

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATIONAL ATM COUNCIL, INC., *et al.*,

*Plaintiff,*

v.

VISA INC., *et al.*,

*Defendants.*

Civil Action No. 1:11-Cv-01803-RJL  
Assign Date: 8/4/2015  
Description: Antitrust – Class Action

**ATM OPERATOR PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION**

Pursuant to Rule 23 of the Federal Rules of Civil Procedure and Rule 23.1(b) of the Local Rules of the U.S. District Court for the District of Columbia, Co-Lead Plaintiffs, ATMs of the South, Inc., Business Resource Group, Inc., Just ATMs USA, Inc., Wash Water Solutions, Inc., ATM Bankcard Services, Inc., Selman Telecommunications Investment Group, LLC, Scot Gardner d/b/a SJI, Turnkey ATM Solutions, LLC, Trinity Holdings Ltd., Inc., T&T Communications, Inc. and Randal N. Bro d/b/a T & B Investments (collectively, the “ATM Operator Plaintiffs”), move for Class Certification and Appointment of Class Counsel, wherein they ask that the Court (1) certify the requested class; (2) appoint the requested class representatives; and (3) appoint the requested class counsel.

Specifically, the ATM Operator Plaintiffs seek an order certifying this case as a class action for a class consisting of:

Class Definition: All ATM Operators that originated an Authorized Surcharged ATM Cash Disbursement at a Qualified ATM at any time between October 1, 2007 and the present (the “Class Period”).

The following definitions apply to the Class Definition:

1. “ATM Operator” is any person or entity that owned, operated, or leased a Qualified ATM that was authorized by a Mastercard Member or Visa Member, or by the agent of such Member, to originate an ATM Cash Disbursement through the connection of the Qualifying ATM to the Visa or Mastercard ATM Networks. “ATM Operator” includes ATM Independent Sales Organizations (“ISOs”) sponsored by a Mastercard Member or Visa Member and authorized to connect a Qualified ATM to the Mastercard or Visa ATM Networks, together with the affiliates of ATM ISOs authorized by the ATM ISO to connect a Qualified ATM to the Mastercard or Visa ATM Networks. Persons or entities that make space available to ISOs or affiliates of ISOs to operate a Qualified ATM on property they own or control, armored car firms that provide cash replenishment of Qualified ATMs, and Encryption and Support Organizations that manage encryption keys or service Qualified ATMs are not ATM Operators.
2. “Authorized Surcharged ATM Cash Disbursement” means currency, including travelers cheques, obtained at an ATM at which the cardholder’s PIN was accepted, paid out to a cardholder using a payment card issued by a U.S.-based financial institution for which an access fee or surcharge was levied on the cardholder by the ATM Operator;
3. “Mastercard ATM Networks” means the Maestro ATM network, the Cirrus ATM network, the Mastercard ATM network or any other ATM network owned or operated by the Mastercard Defendants.
4. “Mastercard Defendants” means Mastercard Incorporated or Mastercard International Incorporated d/b/a Mastercard Worldwide.
5. “Mastercard Member” means a financial institution that is a client of the Mastercard Defendants with membership rights in the Mastercard ATM Networks.
6. “Qualified ATM” means an unattended payment card magnetic-stripe or payment card chip-reading terminal located in any of the 50 United States or the District of Columbia that has electronic and telecommunications capability, accepts PINs, and disburses currency;
7. “Visa ATM Networks” means the Plus ATM network, Interlink ATM network, Visa Electron ATM network, or any other ATM network owned or operated by the Visa Defendants;

8. “Visa Defendants” means Visa Inc., Visa U.S.A. Inc., Visa International Service Association, or Plus System, Inc.;
9. “Visa Member” means a financial institution that is a client of the Visa Defendants with membership rights in the Visa ATM Networks.

Specifically excluded from the Class are:

- i. all banks, credit unions, and other financial institutions that deploy or operate ATMs, including all chartered state or federal banks or credit unions, issuers of payment cards, or members of either the Mastercard Defendants or the Visa Defendants;
- ii. the Visa Defendants and Mastercard Defendants;
- iii. officers, directors or employees of any Visa Defendant or Mastercard Defendant;
- iv. any entity in which any Visa Defendant or Mastercard Defendant has a controlling interest;
- v. any affiliate, legal representative, successor-in-interest or assignee of any Visa Defendant or Mastercard Defendant;
- vi. any federal, state, or local governmental entity;
- vii. any judicial officer presiding over this action and the members of their immediate family and judicial staff; and,
- viii. any juror assigned to this action.

Upon certification of the class, Plaintiffs listed above further move for an order appointing each of them as a class representative to prosecute this class action on behalf of themselves and all absent class members. Finally, Plaintiffs also move for the appointment of Jonathan L. Rubin and Daniel J. Mogin of the firm of MoginRubin LLP as Co-Lead Class Counsel. The grounds for this motion are fully set forth in the supporting Statement of Points and Authorities and accompanying materials filed herewith.

**Statement in Compliance with L.Cv.R. 23.1(c)(1)**

Upon certification of the class, the ATM Operators anticipate that the notice required by Fed. R. Civ. P. 23(c)(2) will be provided to all known class members directly through first class mail, supplemented by media notice in industry trade publications and websites. Notice to class members of class certification will commence approximately 45 days after this Court's approval of the Plaintiffs' notice plan and instructions to proceed to notify the certified class. Plaintiffs have retained class action settlement administrator, A.B. Data, Ltd., to assist in notice by direct mail and through the media. Class counsel will coordinate closely with A.B. Data to publish and distribute notice in industry trade publications, on industry trade association websites, and through industry mail and email lists, as necessary.

**Statement in Compliance with L.Cv.R. 23.1(c)(2)**

In the event a settlement is reached, class counsel will work with A.B. Data to timely present a plan for notice of settlement and distribution of settlement funds for the Court's consideration.

**Statement in Compliance with L.Cv.R. 23.1(c)(3)**

Any affirmative responses from class members to the notice of class certification, for example, requests to be excluded from the class or to update a mailing address, will be routed to A.B. Data and then to class counsel as appropriate or necessary. Class member responses to notice of any future settlement will also be routed to A.B. Data, who will work with class counsel to facilitate any necessary response and/or proceed with claims processing.

**Statement in Compliance with L.Cv.R. 7(m)**

Counsel for Plaintiffs and for Defendants have conferred on the substance of this Motion for Class Certification, and Defendants oppose the motion.

