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Google, Slew Of Others Exit Visa, MasterCard Swipe Fee MDL

By **Jessica Corso**

Law360, New York (February 2, 2015, 1:26 PM ET) -- Google Inc. and dozens of companies and vendors that had protested a \$7.25 billion settlement with Visa Inc. and MasterCard Inc. agreed in New York federal court Friday to drop claims that the companies are conspiring to fix swipe fees for credit cards.

1-800 Contacts Inc., Ethan Allen Inc., Tiffany & Co. and Williams Sonoma Inc. are a few of a multitude of plaintiffs in the multidistrict litigation against Visa and MasterCard that agreed to dismiss the suit under undisclosed settlement terms.

Attorneys for the parties couldn't be reached for immediate comment Monday.

The companies that are party to Friday's dismissal agreement had been unhappy that the \$7.25 billion settlement — believed to be the largest antitrust settlement in history — purportedly did nothing to prevent Visa and MasterCard from continuing with their alleged scheme to fix swipe fees and decided to opt out of the settlement.

Vendors say the interchange fees, which they agree to every time a customer uses his or her card, were much higher than they should have been in a competitive marketplace and hundreds of companies, including banks and health care providers, have objected to the settlement as failing to address the credit card companies' stranglehold on the industry.

Some of those, led by American Express and Blue Cross Blue Shield, are **still awaiting a ruling** from the Second Circuit over whether the settlement improperly releases future antitrust claims, lacks class cohesion and prohibits members from pursuing individualized claims.

But others, including Federal Express Co. **just weeks ago**, have chosen instead to unload their frustrations through undisclosed settlement agreements.

Google, which agreed Friday to see its way out of the MDL, **still has a suit pending** in Texas federal court against Visa and MasterCard echoing claims from the MDL that the credit card companies are violating federal antitrust laws by imposing supracompetitive interchange fees on the tech giant.

Google couldn't immediately be reached Monday for comment on how that suit will be affected by Friday's settlement.

When U.S. District Judge John Gleeson **approved the class settlement** in December 2013, he did so over the objections of class members who voiced their concerns about the fairness of the deal.

"The oral presentations of the objectors at the fairness hearing were afflicted by needless hyperbole," Judge Gleeson wrote in the 50-page order. "One of the merchant association principals who participated in the settlement discussions and initially agreed to its terms argued that the members of his association would be worse off if I approved the proposed settlement than they would be if they proceeded all the way through trial and lost."

Google is represented by David T. Moran and Charles L. Babcock of Jackson Walker LLP.

Other plaintiffs are represented by attorneys from Crowley Norman LLP, Nix Patterson & Roach LLP, Beck Redden LLP and Strange & Carpenter.

Visa is represented by Robert C. Mason, Robert J. Vizas, Mark R. Merley and Matthew A. Eisenstein of Arnold & Porter LLP, and Richard J. Holwell, Michael S. Shuster, Demian A. Ordway and Zachary A. Kerner of Holwell Shuster & Goldberg LLP.

MasterCard is represented by Kenneth A. Gallo, Andrew C. Finch and Gary R. Carney of Paul Weiss Rifkind Wharton & Garrison LLP, and Keila D. Ravelo, Wesley R. Powell and Matthew Freimuth of Willkie Farr & Gallagher LLP.

The case is In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, case number 1:14-md-01720, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Aaron Vehling and Beth Winegarner. Editing by Mark Lebetkin.

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