

**BEFORE THE UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

IN RE: VISA DEBIT NETWORK
ANTITRUST LITIGATION

MDL No.

**MEMORANDUM IN SUPPORT OF MOTION OF
PLAINTIFF PANTANO FOR TRANSFER OF ACTIONS TO
THE NORTHERN DISTRICT OF CALIFORNIA PURSUANT TO 28 U.S.C.
§ 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS**

Plaintiff Richard Pantano (“Moving Plaintiff”)¹ respectfully submits this memorandum of law in support of his Motion for Transfer of Actions to the Northern District of California Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings. To date, five related cases have been filed in two judicial districts, each alleging that Defendant Visa Inc. obtained and maintained monopoly power in two debit network services markets in the United States by entering into anticompetitive agreements with banks, merchants, and potential competitors in violation of federal and state antitrust laws. Transfer and centralization of the related actions to the Northern District of California will advance the efficient resolution of this litigation and serve the convenience of the parties and witnesses.

BACKGROUND

This case concerns two debit network services markets in the United States: the general debit network services market and its submarket, the general card-not-present debit network services market. ¶¶ 157-90.² Visa has monopolized these markets for debit network transactions; penalized issuer and acquirer banks and merchants that seek to use alternative debit networks; and paid off potential competitors, innovators, and new entrants to forestall or snuff out threats to its dominance in these markets. ¶ 1. This conduct has harmed cardholders and merchants, as well as consumers more generally. *Id.*

In the United States, consumers use debit cards to purchase more than \$4 trillion worth of goods or services every year. *Id.* These cards can be used in person in card-present transactions or online or over the phone in card-not-present transactions. ¶ 2. Debit networks process all these transactions and connect a cardholder’s bank to a merchant’s bank by transmitting data between

¹ Plaintiff in *Pantano v. Visa, Inc.*, Case No. 3:24-cv-07365 (N.D. Cal.).

² All “¶” references are to paragraphs in the Complaint filed in the *Pantano* action. Case No. 3:24-cv-07365, Dkt. No. 1 (N.D. Cal.).

these two entities. ¶ 3. Debit transactions historically were authorized using a PIN entry or a signature, but PIN-less methods have also been developed for card-not-present transactions. ¶¶ 3; 49; 65-68. Debit networks can only process transactions when both the bank issuing the debit card to the cardholder (the issuer) and the merchant's bank (the acquirer) are part of the debit network. ¶ 7. This means that participants in the U.S. debit network services markets face powerful network effects where issuers are unlikely to join the debit network unless many merchants already use the network and merchants are unlikely to join the network unless their customers have cards that work with the network, which requires the issuer to have activated the network. *Id.* This creates powerful barriers to entry in the markets. *Id.* Visa's debit networks have been the largest in the United States for decades, with more than 60% of debit transactions and 65% of card-not-present debit transactions in the United States running on Visa's debit networks. ¶ 8. Visa anticompetitively obtained its monopoly in the debit network services markets and has maintained that monopoly in the face of two significant threats: one from legislation and one from emerging technologies. ¶ 10.

First, after the passage of the Durbin Amendment requiring issuers to include at least two debit networks on every debit card that are not affiliated with each other, Visa leveraged non-contestable transactions, on which it has a 100% monopoly, to enter into routing agreements with issuers and acquirers requiring them to send all or nearly all of their debit transactions to Visa, including those that are contestable. ¶¶ 11-16. These deals effectively shield 75% of Visa's debit network volume from competition. ¶ 16.

Second, Visa has entered into agreements with potential competitors who have the potential to introduce innovative technologies to the debit network services markets to prevent them from competing with Visa. ¶¶ 17-19. Several digital platforms that offer payment products to consumers, such as Apple, PayPal, and Square, already have large existing networks that connect merchants

and consumers and the potential to enter the market or develop technologies that would make debit networks unnecessary. ¶¶ 17-18. Visa, recognizing this threat, partnered with these potential entrants and offer heavy inducement payments to dissuade these competitors from developing innovative new technologies that could threaten Visa’s monopoly profits in the debit network markets. ¶ 19.

Visa’s conduct harms the general debit network services market and general card-not-present debit network services market in several ways, including raising barriers to entry, depriving rival debit networks of the scale they need to effectively compete, and neutralizing its biggest potential competitors by paying them not to compete. ¶¶ 20-23. Visa’s actions harm cardholders and merchants by depriving them of the benefits of competitive debit network markets. ¶ 24. By insulating itself from competition, Visa is also able to benefit from monopoly profits in the debit network services markets and charge merchants, acquirers, and issuers supracompetitive prices who in turn pass along these high fees to consumers. ¶¶ 25, 27.

The United States Department of Justice filed a related civil enforcement action on September 24, 2024, in the Southern District of New York, which is pending before the Hon. John G. Koeltl. *United States v. Visa Inc.*, 1:24-cv-07214, Dkt. No. 1 (S.D.N.Y.). Beginning on October 1, 2024, at least four class action suits (the “Related Actions”) have been filed regarding Visa’s anticompetitive conduct in the United States debit network services markets:

- Four actions in the Southern District of New York, pending before the Hon. John G. Koeltl consist of:
 - Three merchant actions: *All Wrapped Up Signs and Graphix LLC v. Visa Inc.*, No. 1:24-cv-07435, filed Oct. 1, 2024 (S.D.N.Y.); *Yabla Inc. v. Visa Inc.*, 1:24-cv-

08045, filed Oct. 22, 2024 (S.D.N.Y.); *NDA Aesthetics, LLC v. Visa Inc.*, 1:24-cv-08269, filed Oct. 30, 2024 (S.D.N.Y.)

- One merchant and cardholder action: *Kevranian d/b/a Nuts for Candy v. Visa Inc.*, 1:24-cv-07997, filed Oct. 21, 2024 (S.D.N.Y.)
- One cardholder action in the Northern District of California, pending before the Hon. Rita F. Lin: *Pantano v. Visa, Inc.*, 3:24-cv-07365, filed Oct. 22, 2024 (N.D. Cal.)

The Related Actions (*see* Schedule of Related Actions submitted herewith) all involve an overlapping defendant, and each alleges that Visa anticompetitively obtained and maintained its monopoly in the U.S. debit network services markets by entering into agreements with issuers, acquirers, merchants, and potential entrants, raising barriers to entry, and foreclosing competition in violation of federal and state antitrust laws and state consumer protection laws. Each Related Action alleges price increases and similar factors that corroborate Moving Plaintiff’s allegations of Visa’s anticompetitive conduct, including high levels of market concentration, significant barriers to entry, and Visa’s history of antitrust violations. Each Related Action seeks compensatory damages and injunctive relief on behalf of a cardholder or merchant class in the United States from October 2020 through the present. The Related Actions are also in a similar procedural posture, as all are in the very earliest stages of litigation, have had no dispositive motions filed, and have yet to commence discovery.

ARGUMENT

I. Centralization of the Related Actions Is Warranted Under 28 U.S.C. § 1407

“When civil actions involving one or more common questions of fact are pending in different districts,” this Panel may transfer such actions “to any district for coordinated or consolidated pretrial proceedings,” if transfer will serve “the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407(a). Because

these requirements are met here, the Panel should transfer the Related Actions, and any future-filed actions, to a single district for coordinated or consolidated pretrial proceedings.

A. The Related Actions Involve Common Questions of Fact

For purposes of Section 1407, common questions of fact exist where multiple actions assert similar “core factual allegations” and “can be expected to focus on a significant number of common events, defendants, and/or witnesses.” *In re Unumprovident Corp. Sec., Derivative & “ERISA” Litig.*, 280 F. Supp. 2d 1377, 1379 (J.P.M.L. 2003).

The Related Actions satisfy the requirements of Section 1407(a) because they involve a common defendant and overlapping conduct, and the Panel routinely finds that centralization is appropriate for such cases involving alleged violations of antitrust laws. *See, e.g., In re Qualcomm Antitrust Litig.*, 273 F. Supp. 3d 1373, 1375 (J.P.M.L. 2017) (“Plaintiffs in all the actions listed on Schedule A assert similar claims for violations of federal and state antitrust and consumer protection laws.”); *In re Visa/Mastercard Antitrust Litig.*, 295 F. Supp. 2d 1379, 1380 (J.P.M.L. 2003) (“All six actions share factual questions relating to allegations that Visa and MasterCard’s ‘Honor All Cards’ policy violates the Sherman Antitrust Act.”); *In re Polyester Staple Antitrust Litig.*, 259 F. Supp. 2d 1376, 1377 (J.P.M.L. 2003) (cases arising out of alleged price fixing shared common factual questions); *In re Parcel Tanker Shipping Servs. Antitrust Litig.*, 296 F. Supp. 2d 1370, 1371 (J.P.M.L. 2003) (“All actions share factual questions relating to the existence, scope and effect of an alleged conspiracy to fix the price of international shipments of liquid chemicals in the United States.”).

Each Related Action is also brought on behalf of a nationwide class and asserts antitrust claims under federal law. *See In re Cotton Yarn Antitrust Litig.*, 336 F. Supp. 2d 1383, 1384 (J.P.M.L. 2004) (“All actions share factual questions relating to the existence, scope and effect of

an alleged conspiracy to fix the price of cotton yarn in the United States and/or to allocate the U.S. cotton yarn market and customers.”); *In re Domestic Airline Travel Antitrust Litig.*, 140 F. Supp. 3d 1344, 1345 (J.P.M.L. 2015) (“All of the actions assert overlapping putative nationwide classes of direct purchasers of domestic airfare, and all the actions assert antitrust violations of Section 1 of the Sherman Act.”); *In re K-Dur Antitrust Litig.*, 176 F. Supp. 2d 1377, 1378 (J.P.M.L. 2001) (similar).

The Panel likewise frequently centralizes direct and indirect purchaser actions—like the cardholder and merchant actions here—together. *See, e.g., In re: Lidoderm Antitrust Litig.*, 11 F. Supp. 3d 1344, 1345 (J.P.M.L. 2014) (“All of the actions are putative nationwide class actions on behalf of either direct or indirect purchasers.”); *In re Capacitors Antitrust Litig. (No. III)*, 285 F. Supp. 3d 1353, 1355 (J.P.M.L. 2017) (ordering centralization where related actions included both indirect and direct purchaser class actions). While the cardholder plaintiffs in the Related Actions bring additional claims for violations of state antitrust and consumer protection laws on behalf of state subclasses, the Panel has “often . . . held that the assertion of different legal claims or additional facts is not significant where, as here, the actions arise from a common factual core” and that transferee judges are more than capable of applying the laws of multiple states. *In re Insulin Pricing Litig.*, 2023 WL 5065090, at *2 (J.P.M.L. 2023).

The Related Actions share the same defendant and numerous common questions of fact, including: (1) defining the relevant markets; (2) determining Visa’ market power in the relevant markets; (3) assessing the alleged anticompetitive effects of Visa’s agreements with issuers, acquirers, merchants, and potential entrants. *Cf. In re Digital Advert. Antitrust Litig.*, 555 F. Supp. 3d 1372, 1375 (J.P.M.L. 2021). In sum, the Related Actions satisfy Section 1407(a).

B. Centralization Would Serve the Convenience of Parties and Witnesses and Promote the Just and Efficient Conduct of the Related Actions

Because the Related Actions' factual allegations largely overlap, transfer would serve "the convenience of parties and witnesses and . . . promote the just and efficient conduct" of the Related Actions. 28 U.S.C. § 1407(a). There are already five actions pending in two districts. *See e.g., In re Delta Dental Antitrust Litig.*, 433 F. Supp. 3d 1358 (J.P.M.L. 2020) (centralizing fourteen actions pending in three districts in the district where "half of the related actions . . . are pending"); *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 355 F. Supp. 3d 1382 (J.P.M.L. 2019) (centralizing four actions pending in three districts); *In re Diisocyanates Antitrust Litig.*, 341 F. Supp. 3d 1376, 1377 (J.P.M.L. 2018) (centralizing twelve actions filed in three districts involving antitrust allegations where "discovery is likely to be international in scope"). Given the likelihood that additional cases will be filed, centralization under Section 1407 now would be the most efficient means of proceeding. *See, e.g., In re: Edward H. Okun I.R.S. |1031 Tax Deferred Exch. Litig.*, 609 F. Supp. 2d 1380, 1381 (J.P.M.L. 2009) ("[D]enial of either of Wachovia's transfer motions could engender delay, as the Panel may be asked to revisit the question of Section 1407 centralization. Centralizing these actions now under Section 1407 should streamline resolution of this litigation to the overall benefit of the parties and the judiciary."); *In re: AndroGel Prod. Liab. Litig.*, 24 F. Supp. 3d 1378, 1379 (J.P.M.L. 2014) (rejecting alternatives to centralization because they "would delay the resolution of the common core issues in this litigation").

Centralization is also appropriate because the plaintiffs in the Related Actions will undoubtedly pursue substantially similar testimony, documents, and other evidence from Visa, yet the five actions are currently proceeding in two districts before two different judges. Centralizing the Related Actions will have "the salutary effect of placing all actions in this docket before a single judge who can formulate a pretrial program that ensures that pretrial proceedings will be

conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties.” *In re Cook Med., Inc., Pelvic Repair Sys. Prod. Liab. Litig.*, 949 F. Supp. 2d 1373, 1375 (J.P.M.L. 2013); *see also In re Auto Body Shop Antitrust Litig.*, 37 F. Supp. 3d 1388, 1390 (J.P.M.L. 2014) (“Transfer under Section 1407 will offer the benefit of placing all related actions before a single judge who can structure pretrial proceedings to accommodate all parties’ legitimate discovery needs while ensuring that common witnesses are not subjected to duplicative discovery demands.”).

Moreover, because the Related Actions have many common questions of fact, they will also have many overlapping pretrial issues, including the adequacy of the claims and allegations. And because each Related Action is a class action, centralization will eliminate the possibility of inconsistent rulings on class certification from two different courts. *See, e.g., In re AT&T Inc. Cellular Customer Data Sec. Breach Litig.*, 2024 WL 4429233, at *3 (J.P.M.L. Oct. 4, 2024) (“Centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings, particularly with respect to class certification; and conserve the resources of the parties, their counsel, and the judiciary.”).

For these reasons, the Panel should centralize the Related Actions.

II. The Panel Should Centralize the Related Actions in the Northern District of California

The Panel should centralize the Related Actions in the Northern District of California because it is the most appropriate transferee district. Visa is headquartered in Foster City, California, which is located in the Northern District of California. Therefore, much of Visa’s documentary evidence and many of its witnesses likely will be found in or near the Northern District of California. *See In re UICI “Ass’n Group” Ins. Litig.*, 305 F. Supp. 2d 1360, 1362 (J.P.M.L. 2004) (“[T]he location of the moving defendants’ headquarters within the Northern

District of Texas implies that relevant witnesses and documents are likely to be found there.”); *cf. In re Hydrogen Peroxide Antitrust Litig.*, 374 F. Supp. 2d 1345, 1346 (J.P.M.L. 2005) (selecting district in part due to “the presence of two of the largest domestic producers of hydrogen peroxide—both of which are named as defendants—within blocks of the federal courthouse”). Indeed, the fact that the Defendant has its headquarters in the district is a sufficient reason on its own to centralize in the Northern District of California. *See In re Chocolate Confectionary Antitrust Litig.*, 542 F. Supp. 2d 1376, 1377 (J.P.M.L. 2008) (selecting district because one defendant’s headquarters was located there and “several of the defendants maintain a presence in or near that district”).

The Northern District of California has a further nexus to this docket given that potential third parties named in the complaint, including Apple, Square, and PayPal, are all headquartered in that district.³ The Northern District of California is also a geographically convenient forum for parties and witnesses. The San Francisco, Oakland, and San Jose courthouses are all located in close proximity to major airports.⁴ Additionally, because the first Related Action was very recently filed (on October 1, 2024), “none of the cases has advanced so far since their filing as to give any particular district unique insight or knowledge of this controversy.” *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.*, 148 F. Supp. 3d 1367, 1369 (J.P.M.L. 2015) (cleaned up).

³ Apple is headquartered in Cupertino, California. <https://investor.apple.com/faq/default.aspx> (last visited 10/23/24). Block, Inc., the parent company of Square, is headquartered in Oakland, California. Block, Inc., Form 10-K (2023). PayPal is headquartered in San Jose, California. <https://about.pypl.com/who-we-are/history-and-facts/default.aspx> (last visited 10/23/24).

⁴ *See* <https://www.flysfo.com/passengers/ground-transportation>; <https://www.iflyoak.com/ground-transportation/driving-directions-getting-to-oak/>; <https://www.flysanjose.com/visiting-the-bay-area> (last visited 10/23/24).

Though the Justice Department's suit against Visa is pending in the Southern District of New York, this factor is not dispositive given that the other factors weigh in favor of transfer to the Northern District of California. *See In re Hydrogen Peroxide Antitrust Litig.*, 374 F. Supp. 2d at 1346 (J.P.M.L. 2005) (transferring MDL to the Eastern District of Pennsylvania despite related court proceedings in the Northern District of California); *In re Elec. Carbon Prod. Antitrust Litig.*, 259 F. Supp. 2d 1374, 1376 (J.P.M.L. 2003) (transferring an MDL to the District of New Jersey despite a federal grand jury proceeding pending in the Eastern District of Pennsylvania); *In re Corn Derivatives Antitrust Litig.*, 486 F. Supp. 929, 931 (J.P.M.L. 1980) (transferring an MDL to the District of New Jersey despite a civil enforcement action and grand jury proceeding pending in the Northern District of California).

This MDL should be transferred to the Hon. Rita F. Lin. Judge Lin is currently presiding over the *Pantano* case and "has not yet had the opportunity to preside over an MDL." *In re Neo Wireless, LLC, Pat. Litig.*, 610 F. Supp. 3d 1383, 1385 (J.P.M.L. 2022); *In re Deere & Co. Repair Servs. Antitrust Litig.*, 607 F. Supp. 3d 1350, 1351 (J.P.M.L. 2022). While Judge Lin's service as a federal district judge began only in 2023, she previously served as a judge on the Superior Court of California for the County of San Francisco from 2018 until 2023. Finally, apart from Judge Lin, there are many other skilled jurists in the Northern District of California who could capably manage this litigation.

Based on the location of the evidence and the Defendant, and having a strong nexus to the Defendant, the Northern District of California is the most appropriate transferee district. Moving Plaintiff respectfully submits that this litigation should be centralized there.

CONCLUSION

For the foregoing reasons, Moving Plaintiff respectfully requests that the Panel centralize the Related Actions before the Hon. Rita F. Lin of the Northern District of California or another judge in that district.

Dated: November 5, 2024

Respectfully submitted,

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