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16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 OAKLAND DIVISION

19	B & R SUPERMARKET, INC., d/b/a	)	Case No. 4:16-cv-01150-DMR
	MILAM'S MARKET, a Florida corporation, et	)	
20	al., Individually and on Behalf of All Others	)	<u>CLASS ACTION</u>
	Similarly Situated,	)	
21		)	NOTICE OF MOTION AND MOTION FOR
	Plaintiffs,	)	PRELIMINARY INJUNCTION
22		)	
	vs.	)	DATE: April 28, 2016
23		)	TIME: 11:00 a.m.
	VISA, INC., a Delaware corporation, et al.,	)	CTRM: 4 - 3rd Floor
24		)	JUDGE: Hon. Mag. Judge Donna M. Ryu
	Defendants.	)	
25		)	

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**TABLE OF CONTENTS**

	<b>Page</b>
I. INTRODUCTION .....	1
II. NATURE OF THE ACTION .....	2
III. STANDARD FOR RELIEF .....	4
A. Plaintiffs and the Class Have Shown a Likelihood of Success on the Merits .....	4
1. Plaintiffs Are Likely to Succeed on Their Sherman Antitrust Act Claims .....	5
2. Plaintiffs Are Likely to Succeed on Cartwright Act Claims.....	6
3. Plaintiffs Are Likely to Succeed on Their Unjust Enrichment Claims .....	7
B. Failure to Order Preliminary Relief Will Cause Irreparable Harm.....	7
C. The Balance of Equities Tips in Favor of Plaintiffs .....	8
D. The Relief Requested Is in the Public Interest.....	9
IV. CONCLUSION.....	10

1 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

2 PLEASE TAKE NOTICE that on April 28, 2016 at 11:00 a.m., or as soon thereafter as the  
3 matter may be heard, in the courtroom of the Honorable Magistrate Judge Donna M. Ryu,  
4 Courtroom 4 – 3rd Floor, Oakland United States Courthouse, 1301 Clay Street, Oakland, CA 94612,  
5 Plaintiffs Milam’s Market and Grove Liquors LLC (collectively, “Plaintiffs”), will, and hereby do,  
6 move this Court pursuant to Rule 65 of the Federal Rules of Civil Procedure, and this Court’s  
7 inherent authority to manage this litigation, seeking for an Order granting Preliminary Injunction.

8 Plaintiffs respectfully request the Court enter the proposed form of injunction filed with this  
9 motion. Filed concurrently with the motion are: (1) Plaintiffs’ Memorandum of Law in Support of  
10 the Motion; (2) Declaration of Carmen A. Medici and accompanying Exhibits; and (3) [Proposed]  
11 Order granting the motion.

12 **I. INTRODUCTION**

13 Plaintiffs Milam’s Market and Grove Liquors LLC – on behalf of a class of similarly situated  
14 persons and entities (the “Class,” further defined below) – seek a preliminary injunction ordering  
15 Defendants<sup>1</sup> to halt imposition of the so-called “Liability Shift” for financial responsibility for  
16 certain credit card transactions which went into effect October 1, 2015, until all class members who  
17 have sought to comply with Defendants’ announced Liability Shift receive the promised  
18 “certifications” which designate Plaintiffs as compliant with the new standards. Without an  
19 injunction, Plaintiffs and members of the proposed class will continue to lose customers, waste time  
20 and be charged for certain transactions which they are unable to avoid. Each and all of these  
21 deleterious impacts arise because of Defendants’ agreement to shift liability from card issuing banks  
22 to merchants while failing to provide the necessary approvals or certifications within deadlines also  
23 set by Defendants. Plaintiffs also seek a notice to the Class to inform them of the injunction.

24

25

26 <sup>1</sup> Visa, Inc.; Visa Usa, Inc.; MasterCard International Incorporated; American Express Company;  
27 Discover Financial Services; Bank of America, N.A.; Barclays Bank Delaware; Capital One  
28 Financial Corporation; Chase Bank USA, National Association; Citibank (South Dakota), N.A.;  
Citibank, N.A.; PNC Bank, National Association; USAA Savings Bank; U.S. Bancorp National  
Association; Wells Fargo Bank, N.A.; EMVCo, LLC; JCB Co. Ltd; and UnionPay.

1 **II. NATURE OF THE ACTION**

2 Plaintiffs here are merchants who have been unlawfully subjected to the Liability Shift for  
3 the assessment of MasterCard, Visa, Discover and American Express credit and charge card  
4 chargebacks, despite having purchased EMV-chip-compliant point of sale card readers and having  
5 otherwise complied with the directives of the Networks and Issuing Banks, during the period from  
6 October 1, 2015 until the present day.

7 Despite various security measures associated with credit cards, with any card transaction,  
8 even with EMV chip-enabled cards, there is a possibility of fraud, error or complaint: Cards may be  
9 stolen and used by the thief to make charges. A merchant might charge the wrong amount or deliver  
10 the wrong, or faulty, goods. A customer may simply regret a purchase and decide to challenge a  
11 transaction with their card-issuing bank, saying it was fraudulent. Typically, when a card-holding  
12 customer sees a fraudulent charge on his card statement, or wishes to dispute a charge for another  
13 reason, he contacts his issuing bank. (The telephone numbers and other contact information printed  
14 on the back of credit cards go to card issuers, not to the Networks such as MasterCard and Visa.) In  
15 such cases, the card-holding customer and the merchant are not usually liable for the fraudulent or  
16 unauthorized charge. Instead, the so called “chargebacks” are typically absorbed by the issuing  
17 banks – who market such “fraud protection” to their credit card customers as a core service of their  
18 cards – when fraudulent “card present” transactions occur. Before October 2015, the Class was not  
19 typically liable for the cost of fraudulent charges in card present transactions, except in those very  
20 rare occasions where the merchant improperly handled the transaction in some way, such as not  
21 obtaining a customer signature.

22 But the Networks decided that on October 1, 2015 – by fiat of Visa, MasterCard, Discover,  
23 American Express and the issuing banks, and without any opportunity for merchants like the  
24 Plaintiff Merchant Class to object or to opt out – that the system for handling chargebacks for card  
25 present transactions would change. Under the Liability Shift – accurately so named by the  
26 Defendants – the card-issuing banks and the Networks agreed and decreed that, as of that date,  
27 liability for billions of dollars of chargebacks would shift from the issuing banks to the merchants,  
28 unless the merchants could satisfy certain conditions – conditions, it would turn out, which were

1 impossible for the members of the Merchants Class to meet and which the Networks, the Issuing  
2 Banks and EMVCo *knew* were impossible for them to meet.

3 Merchants were not consulted about the change, were not permitted to opt out, were not  
4 offered any reduction of the interchange fee, the merchant discount fee, the swipe fee – or any other  
5 cost of accepting the Defendants’ credit and charge cards in exchange for this enormous burden. As  
6 a result of the Liability Shift, instead of only rarely being liable for chargebacks, merchants who  
7 could not process EMV card transactions were to be held liable for any chargeback resulting from  
8 the use of the card, unless they purchased expensive new equipment capable of processing EMV  
9 card transactions.

10 But what the Merchant Class did not and could not know was that purchasing this equipment  
11 and training their staff wasn’t going to be enough. In addition, the equipment would have to  
12 “certified” after the fact in a murky, nebulous process that was utterly outside of their control, and  
13 many times never happened. As a result, Merchant Class members, such as the Class  
14 Representatives here, could not timely comply with the standard, no matter what they did, because  
15 the Defendants refused to, or were unable to, “certify” the new equipment by the deadline – or,  
16 indeed, ever. Instead, the Networks, the issuing Banks and EMVCo knew from the outset – and the  
17 Merchant Class members are now learning – that the “certification” process would take years *after*  
18 the October 1, 2015 Liability Shift was imposed. The result has been massively increased costs for  
19 chargebacks being laid at the feet of the Merchant Class members, while the Issuing Banks have  
20 been spared those same costs and the Networks have continued to profit.

21 Without an injunction, the merchant Class, many of whom are small businesses with razor-  
22 thin margins, will continue to waste time away from their businesses and personal lives investigating  
23 and challenging fraudulent charges, will keep losing customers put off by new security procedures  
24 designed to mitigate circumstances not of the merchants’ making, and will continue to be charged  
25 for transactions under the new Liability Shift regime that they are unable to avoid – unless, of course  
26 the merchants simply stop accepting credit and debit cards, an impossibility for any modern age  
27 business.

28

1 **III. STANDARD FOR RELIEF**

2 Before a court can grant preliminary injunctive relief, a plaintiff must first “establish that he  
3 is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
4 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public  
5 interest.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 877 (9th Cir.  
6 2009).<sup>2</sup> In the Ninth Circuit, “the factors may be balanced such that ‘a stronger showing of one  
7 element may offset a weaker showing of another.’” *Lilith Games (Shanghai) Co. v. uCool, Inc.*, No.  
8 15-cv-01267-SC, 2015 U.S. Dist. LEXIS 128619 (N.D. Cal. Sept. 23, 2015) (quoting *Alliance for*  
9 *the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.2011)).

10 Because a fully developed record is not yet available, “a preliminary injunction is  
11 customarily granted on the basis of . . . evidence that is less complete than in a trial on the merits.”  
12 *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Thus, “the movant may satisfy its burden by  
13 submitting . . . evidence that might otherwise be inadmissible under the Federal Rules of Evidence.”  
14 *Imagine Medispa, LLC v. Transformations, Inc.*, 999 F. Supp. 2d 862, 869 (S.D. W. Va. 2014).

15 A federal court may issue a preliminary injunction ordering notification to affected persons.  
16 See, e.g., *Nabisco Brands, Inc. v. Conusa Corp.*, 722 F. Supp. 1287, 1294 (M.D.N.C.), *aff’d without*  
17 *op.*, 892 F.2d 74 (4th Cir. 1989) (in trademark action, granting preliminary injunction ordering  
18 defendant to recall infringing products and notify customers of order finding infringement).

19 **A. Plaintiffs and the Class Have Shown a Likelihood of Success on the**  
20 **Merits**

21 Plaintiffs in this action assert a number of counts under federal and state law, including civil  
22 conspiracy, violations of the Sherman Antitrust Act, violations of the Cartwright Act, unjust  
23 enrichment and for other equitable relief. “Where multiple causes of action are alleged, [a] plaintiff  
24 need only show likelihood of success on one claim to justify injunctive relief.” *McNeil-PPC v.*  
25 *Granutec, Inc.*, 919 F. Supp. 198, 201 (E.D.N.C. 1995). Here, Plaintiffs have a clear likelihood of  
26 success on each of the claims alleged.

27 \_\_\_\_\_  
28 <sup>2</sup> Unless otherwise noted, citations are omitted and emphasis is, added here and throughout.

1                   **1. Plaintiffs Are Likely to Succeed on Their Sherman Antitrust**  
2                   **Act Claims**

3                   Plaintiffs are likely to succeed on their antitrust claims. As detailed in Plaintiffs' Complaint  
4 filed on March 8, 2016 (Dkt. No. 1), Plaintiffs allege that Defendants conspired to shift billions of  
5 dollars in liability for fraudulent, faulty and otherwise rejected consumer credit card transactions  
6 from themselves to the Merchant Class, without consideration to, or meaningful recourse by, those  
7 merchants. Plaintiffs allege that Defendants accomplished this massive shift to merchants through  
8 the creation and implementation of a system with which Defendants knew many merchants are  
9 unable to comply, despite their best efforts.

10                   Plaintiffs provide compelling proof that Defendants, primarily members of the very entity  
11 that sets standards for so-called EMV transactions, have made it impossible for Plaintiffs to receive  
12 the mandatory "certifications" that Defendants are in charge of supplying. While Plaintiffs attempt  
13 to comply with the Byzantine certification process, they are being assessed massive (and growing)  
14 charges that would not have fallen on them under the system in place prior to the imposition of the  
15 Liability Shift. Plaintiffs have provided detailed allegations regarding each aspect of Defendants'  
16 anticompetitive conduct, including evidence showing named Plaintiff Milam's Market's attempts to  
17 comply with Defendants' rules and regulations regarding the Liability Shift. Plaintiffs have also  
18 provided allegations regarding the structure and make up of EMVCo, including statements from the  
19 entity that the supposed competitor card networks make all decisions on "a consensus basis among  
20 the member organizations."

21                   In order to establish a claim under 15 U.S.C. §1, plaintiff must demonstrate: (1) that there  
22 was a contract, combination, or conspiracy; (2) that the agreement unreasonably restrained  
23 competition under either a per se rule of illegality or a rule of reason analysis; and (3) that the  
24 restraint actually restrains competition, causing injury that extends beyond the impact on the  
25 claimant to affect the field of commerce in which the claimant is engaged (*i.e.*, "antitrust injury").  
26 *See Tanaka v. Univ. of S. Cal.*, 252 F.3d 1059, 1062 (9th Cir. 2001); *Rebel Oil Co. v. Atl. Richfield*  
27 *Co.*, 51 F.3d 1421, 1443-44 (9th Cir. 1995). Moreover, some types of restraint, such as those alleged  
28 here, are "so plainly anticompetitive that no elaborate study of the industry is needed to establish

1 their illegality.” *Nat’l Soc’y of Prof’l Eng’rs v. United States*, 435 U.S. 679, 692 (1978). When  
2 courts apply the per se rule to a particular type of restraint, there is “a conclusive presumption that  
3 the restraint is unreasonable” under §1. *Ariz. v. Maricopa Cnty. Med. Soc’y*, 457 U.S. 332, 344  
4 (1982); *see also United States v. Serta Assocs., Inc.*, 296 F. Supp. 1121 (N.D. Ill. 1968), *aff’d*, *Serta*  
5 *Assocs., Inc., v. United States*, 393 U.S. 534 (1969).

6 Plaintiffs have alleged an unreasonable restraint on competition by alleging a conspiracy  
7 consisting of a continuing agreement, understanding, or concerted action between and among  
8 Defendants and their co-conspirators in furtherance of which Defendants agreed to shift the liability  
9 of fraudulent payment card transactions from the card-issuing banks to merchants, with no ability for  
10 certain merchants to avoid such liability despite all efforts to do so.

11 The final requirement for a §1 violation is the presence of antitrust injury or injury to  
12 competition. That element too is met here. The Ninth Circuit has specifically identified four  
13 requirements for a showing of antitrust injury: (1) unlawful conduct, (2) causing an injury to the  
14 plaintiff, (3) that flows from that which makes the conduct unlawful, and (4) is of the type the  
15 antitrust laws were intended to prevent. *See American Ad Mgmt., Inc. v. General Tel. Co.*, 190 F.3d  
16 1051, 1055 (9th Cir. 1999). Here Plaintiffs have demonstrated unlawful conduct by Defendants that  
17 caused injury in the form of lost time, lost customers and chargebacks that Plaintiffs would not have  
18 incurred in the absence of Defendants’ illegal behavior. Plaintiffs’ damages flow directly from the  
19 illegal conduct alleged and is plainly of the type the antitrust laws were intended to prevent.

## 20 **2. Plaintiffs Are Likely to Succeed on Cartwright Act Claims**

21 The Cartwright Act is California’s antitrust statute. Cal. Bus. & Prof Code §§16700, *et seq.*  
22 Cases decided under the Sherman Act are applicable to interpreting the Cartwright Act. *See Marin*  
23 *Cnty. Bd. of Realtors, Inc. v. Palsson*, 549 P.2d 833 (Cal. 1976). Indeed, the analysis under  
24 California’s antitrust law mirrors the analysis under federal law because the Cartwright Act was  
25 modeled after the Sherman Act. *Cnty. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1160  
26 (9th Cir. 2001). Therefore, the analysis and conclusions would be the same under the Cartwright  
27 Act, as under the federal claims. Thus to the extent the Court finds Plaintiffs are likely to succeed on  
28



1 the Sherman Act claims alleged, a similar analysis would compel a finding of likely success under  
2 the Cartwright Act.

### 3 **3. Plaintiffs Are Likely to Succeed on Their Unjust Enrichment** 4 **Claims**

5 Under California law, the elements of unjust enrichment are: (1) receipt of a benefit; and (2)  
6 the unjust retention of the benefit at the expense of another. *Peterson v. Cellco P'ship*, 80 Cal. Rptr.  
7 3d 316 (Cal. Ct. App. 2008). "Under Florida law, the elements of an unjust enrichment claim are 'a  
8 benefit conferred upon a defendant by the plaintiff, the defendant's appreciation of the benefit, and  
9 the defendant's acceptance and retention of the benefit under circumstances that make it inequitable  
10 for him to retain it without paying the value thereof.'" *Alvarez v. Royal Caribbean Cruises, Ltd.*,  
11 905 F. Supp. 2d 1334, 1341 (S.D. Fla. 2012). Under both California and Florida law, Plaintiffs have  
12 properly alleged an unjust enrichment theory of harm by alleging that the Liability Shift imposed by  
13 Defendants conferred a benefit upon them at the expense of Plaintiffs. The Complaint further  
14 alleges that Defendants understood and appreciated the benefit the Liability Shift conferred upon  
15 them and that Defendants have accepted and retained the benefit of the new Liability Shift under  
16 inequitable circumstances.

### 17 **B. Failure to Order Preliminary Relief Will Cause Irreparable Harm**

18 Preliminary relief by way of an injunction and notice are necessary to avoid irreparable harm  
19 to the Plaintiff class. This is not a case where merchants are simply being improperly assessed  
20 chargebacks which could be remedied by money damages. In fact, Defendants' Liability Shift has  
21 fundamentally altered the way that Plaintiffs and the Merchant Class conduct business and already it  
22 is leading to problems that may, if not enjoined, result in the decimation of Plaintiffs' business.  
23 Many merchants are small business owners and do not have the time or profit margins to absorb the  
24 new liability the Defendants have agreed to thrust on them. Because Defendants have failed to  
25 provide the required certifications prior to the Liability Shift, and failed to allow for a grace period,  
26 Plaintiffs and the Merchant Class have had to take steps in their business to protect themselves from  
27 unavoidable chargebacks in a way that threatens to drive customers away.  
28

1 As but one example, Plaintiff Grove Liquors LLC now asks all payment card customers to  
2 show identification, a practice that that has alienated some customers to the point that those  
3 customers may not return.<sup>3</sup> Ex. A, Abolafia Decl., ¶¶8-12 (detailing frustration of customers with  
4 presenting ID and highlighting one instance where a sale was lost). Delays at the register stemming  
5 from EMV mandates also threaten to drive away both current and repeat customers. Once a  
6 customer has a negative experience in a store, they are often unlikely to return and money damages  
7 alone cannot remedy the problem.

8 As another example of irreparable harm, merchants lose something they can never get back  
9 when they have to deal with chargebacks: their time. Instead of spending time helping the business  
10 run or completing work and going home, merchants and their employees are spending large amounts  
11 of time communicating with the card networks, investigating potential fraud, viewing security  
12 footage and generally disputing the charge. Ex. B, Truntz Decl., ¶¶6-7 (detailing process of dealing  
13 with chargebacks); *id.*, ¶¶9-13 (estimating an 8x increase in the amount of time spent dealing with  
14 chargebacks since the Liability Shift). This is time that could have been spent elsewhere. *Id.*, ¶13.

15 Because Plaintiffs have demonstrated that there is no adequate remedy at law, this factor tips  
16 in favor of granting a temporary injunction.

### 17 **C. The Balance of Equities Tips in Favor of Plaintiffs**

18 “[W]hile cases frequently speak in the shorthand of considering the harm to the plaintiff if  
19 the injunction is denied and the harm to the defendant if the injunction is granted, the real issue in  
20 this regard is the degree of harm that will be suffered by the plaintiff or the defendant if the  
21 injunction is improperly granted or denied.” *Blackbird Techs., Inc. v. Joshi*, No. 5:15-cv-04272-  
22 EJD, 2015 U.S. Dist. LEXIS 136505 (N.D. Cal. Oct. 6, 2015) (quoting *Scotts Co. v. United Indus.*  
23 *Corp.*, 315 F.3d 264, 284 (4th Cir. 2002)). Here, the harm to Plaintiffs is substantial, as chargebacks  
24 are continuing to mount, customers are being driven away, businesses’ existences are threatened and  
25 finite time is wasting away. On the other hand, an injunction which resets the clock back to before  
26 the Liability Shift went into effect only puts the parties into the same position they had occupied for

27 <sup>3</sup> All references to “Ex.” are to the exhibits attached to the Declaration of Carmen A. Medici in  
28 support thereof, filed concurrently.

1 decades, with issuers generally responsible for the types of chargebacks now being assessed on  
2 Plaintiff, despite Plaintiffs' efforts to comply with Defendants' fiat. The balance of equities  
3 decidedly tips in Plaintiffs' favor.

4 **D. The Relief Requested Is in the Public Interest**

5 Finally, granting this motion will promote the public interest. Millions of merchants are  
6 subject to Defendants' Liability Shift. While the reduction of fraud in credit card transactions is  
7 plainly in the public interest, Defendants' agreement to impose the Liability Shift on merchants and  
8 concurrent failure to provide all merchants with the means to actually follow the rules regarding the  
9 acceptance and use EMV cards does nothing to reduce fraud. It turns out the new EMV card regime  
10 is inimical to the very goals Defendants purported it would serve. Not only is the chip-and-signature  
11 system being imposed by Defendants vastly inferior to the chip-and-PIN system in use elsewhere  
12 with EMV cards, there is strong anecdotal evidence that card fraud is actually increasing since the  
13 Liability Shift went into effect. Many merchants have reported increased chargebacks since the  
14 October 1, 2015 Liability Shift. Because it has become public knowledge that many chip readers do  
15 not actually work, thieves have taken advantage of this and have sought to exploit the failure of  
16 Defendants to provide working software and hardware all to the detriment of the Merchant Class. So  
17 Merchant Class members – who occupy the core of the American economy – are suffering, even as  
18 the alleged benefits of the new regime are not being realized. Increased fraud is a direct result of  
19 Defendants' illegal anticompetitive conduct and thus halting the shift is in the public interest.

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1 **IV. CONCLUSION**

2 For all the foregoing reasons, Plaintiffs respectfully request the Court grant Plaintiffs' Motion  
3 for a Preliminary Injunction.

4 DATED: March 11, 2016

Respectfully submitted,

5 ROBBINS GELLER RUDMAN  
6 & DOWD LLP  
7 PATRICK J. COUGHLIN  
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15 Attorneys for Plaintiffs

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 18 OAKLAND DIVISION

19	B & R SUPERMARKET, INC., d/b/a	)	Case No. 4:16-cv-01150-DMR
	MILAM'S MARKET, a Florida corporation, et	)	
20	al., Individually and on Behalf of All Others	)	<u>CLASS ACTION</u>
	Similarly Situated,	)	
21		)	DECLARATION OF CARMEN A. MEDICI
	Plaintiffs,	)	IN SUPPORT OF PLAINTIFFS' MOTION
22		)	FOR PRELIMINARY INJUNCTION
	vs.	)	
23		)	DATE: April 28, 2016
	VISA, INC., a Delaware corporation, et al.,	)	TIME: 11:00 a.m.
24		)	CTRM: 4 - 3rd Floor
	Defendants.	)	JUDGE: Hon. Mag. Judge Donna M. Ryu
25		)	

1 I, CARMEN A. MEDICI, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of  
3 California. I am associated with the law firm of Robbins Geller Rudman & Dowd LLP, counsel for  
4 Plaintiffs Milam's Market and Grove Liquors LLC in the above-entitled action. I have personal  
5 knowledge of the matters stated herein and, if called upon, I could and would competently testify  
6 thereto.

7 2. I submit this declaration in support of Plaintiffs' Motion for Preliminary Injunction.

8 3. Attached hereto are true and correct copies of the following Exhibits:

9 Exhibit A: Declaration of Jordan Abolafia; and

10 Exhibit B: Declaration of Schella Truntz.

11 I declare under penalty of perjury under the laws of the United States of America that the  
12 foregoing is true and correct. Executed this 11th day of March, 2016, at San Diego, California.

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s/ Carmen A. Medici  
CARMEN A. MEDICI

# EXHIBIT A

1 ROBBINS GELLER RUDMAN  
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 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 OAKLAND DIVISION

19	B & R SUPERMARKET, INC., d/b/a	)	Case No. 4:16-cv-01150-DMR
	MILAM'S MARKET, a Florida corporation, et	)	
20	al., Individually and on Behalf of All Others	)	<u>CLASS ACTION</u>
	Similarly Situated,	)	
21		)	DECLARATION OF JORDAN ABOLAFIA
	Plaintiffs,	)	
22		)	
	vs.	)	
23		)	
	VISA, INC., a Delaware corporation, et al.,	)	
24		)	
	Defendants.	)	
25		)	



1           1.       My name is Jordan Abolafia, I reside in Broward County, I am more than 18 years of  
2 age, and I have personal knowledge of the matters attested to in this declaration.

3           2.       I am employed by Grove Liquors, LLC, a plaintiff in this lawsuit, *B & R*  
4 *Supermarket, Inc. v. Visa, Inc.*, No. 4:16-cv-01150, now pending in the Oakland Division of the  
5 United States District Court for the Northern District of California.

6           3.       I work at the 2969 McDonald Street store in Coconut Grove, Florida, where I have  
7 been a cashier since January 2016.

8           4.       My duties include serving store customers and ringing up their purchases.

9           5.       In about three quarters of the transactions I process, the store customer pays with a  
10 payment card of some kind.

11          6.       In recent weeks, about 75% of customers paying with a payment card have been  
12 presenting cards with EMV chips. The balance of the cards have only magnetic stripes.

13          7.       Although we have EMV-chip capable POS card readers, we are not able to use them  
14 or process the EMV chips because the machines and the EMV chip readers have not been certified  
15 yet, so even customers with EMV chip cards are asked to swipe their magnetic strip.

16          8.       In order to avoid fraudulent transactions, because the POS machines cannot process  
17 EMV chip cards, we are asking all customers who pay with a card to present identification before we  
18 finalize the sale and have them sign.

19          9.       I have received complaints from customers about this process, and objections that  
20 they have to present identification to complete the sale.

21          10.       In addition, this process means transactions take longer to process, causing delays,  
22 longer lines and dissatisfaction among customers.

23          11.       Also, many customers take offense at having to present their identification.

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1           12.     In at least one instance, on March 3, 2016, a customer – having been asked for her  
2 identification – left her items on the counter and exited the store, angrily declaring she would never  
3 come back.

4           Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and  
5 correct. Executed on March 11, 2016.

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8  JORDAN ABOLAFIA

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# EXHIBIT B

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15 Attorneys for Plaintiffs

16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 OAKLAND DIVISION

19	B & R SUPERMARKET, INC., d/b/a	)	Case No. 4:16-cv-01150-DMR
	MILAM'S MARKET, a Florida corporation, et	)	
20	al., Individually and on Behalf of All Others	)	<u>CLASS ACTION</u>
	Similarly Situated,	)	
21		)	DECLARATION OF SCHELLA TRUNTZ
	Plaintiffs,	)	
22		)	
	vs.	)	
23		)	
	VISA, INC., a Delaware corporation, et al.,	)	
24		)	
	Defendants.	)	
25		)	

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1           1.       My name is Schella Truntz, I reside in Broward County, I am more than 18 years of  
2 age, and I have personal knowledge of the matters attested to in this declaration.

3           2.       I am employed by B & R Supermarket, Inc., ("B & R") a plaintiff in this lawsuit,  
4 *B & R Supermarket, Inc. v. Visa, Inc.*, Case No. 4:16-cv-01150, now pending in the Oakland  
5 Division of the United States District Court for the Northern District of California.

6           3.       I work at the corporate offices in Miami Springs, Florida, where I have been an  
7 Executive Assistant since 2014. I have worked for the company 15 years.

8           4.       My duties include reconciling chargebacks from credit cards used at all the Milam's  
9 Markets locations and at Grove Liquors.

10          5.       I learn of chargebacks either by receiving an email from American Express, a letter  
11 from our acquirer, Worldpay, or by visiting the Worldpay website, where I can see chargebacks from  
12 MasterCard, Visa and Discover.

13          6.       Each time Milam's Market or Grove Liquors receives a chargeback, I must reconcile  
14 the chargeback.

15          7.       The process for handling a chargeback is as follows:

16               (a)       When I learn of a chargeback, I send an inquiry to the store where the problem  
17 charge occurred.

18               (b)       The store then sends me a detailed receipt that sets forth all the information  
19 about the charge, and evidence of the customer signature.

20               (c)       I then send all the relevant information to Worldpay or American Express and  
21 wait for a determination from them, which usually takes a matter of weeks to reach me.

22               (d)       In some cases, where video is available, the company reviews security video  
23 of the transaction to determine who the customer was and what happened during the payment.

24               (e)       When we receive the determination from Worldpay or American Express,  
25 they tell us whether the dispute is resolved and the chargeback reversed, or if the chargeback is  
26 going to stand.

27               (f)       When the chargeback stands, that is money B&R loses.  
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1 7. Before the October 2015, I was receiving a total of just one or two chargebacks per  
2 week from Worldpay and American Express combined for all our locations.

3 8. Before October 2015, the majority of those chargebacks were ultimately reversed  
4 when we confirmed that the customer had swiped the card and signed. In cases where the card was  
5 stolen or fraudulent, B&R usually still did not pay the chargeback, as long as the card was in fact  
6 swiped and signed.

7 9. Before October 2015, I spent perhaps 15 minutes a week or less dealing with these  
8 issues.

9 10. However, since October 2015, the number of chargebacks with which we have to deal  
10 has increased many fold.

11 11. I now handle from 10 to 15 chargebacks a week and the vast majority of the those  
12 chargebacks are attributed to EMV chip card transactions.

13 12. Also, since October 2015, the great majority of chargebacks that we reconcile are not  
14 reversed, but are instead upheld on the grounds that EMV chip cards were used but not processed in  
15 certified point of sale card readers.

16 13. Since October 2015, I spend at least two hours or more per week handling these  
17 issues. This is time that I otherwise would have spent managing other affairs of B&R.

18 Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and  
19 correct. Executed on March 11, 2016.

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SCHELLA TRUNTZ

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

B & R SUPERMARKET, INC., d/b/a	)	Case No. 4:16-cv-01150-DMR
MILAM'S MARKET, a Florida corporation, et	)	
al., Individually and on Behalf of All Others	)	<u>CLASS ACTION</u>
Similarly Situated,	)	
	)	[PROPOSED] ORDER GRANTING
Plaintiffs,	)	PLAINTIFFS' MOTION FOR
	)	PRELIMINARY INJUNCTION
vs.	)	
	)	
VISA, INC., a Delaware corporation, et al.,	)	
	)	
Defendants.	)	
_____	)	

1 Plaintiffs Milam’s Market and Grove Liquors LLC, on behalf of a class of similarly situated  
2 persons and entities request the Court enter a preliminary injunction ordering Defendants<sup>1</sup> to halt  
3 imposition of the so-called Liability Shift for financial responsibility for certain credit card  
4 transactions which went into effect October 1, 2015 until all class members who have sought to  
5 comply with Defendants’ announced Liability Shift receive the promised “certifications” which  
6 enable Plaintiffs to comply with the new standards.

7 Plaintiffs are subject to irreparable and ongoing harm and have no adequate remedy at law.  
8 Plaintiffs are forced either to stop taking credit cards or risk alienating customers and losing time and  
9 money unless they want to face uncertain and ever-growing chargebacks. Because this Court finds  
10 that Plaintiffs are likely to succeed on the merits of their claims, a preliminary injunction is  
11 appropriate.

12 IT IS HEREBY ORDERED that Plaintiffs’ Motion for Preliminary injunction is GRANTED  
13 as follows:

- 14 1. As of the date of this order Defendants will revert their rules, policies and practices  
15 regarding liability for fraudulent and other chargebacks to the pre-October 1, 2015 state; and
- 16 2. Defendants shall immediately notify all merchants to whom this order applies.

17 IT IS SO ORDERED.

18 DATED: \_\_\_\_\_  
19 THE HONORABLE DONNA M. RYU  
20 UNITED STATES MAGISTRATE DISTRICT JUDGE

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26 <sup>1</sup> Visa, Inc.; Visa Usa, Inc.; MasterCard International Incorporated; American Express Company;  
27 Discover Financial Services; Bank of America, N.A.; Barclays Bank Delaware; Capital One  
28 Financial Corporation; Chase Bank USA, National Association; Citibank (South Dakota), N.A.;  
Citibank, N.A.; PNC Bank, National Association; USAA Savings Bank; U.S. Bancorp National  
Association; Wells Fargo Bank, N.A.; EMVCo, LLC; JCB Co. Ltd; and UnionPay.



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16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 OAKLAND DIVISION

19	B & R SUPERMARKET, INC., d/b/a	)	Case No. 4:16-cv-01150-DMR
	MILAM'S MARKET, a Florida corporation, et	)	
20	al., Individually and on Behalf of All Others	)	<u>CLASS ACTION</u>
	Similarly Situated,	)	
21		)	DECLARATION OF SERVICE BY MAIL
	Plaintiffs,	)	
22		)	
	vs.	)	
23		)	
	VISA, INC., a Delaware corporation, et al.,	)	
24		)	
	Defendants.	)	
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1 I, the undersigned, declare:

2 1. That declarant is and was, at all times herein mentioned, a citizen of the United States  
3 and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested  
4 party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San  
5 Diego, California 92101.

6 2. That on March 11, 2016, declarant served the following:

7 (a) NOTICE OF MOTION AND MOTION FOR PRELIMINARY  
8 INJUNCTION;

9 (b) DECLARATION OF CARMEN A. MEDICI IN SUPPORT OF  
10 PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION; and

11 (c) [PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR  
12 PRELIMINARY INJUNCTION

13 by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed  
14 envelope with postage thereon fully prepaid and addressed to the parties listed on the attached  
15 Service List.

16 3. That there is a regular communication by mail between the place of mailing and the  
17 places so addressed.

18 I declare under penalty of perjury that the foregoing is true and correct. Executed on March  
19 11, 2016, at San Diego, California.

20 s/ Shonda L. Landry  
21 SHONDA L. LANDRY

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**SERVICE LIST**

March 11, 2016

Visa, Inc.  
Registered Agent:  
The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

Visa USA, Inc.  
Registered Agent:  
Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

MasterCard International Incorporated  
Registered Agent:  
The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

American Express Company  
Registered Agent:  
CT Corporation System  
111 Eighth Avenue  
New York, NY 10011

Discover Financial Services  
Registered Agent:  
The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

Bank of America, N.A.  
Registered Agent:  
CT Corporation System  
818 West Seventh Street  
Los Angeles, CA 90017

Barclays Bank Delaware  
Registered Agent:  
Corporation Trust Incorporated  
351 West Camden Street  
Baltimore, MD 21201

Capital One Financial Corporation  
Registered Agent:  
Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

**SERVICE LIST**

Citibank (South Dakota), N.A.  
HQ:  
701 East 60th Street North  
Sioux Falls, SD 57104

Citibank, N.A.  
Registered Agent:  
CT Corporation System  
1 Corporate Center, Floor 11  
Hartford, CT 06103

Chase Bank USA, National Association  
Registered Agent:  
The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

PNC Bank, National Association  
Registered Agent:  
CSC-Lawyers Incorporating Service Company  
7 St. Paul Street, Suite 820  
Baltimore, MD 21202

USAA Savings Bank, a Nevada Corporation  
Registered Agent:  
The Corporation Trust Company of Nevada  
701 South Carson Street, Suite 200  
Carson City, NV 89701

U.S. Bancorp National Association  
Registered Agent:  
The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

Wells Fargo Bank, N.A.  
Registered Agent:  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

EMVCo, LLC  
Registered Agent:  
Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

**SERVICE LIST**

JCB Co. LTD

.HQ:

5-1-22, Minami Aoyama, Minato-ku

Tokyo 107-8686

Japan

UnionPay

HQ:

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Pudong New District

Shanghai, 200135

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