

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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 IN RE PAYMENT CARD INTERCHANGE FEE and MERCHANT-DISCOUNT ANTI-TRUST LITIGATION : MASTER FILE NO. 1:05-md-1720-JG-JO  
 : ORAL ARGUMENT REQUESTED  
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 This Document Relates to All Class Actions :  
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**REPLY MEMORANDUM OF LAW IN SUPPORT OF  
CHASE PAYMENTECH'S MOTION TO STRIKE**

This motion presents only one issue: By adding Chase Paymentech Solutions, LLC (“Paymentech”) as a named defendant, did plaintiffs exceed this Court’s September 18, 2008 Order granting them leave “to file the proposed Second Consolidated Amended Class Action Complaint,” and thereby violate Fed. R. Civ. P. 15(a)(2)? They did, and Paymentech’s motion should be granted.

### ARGUMENT

Plaintiffs concede that they exceeded this Court’s Order by adding Paymentech as a defendant. Courts routinely strike substantive amendments that exceed a court’s leave without requiring a showing of prejudice. *See, e.g., Index Fund, Inc. v. Hagopian*, 107 F.R.D. 95, 97-99 (S.D.N.Y. 1985). When a plaintiff exceeds the court’s leave by subjecting a new party to legal liability, even if the new party is “already well aware of and involved in the litigation” (Opp. at 5), such addition is substantive and in violation of Rule 15(a)(2). *See Castillo v. Iveco Truck Repair*, No. 86 CIV. 5155 (WK), 1989 U.S. Dist. LEXIS 16036, at \*6-7 (S.D.N.Y. Oct. 3, 1989), *aff’d*, 1989 U.S. Dist. LEXIS 15139 (S.D.N.Y. Dec. 19, 1989). Nor was plaintiffs’ deviation simply “minor” or “technical” as they assert (Opp. at 2); *Tuff-N-Rumble Mgmt., Inc. v. Sugarhill Music Publ’g, Inc.*, 49 F. Supp. 2d 673, 681-82 (S.D.N.Y. 1999), on which plaintiffs rely, is thus entirely inapposite.<sup>1</sup> The addition of Paymentech altered its involvement in this litigation from “a subsidiary of Chase” participating in discovery to a named defendant subject to legal liability, without any regard to the protections imbedded in Rule 15(a)(2).

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<sup>1</sup> Contrary to plaintiffs’ characterization, the *Sugarhill* plaintiffs properly obtained the court’s leave for each party they added. *Compare Tuff-N-Rumble Mgmt., Inc. v. Sugarhill Music Publ’g, Inc.*, 97-CV-7700, 1999 WL 34522532 (S.D.N.Y. Feb. 1, 1999) (Plaintiff’s First Amended Complaint at 4-5) *with Sugarhill*, 49 F. Supp. 2d at 675-76, 681-82. The *Sugarhill* plaintiffs then merely added a few paragraphs to the complaint describing the newly added parties and changed certain other paragraphs by “slightly reword[ing]” them or splitting them into two. *Sugarhill*, 49 F. Supp. 2d at 681-82 & nn. 6-7.

Dated: July 2, 2009

Respectfully submitted,

/s/ Peter E. Greene

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