Sophia Rios, SBN 305801
BERGER MONTAGUE PC
401 B Street, Suite 2000
San Diego, CA 92101
Tel. 619.489.0300
Fax 215.875.4604
srios@bm.net

Attorney for Plaintiffs
[Additional counsel listed on signature page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KRISHNENDU CHAKRABORTY, JESUS GUERRERO, MAUREEN YOUNG, RACHELLE BLAKE, SHERIDINE HARRIS, RHONDA MCDONALD, EMILY WRIGHT, BRYAN DAHL, KAREN NEEDHAM, and RACHEL MULLINS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

VISA INC., VISA U.S.A. INC., AND VISA INTERNATIONAL SERVICE ASSOCIATION;

Defendants

Case No. 3:21-cv-5302

CLASS ACTION COMPLAINT

(I) Unjust Enrichment;
(II) Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.;
(III) Washington Consumer Protection Act, RCW § 19.86, et seq.;
(IV) Violations of the Illinois Consumer Fraud Act

JURY TRIAL DEMANDED

TABLE OF CONTENTS

Plaintiffs Krishnendu Chakraborty, Jesus Guerrero, Maureen Young, Rachelle Blake, Sheridine Harris, Rhonda McDonald, Emily Wright, Bryan Dahl, Karen Needham, and Rachel Mullins ("Plaintiffs"), allege the following claims for relief against Defendants Visa Inc., Visa U.S.A. Inc., and Visa International Service Association (collectively "Visa" or "Defendants").

INTRODUCTION

1. Defendants Visa Inc., Visa U.S.A. Inc., and Visa International Service Association are together a U.S.-based multinational financial services corporation that processes electronic funds transfers throughout the world through its electronic payments network (known as "VisaNet"), most commonly through Visa-branded credit cards, debit cards, and prepaid cards (collectively, "payment cards").

2. Plaintiffs and members of the proposed Classes[1] are Visa payment card cardholders in the U.S. who were issued Visa-branded payment cards, and used those cards to transact in foreign currencies.

3. Visa does not issue payment cards directly to consumers. Instead, it provides financial institutions with Visa-branded payment products that the financial institutions then use to offer payment cards to their customers.

4. Visa requires the banks that issue Visa-branded payment cards (the "member banks" or "issuing banks") to agree to be bound by certain rules of Visa (the "Visa Rules," available at https://usa.visa.com/content/dam/VCOM/download/about-visa/visa-rules-public.pdf). These Rules provide, *inter alia*, that the foreign exchange ("FX") rates applied to consumer payment card transactions in foreign currencies for each day will either be wholesale FX market rates or a government-mandated rate. The vast majority of jurisdictions do not have government-mandated rates.

[1] The Nationwide Class and proposed alternative State Classes are referred to herein as the "Classes."

5. The Visa Rules also provide that the member banks must provide specific disclosures to member bank payment card cardholders describing what FX rates will be imposed.

6. Member banks require all of their cardholders, including Plaintiffs and members of the proposed Classes, to agree to the terms of standardized credit card agreements and debit card agreements (together, the "Cardholder Agreements") as a condition of being issued Visa-branded payment cards.

7. The member banks include language referencing the Visa Rules in their Cardholder Agreements, promising their cardholders, including Plaintiffs and Class Members, that the FX rates applied to foreign transactions will be either wholesale market rates or, in jurisdictions that have them, government-mandated rates.[2]

8. Contrary to the Visa Rules and Cardholder Agreements, the FX rates applied to cardholder transactions do not represent rates available in the wholesale FX market.

9. Further, even when the FX rates imposed by Visa are within the trading ranges of the individual currencies within the wholesale market for the applicable dates, the methods by which the rates are imposed are unfair, in bad faith, and therefore in violation of the Visa Rules and the Cardholder Agreements.

10. Based on the language of the Visa Rules regarding exchange rates—and the identical language set forth in the Cardholder Agreements—cardholders reasonably expect (and are led to believe) that the banks will charge wholesale rates that bear some resemblance to the rates that Visa and the banks themselves receive when transacting in foreign currencies to facilitate the cardholders' transactions. In fact, however, the banks and

[2] Some countries use fixed exchange rate systems, sometimes called a pegged exchange rate, in which their respective currency's value is fixed or pegged by a monetary authority against the value of another currency, such as the U.S. Dollar. For example, the Bermudian dollar is pegged to the U.S. Dollar at a one-to-one ratio by the Bermuda Monetary Authority. Visa does not apply government-mandated exchange rates for foreign payment card transactions in the limited set of countries that have adopted fixed exchange rate systems; instead, it adjusts the rates to provide a profit for Visa. For all other currencies, the Visa Rules and the Cardholder Agreements provide that wholesale FX market rates must be applied.

Visa rarely engage in wholesale market transactions to facilitate the cardholders' transactions, but when they do, they will charge and/or be charged genuine wholesale rates. Visa settles much of the transactions by U.S. cardholders with foreign merchants in U.S. Dollars, meaning neither the banks nor Visa engage in any currency conversion at all. In these instances, the need for any currency conversion at all is a pure fiction, and any hidden charge for the same, and/or the manipulation of FX rates in breach of the Visa Rules and the Cardholder Agreements, is unlawful and unjustly enriches Visa to the detriment of Visa cardholders. While the price the U.S. cardholder was quoted was in a foreign currency at the point of sale, the cardholder's account was in fact debited in U.S. Dollars, and the foreign merchant was typically paid in the foreign merchant's domestic currency.

11. Even in transactions that Visa actually settles in foreign currencies, the need for currency exchange is minimal. Visa is engaged in multilateral global transactions on a massive scale (*i.e.*, doing multiple transactions in both directions—*e.g.*, U.S. Dollars to Euros, and Euros to U.S. Dollars). As a result of all these transactions, Visa is constantly in possession of large amounts of various currencies. Given its own currency balances, Visa only needs to engage in foreign currency transactions to settle any *net* currency settlement requirements.

12. In sum, the FX rates Visa imposes and that banks charge cardholders for foreign transactions are largely a fiction and represent a non-transparent charge. They bear no resemblance to any exchange rate obtained or which could be obtained by the banks or Visa in wholesale markets, as many times Visa exchanged no currency whatsoever (because the transaction was settled in U.S. Dollars or because Visa had foreign currency on hand to settle the transaction with the foreign merchant) or traded at spot or forward FX prices.

13. Instead of approximating the issuing banks and Visa's actual costs of acquiring foreign currency to settle transactions, the rates Visa imposes and member banks charge consumers for FX transactions are designed to maximize profits for the banks and Visa. Specifically, the rates imposed vary based on the direction of the transaction, and are always in the banks' and Visa's favor. For example, for any given processing date, the rate

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

WHAT WILL YOU BUILD? | **sales@docketalarm.com** | **1-866-77-FASTCASE**

fastcase®
Smarter legal research.