

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In Re PAYMENT CARD INTERCHANGE : MASTER FILE NO.
FEE AND MERCHANT DISCOUNT : 05-MD-1720 (MKB)(JO)
ANTITRUST LITIGATION :
:
This Document Relates To: :
: DECLARATION OF
Rule 23(b)(3) Class Action : GARY B. FRIEDMAN
-----X

Gary B. Friedman hereby declares pursuant to 28 U.S.C. § 1746:

1. I am a member of Friedman Law Group LLP (“FLG”), one of the law firms representing the plaintiff class in this class action. I submit this declaration in support of the motion being filed today on behalf of FLG and myself for leave to intervene into this action pursuant to Fed R. Civ. P. 24.

2. In November and December 2005, I entered into a written agreement with K. Craig Wildfang, a member of Robins Kaplan LLP (previously Robins, Kaplan Miller & Ciresi LLP) on behalf of a “lead counsel group” consisting of (i) his firm, (ii) Berger & Montague P.C., and (iii) the law firm that was then known as Lerach, Coughlin et al., and is now known as Robbins Geller Rudman and Dowd LLP. That written agreement consists of:

- a. A letter signed by Mr. Wildfang addressed to me and Mark Reinhardt, and copying the other co-lead counsel, dated November 29, 2005. A copy of this letter is attached as **Exhibit 1**.
- b. A letter signed by me addressed to Mr. Wildfang and Dennis Stewart, copying the other co-lead counsel, dated December 29, 2005. A copy of this letter is attached as **Exhibit 2**.

c. Acknowledgements signed by the so-called NSR Group firms agreeing to be bound by the Agreement. These acknowledgements were styled as a letter from me and Mr. Reinhardt to the NSR Group firms with “Agreed To” signature lines for the firms. A true and correct copy, which I transmitted to lead counsel along with my December 29, 2005 letter, is attached as **Exhibit 3**.

3. Attached as **Exhibit 4** are emails between me and Mr. Wildfang, cc’ing Mark Reinhardt, dated December 29 and 30, 2005. In the December 30 email, Mr. Wildfang wrote “I’ll circulate the letter from Gary to me [Ex. 2] to our group, but I don’t anticipate any problems.” And indeed, Mr. Wildfang never conveyed that lead counsel had any problems with any of the terms in Exhibit 2.

4. In an earlier declaration, Dkt. 6576-2 (under seal), I discussed the weekend of settlement negotiations that took place in this case shortly after the summary judgment arguments in November 2011. I had not initially been part of the team that went to court on that Friday afternoon. On my way home from work that night, I got a call from one of the individual plaintiffs’ attorneys, Linda Nussbaum, telling me that the discussions had turned to surcharging, and that Mr. Wildfang stated the class was not prepared to discuss these issues without me there. I asked her to confirm with Mr. Wildfang that he indeed wanted me present. With me on the phone, she walked to class counsel’s conference room and confirmed that I should get down to court right away.

5. In early February 2015, in a break-out conference room during a meeting at Willkie Farr, which Willkie had called to apprise all relevant counsel of communications they had discovered in the files of their recently-arrested partner, Keila Ravelo, I told a group of the lead

counsel attorneys, including at minimum Craig Wildfang, Laddie Montague and Michael Kane, that I was happy to share with them any and all information that I had relating to the communications with Ms. Ravelo, and to answer any questions they may have, “with nothing off-limits.” I stated that I would gladly meet anytime and anywhere, and I proposed meeting in Philadelphia, where Berger & Montague is located.

6. In early March 2015, my then-counsel Samuel Issacharoff reiterated to lead counsel my offer to meet anytime and anywhere and to answer all questions lead counsel may have, on any topic. Mr. Issacharoff told me that lead counsel responded by explaining that they believed it preferable not to speak with me for the time being. I referenced this understanding in my letter to Magistrate Judge Orenstein dated September 2, 2015 (Dkt. 6582).

7. In June 2018, media reports surfaced that a new deal had been reached in this class action. On June 29, 2018, I wrote Mr. Wildfang an email, in which I reiterated my offer to meet and answer any questions. A true and correct copy of that email is at the bottom of the email chain that is attached hereto as **Exhibit 5**.

8. On April 9, 2019, not having heard back from Mr. Wildfang, I again wrote Mr. Wildfang an email. A true and correct copy of that email is also included in the email chain that is attached as **Exhibit 5**. In that April 9 email, I yet again reiterated my offer to meet and address any concerns that lead counsel may have.

9. On Friday May 3, 2019, Mark Reinhardt spoke with Mr. Wildfang and, as Mr. Reinhardt explained it to me, asked Mr. Wildfang if lead counsel had a response to my prior emails. According to Mr. Reinhardt, Mr. Wildfang stated that he had never received any emails from me. Mr. Reinhardt also stated that Mr. Wildfang would discuss matters with the leadership group and call me early in the following week. At the time, I was hopeful that Mr. Wildfang’s statement

about not having received my prior emails was a “white lie” that might actually facilitate a constructive conversation.

10. As noted above, Mr. Wildfang has never taken me up on my face-to-face offer to answer questions and provide information, and he has never taken me up on a comparable offer made over the phone by my lawyer. My emails to him were merely redundant offers of full transparency, so whether he received them is of little import. Regardless, it is highly unlikely that Mr. Wildfang never received my emails. I never received any bounce-back messages. And my emails were sent to email addresses that are fully functional, to this day.

11. On Monday May 6, 2019, I sent another email to Mr. Wildfang and his partner Tom Undlin, and confirmed with Mr. Wildfang’s administrative assistant that the email was received. A true and correct copy of that email is included in the email chain that is attached as **Exhibit 5**.

12. Later that evening, on May 6, 2019 at 7:03 pm, I received by email from Mr. Wildfang the letter disavowing the 2005 Agreement. A true and correct copy of this letter is attached as **Exhibit 6**.

13. Attached as **Exhibit 7** is a copy of an email exchange between my former partner Tracey Kitzman and lead counsel, which Ms. Kitzman forwarded to me. As is implicit in Ms. Kitzman’s May 20, 2019 email to Mr. Wildfang, I would have been perfectly amenable to an arrangement under which Ms. Kitzman and other FLG stakeholders were compensated under the joint petition—i.e., an arrangement in which I alone was left to litigate against lead counsel.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 7, 2019
New York, New York

s/ Gary B. Friedman
Gary B. Friedman

Exhibit 1

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

2800 LA SALLE PLAZA
800 LA SALLE AVENUE
MINNEAPOLIS, MN 55402-2015
TEL: 612-349-8500 FAX: 612-339-4181
www.rkmc.com

ATTORNEYS AT LAW

K. CRAIG WILDFANG
612-349-8554

November 29, 2005

Gary B. Friedman
FRIEDMAN & SHUBE
155 Spring Street
Fifth Floor
New York, NY 10012

Mark Reinhardt
REINHARDT WENDORF & BLANCHFIELD
1250 East First National Bank Building
332 Minnesota Street
St. Paul, MN 55101

Re: MDL 1720
Our File No.: 123630.0000

Dear Mark and Gary:

I write this letter to you as representatives of counsel in the cases we have referred to in our discussions as the "No Surcharge" ("NSR") cases, on behalf of plaintiffs' counsel in the cases we have referred to as the "Interchange" cases, in order to summarize the understanding we have reached regarding the organization and prosecution of these cases. Together we have agreed that the NSR counsel will no longer seek to have the NSR cases organized and prosecuted on a track separate from the broader Interchange cases, and you and the other NSR counsel you represent (as disclosed on Attachment A to this letter) agree to support the organizational structure already agreed to by counsel in the broader Interchange cases. In return, on behalf of the Interchange counsel, as the prospective co-lead counsel, the firms of Robins, Kaplan, Miller & Ciresi, L.L.P., Berger & Montague, P.C., and Lerach, Coughlin, Stoia, Geller, Rudman, & Robbins, L.L.P. have agreed to designate you as heads of a "wormking group" which will have primary responsibility, within the larger organizational structure, to litigate the issues raised by the "no surcharge" rules of Visa and MasterCard. In addition, in our discussions of this week you have asked for the following seven assurances, to which we also agree:

1. The Consolidated Amended Complaint on which we will endeavor to reach consensus will include some form of a claim which will address the anticompetitive effects of the no surcharge rules under Sherman Act §§ 1 and 2. This might be, but need not be, a "stand alone" count challenging these rules, or may be a count that might include NSR along with other restraints as alleged in some of the Interchange cases.
2. At any potential decision-point, e.g. class certification, summary judgment, etc. a committee of 5 consisting of the 3 co-leads and the two of you will decide how to deal with the NSR damages claim.

November 29, 2005
Page 2

That is, the claim might be abandoned for class certification or other purposes, modified, etc., as determined by that five person committee. You and the NSR counsel agree to abide by the decision of the majority of the five person committee.

3. However, we commit that we will not abandon a claim for injunctive relief, and the certification of a (b)(2) class, for purposes of the no surcharge rules. Notwithstanding the foregoing, if an overall settlement of the claims of the Class is reached that does not provide for injunctive relief relating to the no surcharge rule, you and the NSR group may object to that settlement, if you so determine, but if that settlement agreement is finally approved by the Court, then this point number 3 becomes inoperative. We will consult with you regarding any negotiations involving any proposed release of any claim relating to the no surcharge rules.

4. Before trial the same five person committee will decide whether and how to include a damages claim based on the no surcharge rules in the trial. You and the NSR counsel agree to abide by the decision of the majority of the five person committee. For these purposes, the NSR group includes the law firms identified on Attachment A.

5. The NSR group will, as a group, receive a percentage of all attorneys' fees in this action that is equal to the percentage of the approved lodestar that the NSR Group accounts for. So by way of example, if the NSR Group accounts for 10% of the approved lodestar (hours times hourly rate) of all plaintiffs' counsel, then the NSR Group shall receive 10% of all attorneys fees awarded, irrespective of whether the NSR claim(s) result in any relief of any nature, and irrespective of whether the interchange claim(s) result in any relief of any nature. The two of you will be responsible for the allocation within the NSR group, and the members of that group agree not to seek additional fees from the other plaintiffs' counsel or from the Court

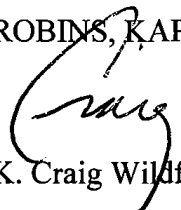
6. If the claim which includes the challenge to the no surcharge rules is abandoned, settled or lost, we will "re-deploy" the NSR lawyers in other parts of the case.

7. The NSR group would have the right to propose to the co-leads that the separate claim which includes the challenge to the no surcharge rules be settled separately, but the co-leads would control that ultimate decision.

As you know from our discussions, we believe that bringing the NSR claims under the umbrella of the broader Interchange cases is in the best interests of the Class, and so we are pleased that we have been able to reach this understanding with you and your group. We look forward to working with you as we prosecute this immensely important case.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.



K. Craig Wildfang

KCW/tlo

cc: H. Laddie Montague
Bonny Sweeney

Exhibit 2

FRIEDMAN & SHUBE
ATTORNEYS AT LAW
155 SPRING STREET, FIFTH FLOOR
NEW YORK, NEW YORK 10012
TEL: (212) 680-5150
Fax: (212) 219-6446

December 29, 2005

K. Craig Wildfang
Robins, Kaplan, Miller & Ciresi LLP
2800 LaSalle Plaza
Minneapolis, MN 55402

Dennis J. Stewart, Esq.
Hullett, Harper, Stewart LLP
550 West C Street, Suite 1600
San Diego, CA 92101

Re: MDL 1720: NSR Agreement

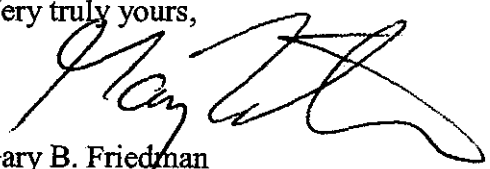
Dear Craig and Dennis:

As we discussed on Tuesday, I am writing to confirm our understanding of the scope of the responsibilities of the NSR group counsel under the letter of agreement from Craig to Mark Reinhardt and me dated November, 29, 2005. In particular, we agree that, under the leadership of Friedman & Shube and Reinhardt Wendorf & Blanchfield, the NSR group will have primary responsibility for briefing and arguing motions relating to the NSR claims, taking and noticing depositions related to the NSR Claims, conducting all NSR-related discovery, working with experts on the NSR claims, staffing the NSR claims and other activities consistent with the foregoing.

On the basis of this understanding, we have obtained the consent of the NSR group attorneys to be governed by the terms set forth in your November 29, 2005 letter. A copy of that letter agreement among the NSR attorneys is annexed hereto.

We look forward to working with you.

Very truly yours,


Gary B. Friedman

Enclosures

cc: H. Laddie Montague
Bonny Sweeney
Mark Reinhardt

Exhibit 3

December 6, 2005

Re: *In Re Payment Card Interchange and Merchant Discount Antitrust Litigation*
MDL 1720
No Surcharge Rule Cases

Dear Counsel:

As you know, MDL 1720 transferred all our NSR cases, as well as the Interchange Fee cases, to Judge Gleeson in the Eastern District of New York. We had several meetings with the Interchange Fee group, which is led by Craig Wildfang, Laddie Montague and Lerach, Coughlin, Stoia, Geller, Rudman & Robbins, LLP.

Ultimately, we reached agreement with the Interchange Fee leadership, whereby they will have overall responsibility for the prosecution of the action as co-leads, but the NSR attorneys will form a separate working group which will be responsible for prosecuting the NSR claim(s). The terms of the agreement are set forth in the letter from Craig Wildfang to Gary Friedman and myself, attached hereto.

As set forth in the attached Letter Agreement, at the end of the case, the NSR group will receive a lump sum payment of attorneys' fees that is proportionate to our court approved lodestar divided into the total lodestar allowed by the Court. So, by way of example, if the NSR group accounts for 15% of the total lodestar of all plaintiffs' counsel, then the NSR group shall receive 15% of all attorneys' fees awarded, irrespective of whether the NSR group's claims resulted in any relief of any nature and irrespective of whether the interchange claims resulted in any relief of any nature.

It was further agreed that Gary B. Friedman and I will act as lead counsel of the NSR Group. In that role, we will be responsible, either personally or through designated counsel, to deal with the Court and co-lead counsel, to conduct case proceedings on behalf of the NSR group, to request volunteers and assign work, to monitor time billing, to make monetary assessments necessary to the prosecution of the action, to determine the portion of the above mentioned NSR group's attorneys' fee that will be awarded to any member of the NSR group in this action, and to otherwise coordinate the NSR group's work.

By signing below, you will indicate your agreement to come into this case as part of the NSR Group, under the leadership structure described above and in the attached letter agreement.

Yours very truly,



Mark Reinhardt



Gary B. Friedman

AGREED TO:

David Markun
Markun, Zusman & Compton LLP

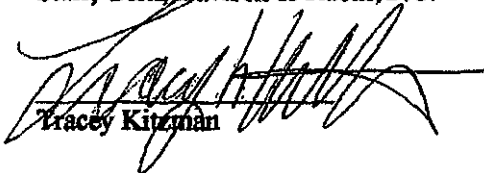
Craig Harley
Chitwood, Harley Harnes, LLP



Gregory J. Hubachek
Gregory J. Hubachek, LLC

Karl Cambronne
Chestnut & Cambronne

Jonathan J. Lemer
Starr, Gern, Davison & Rubin, P.C.



Tracey Kitzman

By signing below, you will indicate your agreement to come into this case as part of the NSR Group, under the leadership structure described above and in the attached letter agreement.

Yours very truly,

Mark Reinhardt

Gary B. Friedman

AGREED TO:



David Markun
Markun, Zusman & Compton LLP

Craig Harley
Chitwood, Harley Harnes, LLP

Gregory J. Hubachek
Gregory J. Hubachek, LLC



Karl Cambronne
Chestnut & Cambronne

Jonathan J. Lerner
Starr, Gern, Davison & Rubin, P.C.

Tracey Kitzman

By signing below, you will indicate your agreement to come into this case as part of the NSR Group, under the leadership structure described above and in the attached letter agreement.

Yours very truly,

Mark Reinhardt

Gary B. Friedman

AGREED TO:

David Markun
Markun, Zusman & Compton LLP

 12/8/05

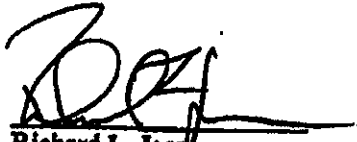
Craig Harley
Chitwood, Harley Harnes, LLP

Gregory J. Hubachek
Gregory J. Hubachek, LLC

Karl Cambronne
Chestnut & Cambronne

Jonathan J. Lerner
Starr, Gern, Davison & Rubin, P.C.

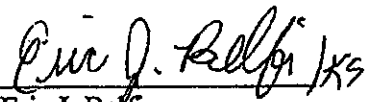
Tracey Kitzman



Richard L. Jasperson
Richard L. Jasperson, P.A.



Daniel R. Karon
Goldman Scarlato & Karon, P.C.



Eric J. Belfi
Murray Frank & Sailer, LLP

Exhibit 4

From: Wildfang, K. C. [KCWildfang@rkmc.com]

Sent: Friday, December 30, 2005 10:57 AM

To: Gary B. Friedman

Cc: Mark Reinhardt

Subject: RE: NSR Letters

>>>> Please read the confidentiality statement below <<<<<

Gary and Mark - The letter to the Court looks fine. I'll circulate the letter from Gary to me to our group, but I don't anticipate any problems. Have a Happy New Year!

From: Gary B. Friedman [mailto:garybfriedman@worldnet.att.net]

Sent: Thursday, December 29, 2005 4:35 PM

To: Wildfang, K. C.

Cc: Mark Reinhardt

Subject: NSR Letters

Craig,

I am attaching three letters, as we discussed: (1) letter to Judge Gleeson from Mark; (2) letter to you and Dennis from me, clarifying our agreement; and (3) letter agreement among NSR counsel. Thank you for offering to circulate these materials to Laddie, Dennis and Bonny Sweeney.

-- Gary

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Thank you in advance for your cooperation.

Robins, Kaplan, Miller & Ciresi L.L.P.

<http://www.rkmc.com>

Exhibit 5

Gary Friedman

From: Gary Friedman
Sent: Monday, May 6, 2019 9:53 AM
To: K. Craig Wildfang (KCWildfang@RobinsKaplan.com); 'TUndlin@RobinsKaplan.com'
Subject: FW: Meeting

Dear Craig and Tom,

I understand from Mark Reinhardt that Craig never received my emails, which are appended below. I'm glad to have discovered that disconnect, and I look forward to talking.

Can we set a time for today or tomorrow? As I've written, I'd welcome any opportunity to clear the air and answer questions. But, be that as it may, I need to confirm that the lead counsel group intends to honor the agreement it entered into with me and the "NSR Group." For various reasons that we can discuss, I'm concerned the LCG might not be committed to abiding by the terms of the written contract. And if that's right, my assessment is that I am obligated to act now, to enforce and preserve my rights and those of other stakeholders.

Let's talk this over at your earliest convenience. Thanks so much.

Best,

Gary

From: Gary Friedman
Sent: Tuesday, April 9, 2019 8:49 AM
To: KCWildfang@RobinsKaplan.com
Subject: FW: Meeting

Dear Craig,

I wrote you last June (see below) proposing to address any issues or questions the lead counsel group may have. My primary concern, then and now, is to ensure the LCG is committed to abiding by our December 2005 agreement. And as the date for submission of the fee petition nears, I am increasingly concerned about the LCG's intentions. The complete lack of communication naturally heightens my concerns. I am operating in an information vacuum, making decisions about how and when to present my affirmative case for full enforcement of our December 2005 agreement. It is hard to see how this state of uncertainty benefits anyone.

I would respectfully request to hear back from you in the next week, even if it is simply to schedule a call. In any event, I need clear resolution by May 8 – thirty days before the filings are due, by my count.

I am happy to discuss any or all of this at your convenience. Again, I am happy to meet anywhere, anytime, and to address any concerns you may have. Thanks so much for your help.

Best,

Gary

917-568-5024

From: Gary Friedman
Sent: Friday, June 29, 2018 2:36 PM
To: KCWildfang@rkmc.com
Subject: Meeting

Hi Craig,

Congratulations on the settlement. It's a spectacular result, especially given the Supreme Court's *Amex* decision.

I would like to have a chance to sit down with you, whether in MN or NY, at your earliest convenience but before any decisions are made that might affect me or my law firm. There's a lot of potential for misunderstanding here and I'm confident we can cut through all of it if we can sit down for an hour or so. Is there a time/place that works for you?

Thanks and all the best,

Gary

Exhibit 6

ROBINS / KAPLAN LLP

800 LASALLE AVENUE
SUITE 2800
MINNEAPOLIS MN 55402

612 349 8500 TEL
612 339 4181 FAX
ROBINSKAPLAN.COM

K. CRAIG WILDFANG
612 349 8554 TEL
KCWILDFANG@ROBINSKAPLAN.COM

May 6, 2019

VIA E-MAIL AND U.S. MAIL

Gary Friedman, Esq.
154 Grand Street, 5th Fl.
New York, NY 10013

Re: *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 05-md-01720 (MKB) (JO)

Dear Gary:

To respond to your inquiry, Co-Lead Counsel for the (b)(3) Class will not include in any joint fee petition any portion of the lodestar time or expenses of the Friedman Law Group and any predecessor firms. If you wish to apply for a fee and expense award for your firm's work in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 05-md-01720, you will need to file an independent fee petition with the Court.

Under the circumstances, we do not believe that the 2005 letter requires us to include your firm's time and expenses in a joint fee petition.

Yours very truly,

/s/ K. Craig Wildfang

K. Craig Wildfang
Robins Kaplan LLP
800 LaSalle Ave.
Suite 2800
Minneapolis, MN 55402

/s/ H. Laddie Montague, Jr.

H. Laddie Montague, Jr.
Berger Montague PC
1818 Market St., Ste. 3600
Philadelphia, PA 19103

/s/ Patrick J. Coughlin

Patrick J. Coughlin
Robbins Geller Rudman
& Dowd LLP
655 West Broadway
San Diego, CA 92101

cc: Class Plaintiffs Co-Lead Counsel

Exhibit 7

Gary Friedman

From: Gary Friedman
Sent: Saturday, June 1, 2019 6:03 PM
To: Gary Friedman
Subject: FW: [EXTERNAL] MDL 1720 | Proposal From Tracey Kitzman

Begin forwarded message:

From: "Wildfang, K. Craig" <KCWildfang@RobinsKaplan.com>
Date: May 29, 2019 at 4:22:27 PM CDT
To: Tracey Kitzman <tkitzman@kitzmanlawoffices.com>
Cc: "hlmontague@bm.net" <hlmontague@bm.net>, "PJC@rgrdlaw.com" <PJC@rgrdlaw.com>
Subject: RE: [EXTERNAL] MDL 1720 | Proposal From Tracey Kitzman

Tracey – I am sorry that I could not get back to you sooner, but this required discussion within our group. I have now discussed your issues with our leadership group. It is the unanimous view of all of us that we cannot include your time and expenses in our joint fee petition. As you suggested, you can always file your own fee petition and try to convince the Court to award fees to you. If you do that, you may have to convince Gary not to put in your time and that of the “other stakeholders” into his separate fee petition, should he file one. The leadership cannot make any commitments regarding what position we would take on such a separate petition until after we see it.

K. Craig Wildfang

Robins Kaplan LLP

Celebrating 80 Years of Rewriting the Odds

800 LaSalle Avenue | 2800 LaSalle Plaza | Minneapolis, MN 55402

Direct: 612.349.8554 / Fax: 612.339.4181 / Cell: 612.940.9044

kcwildfang@robinskaplan.com | www.robinskaplan.com

From: Tracey Kitzman [<mailto:tkitzman@kitzmanlawoffices.com>]
Sent: Wednesday, May 29, 2019 3:46 PM
To: Wildfang, K. Craig <KCWildfang@RobinsKaplan.com>
Cc: hlmontague@bm.net; PJC@rgrdlaw.com
Subject: Re: [EXTERNAL] MDL 1720 | Proposal From Tracey Kitzman

Craig,

I wanted to touch base with you to see if you have reached a decision about whether to include my fees, along with the fees of my colleagues other than Gary, in the Class fee petition.

The people, hours, and expenses being included had nothing to do with the interactions that trouble you. They are innocent bystanders in all of this. None of the funds will go to Gary, and for many (myself very much included) the payment will have an enormous impact on their lives.

While I don't want to rush your discussions / deliberations, I do need to understand your position

by Monday, as I understand that there is filing deadline approaching. I very much want to avoid having my time and the other non-Gary time showing up in his fee filing.

Thanks so much.

Best,
Tracey

On Mon, May 20, 2019 at 12:04 PM Tracey Kitzman <tkitzman@kitzmanlawoffices.com> wrote:

Craig - Thank you, I very much appreciate this.

Kind Regards,

Tracey

On Mon, May 20, 2019 at 11:43 AM Wildfang, K. Craig <KCWildfang@robinskaplan.com> wrote:

Tracey - The Co-Leads have discussed these issues at length. We will discuss this further and get back to you.

K. Craig Wildfang

Robins Kaplan LLP

Celebrating 80 Years of Rewriting the Odds

800 LaSalle Avenue | 2800 LaSalle Plaza | Minneapolis, MN 55402

Direct: 612.349.8554 / Fax: 612.339.4181 / Cell: 612.940.9044

kcwildfang@robinskaplan.com | www.robinskaplan.com

From: Tracey Kitzman [mailto:tkitzman@kitzmanlawoffices.com]

Sent: Monday, May 20, 2019 11:38 AM

To: Wildfang, K. Craig <KCWildfang@RobinsKaplan.com>; hlmontague@bm.net; PJC@rgrdlaw.com

Subject: [EXTERNAL] MDL 1720 | Proposal From Tracey Kitzman

Dear Craig, Laddie and Pat:

I wanted to reach out to you with a proposal for your consideration.

I understand that members of the NSR group are being asked to affirm that they were not part of the communications in 7-Eleven's Rule 60 motion. I also understand that you are planning to omit Gary Friedman's time from the upcoming fee petition and have asked him to make a separate application to the court.

My request is that my time and the time of my colleagues be submitted as part of Class Counsel's fee application, along with out-of-pocket expenses. We would receive our lodestar and case multiplier, as originally planned. I am confident that I can sign any declaration that Mark Reinhardt and the other members of the NSR Group sign. I can also assure you that none of the money will go to Gary.

1. In the original fee petition, the Friedman Law Group line items were \$892,044 in out-of-pocket expenses, and \$9,594,806 in fees. Gary's fees represent only 35% or so of FLG's overall billings. The remaining amount – \$6,237,274 – relates to work performed by myself, Noah Shube, and the firm's associates and paralegals.

2. Gary has no interest in the reimbursement of out-of-pocket expenses. Those expenses were funded by other stakeholders, and the reimbursement will repay those stakeholders.

3. Moreover, Gary will not receive any of the funds that are paid in relation to the firm's fees that are included in Class Counsel's fee application. Those funds will go to me, to Noah Shube, to the attorneys who worked on this matter, and to other stakeholders who provided financing over the years. I very much want to limit the collateral damage that has resulted from this controversy.

4. I am willing to sign a declaration that Gary will not receive any of the funds paid through Class Counsel's fee petition.

5. If you would like to roll these hours and fees under the banner of the Law Office of Tracey Kitzman PLLC, that would avoid including the Friedman name entirely.

I understand your frustration with the prior Rule 60 motions and your desire to avoid a sideshow with the current fee application. Likewise, I hope that you understand how difficult this has all been for me, both personally and professionally. I am a single mother and the sole provider for my children, Colin and Edrie. Compensation for the years of time that I dedicated to MDL 1720 is of vital importance to me and my family. These decisions will have very real consequences for us.

I would be happy to speak with you about this matter, and to provide you with any further assurances that you need. I would appreciate a response from you by the end of the week. By default, Gary will include all of the firms' hours and costs in his fee petition. If these hours and costs will instead appear in your fee petition, as I would very much prefer, I want to direct Gary to remove these line items from his fee petition. I want to avoid any duplicative submissions.

Thank you for your consideration and understanding in this difficult matter.

Kind Regards,

Tracey

LAW OFFICES OF TRACEY KITZMAN

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Thank you in advance for your cooperation.

Robins Kaplan LLP
<http://www.robinskaplan.com>

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