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MEMORANDUM

March 30, 2017

To Our Clients and Friends

Re: Supreme Court Rules New York State Ban on Credit Card Surcharges Regulates Speech

The U.S. Supreme Court has held that a New York State law that prohibits retailers from imposing credit card surcharges regulates speech. Accordingly, the Court remanded the case to the Second Circuit Court of Appeals to determine whether the New York surcharge ban is a valid regulation of commercial speech or violates the First Amendment.

In 2013, the merchants filed suit challenging the New York law which banned surcharges on credit card sales, arguing that the law violated the First Amendment because it regulated how they could communicate their prices. They contended that the law was unconstitutionally vague because there was no meaningful distinction between surcharges and discounts. In a unanimous opinion authored by Chief Justice Roberts, the Court rejected the Second Circuit's conclusion that the New York surcharge ban regulated pricing conduct rather than speech. The Court stated that because it regulates how merchants may communicate prices rather than regulating the prices themselves, the law regulates speech.

A copy of the Court's decision in the case, *Expressions Hair Design et al. v. Schneiderman*, is available on our website at <http://www.schwartzandballen.com/news.html>

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox, Heidi Wicker or Magda Gathani at (202) 776-0700.