

Price Fixing Case on Swipe Fees Settled By Visa and Mastercard

By: David Tetzlaff, Esq.

<http://commercialcounselor.com/>

VISA and Mastercard have agreed to a \$7.2 billion settlement in a class action lawsuit brought by merchants over credit card swipe fees. Swipe fees are the fees that VISA and Mastercard charge merchants each time a customer uses one of their credit cards, usually calculated as a percentage of the overall transaction.

Under the terms of the settlement, merchants are permitted to pass on to consumers the cost of swipe fees, something that was not permitted in the past. But California consumers may be among those least impacted because, notwithstanding the settlement, California law prohibits consumer surcharges related to swipe fees when the consumer elects to use a credit card.

Similar laws exist in several other states. California Civil Code § 1748.1 (a) reads:

“No retailer in any sales, service, or lease transaction with a consumer may impose a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means. A retailer may, however, offer discounts for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card, provided that the discount is offered to all prospective buyers.”

Even though swipe fees may not be passed on in California, the state does allow merchants to give a discount for using other forms of payment (e.g. cash). Understanding the difference between charging a surcharge and offering a discount will be important for any California retailer who is thinking of changing their credit card policies.

According to the recent settlement concerning Visa and Mastercard, \$6 billion in settlement funds in the class action lawsuit will be payable to the merchants who are part of the class. The settlement also includes a “temporary rebate of about one-tenth of a percentage point on the fees charged retailers”, according to a recent [article](#). The rebate is valued at \$1.2 billion.

Large retailers are likely to benefit most from the settlement since the number of credit card transactions they process give them leverage to negotiate lower swipe fees, though it remains unclear whether large retailers will pass on the savings of lower swipe fee to customers or impose surcharges to cover such (except in states that have separate laws prohibiting the practice). <http://bit.ly/S1aOXY>

For over 35 years small businesses, major corporations, public entities, individuals and insurance companies have depended on Tharpe & Howell, LLP, to deliver pragmatic, innovative, cost-effective civil litigation and transactional solutions. For more information, please contact us at (818) 473-5720 or email your request to cabusinesslawreport@tharpe-howell.com.