("Visa")

"SCHEDULE A"

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE) «DAY», THE «NUMBER»
JUSTICE PERELL)
DAY OF «MONTH», 2017

B E T W E E N:

JONATHON BANCROFT-SNELL and 1739793 ONTARIO INC.

Plaintiffs

-and-

**VISA CANADA CORPORATION, MASTERCARD INTERNATIONAL INCORPORATED,
BANK OF AMERICA CORPORATION, BANK OF MONTREAL, BANK OF NOVA SCOTIA,
CANADIAN IMPERIAL BANK OF COMMERCE, CAPITAL ONE FINANCIAL CORPORATION,
CITIGROUP INC., FEDERATION DE CAISSES DESJARDINS DU QUEBEC, NATIONAL
BANK OF CANADA INC., ROYAL BANK OF CANADA, and TORONTO DOMINION BANK**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

(Visa Round 1 – Certification and Notice Approval)

THIS MOTION made by the Plaintiffs, in writing;

ON READING the pleadings and material filed;

AND ON BEING ADVISED that the Plaintiffs and others have entered into an agreement with Visa Canada Corporation (the “**Settling Defendant**”) dated June 2, 2017 (the “**Visa Settlement Agreement**”) attached hereto as Schedule “C”;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendant consent to this Order

AND ON BEING ADVISED that the Non-Settling Defendants take no position on this Order;

THIS COURT ORDERS AND DECLARES THAT:

1. Except to the extent that they are modified by this Order, the definitions set out in the Visa Settlement Agreement apply to and are incorporated into this Order;
2. The within proceeding (the “**Ontario Proceeding**”) is certified as a class proceeding only as against the Settling Defendant, for settlement purposes only;

3. The "Ontario Settlement Class" is defined as:

All Merchants resident in Canada who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards, except the BC Settlement Class, the Alberta Settlement Class, the Saskatchewan Settlement Class, the Quebec Settlement Class, and the Excluded Persons;

4. Jonathon Bancroft-Snell and 1739793 Ontario Inc. are appointed as the representative plaintiffs for the Ontario Settlement Class;

5. The Ontario Proceeding is certified on the basis that the following issue is common to the Ontario Settlement Class:

Did the Settling Defendant conspire with others to fix, maintain, increase or control Merchant Discount Fees and/or Interchange Fees in Canada during the Class Period?;

6. The period to opt-out of the Ontario Proceeding has already expired pursuant to this Court's order pronounced August 6, 2015. Any member of the Ontario Settlement Class who has validly opted-out of the Ontario Proceeding is not bound by the Visa Settlement Agreement, and will not be entitled to receive any share of benefits payable in connection with the Visa Settlement Agreement;

7. Any member of the Ontario Settlement Class who has not validly opted out of the Ontario Proceeding is bound by this Order and the Visa Settlement Agreement, and will not be entitled to opt-out of the continuing action as against the Non-Settling Defendants;

8. This Order is binding upon each member of the Ontario Settlement Class who has not validly opted out of the Ontario Proceeding, including those persons who are minors or mentally incapable;

9. The form of the Pre-Approval Notice is hereby approved substantially in the form attached hereto as Schedule A;

10. The plan of dissemination for the Pre-Approval Notice (the "**Plan of Dissemination**") is hereby approved in the form attached hereto as Schedule "B";

11. The Pre-Approval Notice shall be disseminated in accordance with the Plan of Dissemination approved as part of this Order and by any other additional means as may be ordered by any of the other Courts in the Canadian Proceedings; and
12. This Order, including without limiting the generality of the foregoing, the certification of the Ontario Proceeding against the Settling Defendant and the definitions of Ontario Settlement Class, Class Period and Common Issue, is without prejudice to any position a Non-Settling Defendant may take in this or any other proceeding on any issue, including the issue of whether the Ontario Proceeding should be certified as a class proceeding as against the Non-Settling Defendants. For greater certainty, this Order, the Court's reasons in support of this Order and the certification of the Ontario Proceeding against the Settling Defendant for settlement purposes only are not binding on and shall have no effect on the continuing prosecution of the Ontario Proceeding or any other proceeding as against the Non-Settling Defendants.

Schedule "A" to Visa Round 1 Order

NATIONAL BANK, VISA AND MASTERCARD MERCHANT FEES SETTLEMENT NOTICE

Legal Notice

If you accepted Visa or Mastercard credits cards as payment for goods or services after March 23, 2001, your rights could be affected by proposed national class action settlements with National Bank of Canada, Visa and Mastercard.

The Credit Card Actions

Class action lawsuits were commenced in British Columbia (the "BC Action"), Alberta, Saskatchewan, Quebec and Ontario (collectively, the "Credit Card Actions") against Visa Canada Corporation ("Visa"), Mastercard International Incorporated ("Mastercard") and certain banks which issue credit cards ("Issuing Banks") alleging each of Visa and Mastercard conspired with their issuing banks and Acquirers in setting the amount of interchange fees and imposing rules restricting merchants' ability to surcharge or refuse higher cost Visa and Mastercard credit cards. The BC Action was certified as a class proceeding as against all defendants.

The Settlement

Although National Bank of Canada, Visa and Mastercard deny liability, they have reached national settlements with the plaintiffs (the "National Bank Settlement", the "Visa Settlement" and the "Mastercard Settlement", collectively, the "Settlements"), subject to approval of the courts. National Bank of Canada will pay CAD \$6 million, and Visa and Mastercard will each pay CAD\$19.5 million (the "Settlement Amounts") for the benefit of the Settlement Class Members and provide certain cooperation to the plaintiffs as described in their respective settlement agreements, in exchange for a full release of claims against each of them and their related entities. Visa and Mastercard will also be modifying their respective "no surcharge rules" that prevented merchants from charging a premium on credit card use, on terms set out in greater detail in their respective settlement agreements.

If the Settlements are approved, the Class Lawyers will ask the Courts to approve the deduction of certain amounts (collectively, the "Court Approved Expenses") from the Settlement Amounts, including costs incurred to distribute this notice and process opt-out requests, comments and objections, the approved counsel fee of up to 25% of the recovered amounts, and disbursements.

As the Credit Card Actions have to continue against the remaining defendants, it is proposed that the amounts remaining from the Settlement Amounts after deduction of all Court Approved Expenses be held in trust for Settlement Class Members pending receipt of further settlements or further order of the court at the conclusion of the Credit Card Actions. At such time, a distribution protocol will be developed and submitted to the Courts for approval, and further notice will be provided to you of the proposed distribution system. If you would like to make sure you receive direct notice of any later distribution, please register at www.creditcardsettlements.ca , or contact one of the Class Lawyers listed below.

Certification/Authorization as Class Proceedings for Settlement Purposes

Separate and apart from the certification of the BC Action against all defendants, in order to implement the Settlements, the Courts have certified/authorized all of the other Credit Card Actions as class proceedings against National Bank of Canada, Visa and Mastercard for settlement purposes only.

Who Are The Settlement Class Members?

You are a Settlement Class Member if you accept or accepted Visa credit cards and/or Mastercard credit cards as payment for goods or services and incurred merchant discount fees, including interchange fees, in Canada since March 23, 2001.

All Settlement Class Members are affected by this notice.

Settlement Approval Hearings

Hearings to consider approval of the Settlements, a counsel fee of up to 25% of the recovered amounts, and disbursements payable from the Settlement Amounts will be heard on:

- (British Columbia Supreme Court, Vancouver)
- (Court of Queen's Bench of Alberta, Edmonton)
- (Court of Queen's Bench for Saskatchewan, Regina)
- (Quebec Superior Court, Montreal)
- (Ontario Superior Court of Justice, Toronto).

Anyone can attend the hearings, but if you wish to speak to the Court, please advise the Administrator (Epiq Systems)*.

If you wish to provide written comment on or objection to any of the Settlements, you must do so by delivering same to the Administrator* by ●, 2017. Comments or objections will be provided to the Court for consideration in whether to approve or reject each of the Settlements.

Participating in the Settlements or the Credit Card Actions

If you fall within the Settlement Class, including the Quebec Settlement Class (defined below), and wish to participate in the Settlements and in the continuing Credit Card Actions, you do not need to do anything at this time, although we encourage you to register as set out above to ensure that you receive notice when time comes to distribute all the funds received.

Opting Out of the Class Proceedings in British Columbia, Alberta, Saskatchewan and Ontario

The deadline to opt out of the Settlements or the class actions in British Columbia, Alberta, Saskatchewan and Ontario has already expired. You can no longer opt-out of the British Columbia, Alberta, Saskatchewan and Ontario class actions. You can still make your views known about the new Settlements, however.

Opting Out of the Class Proceedings for Quebec Class Members Only

The deadline to opt out of the National Bank Settlement, the Visa Settlement, the Mastercard Settlement or the class action in Quebec is ●, 2017. You are a **Quebec Settlement Class Member** if you are a Quebec resident person who accepted Visa and/or Mastercard credit cards as payment for goods or services and incurred merchant discount fees, including interchange

23143763.3

fees, in Canada, at any time since March 23, 2001. Any legal persons established for a private interest, partnership or association which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment, and any legal persons established for a public interest resident in Quebec, are **not** Quebec Settlement Class Members.

Consequences of Opting Out for Quebec Class Members Only

By opting out, you are choosing:

- 1) **not** to take part in any of the National Bank Settlement, the Visa Settlement and the Mastercard Settlement in Quebec,
- 2) **not** to participate in the ongoing prosecution of the Credit Card Class Action in Quebec against the other defendants, AND
- 3) **not** to participate in any future settlements reached in the Credit Card Class Action in Quebec.

Quebec Settlement Class Members who opt out will not be bound by the National Bank Settlement, the Visa Settlement or the Mastercard Settlement or the releases in those Settlements, but will also not be entitled to share in any of the proceeds that may become available to merchants as part of those Settlements or other settlement(s). Quebec Settlement Class Members who opt out will also not be entitled to participate in the continued prosecution of the Credit Card Action in Quebec or future settlements.

Consequences of Not Opting Out for Quebec Class Members Only

Quebec Settlement Class Members who **do not opt out** will be bound by the Settlements and the releases in them, and will be entitled to share in any of the proceeds that may become available to merchants as part of the Settlements. They will have an opportunity to opt out of the ongoing Quebec Credit Card Action against the other defendants if and when such Action is authorized as a class action against some or all of those remaining defendants.

* * *

FOR MORE INFORMATION on the status of the approval hearings or on how to opt out of the Quebec Credit Card Action, comment or object to the Settlements, or to view the National Bank Settlement, the Visa Settlement and the Mastercard Settlement and a list of other definitions that apply to this Notice, visit www.creditcardsettlements.ca, which will be periodically updated with information on the approval process of the Settlements and the Credit Card Actions.

*For communications with the Opt-Out Administrator, Epiq Systems call <>, email <>, fax <> or write to <address>.

CLASS LAWYERS can be reached at lawyers@creditcardsettlements.ca and are:

- Branch MacMaster LLP at (604) 654-2999 (Luciana Brasil)
 - Camp Fiorante Mathews Mogerman at (604) 689-7555 (David Jones)
 - Consumer Law Group Inc. (for Quebec residents) at 1-888-909-7863 x2 (Jeff Orenstein)
- This notice is approved by the Courts.

Schedule "B" to Visa Round 1 Order

PLAN OF DISSEMINATION

**Notice of Certification/Authorization and Settlement Approval Hearing
in the Matter of Visa/MasterCard Class Action Litigation**

The Plaintiffs propose that the Notice of Certification/Authorization and Settlement Approval Hearing (the "Pre-Approval Notice") shall be distributed in the following manner:

1. Published once in the following newspapers, in either English or French, as is appropriate for each newspaper, in a size no less than 1/2 page, and preferably in a business section (if available), subject to each having reasonable publication deadlines and costs:
 - (a) The Globe and Mail, national edition;
 - (b) National Post, national edition;
 - (c) Metro Canada, national edition;
 - (d) Montreal La Presse;
 - (e) Montreal The Gazette;
 - (f) Calgary Herald;
 - (g) Edmonton Journal;
 - (h) 24 Hours Toronto;
 - (i) 24 Hours Vancouver.

2. Published once in the following four (4) industry magazines, in either English or French, as is appropriate for each magazine, subject to each having reasonable publication deadlines and costs:
 - (a) Retail Council of Canada's Canadian Retailer Magazine;
 - (b) Canadian Convenience Stores Association's C-Store Life;
 - (c) Canadian Restaurant and Foodservices News;
 - (d) Grocery Business Magazine.

3. Published once in the following four (4) regional business publications, in either English or French, as is appropriate for each magazine, subject to each having reasonable publication deadlines and costs:

- (a) Alberta Venture;
 - (b) BC Business;
 - (c) Northern Ontario Business;
 - (d) Ottawa Business Journal.
4. Published once in the following digital-only publication, subject to reasonable publication deadline and cost:
- (a) The Canadian Business Journal.
5. Sent to the following twenty (20) industry associations whose members accept Visa or Mastercard credit cards as a means of payment for goods or services, in either English or French, as is appropriate for each association, requesting voluntary distribution to their membership, including:

- (a) Retail Council of Canada;
 - (b) Canadian Federation of Independent Businesses (CFIB);
 - (c) Retail Merchants Association of Canada (Ontario) Inc.;
 - (d) Canadian Restaurant and Foodservices Association;
 - (e) Canadian Convenience Stores Association;
 - (f) Canadian Federation of Independent Grocers (CFIG);
 - (g) Food and Consumer Products of Canada;
 - (h) Canadian Association of Chain Drug Stores;
 - (i) Tourism Industry Association of Canada;
 - (j) Canadian Independent Petroleum Marketers Association;
 - (k) Canadian Jewellers Association;
 - (l) Small Business Matters;
 - (m) Canadian Wireless Telecommunications Association (CWTA);
 - (n) Canadian Association of Home and Property Inspectors;
 - (o) Canadian Parking Association;
 - (p) Association of Universities and Colleges of Canada;
 - (q) Automotive Retailers Association;
 - (r) Canadian Deals and Coupons Association;
 - (s) Canadian Cosmetic, Toiletry and Fragrance Association; and
 - (t) Canadian Franchise Association.
6. Online banner ads will be placed on the following websites, in either English or French as appropriate, targeting the general Canadian population:
- (a) Facebook.
7. Online banner ads will be placed on the following websites, in either English or French as appropriate, targeting Small Business Owners in Canada:

- (a) Canadian Business's official websites (CanadianBusiness.com);
 - (b) Facebook;
 - (c) Yahoo! Ad Network.
8. Online sponsored search ads will be placed through Google, Bing and Yahoo!
 9. A copy will be posted in electronic format in English and in French on the websites of the Class Counsel.
 10. A copy will be provided to the CBA National Class Action Registry with a request that it be posted online.
 11. A copy will be sent to all persons who have contacted Class Counsel and identified themselves as being potential class members.
 12. A press notice will be issued by the Plaintiff as a press release on Canada Newswire in both English and French.

**CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Between

**COBURN AND WATSON'S METROPOLITAN HOME DBA METROPOLITAN HOME,
HELLO BABY EQUIPMENT INC., JONATHON BANCROFT-SNELL,
1739793 ONTARIO INC., 9085-4886 QUEBEC INC., PETER BAKOPANOS,
MACARONIES HAIR CLUB AND LASER CENTER INC. OPERATING AS
FUZE SALON**

(the "Plaintiffs")

and

VISA CANADA CORPORATION

("Visa")

"SCHEDULE B"

In the Supreme Court of British Columbia

Between:

**Coburn and Watson’s Metropolitan Home dba
Metropolitan Home**

Plaintiff

and:

**Bank of America Corporation, BMO Financial Group,
Bank of Nova Scotia, Canadian Imperial Bank of
Commerce, Capital One Bank (Canada Branch),
Citigroup Inc., Fédération des caisses Visa du
Québec, MasterCard International Incorporated, National
Bank of Canada Inc., Royal Bank of Canada, Toronto-
Dominion Bank, and Visa Canada Corporation**

Defendants

Brought pursuant to the *Class Proceedings Act*, RSBC, 1996, c.50

**ORDER MADE AFTER APPLICATION
(VISA SETTLEMENT APPROVAL)**

- BEFORE THE HONOURABLE JUSTICE G.C. WEATHERILL)) ,2017
- ON THE APPLICATION of the Plaintiff, Coburn and Watson’s Metropolitan Home dba Metropolitan Home coming on for hearing at 800 Smithe Street, Vancouver, B.C. on ●, for an order approving the agreement made between the Plaintiff and others and Visa Canada Corporation (the “**Settling Defendant**”), dated ●, 2015 (the “**Settlement Agreement**”);

ON HEARING the submissions of ●, counsel for the Plaintiff and ●, counsel for the Settling Defendant; ●, counsel for Toronto-Dominion Bank; ●, counsel for Canadian Imperial Bank of Commerce; ●, counsel for Royal Bank of Canada; ●, counsel for BMO Financial Group; ●, counsel for MasterCard International Incorporated; and ●, counsel for the Bank of Nova Scotia; [and ●, counsel for National Bank of Canada Inc.];

AND ON READING the pleadings and materials filed;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendant consent to this Order;

AND ON BEING ADVISED that the Non-Settling Defendants take no position on this Order;

THIS COURT ORDERS that:

1. The Settlement Agreement, as attached at Schedule "A", is incorporated into this Order in its entirety and forms part of this Order, and the definitions in the Settlement Agreement shall be applied in interpreting this Order;
2. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail;
3. The Settlement Agreement is fair, reasonable and in the best interests of the BC Visa Settlement Class;
4. The Settlement Agreement is hereby approved pursuant to section 35 of the *Class Proceedings Act*, RSBC 1996, c. 50 and shall be implemented in accordance with its terms and the terms of this Order;
5. The Settlement Agreement forms part of this Order and is binding upon the representative plaintiff and all members of the BC Visa Settlement Class who have not validly opted-out (collectively; the "**BC Settlement Class Members**", each a "**BC Settlement Class Member**"), and the Settling Defendant;
6. This Order, including the Settlement Agreement, is binding upon each BC Settlement Class Member including those persons who are minors or mentally incapable and the requirements of Rule 20-2 of the *Supreme Court Civil Rules* are dispensed with in respect of the BC Proceeding;
7. Upon the Effective Date, each Releasor shall consent to and shall be deemed to have consented to the dismissal as against the Releasees of any other actions or proceedings in BC he, she or it has commenced, without costs and with prejudice;

8. Upon the Effective Date, each other action or proceeding commenced in BC by any BC Releasor shall be and is hereby dismissed against the Releasees, without costs and with prejudice;
9. Subject to paragraphs 11 and 12 of this Order, upon the Effective Date, each Releasor who has not validly opted-out of the BC Proceeding has released and shall be conclusively deemed to have forever, finally and absolutely released the Releasees from the Released Claims as provided for in the Settlement Agreement;
10. Upon the Effective Date, each Releasor (i) shall not now or hereafter threaten, institute, prosecute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim, proceeding, complaint or demand against, or collect or seek to recover from, any Releasee or any other person or persons who will or could bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any Releasee in respect of any Released Claims, except for the continuation of the Canadian Proceedings against the Non-Settling Defendants or other Persons who are not Releasees, and (ii) are permanently barred and enjoined from doing so;
11. The use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those BC Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors;
12. Instead of releasing the claims against the Releasees, upon the Effective Date, each BC Releasor who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to sue or make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims;
13. All claims for contribution, indemnity or other claims over against a Releasee, whether asserted, unasserted or asserted In a representative capacity, inclusive of interest, taxes, fees and costs, relating to the Released Claims, which were or could have been brought in the Canadian Proceedings or otherwise by any Non-Settling Defendant,

Settled Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant or any other Person or party who are not Releasees, are barred, prohibited and enjoined in accordance with the terms of this Order except as set out in section 6.1(1)(a) of the Settlement Agreement;

14. If, in the absence of paragraph 13 of this Order, the Court or a final decision of an appellate court of competent jurisdiction in this proceeding determines that there is a right of contribution, indemnity or other claim over, whether in equity or in law, by contract, statute or otherwise:
 - (a) The BC Settlement Class Members shall reduce or limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators to not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators who are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise; and
 - (b) This Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the BC Proceeding, whether or not the Releasees remain in the BC Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the BC Proceeding and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the BC Proceeding and shall not be binding on the Releasees in any other proceedings;
15. If, in the absence of paragraph 13 hereof, the Non-Settling Defendants would not have the right to make claims for contribution, indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in the B.C. Proceeding;

16. For greater certainty, the bar order in paragraphs 13 through 15 deals only with claims over and is not intended to bar *bona fide* independent and direct claims and causes of action arising by contract, statute or otherwise between Visa and any Non-Settling Defendant for relief other than that claimed by the Plaintiff in the BC Proceeding including *bona fide* independent and direct claims and causes of action that Visa may have against any Non-Settling Defendant under the Visa Network Rules;
17. Subject to paragraph 13 hereof, a Non-Settling Defendant may, on motion to this Court brought on at least ten (10) days' notice to counsel for the Settling Defendants seek orders for the following:
 - (a) documentary discovery and list of documents in accordance with the Supreme Court Civil Rules, BC Reg 168/2009 from the Settling Defendant;
 - (b) oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;
 - (c) leave to serve a notice to admit on the Settling Defendant in respect of factual matters; and/or
 - (d) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants;
18. The Settling Defendant retains all rights to oppose such motion(s) brought under paragraph 17 of this Order and to seek such ancillary relief as they deem appropriate (including, without limitation, confidentiality protections and/or costs). Nothing in this Order is intended to interfere with the power of this Court to make such orders as to costs and other terms as it considers appropriate on any such motion;
19. A Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 17 above on the Settling Defendant by service on counsel of record for the Settling Defendant in the BC Proceeding;
20. For purposes of enforcement of this Order and the Settlement Agreement, this Court will retain an ongoing supervisory role and the Settling Defendant acknowledges the jurisdiction of this Court and attorns to the jurisdiction of this Court solely for the purpose

of implementing, administering and enforcing the Settlement Agreement and this Order subject to the terms and conditions set out in the Settlement Agreement and this Order;

21. Except as provided herein, this Order does not affect any claims or causes of action that any BC Settlement Class Member has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in the BC Proceeding;
22. No Releasee shall have any responsibility or liability relating to the administration of the Settlement Agreement or the Distribution Protocol or the administration, investment, or distribution of the Trust Account;
23. Subject to the provisions of the Settlement Agreement, the Settlement Amount, plus accrued interest less any monies paid out pursuant to the Settlement Agreement, shall be held in trust for the benefit of the Settlement Class, pending further order of the Courts;
24. The approval of the Settlement Agreement is contingent upon approval by the Alberta Court, the Saskatchewan Court, the Quebec Court and the Ontario Court and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the Alberta Court, the Saskatchewan Court, the Quebec Court and the Ontario Court and the Ontario Proceeding, the Saskatchewan Proceeding, and the Alberta Proceeding have been dismissed with prejudice and without costs and the Quebec Proceeding has been declared settled out of court as against the Settling Defendant in the relevant proceeding by the Courts. If such orders are not secured in Alberta, Saskatchewan Quebec and Ontario, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the BC Proceeding and any agreement between the Parties incorporated in this Order shall be deemed in any subsequent proceedings to have, been made without prejudice;
25. In the event that the Settlement Agreement is terminated in accordance with its terms, on motion made on notice to the Plaintiff or the Settling Defendant, as appropriate:
 - (a) This Order shall be declared null and void and be without prejudice to any party;
and

- (b) Each party to the BC Proceeding shall be restored to his, her or its respective position in the BC Proceeding as it existed immediately prior to the execution of the Settlement Agreement.
26. On notice to the Court, but without further order of the Court, the Parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions in the Settlement Agreement;
27. The determination of the form of any additional notice to the Settlement Class Members regarding approval of the Settlement Agreement and/or claims filing process, and the approval of a plan of dissemination of any additional notice be and are hereby adjourned to be dealt with by further orders of the Courts;
28. Except as aforesaid, the BC Proceeding be and is hereby dismissed against the Settling Defendant without costs and with prejudice;
29. The approval of the Settlement Agreement is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing BC Proceeding. No person may cite or refer to all or any part of this Order and any reasons given by the Court in connection with this Order as against any of the Non-Settling Defendants, except as is necessary to enforce this Order;
30. This Order may be endorsed in counterpart, electronically or by facsimile; and
31. Endorsement of this Order by the Non-Settling Defendants is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the Plaintiff

- for Branch Macmaster LLP

Signature of lawyer for Visa Canada Corporation

Robert E. Kwinter

By the Court

Registrar

In the Supreme Court of British Columbia

Between:

**Coburn and Watson's Metropolitan Home dba
Metropolitan Home**

Plaintiff

and:

**Bank of America Corporation, BMO Financial Group,
Bank of Nova Scotia, Canadian Imperial Bank of
Commerce, Capital One Bank (Canada Branch),
Citigroup Inc., Fédération des caisses Visa du
Québec, MasterCard International Incorporated, National
Bank of Canada Inc., Royal Bank of Canada, Toronto-
Dominion Bank, and Visa Canada Corporation**

Defendants

Brought pursuant to the *Class Proceedings Act*, RSBC, 1996, c.50

ORDER MADE AFTER APPLICATION

CAMP FIORANTE MATTHEWS MOGERMAN
Barristers and Solicitors
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax : (604) 689-7554
Email : service@cfmlawyers.ca

**CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Between

**COBURN AND WATSON'S METROPOLITAN HOME DBA METROPOLITAN HOME,
HELLO BABY EQUIPMENT INC., JONATHON BANCROFT-SNELL,
1739793 ONTARIO INC., 9085-4886 QUEBEC INC., PETER BAKOPANOS,
MACARONIES HAIR CLUB AND LASER CENTER INC. OPERATING AS
FUZE SALON**

(the "Plaintiffs")

and

VISA CANADA CORPORATION

(**"Visa"**)

"SCHEDULE C"

SCHEDULE C

MODIFICATION TO “NO SURCHARGE” RULE

With a view to modeling its No Surcharge Rule in Canada on the amended No Surcharge Rule in the United States (as of the Effective Date of this Agreement) that resulted from the 2012 U.S. settlement agreement in MDL 1720, Visa will amend its No Surcharge Rule in Canada, including, but not limited to, the following modifications:

- (a) Visa will permit surcharging on credit cards only at the brand (i.e., network) level or at the product level (i.e., different types of cards offered by a given network) but not both. Where surcharging is permitted, a merchant may surcharge a transaction either using a fixed value or based on a percentage of transaction value (“ad valorem”) in accordance with the modified rule. For clarity, regardless of whether surcharging occurs as a fixed value or ad valorem, the surcharge must be equal to or less than the amount provided for in sections (c), (d) and (e) below. Visa will not permit surcharging at the issuer level;
- (b) Any surcharge that a merchant imposes on Visa credit card transactions must be no greater (after accounting for any discounts or rebates offered at the point of sale) than the surcharge that the merchant imposes on transactions of American Express or PayPal;
- (c) When a merchant surcharges at the brand level, the amount of the surcharge shall not exceed the merchant’s average effective merchant discount rate (“EDMR”) (as that term is defined in footnote 3 of the *Code of Conduct for the Credit and Debit Card Industry in Canada (the “Code of Conduct”)*) for that brand during the last 1 month or 12 months;
- (d) When a merchant surcharges at the product level, regardless of whether the merchant surcharges every product within a brand or only some products within a brand, the amount of the surcharge shall not exceed the merchant’s average EMDR for that product during the last 1 month or 12 months;
- (e) Notwithstanding sections (a), (c) and (d) above, a merchant cannot impose a surcharge greater than the “maximum surcharge cap”. The maximum surcharge cap is the lesser of (1) 2.5%; or (2) 1% plus Visa’s average annual effective rate of interchange for credit card transactions in Canada as set out in any voluntary or mandatory commitment to a Canadian governmental entity or otherwise reasonably determined by Visa if not so regulated, expressed as a percentage of transaction value. Visa shall publish the “maximum surcharge cap” on the portion of its website and its rules that sets forth merchants’ surcharging rights and obligations. However, should the annual effective rate of interchange established by the voluntary or mandatory commitment to a Canadian government entity, or otherwise reasonably determined by Visa, referred to above be increased from its current 1.5%, the maximum surcharge cap of 2.5% noted above shall be increased by the same amount as any such increase. By way of example,

should such rate be raised to 2.0%, the surcharge cap of 2.5% shall increase to 3.0%;

- (f) A merchant who elects to surcharge Visa or any Visa products shall provide reasonable notice and disclosure, including, but not limited to, (1) at least 30 days advanced, written notice and registration with Visa and the merchant's acquirer; (2) signage requirements on the merchant's entrance door and at the checkout/payment area; (3) explicitly showing the surcharge amount on the merchant receipt; (4) a clear indication that the surcharge was imposed by the merchant and not by Visa; (5) provide the cardholder with the opportunity to cancel or opt-out of the transaction; and (6) such further and other disclosure as may be required, on a voluntary or mandatory basis, by any Canadian governmental entity;
- (g) Surcharging is prohibited on transactions that already have service fees;
- (h) Third party agents are not permitted to surcharge Visa transactions;
- (i) Visa Opt-Outs may not be permitted to surcharge Visa transactions; and
- (j) Nothing in the modified No Surcharge Rule shall preclude Visa and any merchant from entering into an agreement that prohibits that merchant from surcharging some or all Visa credit card transactions.

CONFIDENTIAL

"SCHEDULE D"