

# EXHIBIT 13

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

IN RE PAYMENT CARD INTERCHANGE  
FEE AND MERCHANT DISCOUNT  
ANTITRUST LITIGATION

MDL No. 1720  
Case No. 1:05-md-1720-JG-JO

This document refers to: All Actions

**DECLARATION OF MITCH GOLDSTONE**

I, Mitch Goldstone, of full age, do hereby declare and say:

1. My name is Mitch Goldstone. My partner, Carl Berman, and I are co-owners of—and I serve as CEO for—ScanMyPhotos.com, an online-based photograph-scanning business that enables individuals to digitize their photographs. ScanMyPhotos.com is based in Irvine, California.

2. Today, ScanMyPhotos.com offers a variety of scanning services, including photo scanning, negative scanning, and slide scanning. It is an internet-based business that relies heavily on Visa and MasterCard payment. ScanMyPhotos has had over 300,000 customers since its inception in 1990.

3. When Mr. Berman and I opened our business, it was incorporated under the name Photos Etc. Corporation and did business under the name “30 Minute Photos Etc.” In its early years, 30 Minute Photos Etc. was primarily engaged in traditional photo developing and finishing. With the advent of internet commerce, however, our business morphed into an online photo-developing and finishing business and later began performing the scanning activities that we are primarily engaged in today. Our business has been discussed in publications including *The New York Times*, *The Huffington Post*, and *USA Today*.

4. On April 12, 2005, our business was featured in *The Wall Street Journal* in an article entitled “Merchants Balk at Higher Fees for Credit Cards.” The article—which detailed the costs that interchange fees imposed on U.S. merchants—described a recent fee-increase notification that we had received from our acquiring bank, and how that notice led us to contact 25,000 customers to urge them to contact their issuing banks to justify the increase. The article featured other small businesses’ difficulties in coping with payment-card fees.

5. After the *Wall Street Journal* article was published, K. Craig Wildfang contacted me to discuss the article and the larger problems that the banks’ and card networks’ market power imposed on merchants. We also discussed potential solutions to these problems, including legislation and litigation.

6. After speaking with Mr. Wildfang on multiple occasions, I made the decision that 30 Minute Photos Etc. should participate in this litigation as a class representative. I made that decision because I understood the impact that payment-card interchange fees had on the bottom lines of ScanMyPhotos’s business. I also felt that the previous merchant settlement in *In re Visa Check/MasterMoney Antitrust Litigation* did not provide merchants with sufficient tools to combat the anticompetitive practices of Visa, MasterCard, and their member banks.

7. Photos Etc. was one of the original, lead class representatives in *Photos Etc. v. Visa U.S.A., Inc. et al.*, the first of the cases challenging the fixing of interchange fees to be consolidated into MDL 1720, which was filed on June 22, 2005 in the United States Court for the District of Connecticut.

8. My decision to enter this litigation was also fueled by my activity as an advocate for merchants against the abuses of market power by Visa, MasterCard. Beginning in the mid 1990’s, the percentage of our business that was transacted on Visa and MasterCard payment

cards drastically increased, as did the fees associated with the acceptance of those cards. From that time on, accepting payment cards was one of our largest overhead costs. When I researched why fees were so high, I learned that the same large banks controlled the Visa and MasterCard networks and collectively set interchange fees for each network, which all merchants were forced to pay. And as I knew from my own business, merchants were powerless to stop accepting Visa and MasterCard or to push back on the level of fees.

9. In 2005 I decided to fight back against the banks' and card networks' market power by establishing a blog, which I titled, *WayTooHigh.com*. Since that time, I have updated the *WayTooHigh* blog almost daily to inform merchants and the general public on issues relating to, for example, the amount of card-transaction volume and fees, the networks' rules, the banks' profits from card-issuing activities, legal and regulatory actions against the card networks and banks, and the banks' and networks' abuses of their market power. I also highlight important, public developments in this litigation to help merchants and the public understand this groundbreaking case.

10. I became aware that news agencies, as well as some of the defendants and their law firms followed my blog posts. As the case developed, I became the spokesperson for the merchant class. I—and my blog <http://waytoohigh.wordpress.com> and twitter account <http://twitter.com/waytoohigh>, representing tens of thousands posts—were often quoted in major news sources on the litigation and other issues relating to merchants' payment-card acceptance. I estimate that I spoke with journalists more than one hundred times between the filing of the *Photos Etc.* complaint and today. Some of these contacts led to extensive stories, while others provided quotations for larger pieces on the payment-card industry, while still others provided background information.

11. As a result of my advocacy in the media, I have been profiled in the *New York Times*, on PBS, and in numerous other newspaper and television forums since filing the litigation in 2005. Schedule A lists just some of the many occasions in which I was quoted in or provided information for an article or segment on the payment-card industry.

12. I extended my advocacy beyond traditional media to include social media. In about 2007, I established a Twitter account to publish tweets related to the payment-card industry and the litigation and its coverage in the news media. That account--@WayTooHigh, run solely by me—is followed on Twitter by over 2,900 Twitter accounts, including news agencies like @NPRNews. I have published over 30,000 tweets through that account.

13. Through these online endeavors, I have spent many hours—sometimes many hours each day—to become the leading merchant voice in this litigation. This coverage and my online documentation and sharing through Twitter and my blog have generated tens of thousands of social media comments and demonstrate some of the work I have done in this litigation.

14. As a result of the significant media attention that this case has attracted, I have not only had extensive contacts with reporters for various publications around the country concerning the litigation, but also have been contacted by numerous merchants and other groups to help them understand the issues raised by the case and the potential ramifications of the litigation on their individual situations.

15. Aside from my media advocacy, I actively participated in this action as a class representative. I frequently discussed the status of the litigation and settlement discussions with lead counsel, K. Craig Wildfang, and provided ScanMyPhotos.com's opinions on the terms the settlement as they were materializing. Since the *Photos Etc.* case was filed, I estimate that I spent

several hours each month on average communicating via phone or emails with Mr. Wildfang and others.

16. During the course of the litigation and the mediation-and-settlement process, Mr. Wildfang held numerous meetings and conference calls with Class Representatives. I participated in most of the conference calls and many of the in-person meetings, despite the fact that they were typically held in the Washington, D.C. area where trade-association plaintiffs were located. I was an active participant in these meetings.

17. I also participated in the settlement conferences that the Court held in December 2011 and June 2012. During these settlement conferences I provided my views to Class Counsel, the other plaintiffs, and the Court relating to how various proposals would affect our business and the businesses of similar merchants.

18. Over the past eight years, I also spent a significant amount of time responding to Defendants' discovery and deposition requests. I spent many hours searching through our hardcopy and electronic corporate records to respond to Defendants' discovery requests. This was a labor-intensive process, which fell largely upon Carl and me because, as a small business, ScanMyPhotos does not have the resources to have an extensive system of filing and cataloging documents. Moreover, most of the documents that were responsive to Defendants' requests were in paper form. This meant that Mr. Berman and I and our employees at times had to personally go through boxes of documents to find paper records that were not easily accessible and which we had not previously had occasion to access. We conducted much of our search during business hours, which forced us to divert our attention away from serving our customers and other aspects of our business.

19. In total, ScanMyPhotos produced 2,031 documents, totaling 17,945 pages.

20. I also sat for a deposition on August 6, 2008. Mr. Berman was deposed on April 10, 2008. Both of these depositions required that Mr. Berman or I spend an entire day with counsel preparing for the deposition in addition to a full-day deposition.

21. I am familiar with the terms of the settlement in MDL 1720 and believe that it provides an extraordinary result for merchants. As a small business owner, I understand the impact that interchange fees have had on my bottom line over the past two decades. The financial compensation in the settlement will provide much needed relief to merchants.

22. I understand the rules reforms that are part of the settlement and believe that they will help merchants reduce their card-acceptance costs in the future. I understand that the right to surcharge provided for in the settlement has never been granted to U.S. merchants before now but has helped to push down interchange fees and merchant-discount fees in countries where it has been allowed. I believe that the surcharge right, combined with the other rules reforms contained in the settlement, will help merchants collectively put downward pressure on interchange rates. I believe that the right for merchants to provide differential discounts to consumers based on the brand or form of payment used will also assist merchants, especially in states such as California the right to surcharge is restricted by law.

23. In the process of updating my blog and Twitter accounts I have followed developments in countries where the networks' rules were repealed or reformed, such as Australia. I understand that even those Australian merchants that do not surcharge have experienced reduced acceptance fees because of the pressure the surcharging puts on the networks, and believe that a similar effect may occur in the United States.

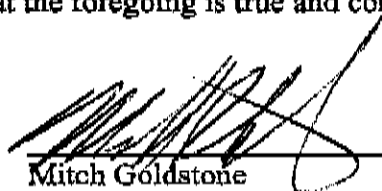
24. I understand that if the proposed class continued to litigate the case, it would risk losing the case and would certainly delay a resolution for years. In my view, it would be

irresponsible to turn down the cash and rules reforms contained in this settlement, while risking defeat and experiencing certain delay. I fear that, without this settlement, the networks would have been able to continue with unbridled fee increases while this case is being litigated and appealed.

I swear under penalty of perjury that the foregoing is true and correct.

Date:

4-8-13



Mitch Goldstone

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**Schedule A**  
**Publications Featuring Mitch Goldstone**

1. “Forecaster Predict Credit Card Surcharges Will Find Few Takers Come Jan. 27,” *Digital Transactions*, (Jan. 25, 2013).
2. “Interchange Wars: Merchants Tug Networks For Change,” atmmarketplace.com, (Feb. 6, 2010).
3. “More Retailers Object to Credit Card Settlement,” *The Associated Press*, (Oct. 12, 2012).
4. Steve Churm, “The Gold Standard,” *OC Metro*, available at <http://www.ocmetro.com/t-Bottom-Line-Steve-Churm-column-credit-card-fees-class-action-suit-Mitch-Goldstone-8-12.aspx>, (Aug. 1, 2012).
5. “As Big Chains Chafe at Settlement, Smaller Retailers Celebrate the Deal,” *Digital Transactions*, (Jul. 24, 2012).
6. “The Victor of Card Wars: Small Businessman Beat MasterCard, Visa; Consumers Could Pay More,” *Chicago Tribune*, (Jul. 20, 2012). Also featured in *The Baltimore Sun* (Jul. 19, 2012); *The Sun-Sentinel*, (Fort Lauderdale, Florida) (Jul. 19, 2012).
7. “OC Metro Minute – Mitch Goldstone talks about \$7.2 billion settlement against Visa/MasterCard,” available at <http://www.youtube.com/watch?v=xiTHfbHxAow&feature=youtu.be>, (Jul. 18, 2012).
8. “‘Swipe Fee’ war victor: Irvine Entrepreneur Mitch Goldstone wins as card giants Visa and MasterCard settle lawsuit,” *Los Angeles Times*, (Jul. 18, 2012).
9. “Not All Merchants Are Happy with the \$7-Billion-Plus Credit Card Settlement,” *Digital Transactions*, (Jul. 16, 2012).
10. “MasterCard, Visa Settle Retailers’ Suit; They Agree To Pay \$6 Billion and Change Policies on Credit Card Transaction Fees,” *Los Angeles Times*, (Jul. 14, 2012).
11. “Credit Card Lawsuit Nets \$6 Billion,” *The Orange County Register*, (Jul. 14, 2012).
12. “Proposal Would Settle Credit-Card ‘Swipe Fee’ Case,” *The Washington Post*, (Jul. 14, 2012).
13. “MasterCard Estimates Settlement of Big Interchange Cases Could Cost It \$500 Million,” *Digital Transactions*, (Nov. 3, 2011).
14. “Reviews Are in on Fed’s Final Debit Rule: Thumbs Down from Both Retailers and Bank,” *Digital Transactions*, (Jun. 30, 2011).
15. “Merchants Will Accept Small-Issuer Debit Cards Post-Durbin, Advocate Says,” *Digital Transactions* (May 3, 2011).
16. “Next in Merchants Cross-Hairs,” *Digital Transactions*, (Jan. 1, 2011).
17. “TCF’s Suit is ‘Nonsense,’ Anti-Interchange Crusader Says,” *Digital Transactions*, (Oct. 14, 2010).
18. “Visa, MasterCard Changes Will Benefit Merchants—and Maybe Consumers,” *Los Angeles Times*, (Oct. 5, 2010).
19. “Retailer Weighs in on Financial Reform in Washington,” pmanewslines.com, (May 31, 2010).
20. “Mr. Goldstone Goes to Washington and Tweets,” atmmarketplace.com, (May 26, 2010).
21. “Congress at The Cash Register: How Financial Reform Could Affect Your Shopping,” [www.mint.com](http://www.mint.com), (May 18, 2010).

22. "Merchants Score Win in Fight Over Card Fees," *The Associated Press*, (May 14, 2010).
23. "O.C. Businessman Fights Fees on Haiti Donations," *Orange County Business News*, (Jan. 19, 2010).
24. "How Visa, Using Card Fees, Dominates a Market," *The New York Times*, (Jan. 5, 2010).
25. "Visa's Strategy in Debit Cards: Push Up Costs," *The New York Times*, (Jan. 5, 2010).
26. "Those Other Merchant Fees," *Digital Transactions*, (Dec. 2009).
27. "Network Rivalry Sparks 10-Year Quadrupling of PIN-Debit Pricing," *Digital Transactions*, (Aug. 14, 2009).
28. "7-Eleven Franchisees Fight Credit Card Fees," *Orange County Register*, (Aug. 2, 2009).
29. "How to Get Approved By A Credit Card," [securedchase.bravejournal.com](http://securedchase.bravejournal.com), (Jul. 3, 2009).
30. "MasterCard: Paper Not Opening Salvo in '09 Interchange Wars," *Digital Transactions*, (Jan. 19, 2009).
31. "Small Merchants Lobby To Cut Credit Card Fees," *The New York Times*, (Nov. 6, 2008).
32. "Gas Stations Offer Discounts for Cash Instead of Credit Cards," [9news.com](http://origin.9news.com/news/story.aspx?storyid=95377), available at <http://origin.9news.com/news/story.aspx?storyid=95377>, (Jul. 8, 2008).
33. "Gas protest to blame role of credit cards; Visa and MasterCard fees drive up the price by up to a dime a gallon, a man leading an Irvine rally says," *The Orange County Register*, (Jul. 3, 2008).
34. "Merchants Must Submit to MasterCard's Power," *The Wall Street Journal*, (Jan. 10, 2008).
35. "Visa Hike Overall Interchange 0.6%, Effective April 14," *Digital Transactions*, (Apr. 12, 2007).
36. "Card issuers, retailers at odds; Merchants say higher fees are forcing them to hike prices. Congress may take up the issue." *Los Angeles Times*, (Apr. 2, 2007).
37. "30 Minute Photos Not Backing Down; Small business owners Mitch Goldstone and Carl Berman are the lead plaintiffs in a lawsuit against big credit card companies," *The Orange County Register*, (Oct. 26, 2006).
38. "Credit Card Ricochet," *The Washington Times*, (Sept. 17, 2006).
39. "What's At Stake In the Interchange Wars," [www.greensheet.com](http://www.greensheet.com), (Nov. 28, 2005).
40. "Thanksgiving: A Day Without Credit Cards," [consumeraffairs.com](http://consumeraffairs.com), (Nov. 2, 2005).
41. "Taking on Credit Card Fees, With Allies," *The New York Times*, (Oct. 6, 2005).
42. "Major Retail Groups Sue Credit Card Firms," *Dow Jones Business News*, (Sept. 26, 2005).
43. "Card Companies Are Filling Up At the Station," *The Washington Post*, (Sept. 25, 2005).
44. "Gas Stations Complain of 'Credit Card Cabal,'" *The Orange County Register*, (Sept. 11, 2005).
45. "Kroger Leads Suit Against Visa Over Fees," *The Associated Press*, (Jul. 15, 2005).
46. "Lawsuit Targets Credit Fees; Irvine Man Seeks Class-Action Status In Claim That Banks Fix Retailers' Costs At A Higher Rate Than Is Justified," *The Orange County Register*, (Jun. 24, 2005).

47. “Merchants Expand Credit-Card Fees—Lawsuits That Claim Visa, MasterCard Collude on Fees Could Hit Issuers’ Profits,” *The Wall Street Journal*, (Jun. 23, 2005).
48. “Visa, MasterCard and Major US Banks Charged With Antitrust Violations For Fixing Credit Card Interchange Fees,” [www.paymentnews.com](http://www.paymentnews.com), (Jun. 23, 2005).
49. “Merchants Balk at Higher Fees for Credit Cards,” *The Wall Street Journal*, (Apr. 12, 2005).
50. “Merchants Bring Interchange Lawsuit,” [www.greensheet.com](http://www.greensheet.com), (2005).
51. “Mitch Goldstone Leads A Rebellion, This Time Against Credit Card Fees,” *Marshall Magazine*, (2005).