

# EXHIBIT 2

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 H. LADDIE MONTAGUE, JR.  
ON BEHALF OF BERGER & MONTAGUE, P.C.**

I, H. Laddie Montague, Jr., hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge, information and belief:

1. I am President of Berger & Montague, P.C. (“Berger Montague”), one of the three firms which were appointed interim Co-Lead Class Counsel in MDL No. 1720 (Order of February 24, 2006, Docket No. 278) and later appointed Class Counsel. (Order dated November 27, 2012, Docket No. 1745.) Merrill G. Davidoff and myself (the two most experienced and senior antitrust and trial attorneys in the firm) have led the Berger Montague team. We were assisted throughout by Bart D. Cohen and Michael J. Kane, both Shareholders at Berger Montague with substantial antitrust litigation experience.

**BERGER & MONTAGUE TIME, LODESTAR AND EXPENSE**

2. Berger Montague has a long history of litigating complex class action cases and has used its experience to litigate this case efficiently and effectively. We have employed our depth of talent and experience in this case, having a core of four experienced attorneys who have been involved in the litigation from the beginning to the end. This core has been supplemented as needed for document discovery, depositions and research, usually with attorneys who have a

background in the case. This is exemplified by the fact that the four core attorneys (Montague, Davidoff, Cohen and Kane) account for forty-two percent (42%) of the total hours expended by Berger Montague and sixty percent (60%) of the lodestar; and the four attorneys, one paralegal<sup>1</sup> and one full time contract attorney<sup>2</sup> who expended in excess of one thousand (1,000) hours, along with the core attorneys, accounted for seventy-six percent (76%) of the total hours expended by Berger Montague and eighty-five percent (85%) of the lodestar.

3. Because of the massive quantity of documents that were produced by the parties and third parties in this litigation, most firms were required to hire contract lawyers in order to adequately staff the review. Berger Montague was no exception. We employed six contract attorneys who worked under the direction of Messrs. Cohen and Kane.

4. Berger Montague requires each of its attorneys and paralegals to maintain contemporaneous time records which are entered electronically. Time expended is generally broken down into six (6) minute intervals or 1/10<sup>th</sup> of an hour. Each month, Berger Montague submitted its time, lodestar and expenses for the previous month to Hulett Harper Stewart LLP, which tallied that information for all firms and circulated the results on a monthly basis to the Leadership Group. After Preliminary Approval of the Settlement was Ordered, Berger Montague, under the direction of Mr. Cohen, reviewed all of its time records to comply with the guidelines established by the Leadership Group (set forth in paragraphs 6, 7 and 8 of the Declaration of Thomas J. Undlin). Examples of time that has been deleted from Exhibit "A" include, *inter alia*:

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<sup>1</sup> Charles Goodwin (SH); Jenna MacNaughton-Wong (A); Karen Markert (PL); Laura Gleason (A) and Matthew P. McCahill (A).

<sup>2</sup> Eugene Tompkins, Esquire, had been a full-time contract attorney since 2000 and became an associate in 2010. Despite his longtime and full-time employment with Berger Montague, for purposes of this fee petition, Tompkins has been treated as a contract attorney until 2010, resulting in a substantial reduction in Berger Montague's lodestar.

- a. attorneys and paralegals who expended less than ten (10) hours in the case;
- b. time expended in timekeeping, expense reporting or the joint fee and expense petition or any fee or expense submissions on behalf of Berger Montague;
- c. pure travel time has been reduced by fifty percent (50%);
- d. all time in excess of ten (10) hours in a single day for document review; and
- e. all time in excess of fifteen (15) in a day for all other work.

In addition, it was later agreed by Class Counsel that any first-tier document review would be capped at \$350/hour or, in the case of contract attorneys, four times their hourly wage. (In the case of Berger Montague contract attorneys, the resulting hourly rates were all \$200 or less.)

5. Exhibit "A" hereto sets forth time and lodestar through November 30, 2012, for each Berger Montague attorney and paralegal who expended ten (10) or more hours in MDL No. 1720 and is taken from Berger Montague's electronic time records after the reductions were made pursuant to the foregoing paragraph. The lodestar is calculated at the regular hourly rate applicable to each attorney and paralegal on Exhibit "A" for each relevant time period during which that attorney or paralegal performed work. Exhibit "B" hereto sets forth a schedule of hourly rates over time for each attorney and paralegal on Exhibit "A." A full print-out of Berger Montague's time records is available and will be made available to outside auditors.

6. Berger Montague has advanced the costs of litigation in this matter, both with respect to its own costs as well as payment of assessments to a common fund to which all Plaintiffs' counsel in the Class case were to contribute. Berger Montague records its expenses by

case in its computer system contemporaneously as such expenses are paid or reported. Those expenses have been internally audited to comply with the criteria set forth in the Undlin Declaration. Exhibit “C” hereto is a true and correct summary of those costs through November 30, 2012 by subject matter (*e.g.*, travel and lodging, assessments, telephone, reproductions, etc.). A full printout of Berger Montague’s costs is available and will be made available to outside auditors.

7. Berger Montague has represented the Class on a contingent fee basis. Berger Montague to date has not received any fees or any reimbursement of expenses.

8. Berger Montague has performed legal services and incurred and paid expenses subsequent to November 30, 2012, and will continue to do so. Berger Montague reserves the right to submit its subsequent lodestar and expenses to the Court as a supplement to the current Petition.

#### **BERGER & MONTAGUE PARTICIPATION**

9. Berger Montague has a background in aspects of the banking industry relating to payment cards. Merrill G. Davidoff, Bart D. Cohen and Michael J. Kane were involved in litigation involving hidden charges on credit cards involving foreign currency and litigation involving interchange fees associated with the use of ATM machines.

10. In 2005, several businesses had discussed with Berger Montague the issue of the high level of expense of acceptance of the payment cards of the major networks. Following on that, Berger Montague attorneys met with other counsel, in particular, counsel for clients which became known as the individual plaintiffs, to exchange ideas and legal theories, issues, strategy and planning. This expanded into meetings with the Robins Kaplan Miller & Ciresi, L.L.P. (“Robins Kaplan”) and with Joseph Goldberg (Freedman Boyd Daniels Hollander & Goldberg

P.A.), Dennis Stewart (Hulett Harper Stewart LLP) and Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) (formerly Lerach Coughlin Stoia Geller Rudman & Robbins). It was only after these conferences and after research that Berger Montague filed a class action complaint on behalf of Tabu Salon in the District of Connecticut. Berger Montague joined the motion before the Panel on Multidistrict Litigation to transfer all cases to the Eastern District of New York and argued before the Panel on behalf of plaintiffs requesting transfer to that District. (Argued 9/29/2005.)

11. Once transferred, the cases had to be organized. As Robins Kaplan, Robbins Geller and Berger Montague had been working together on this litigation for several months, and based upon their backgrounds and experience, it was natural that the three firms moved to be appointed interim lead counsel (hereinafter “Class Counsel”). Once that occurred, the Leadership Group was established. Joseph Goldberg and Dennis Stewart were appointed as Co-Chairmen of the Executive Committee and became part of the main Leadership Group for the class action cases. On November 27, 2012, upon preliminary approval of the Settlement, the Court appointed Robins Kaplan, Berger Montague and Robbins Geller “to serve as Class Counsel.” (Docket No. 1745.)

12. As Class Counsel, Berger Montague participated in all phases of this litigation, including in addressing the day-to-day issues and problems, of which there were many. The Leadership Group discussed and made all the decisions and assignments in the case, prepared almost all motions and briefs and presented almost all arguments to the Court. This Group developed and organized pretrial discovery and fully participated in all aspects. Likewise, Berger Montague, along with the rest of the Leadership Group, participated in every aspect of the mediation and settlement process, and the preliminary and final approval papers.

13. The activities of Class Counsel are set forth in the Declaration of K. Craig Wildfang<sup>3</sup> and will not be repeated here. While the Leadership Group worked together, particular aspects of the case were assigned to individual Leadership Firms. For example, Berger Montague took the lead in class certification issues, including principle responsibility for the depositions of class representatives, class action expert reports, class action expert depositions and the motion, memorandum and reply memorandum in support of class certification. Other members of the Leadership Group and other counsel contributed to the final effort. Mr. Davidoff of Berger Montague argued the class motion during a full day hearing.

14. As one would expect, Berger Montague was very involved in all aspects of the mediation and settlement process. Indeed, this was a collaborative effort on the part of the entire Leadership Group as well as the other counsel who represented Class Plaintiffs who were not clients of Class Counsel. Throughout the entire litigation process, it is impossible for each member of the Leadership Group to give justice to all that each contributed, for it would have been very difficult for this case to have been litigated as it was without the full cooperation and participation of the Leadership Group and other counsel when called upon and without each firm's willingness to advance its share toward the overall common expenses.

Dated this 11<sup>th</sup> day of April, 2013.



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<sup>3</sup> Declaration of K. Craig Wildfang in Support of Class Plaintiffs' Motion for Final Approval of the Class Settlement and Class Counsel's Petition for Award of Fees and Costs, being filed concurrently herewith.

**EXHIBIT "A"**

(SH = Shareholder; A= Associate; PL = Paralegal;  
CA = Contract Attorney; SA = Summer Associate)

For each person whose time is included, the chart sets forth the name, billing rate and period in effect, hours for each billing rate, and lodestar for each billing rate.

<b>TIMEKEEPER</b>	<b>TOTAL HOURS</b>	<b>TOTAL LODESTAR</b>
ANDREW C. CURLEY (A)	31.60	9,480.00
BETH A. BURGHAZE (PL)	10.50	2,100.00
BART D. COHEN (SH)	5,775.80	2,669,928.00
BRET P. FLAHERTY (SH)	92.10	31,788.00
CAITLIN G. COSLETT (A)	953.90	254,232.00
CANDICE J. ENDERS (A)	368.06	124,413.50
CHARLES P. GOODWIN (SH)	1,127.00	508,506.00
DAVID ANZISKA (A)	500.50	142,038.50
DAVID A. LANGER (A)	520.90	177,857.00
DA RITZMAN (CA)	1,107.50	210,425.00
EUGENE R. TOMPKINS (CA/A)	7,668.50	1,725,692.50
EDWARD W. MILLSTEIN (SH)	48.80	17,637.00
H LADDIE MONTAGUE, JR (SH)	3,241.80	2,350,120.00
JB BLAKE (CA)	1,193.50	226,765.00
JENNA E MCNAUGHTON-WONG (A)	1,069.24	317,510.60
JK KLEIN (CA)	2,792.20	502,596.00
JILL L. FREEMAN (A)	812.80	295,819.50
JUNE M. CUSACK (PL)	253.30	52,162.50
KIMBERLY A. WALKER (PL)	24.90	5,407.50
KEVIN C. ALDRIDGE (PL)	219.50	41,534.00
KAREN M. MARKERT (PL)	2,009.75	468,227.50
KP KEMLER (PL)	103.20	24,768.00
LM MUCCI (CA)	1,238.80	235,372.00
LAURA X. GLEASON (A)	3,689.94	952,485.20
MARY ANNE ROSSI (PL)	206.30	49,512.00
MICHAEL C. DELL'ANGELO (SH)	123.40	52,661.50
MERRILL G. DAVIDOFF (SH)	3,985.20	2,925,379.00
MARTIN I. TWERSKY (SH)	109.50	63,292.00
MICHAEL J. KANE (SH)	10,834.29	4,559,092.00
MATTHEW P. MCCAHERN (A)	3,206.00	1,048,786.00
NICHOLAS X. URBAN (A)	114.90	29,055.00
P.V. TELANG (PL)	22.50	5,312.50
PETER B. NORDBERG (SH)	15.50	6,975.00



<b>TIMEKEEPER</b>	<b>TOTAL HOURS</b>	<b>TOTAL LODESTAR</b>
PM MANLEY (CA)	1,300.60	247,114.00
RG GOLDEN (CA)	1,092.80	207,632.00
SHAWN L. MATTEO (PL)	16.70	3,340.00
SARAH S. SCHALMAN-BERGEN (A)	22.00	5,500.00
	55,903.78	20,550,516.30

**EXHIBIT “B”**

**BERGER & MONTAGUE HOURLY BILLING RATES**

<b>Timekeeper</b>	<b>Rate Effective 2005</b>	<b>Rate Effective 01/01/06-06/30/07</b>	<b>Rate Effective 07/01/07-12/31/08</b>	<b>Rate Effective 01/01/09-02/28/10</b>	<b>Rate Effective 03/01/10-02/28/11</b>	<b>Rate Effective 03/01/11-02/28/12</b>	<b>Rate Effective 03/01/12-12/31/12</b>
H. Laddie Montague, Jr.	590	650	700	725	750	775	790
Merrill Davidoff	590	650	700	725	750	775	790
Martin Twersky		520	550	575	650	660	675
Bart Cohen	370	400	450	475	550	560	570
Peter Nordberg			450				
Michael Dell’ Angelo			425	460	525	535	560
Edward Millstein	360	375					
Charles Goodwin		365	450	475	525	535	550
Michael Kane	350	370	395	405	450	475	500
Jill Freeman		340	365				
Bret Flaherty		340	400				
David Langer		290	365	385	425	450	485
Jenna McNaughton-Wong		290	300	360			
Candice Enders		270	325	335	360	380	410
Matthew McCahill		205 (10/2006 - 11/2006); 270 (12/2006 - 6/2007)	325	335	360	380	
David Anziska		265	285				
Andrew Curley				300			
Laura Gleason		215	260	275	310	320	
Sarah Schalman-Bergen				250			
Caitlin Coslett				250	275	290	
Nick Urban				250	275		
Karen Markert	195	210	225	240	240	240	250
PV Telang	195	210	225	240	240	240	250
Kevin Aldridge	180	195	200	215			
Kimberly Walker		210	225				
Mary Anne Rossi					240		
KP Kemler					240		
June Cusack		190	200	215	215		

<b>Timekeeper</b>	<b>Rate Effective 2005</b>	<b>Rate Effective 01/01/06-06/30/07</b>	<b>Rate Effective 07/01/07-12/31/08</b>	<b>Rate Effective 01/01/09-02/28/10</b>	<b>Rate Effective 03/01/10-02/28/11</b>	<b>Rate Effective 03/01/11-02/28/12</b>	<b>Rate Effective 03/01/12-12/31/12</b>
Shawn Matteo			200				
Beth Burghaze			200				
Eugene Tompkins		200	200	200	200 (3/1/10 - 10/31/10); 350 (11/1/10- 2/28/11)	350	350
JK Klein		180	180				
RG Golden		190	190				
JB Blake		190	190				
LM Mucci		190	190				
DA Ritzman		190	190				
PM Manley		190	190				

**EXHIBIT "C"**

**BERGER & MONTAGUE, P.C  
EXPENSES - Inception through November 30, 2012**

<b>Description</b>	<b>Cumulative Total</b>
Assessments	3,390,000.00
Commercial Copies	4,632.71
Internal Reproduction/Copies	96,163.65
Computer Research	264,332.19
Court Fees (filing, etc.)	2,270.82
Court Reporters/Transcripts	284.92
Telephone/Fax	4,665.42
Postage/Express Delivery/Couriers	15,729.32
Professional Fees (expert/investigator, etc.)	13,000.00
Witness/Service Fees	
Travel (Transportation, lodging, meals, etc.)	431,463.27
Miscellaneous (Describe): OCR; electronic file conversion; electronic endorsing; electronic hosting and misc. computer expenses; CD/DVD burns	6,047.80
Miscellaneous (Describe): overtime; misc. office expense	153.75
Miscellaneous (Describe): publications	1,409.30
Miscellaneous (Describe): advertising	935.00
<b>TOTAL EXPENSES</b>	<b>4,231,088.15</b>

LESS FIRST CLASS AIRFARE -11,364.18

ADJUSTED TOTAL  
(FROM DETAILS SHEET) 4,218,798.06