



Potential Settlement of Interchange Fee Antitrust Litigation

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, MDL 1720

Dear National Restaurant Association Member,

You may have heard that there is a potential settlement of class action litigation that could provide restaurants with payment for prior swipe fees incurred. Many of our Members have been receiving notices from vendors offering to assist in securing such funds. Although the case is not yet settled, we wanted to alert our Members and other stakeholders of their ability to file a claim, and the possibility of obtaining a reimbursement payment if such litigation is fully and finally settled.

Background

Several years ago, the National Restaurant Association joined the merchant community in litigation against Visa and MasterCard and several large banks challenging their interchange fees as well as prohibitive card network rules, such as the inability to offer discounts for different forms of electronic payments (*In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, MDL 1720*). The National Restaurant Association was actively involved as a class representative in this litigation from 2005 until 2013, and the Restaurant Law Center has been involved in the litigation since 2015. Although a prior settlement was proposed in 2013 (the "2013 Settlement"), such settlement was never fully approved because of differences in viewpoints of the litigant classes, and the fact that such proposed settlement did not address the ability of Visa, Mastercard, and the banks from setting and charging such swipe fees.

Today, there are two types of class actions currently pending in Federal Court regarding interchange fees charged by Defendant Banks to merchants:

- 1) A damages class action; and,
- 2) An injunctive relief class action seeking changes in bank rules.

Restaurants and other parties may have or be receiving court-approved notices concerning a settlement in the damages class action. The injunctive relief class action is expected to be contested and continue, and therefore will not be affected by the proposed settlement.

<https://www.paymentcardsettlement.com/Content/Documents/New%20Docs/Notice.pdf>

2018 Damages Settlement Description

In 2018, a new settlement agreement was proposed in the damages class action litigation only (the "2018 Damages Settlement"). Similar to the 2013 Settlement, the 2018 Damages Settlement proposes monetary damages, but does not address or cease the ability of the credit cards and banks to charge such swipe fees. Under the 2018 Damages Settlement, the defendant would pay

over \$5 billion to merchants in the class, which includes any merchants who accepted Visa or MasterCard (and therefore paid swipe fees) between January 1, 2004 and January 25, 2019. Under the 2018 Damages Settlement, the defendant credit card companies do not have to make any changes to their rules or business practices.

On Thursday, January 24, 2019, the court granted preliminary approval of the class settlement in the damages class action litigation only. You might receive formal notices from court-appointed class counsel in the coming weeks if you participated in the original actions.

There is no cost to you to participate in the 2018 Damages Settlement, and you do not need to retain a lawyer or claims-filing firm in order to participate. Claim forms will be available after the settlement is finally approved. The court will hold a hearing on final approval on November 7, 2019.

Merchants do have the right to object to or opt-out of the settlement by sending a notice to class counsel by July 23, 2019. Between now and July 23, we recommend that each Member makes a business decision about whether to participate in the settlement or opt out. We also want to note that while the release is broad, unlike the last settlement in 2013 – to which National Restaurant Association objected – the new class settlement release is limited to five years.

Lastly, please note that there has been no settlement of a separate class action seeking changes to card network rules (the ability of the credit cards and banks to charge such swipe fees). If a rules class settlement is announced, we will share that information so you can make a decision whether to object to that settlement or not.

More information is available on the official case website, www.paymentcardsettlement.com.



National Restaurant Association
2055 L Street NW, Washington, D.C. 20036