UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK	: :	
In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation	: :	No. 05-MD-1720 (BMC)(JAM)

National Restaurant Association and Restaurant Law Center Joint Statement of Objections

The National Restaurant Association ("Association")[1] and its member companies are members of the Rule 23(b)(2) Class in the case, *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation,* No. 05-MD-1720 (BMC)(JAM). On behalf of the industry, the Association and the Restaurant Law Center[2] ("Law Center") jointly object to the proposed settlement issued on November 10, 2025. This represents the third attempt by the credit card industry to push a settlement through the courts that ultimately protects and preserves their anticompetitive business model. The courts have rejected these efforts twice in the past and should do so again because the proposed settlement sacrifices the legal rights of restaurant operators in exchange for inadequate, temporary and unworkable relief that further entrenches the current swipe fee system which has burdened the industry and the customers we serve.

While restaurants are ubiquitous in America, the industry is comprised of hundreds of thousands of small businesses running on slightly different business models. Seven in 10 restaurants are single unit operations, and 90% percent of restaurant locations employ fewer than 50 people. The industry is highly competitive and constantly changing in response to trends and economic pressures. In stark contrast to behemoth credit card companies and giant Wall Street banks, the typical small business restaurant runs on a 3-5% pre-tax margin with an average of about $1.5 million in sales per year.

For restaurant owners and operators, accepting debit and credit cards is an absolute imperative to best serve their customers, and ultimately, to stay in business. However, accepting card payments is one of the highest costs borne by an operator, often only behind labor and food. Restaurants have already been struggling as average food and labor costs have gone up over 35% in the last five years on top of already thin margins, but credit card interchange (or "swipe") fees have made this environment even more challenging. With an estimated 7 in 10 restaurant transactions paid by customers using either a credit or debit card, the constantly increasing rates and purchase volumes together have created a completely untenable situation for the restaurant industry.

---

[1] Founded in 1919, the National Restaurant Association ("Association") is the leading business association for the restaurant industry, which comprises more than 1 million restaurant and foodservice outlets and a workforce of 15.7 million employees. Together with 52 State Associations, we are a network of professional organizations dedicated to serving every restaurant through advocacy, education, and food safety.

[2] The Restaurant Law Center ("Law Center") is the only independent public policy organization created specifically to represent the interests of the food service industry in the courts. Its expressed purpose is to promote laws and regulations that allow restaurants to continue growing, creating jobs, and contributing to a robust American economy. The Law Center's goal is to protect and to advance the restaurant industry and to ensure that the views of America's restaurant and foodservice industry (the "Industry") are taken into consideration by giving its members a stronger voice, particularly in the regulatory arena and the courtroom. The Law Center files comments and pursues cases of interest to the industry.

The Association and Law Center are opposed to the settlement for several reasons outlined below:

1. **Nothing in the proposed settlement fixes the fundamentally anticompetitive fee-fixing and rule-setting role that Visa and Mastercard perform on behalf of card-issuing banks, nor does it permit restaurant operators to negotiate better rates.**

The entire U.S. payments system is inherently flawed because it allows just two companies, Visa and Mastercard, to fix fee rates on behalf of banks that issue credit cards and set the terms by which those cards are accepted. The fee rates are dictated through Visa's and Mastercard's "fee schedules" that are adopted by every one of the hundreds of banks that issue their cards. The rates are typically established with a percentage-based fee component plus a flat fee component (e.g., 2.35% + $0.10 per transaction). Every time a customer swipes a credit card, the businessowner accepting the payment must pay that interchange fee to the bank that issued the customer's credit card. But because banks do not have to set their own swipe fee rates, they become altogether insulated from fair market competition, and this anticompetitive pricing model inflates the costs of menu items and other goods and services in a way that leaves businesses and consumers holding the bag.

These conditions have created a power vacuum enabling the Visa/Mastercard duopoly to control over 80% of the credit card marketplace. As a result, U.S. merchants, including small business restaurant owners, pay the highest interchange (or "swipe") fees in the industrialized world, typically ranging between 2-4% per transaction. U.S. businesses and consumers paid over $111 billion in swipe fees on Visa- and Mastercard-branded credit card transactions alone in 2024, and a total of more than $187 billion in merchant fees for all credit and debit transactions that same year.

Equally problematic is that restaurant operators and other merchants have no ability to negotiate the credit card rates that the two dominant card companies impose, nor in practicality are they able to seek out alternative payment processing options. In other words, Visa, Mastercard, and Wall Street banks effectively force restaurant operators into a "take it or leave it" position if they want to accept credit cards with their logos on them. This is the only type of business "relationship" in which the service provider takes a definitive cut of the operator's profit and where the terms between the two parties are completely non-negotiable. But because the restaurant industry is so competitive, restaurants need to accept credit cards, or their customers will go to the restaurant next door or across the street.

Under the settlement, our members would still be subject to Visa's and Mastercard's limitations on their ability to bargain with credit card issuers. This is not what a competitive marketplace should look like—restaurant operators should be able to negotiate terms with credit card issuers that are acceptable to both parties, just like they do with all other aspects of their business. However, the settlement allows Visa and Mastercard to continue its restrictions on those negotiations that constrain the market and limit competition. In fact, the settlement gives Visa, Mastercard and the banks legal immunity to continue that system, thus further empowering the credit card duopoly to maintain its stranglehold over the broken U.S. payments system.

2. **The proposed settlement's temporary interchange fee reduction does not provide sufficient or meaningful cost savings for restaurant operators.**

For most restaurant operators, processing credit card transactions is their third largest operating expense, and the temporary rate reduction of ten basis points over five years proposed within the

settlement would have no substantive impact on the exorbitant cost of accepting credit cards. In fact, this meager reduction would barely nullify the increase in swipe fees over the last year alone—in 2024, the average interchange fee rate for Visa and Mastercard credit cards was 2.35% of the transaction amount, up from 2.26% in 2023.[3] These rates are particularly alarming when compared to places like Europe, Australia, and Canada, where credit card fees have been capped at 0.3%, 0.8%, and 0.95% respectively. Restaurant operators are savvy enough to recognize that a 0.1% rate reduction over five years is a bad deal, particularly when U.S. swipe fees are already far and away the highest in the industrialized world and clearly exceed what is reasonably needed to process transactions. Worse yet, nothing in the settlement would prevent Visa and Mastercard from raising rates again at will and without impunity after the five-year window ends.

The settlement also proposes setting a temporary, eight-year interchange rate cap of 1.25% for so-called "standard" consumer credit cards. However, this category of "standard" consumer credit cards as defined by the settlement represent a very small subset of credit cards currently in circulation, as most card issuing banks seek to bump their customers up into their "premium" rewards card categories that would remain uncapped. The vast majority (about 85%) of credit cards in the U.S. today would fall under this "premium" category, and the settlement does not prevent Visa and Mastercard from altering which cards are subject to the standard category, effectively rendering this particular provision meaningless.

In addition to the interchange rates that are established by the two card network companies on behalf of their card-issuing banks, Visa and Mastercard also charge separate network fees for the millions of credit card transactions that take place every day and keep those network fees for themselves. Indeed, the settlement does nothing to stop Visa and Mastercard from increasing their own network fees, meaning that any potential savings from capped interchange fees that the settlement might provide merchants over the next five years can and likely would be negated by other fee increases.

3. **The proposed settlement merely creates the illusion of flexibility and choice in card acceptance because it does not meaningfully reform the problematic "Honor-All-Cards" Rule.**

The "Honor-All-Cards" rule imposed by Visa and Mastercard requires that if a merchant accepts one card from a network (e.g., a Visa credit card), they must accept all cards issued under that network, regardless of the card type, issuer, or associated fees. The rule epitomizes the immense market power wielded by the Visa/Mastercard duopoly and has long been a source of contention for the merchant community. In fact, one of the key reasons why Federal District Court Judge Margo Brodie of the Eastern District of New York rejected the 2024 proposed settlement was because the "Honor-All-Cards" rule remained unchanged. While the newly proposed settlement appears to make modest revisions to some of the rule's premises, the changes would have no practical advantage for restaurant operators.

Under the settlement, credit cards would be grouped into three different categories—"standard" cards, "premium" (or rewards) cards, and "business" cards—and merchants would be permitted to no longer accept one or more of these three categories for payment. As noted previously, however, about 85% of credit cards in circulation in the U.S. would qualify as "premium" cards, and opting out of accepting these types of rewards cards would essentially mean opting out of

[3] The Nilson Report

accepting credit cards altogether, which is just not feasible today when about 75% of transactions made in restaurants are paid by card.[4]

Furthermore, the settlement would make the proposed change to the "Honor All Cards" rule completely ineffectual because credit card issuing banks would be permitted to move cards from one category to another without warning. Restaurant operators would have no line of sight into these changes, and the settlement does not place any restrictions on those changes, making it impossible in a practical sense for operators to plan for or use this type of relief.

4. **The proposed settlement makes credit card surcharging a central element of its purported relief, but this practice is not widespread within the restaurant industry and does not mitigate the larger systemic issues associated with the high cost of card acceptance.**

While the Association and Law Center have previously argued and continues to assert that surcharging should remain legal in all fifty states, most restaurant operators choose not to pass on any kind of credit card surcharge to their customers because of the optics surrounding a perceived "nickel and diming" of consumers and the generally competitive nature of the industry. In fact, according to the Association's 2025 *State of the Industry* report, less than 20% of restaurant operators across the country currently pass on a credit card surcharge on their customers. This is also due in part to the fact that the surcharging rules imposed by Visa and Mastercard are confusing and difficult to implement correctly, resulting in many disputes between operators and their payment processors for alleged violations of these rules in some capacity.

While the proposed settlement appears to allow "discounts" based on the individual credit card issuer, the settlement actually empowers Visa and Mastercard to limit the utility of those discounts by preserving existing agreements with merchants under which merchants do not discount, and by allowing Visa and Mastercard to simultaneously enforce rules that prohibit merchants from disparaging their brand or encouraging customers from using one issuer over another. To that end, the settlement also explicitly prohibits operators to surcharge based on the individual bank that issued the card, meaning that there is no way to use surcharging to spur price competition among credit card issuers, which is a foundational problem the litigation is supposed to address.

Ultimately, the practice of credit card surcharging merely represents a bandage on a broken payments system, and the proposed changes under the settlement will only lead to more disputes between Visa, Mastercard and restaurant operators over what discounts are permissible and what is considered a "discount" versus a "surcharge." Again, the narrow reforms afforded by the settlement does not provide operators with any new negotiating tools that they typically have when dealing with other suppliers in their normal operations.

Conclusion

The Association and Law Center urge the Court to reject the proposed settlement. The settlement was negotiated behind closed doors between Visa, Mastercard, several giant banks, and attorneys representing a small handful of merchants that neither coordinated with nor represented the interests of the vast majority of merchants, including restaurant operators, that would be bound by its terms. It does not provide any kind of meaningful relief for businesses, nor does it reign in any of the

[4] Circana/CREST, 2023

anticompetitive and harmful practices being exercised by the credit card duopoly. And in exchange for these inadequate relief measures, the settlement would broadly bar all merchants—whether they agree with the terms of the settlement or not—from bringing future legal claims against Visa, Mastercard and Wall Street banks regarding their credit and debit card fees and practices. As such, we do not support the settlement and urge the Court to reject the settlement proposal.



Michelle Korsmo
President & CEO
National Restaurant Association
2055 L St NW
Suite 700
Washington, D.C. 20036



Sean Kennedy
Acting Executive Director
Restaurant Law Center
2055 L St NW
Suite 700
Washington, D.C. 22036