

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT ROSS and RANDAL WACHSMUTH, on
behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

AMERICAN EXPRESS COMPANY, AMERICAN
EXPRESS TRAVEL RELATED SERVICES, INC.
and AMERICAN EXPRESS CENTURION BANK,

Defendants.

No. 04 CV 05723 (WHP)

ANSWER AND AFFIRMATIVE
DEFENSES TO THE FIRST
AMENDED COMPLAINT

Defendants American Express Company, American Express Travel Related Services, Inc. and American Express Centurion Bank (collectively “American Express” or Defendants”), as and for their Answer to the First Amended Class Action Complaint dated March 16, 2010 (the “Complaint”), allege as follows:

1. Deny the allegations contained in paragraph 1 of the Complaint, except admit that, upon information and belief, the defendants in the case captioned In re Currency Conversion Fee Antitrust Litigation, MDL 1409 (the “MDL Action”) include the identified entities, state that paragraph 1 contains legal conclusions as to which no response is required, and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the fourth sentence of paragraph 1.
2. Deny the allegations contained in paragraph 2 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first three sentences of the paragraph.
3. Deny the allegations contained in paragraph 3 of the Complaint.

4. Deny the allegations contained in paragraph 4 of the Complaint except state that paragraph 4 contains legal conclusions as to which no response is required.

5. Deny the allegations contained in paragraph 5 of the Complaint except state that paragraph 5 contains legal conclusions as to which no response is required.

6. Deny the allegations contained in paragraph 6 of the Complaint except state that paragraph 6 contains legal conclusions as to which no response is required.

7. State that paragraph 7 contains legal conclusions as to which no response is required.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint.

9. Admit the allegations contained in paragraph 9 of the Complaint.

10. Admit the allegations contained in paragraph 10 of the Complaint.

11. Admit the allegations contained in paragraph 11 of the Complaint.

12. Deny the allegations contained in paragraph 12 of the Complaint.

13. Deny the allegations contained in paragraph 13 of the Complaint except state that paragraph 13 contains legal conclusions as to which no response is required.

14. Deny the allegations contained in paragraph 14 of the Complaint except state that paragraph 14 contains legal conclusions as to which no response is required.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint except state that paragraph 15 contains legal conclusions as to which no response is required and admit that American Express operates a credit and charge card network in the United States, that American Express issues credit and charge cards in the United States, that American Express cards can be and are used to make

purchases in foreign countries, and that such purchases frequently are denominated in the currency of the country in which they are made and billed to U.S. cardholders in U.S. dollars.

16. Deny the allegations contained in paragraph 16 except state that paragraph 16 contains legal conclusions as to which no response is required.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17, except admit that American Express issues cards that a consumer can use to make purchases from unrelated merchants without accessing or reserving the consumer's funds at the time of the purchase, including credit cards and charge cards, admit that paragraph 17 accurately summarizes some, but not all, of the salient features of general purpose cards and deny that American Express' charge cards require the cardholder to pay all charges within a set period after a monthly bill is presented.

18. Admit the allegations contained in paragraph 18 except deny knowledge or information sufficient to form a belief as to the allegations contained in the third sentence of the paragraph.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 except admit that American Express issues credit and charge cards on its own network.

20. Deny the allegations contained in paragraph 20 of the Complaint except admit that American Express issues cards directly to cardholders and contracts with merchants that accept American Express cards, admit that certain American Express network and cardholder accounts are owned by American Express or its affiliates, admit that the authorization and settlement of American Express card transactions are carried out by American Express or its affiliates, and admit the allegations contained in footnote 2.

21. Admit the allegations contained in paragraph 21.
22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint and footnote 3.
23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint.
24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint.
25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint.
26. Deny the allegations contained in paragraph 26 except admit that American Express competes with the VISA and MasterCard networks and their issuing and acquiring banks.
27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint.
28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint.
29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint.
30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint.
31. Deny the allegations contained in paragraph 31 of the Complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct of entities other than American Express.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint and state that paragraph 34 contains legal conclusions as to which no response is required.

35. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint and state that paragraph 35 contains legal conclusions as to which no response is required.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint and state that paragraph 36 contains legal conclusions as to which no response is required.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint.

39. Deny the allegations contained in paragraph 39 of the Complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of the paragraph.

40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint.

41. Deny the allegations contained in paragraph 41 of the Complaint except deny knowledge or information sufficient to form a belief as to the allegations concerning the conduct and knowledge of entities other than American Express.

42. Deny the allegations contained in paragraph 42, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct of entities other than American Express, admit that the amount of the charge in foreign currency and the corresponding amount owed in dollars appeared on American Express' monthly statements, state that American Express typically disclosed both the date of the relevant transaction and the date the transaction was posted to the account on its monthly statements, and respectfully refers the Court to the cardholder agreements for more information concerning American Express' foreign currency exchange rate adjustment.

43. Deny the allegations contained in paragraph 43 of the Complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 concerning entities other than American Express.

44. Deny the allegations contained in paragraph 44 of the Complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct of entities other than American Express.

45. Deny the allegations contained in paragraph 45 of the Complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct of entities other than American Express.

46. Deny the allegations contained in paragraph 46 of the Complaint except admits that American Express maintains a general purpose card network in competition with other operators

of networks for general purpose cards and states that paragraph 46 contains legal conclusions as to which no response is required.

47. Deny the allegations contained in paragraph 47 of the Complaint except admits that American Express issues general purpose cards and competes with other issuers of general purpose cards and states that paragraph 47 contains legal conclusions as to which no response is required.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 except admits that American Express uses an electronic network settlement system that permits United States cardholders to make payments in dollars for purchases in foreign countries denominated in foreign currencies, and that American Express implemented a 1% foreign currency exchange rate adjustment in or about the 1980s on American Express cardholders who used their American Express cards to purchase goods or services in a foreign currency.

49. Deny the allegations contained in paragraph 49 of the Complaint except admit that American Express revised certain cardholder agreements in or around April 1999, and that those revised agreements provided for a foreign currency exchange rate adjustment of 2%.

50. Deny the allegations contained in paragraph 50 of the Complaint except admit that American Express attended a presentation that was also attended by, among other persons and entities, lawyers employed by Household, Providian, Chase Manhattan, Sears, Citigroup and Bank One/First USA, and that an agenda for the presentation was created by an entity other than American Express and respectfully refer the Court to the agenda for the true and complete contents thereof.

51. Deny the allegations contained in paragraph 51 of the Complaint and state that neither American Express nor any of its representatives “participated in a discussion” regarding American Express’ foreign currency exchange rate adjustment.

52. Deny the allegations contained in paragraph 52 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct of persons and entities other than American Express and admit that a 1% increase in American Express’ foreign currency exchange rate adjustment for certain cardholder accounts, though announced prior to May 25, 1999, did not become effective until after May 25, 1999.

53. Deny the allegations contained in paragraph 53 of the Complaint.

54. Deny the allegations contained in paragraph 54 of the Complaint.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the Complaint, and state that paragraph 55 contains legal conclusions as to which no response is required.

56. Deny the allegations contained in paragraph 56 of the Complaint.

57. Deny the allegations contained in paragraph 57 of the Complaint and respectfully refer the Court to the identified document for the true and complete contents thereof.

58. Deny the allegations contained in paragraph 58 of the Complaint.

59. Deny the allegations contained in paragraph 59 of the Complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct of persons and entities other than American Express and state that the allegations contained in the first sentence of the paragraph concerning American Express are vague, subjective, and ill-defined and that Defendants therefore deny knowledge or information sufficient to form a belief as to the truth of those allegations.

60. Deny the allegations contained in paragraph 60 of the Complaint except state that paragraph 60 contains legal conclusions as to which no response is required.

61. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the Complaint except state that paragraph 61 contains legal conclusions as to which no response is required.

62. Deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct and opinions of entities other than American Express contained in paragraph 62 of the Complaint and state that the remaining allegations of paragraph 62 are vague, subjective, and ill-defined and that Defendants therefore deny knowledge or information sufficient to form a belief as to the truth of those allegations.

63. Deny the allegations contained in paragraph 63 of the Complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct and opinions of entities other than American Express.

64. Deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct of entities other than American Express contained in paragraph 64 of the Complaint and state that the remaining allegations of paragraph 64 are vague, subjective, and ill-defined and that Defendants therefore deny knowledge or information sufficient to form a belief as to the truth of those allegations.

65. Deny the allegations contained in paragraph 65 of the Complaint.

66. Deny the allegations contained in paragraph 66 of the Complaint and state that the allegations contained in the first sentence of paragraph 66 are vague, subjective, and ill-defined and that Defendants therefore deny knowledge or information sufficient to form a belief as to the truth of those allegations.

67. Deny the allegations contained in paragraph 67 of the Complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 characterizing the discovery process in the MDL Action.

68. Deny the allegations contained in paragraph 68 of the Complaint.

69. Deny the allegations contained in paragraph 69 of the Complaint.

70. Deny the allegations contained in paragraph 70 except admit that Plaintiffs purport to bring this action pursuant to the identified statutes and on behalf of the identified, but uncertified, classes.

71. Deny the allegations contained in paragraph 71 of the Complaint, including footnote 5.

72. Deny the allegations contained in paragraph 72 of the Complaint.

73. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 73 of the Complaint.

74. Deny the allegations contained in paragraph 74 of the Complaint.

75. Deny the allegations contained in paragraph 75 of the Complaint except deny knowledge or information sufficient to form a belief as to the allegations concerning the experience and competency of Plaintiffs' counsel.

76. Deny the allegations contained in paragraph 76 of the Complaint except state that paragraph 76 contains legal conclusions as to which no response is required.

77. Deny the allegations contained in paragraph 77 of the Complaint except state that paragraph 77 contains legal conclusions as to which no response is required.

78. Deny the allegations contained in paragraph 78 of the Complaint.

79. Deny the allegations contained in paragraph 79 of the Complaint.

80. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 80 of the Complaint.

81. Defendants repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

82. Deny the allegations contained in paragraph 82 of the Complaint.

83. Deny the allegations contained in paragraph 83 of the Complaint.

84. Deny the allegations contained in paragraph 84 of the Complaint.

85. Defendants repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

86. Deny the allegations contained in paragraph 86 of the Complaint.

87. Deny the allegations contained in paragraph 87 of the Complaint.

88. Deny the allegations contained in paragraph 88 of the Complaint.

89. Deny the allegations contained in paragraph 89 of the Complaint.

90. Deny the allegations contained in paragraph 90 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

1. The Complaint fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Plaintiffs' claims are subject to arbitration.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiffs' claims are barred, in whole or in part, because plaintiffs have not suffered actual, cognizable injury under antitrust laws.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiffs' claims are barred by plaintiffs' lack of standing to prosecute the claims individually or as a class action.

FIFTH AFFIRMATIVE DEFENSE

5. Plaintiffs' claims should be dismissed to the extent they are barred by the doctrines of waiver, laches, and estoppel.

SIXTH AFFIRMATIVE DEFENSE

6. Plaintiffs have not suffered any damages as a result of the conduct complained of, and have failed to mitigate any damages that might be alleged.

SEVENTH AFFIRMATIVE DEFENSE

7. Plaintiffs' claims are improperly joined within the meaning of Federal Rule of Civil Procedure 20 because they did not arise out of the same transaction, occurrence or series of transactions or occurrences and/or do not involve questions of law or fact common to all Defendants.

EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiffs' claims are barred, in whole or in part, because the named plaintiffs are not proper class representatives.

NINTH AFFIRMATIVE DEFENSE

9. Plaintiffs' claims are barred, in whole or in part, because any and all injuries and damages alleged in the Complaint, the fact and extent of which are expressly denied by Defendants, were directly and proximately caused by or contributed to by the statements, acts and/or omissions of Plaintiffs.

TENTH AFFIRMATIVE DEFENSE

10. Plaintiffs' claims are barred, in whole or in part, because any and all of Defendants' conduct has been reasonable and based on independent, legitimate business and economic justifications.

ELEVENTH AFFIRMATIVE DEFENSE

11. Plaintiffs' claims are barred, in whole or in part, because any actions taken by the Defendants did not lessen competition in the relevant market.

TWELFTH AFFIRMATIVE DEFENSE

12. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs would be unjustly enriched if they were allowed to recover any part of the damages alleged in the Complaint.

THIRTEENTH AFFIRMATIVE DEFENSE

13. The relief sought by Plaintiffs is barred, in whole or in part, because the alleged damages sought are too speculative and uncertain, and because of the impossibility of the ascertainment and allocation of such alleged damages.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Plaintiffs' claims are barred by one or more statutes of limitation.

FIFTEENTH AFFIRMATIVE DEFENSE

15. Plaintiffs' claims are barred, in whole or in part, because Plaintiff's claims are released under Paragraph 8 of the Amended Final Judgment and Order of Dismissal with Prejudice, entered on February 1, 2006 in LiPuma v. American Express Co., No. 04-20314 (S.D. Fla.).¹

¹ Defendants understand that the Court addressed the affirmative defense of release in its January 22, 2010 Order. That Order was entered prior to the filing of the First Amended Complaint. Defendants plead the affirmative defense here because they are required to submit an answer to the newly amended complaint and wish to preserve the issue of release for appeal or other reconsideration as appropriate.

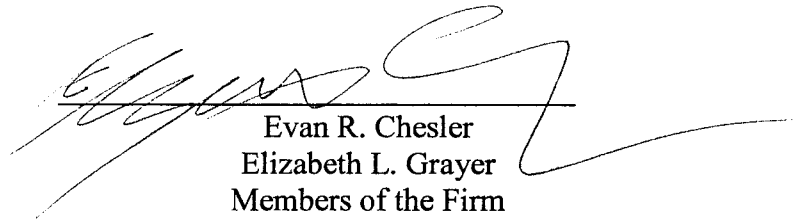
SIXTEENTH AFFIRMATIVE DEFENSE

16. Defendants reserve the right to assert other defenses and affirmative defenses as this action proceeds.

WHEREFORE, Defendants American Express Company, American Express Travel Related Services, Inc. and American Express Centurion Bank respectfully request that the Court dismiss the Complaint with prejudice and grant such other and further relief as the Court deems just and proper.

March 30, 2010

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