

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:
ROBERT ROSS and RANDAL	:
WACHSMUTH, on behalf of themselves and	: FIRST AMENDED CLASS ACTION
all others similarly situated,	: COMPLAINT
	:
	:
Plaintiffs,	:
vs.	:
	:
AMERICAN EXPRESS COMPANY,	:
AMERICAN EXPRESS TRAVEL RELATED	:
SERVICES, INC., and AMERICAN	:
EXPRESS CENTURION BANK,	:
	: JURY TRIAL DEMANDED
Defendants.	x

Plaintiffs, on behalf of themselves and all others similarly situated, by and through their undersigned attorneys, allege, upon knowledge as to their own acts and otherwise upon information and belief, as follows:

INTRODUCTORY STATEMENT

1. This is a class action brought on behalf of general purpose cardholders of VISA, MasterCard and Diners Club. It arises out of American Express' participation in conspiracies alleged in *In re Currency Conversion Fee Antitrust Litigation*, MDL 1409 (the "MDL action"). The defendants in the MDL action are various entities which comprise the VISA, MasterCard, and Diners Club networks, and seven of the largest and most influential bank members of the VISA and MasterCard networks.¹ The Second Consolidated Amended Complaint in the MDL

¹ The defendants in MDL 1409 are Visa U.S.A. Inc., Visa International Service Association, MasterCard International, Incorporated, Citigroup, Inc., Citibank (South Dakota) N.A., Universal Bank, N.A., Universal Financial Corp., Citicorp Diners Club, Inc., Bank of

action (the “MDL Complaint”) alleges, among other things, conspiracies between and among the VISA and MasterCard networks to fix and maintain prices, all in connection with fees charged to United States cardholders for transactions effected in foreign currencies (the “foreign transaction fee”).

2. U.S. cardholders throughout the VISA and MasterCard networks are charged a collusively set base foreign transaction fee equal to 1% of the amount of the foreign currency transaction. In addition, the MDL Defendant Banks tack on an additional collusively set foreign transaction fee of their own, generally 2%. The VISA and MasterCard networks have actively colluded with their member banks and assisted in implementing and facilitating these “second tier” foreign transaction fees by amending their rules and procedures to accommodate these fees, and by colluding with the MDL Defendant Banks to charge these fees. American Express has actively conspired with the MDL Defendants to fix, maintain, and conceal the artificially inflated second tier fee and to increase its own foreign transaction fee from 1% to 2%.

3. In furtherance of this conspiracy, American Express has also conspired with the MDL Defendant Banks to include compulsory arbitration clauses in their respective cardholder agreements in a concerted effort to reduce (or eliminate) their potential liability arising from their illegal conduct. This concerted action suppresses competition, deprives cardholders of any meaningful choice concerning arbitration, deprives them of valuable legal rights and diminishes or negates any recourse for unlawful conduct.

America Corporation, Bank of America, N.A. (USA), Bank One Corporation, First USA Bank, N.A., J.P. Morgan Chase & Co., Chase Manhattan Bank USA, N.A., the Chase Manhattan Bank, Providian Financial Corp., Providian National Bank, Providian Bank, Household International, Inc., Household Bank (SB) N.A., MBNA Corporation, and MBNA America Bank, N.A. (“MDL Defendants”).

JURISDICTION AND VENUE

4. This action is instituted to recover damages and costs of suit, including reasonable attorneys' fees, for the injuries sustained by plaintiffs and the members of the Damages Class by reason of the violations alleged in this Complaint under §§4 and 16 of the Act of Congress of October 14, 1914, C. 323, 38 Stat. 731 (15 U.S.C. §§ 15 & 26), commonly known as the Clayton Act, and under §1 of the Act of Congress of July 2, 1890, C. 467, 26 Stat. 209 (15 U.S.C. § 1), commonly known as the Sherman Act. This action is also instituted to secure injunctive relief to prevent further threatened harm and damage to plaintiffs and the members of the Injunctive Relief Class pursuant to §16 of the Clayton Act, 15 U.S.C. §26.

5. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1337, and by §§ 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) & 26.

6. Venue is proper in this judicial district pursuant to §§ 4, 12 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22 & 26, and 28 U.S.C. §§ 1391(b), (c) & (d).

7. Defendants are found within this judicial district. The causes of action alleged in this Complaint arose in part within this district. The interstate trade and commerce described in this Complaint is and has been carried out in part within this district.

THE PARTIES

8. Plaintiffs Robert Ross and Randal Wachsmuth are residents of Montgomery County, Pennsylvania. Both paid foreign transaction fees for using their general purpose cards to one or more of the MDL Defendant Banks, and were injured in their business and/or property by reason of the antitrust violations alleged herein.

9. Defendant American Express Company is incorporated under the laws of the State of New York, and has its principal place of business at 200 Vesey Street, New York, NY

10285. American Express Company issues American Express and Optima cards through its subsidiaries.

10. Defendant American Express Travel Related Services, Inc., a wholly owned subsidiary of American Express Company, is incorporated under the laws of the State of New York, and has its principal place of business at 200 Vesey Street, New York, New York 10285. Directly and through its subsidiary, American Express Related Travel Services operates, among other things, as an issuer of credit and charge cards and owns and operates a general purpose card network.

11. Defendant American Express Centurion Bank, a wholly owned subsidiary of The American Express Travel Related Services Company, Inc., is incorporated under the laws of the State of Utah, and has its principal place of business at 4315 South 2700 West, Salt Lake City, Utah 84184. American Express Centurion Bank issues American Express and Optima general purpose cards. American Express Company, American Express Travel Related Services and American Express Centurion Bank are referred to collectively as “American Express.”

CO-CONSPIRATORS AND OTHERS

12. Various other persons, firms and corporations, not named as defendants in this Complaint, including the MDL Defendants, have participated as co-conspirators with defendants in the offenses complained of and have performed acts and made statements in furtherance of the conspiracy.

DAMAGES PERIOD

13. The Damages Period in this action is July 22, 2000 to November 8, 2006.

TRADE AND COMMERCE

14. The trade and commerce relevant to this action is comprised of the issuance of general purpose cards which can be used by plaintiffs and the plaintiff classes to incur charges in foreign currencies.

15. During the relevant period, American Express and MDL Defendants VISA, MasterCard and Diners Club have operated general purpose card networks throughout the United States and abroad. The networks are the mechanisms by which American Express, VISA, MasterCard and Diners Club effect the process of conducting and settling a transaction using their general purpose cards. American Express, MasterCard, VISA and Diners Club provide the networks and related products and services in the United States and abroad, and those networks, products and services affect a substantial amount of interstate commerce. American Express issues its general purpose cards throughout the United States. The MDL Defendant Banks issue VISA and MasterCard general purpose cards throughout the United States. Diners Club issues charge cards throughout the United States. American Express, VISA, MasterCard and Diners Club cards issued in the United States can be and are used to make purchases in foreign countries. Purchases are denominated in the currency of the country in which the purchase is made and then translated into U.S. dollars through the networks and billed to U.S. cardholders in U.S. dollars in transactions and communications that cross state lines and national borders.

16. The activities of the defendants and their co-conspirators, as described in this Complaint, took place within interstate commerce; had and continue to have a substantial effect on interstate trade and commerce; and have unreasonably restrained, and continue to restrain, interstate trade and commerce.

STATEMENT OF FACTS

17. General purpose cards, like American Express, VISA-branded, and MasterCard-branded cards, are payment devices that a consumer can use to make purchases: (a) from unrelated merchants; and (b) without accessing or reserving the consumer's funds at the time of the purchase. There are two principal types of general purpose cards: (a) credit cards – such as VISA cards, MasterCard Classic and Gold cards, and the American Express Optima and Blue cards – that usually permit the cardholder to either (i) pay all charges within a set period after a monthly bill is presented, or (ii) pay only a portion of the charge within that time and pay the remainder in monthly installments plus a finance or interest charge; and (b) charge cards – such as the American Express Platinum, Gold and Green Cards and the Diners Club Card – that require the cardholder to pay all charges within a set period after a monthly bill is presented.

18. General purpose card transactions are processed through general purpose card networks. American Express, VISA and MasterCard own and operate the three largest general purpose card networks. In 2003, the three networks accounted for more than 93% of all purchases made with general purpose cards and approximately 92% of the number of general purpose cards issued in the United States.

19. General purpose cards are issued to cardholders in one of two ways. VISA-branded and MasterCard-branded cards are issued by their respective member banks, such as the MDL Defendant Banks. American Express, like Diners Club and Discover, issues its own cards.

The American Express Network

20. American Express is a closed network which issues its cards directly to cardholders and contracts directly with the merchants that accept its cards. The authorization and settlement of general purpose card transactions, including imposition of fees such as the

foreign transaction fee, are done internally. American Express owns both the network and the corresponding cardholder accounts.²

21. In a typical transaction on the American Express network, the merchant accepts a credit card from a customer for the provision of goods or services. The merchant presents the card transaction data to American Express for verification and processing. American Express then notifies the merchant if the transaction is authorized. If authorized, the merchant submits a request for payment to American Express. American Express pays the merchant and retains a percentage of the purchase price for its service. American Express then bills its cardholder for the amount of the purchase.

The VISA and MasterCard Networks

22. Both VISA and MasterCard are joint ventures – or, as they call themselves, “associations” – created, owned, governed, and operated by and in the interests of their member banks. At all relevant times, VISA and MasterCard were organized as membership corporations.³ Their activities are principally financed through fees and assessments levied on their members, including the MDL Defendant Banks.

23. VISA and MasterCard each own and operate open general purpose card networks. Their member banks issue cards to cardholders (“issuing banks” or “issuer”) and contract with

² Under VISA’s and MasterCard’s so-called “exclusionary rules”, its member banks are restricted from issuing cards on the American Express (or Discover) network. In 2001, the Department of Justice successfully prosecuted an antitrust action against VISA and MasterCard to invalidate this policy. The decision was recently affirmed. *United States v. Visa U.S.A., Inc.*, 344 F.3d 229 (2d Cir. 2003). Subsequently, in January 2004, American Express and MDL Defendant MBNA reached an agreement whereby MBNA will be the first US-based bank to issue cards on the American Express network.

³ Effective June 28, 2002, MasterCard is a wholly-owned subsidiary of MasterCard International Incorporated, a Delaware State Corporation.

merchants to accept their cards (“acquiring banks” or “acquirer”). The cardholder accounts are owned by the issuing banks and processed by the banks themselves, or by third-party processors such as First Data Resources, Inc. (“FDR”) or Total System Services, Inc. (“TSYS”).

24. Among other things, VISA and MasterCard: implement systems and technologies to authorize and settle general purpose card transactions, including the imposition of foreign transaction fees; market and promote their brand names; and develop and impose rules and assess fees on their member banks.

25. In a typical general purpose card transaction, such as a credit card, on the VISA or MasterCard networks, a merchant accepts a credit card from a customer for the provision of goods and services. The merchant then presents the card transaction data to an “acquirer,” typically a bank, for verification and processing. The acquirer presents the transaction data to the association which, in turn, contacts the “issuer” to check the cardholder’s credit line. The issuer then indicates to the association whether it authorizes or denies the transaction. The association relays the message to the merchant’s acquirer, who then relays the message to the merchant. If the transaction is authorized, the merchant will submit a request for payment to the acquirer, which relays the request, via the association, to the issuer. The issuer pays the acquirer; the acquirer pays the merchant and retains a percentage of the purchase price for its services which is shared with the issuer. The issuing bank bills the cardholder for the amount of the purchase.

26. By comparison, in addition to its network functions, American Express acts as both an “issuer” and “acquirer” because it performs all the functions performed by the issuers and acquirers on the VISA and MasterCard networks. As a result, American Express competes with both the VISA and MasterCard networks, and their issuing and acquiring banks.

27. Control of both VISA and MasterCard is exerted by a select group of member banks – essentially a group of the largest banks operating in the general purpose card market. These large banks, including the MDL Defendant Banks, simultaneously serve on the board of directors and/or on important committees of one, or in many cases both, associations. Additionally, each of the MDL Defendant Banks issued significant numbers of both VISA and MasterCard general purpose cards. This relationship also provided the vehicle for inter-firm communication and other anti-competitive behavior by both the associations and, among others, the MDL Defendant Banks, including the setting of a common minimum foreign transaction fee.

The VISA and MasterCard Foreign Transaction Fee

28. VISA and MasterCard serve as clearinghouses for general purpose card transactions which occur in foreign countries using credit cards issued by their member banks. VISA and MasterCard each use an electronic network and settlement system that permits United States cardholders to make payments in dollars for purchases in foreign countries denominated in foreign currencies. These network settlement systems also automatically impose foreign transaction fees, including both the VISA/MasterCard fees and, in some cases, the additional fees implemented by the MDL Defendant Banks.

29. The procedure by which VISA and MasterCard process any foreign currency transaction involves a “netting out” procedure such that the bulk of transactions for which a foreign transaction fee is charged do not, in fact, involve the actual purchase or sale of any currency. VISA and MasterCard levy their fees on all foreign currency charge transactions despite the fact that most of this “foreign exchange” is illusory due to the “netting out” procedures. For example, if 100 U.S. VISA cardholders in France charge the equivalent of U.S. \$10,000 in Euros on a given day, and 100 French VISA cardholders in the U.S. spend the U.S.

\$10,000 on the same day, VISA does not actually convert any currency. VISA nonetheless collects foreign transaction fees on each of the United States cardholders' transactions. MasterCard employs an identical procedure.

30. Both VISA and MasterCard – on behalf of, and in collaboration with, the member banks that govern them (including the MDL Defendant Banks) – have assessed and continue to assess foreign transaction fees on VISA and/or MasterCard general purpose cards used by consumers of these general purpose cards to purchase goods and/or services in foreign currencies.

31. The foreign transaction fees at issue in the MDL action are imposed on two levels. First, VISA, MasterCard and its issuer members assess a foreign transaction fee, at an identical one percent, which is retained by the associations. The 1% fee is referred to in the MDL Complaint as a “first tier” fee. This first tier fee acts as an agreed floor price for foreign transaction fees and has been charged for many years both predating and during the Damages Period in this Complaint. Second, the MDL Defendant Banks assess an additional foreign transaction fee, which they retain, and which was instituted during the Damages Period. The second tier foreign transaction fee is typically an additional 2%. This action arises out of American Express' collusive conduct and active participation in the conspiracy between and among the MDL Defendants to assess the foreign transaction fees.

The First Tier Foreign Transaction Fee

32. Beginning in the 1980's, VISA and MasterCard first imposed the first tier foreign transaction fee on cardholders using a VISA or MasterCard general purpose card to purchase goods or services in a foreign currency. American Express also began assessing a 1% foreign transaction fee in the 1980's.

33. From the time VISA and MasterCard initiated foreign transaction fees and at all times since, it was contemplated and agreed that the first tier fee would be imposed on, and borne by, the cardholders and not the members. Systems implemented to impose the fee by both MasterCard and VISA were designed and administered so as to accomplish the imposition of the foreign transaction fees on the cardholders and not the members. Issuers routinely refer to the foreign transaction fees as being imposed by VISA or MasterCard. The associations frequently refer to, and consider, the fee as a fee on the cardholder. The foreign transaction fee has not been considered or treated as a charge by the networks on the member banks or as an allocation of costs among the member banks.

34. VISA and MasterCard and their members have not competed on the amount or imposition of this first tier fee, which has been horizontally fixed both within and between the associations and their member banks.

35. While the MDL Defendant Banks generally compete against each other on many price terms, such as interest rates, annual fees, service charges and the like, they have acted and elected to collude on fees charged for transactions in foreign currencies. The MDL Defendant Banks jointly, through the associations, agreed to charge a floor price of 1% for the foreign transaction fee. Colluding on the fee they will all charge for foreign transactions in order to raise revenue for their joint venture is no different from the banks and associations agreeing to fix a minimum interest rate, with the monopoly profits going to fund the venture.

36. With respect to the foreign transaction minimum price agreement, the VISA and MasterCard networks do not act as efficiency-enhancing joint ventures. Instead, they provide an organizational vehicle for widespread and wholesale violation of United States antitrust laws.

The Second Tier Foreign Transaction Fee

37. The second tier foreign transaction fees are imposed over and above the first tier floor fixed by VISA, MasterCard and their members. An issuing bank's second tier foreign transaction fee is added to the amount of each and every charge made by a cardholder in a foreign currency,⁴ including such countries as Canada, Japan, France, Italy, Germany, and the United Kingdom – all of which are frequently visited by United States travelers. Hundreds of millions of dollars in second tier foreign transaction fees have been generated by purchases made in these and other countries.

38. The second tier fee is almost pure profit to the MDL Defendant Banks because it is VISA and MasterCard that perform any conversion function relating to the transactions in foreign currencies. The MDL Defendant Banks have no involvement in and incur no expenses in connection with the currency conversion.

39. The MDL Defendant Banks, together with American Express, conspired to fix and maintain the amount of the second tier fee at an agreed-upon level, and to further restrain competition by concealing the fee. VISA and MasterCard actively aided and abetted the process of collecting the second tier fees by adding these fees for members at the network level, and by modifying their practices and procedures to accommodate, and encourage, the imposition of such fees.

40. MDL Defendant Diners Club has also imposed a foreign transaction fee on its customers' use of the Diners Club charge card. Diners Club's foreign transaction fee was 1 percent. In line with the imposition of the second tier foreign transaction fees by the MDL Defendant Banks, Diners Club (like American Express) now imposes a 2% foreign transaction

⁴ With the exception of a few minor currencies, which are "pegged" to the U.S. dollar.

fee on its customers. This fee was imposed by the Citigroup MDL Defendant-conspirators under the price-fixed “umbrella” created by their participation in the conspiracy with the other MDL Defendants.

The Foreign Transaction Fees Were Not Disclosed to Cardholders

41. The amount and existence of any foreign transaction fees were concealed by American Express, VISA and MasterCard, as well as the MDL Defendant Banks, and by Diners Club. As part of the conspiracy, American Express and the MDL Defendant Banks agreed not to disclose the fees in solicitations and applications for American Express cards and VISA-branded and MasterCard-branded cards. Solicitations provide the primary source of information to prospective cardholders about fees, finance charges and card features.

42. American Express and the MDL Defendants further agreed to hide the foreign transaction fees from cardholders by failing to adequately disclose them on the cardholders’ monthly statements. For example, on some monthly statements, the consumer charging the goods or services abroad only saw the amount of the charge in the foreign currency and the corresponding amount owed in dollars. Other statements listed a “rate,” but failed to disclose in the billing statements that foreign transaction fees were built into that rate. Also, the date of the conversion was often not set forth on the cardholders’ statement. In any event, the VISA and MasterCard fees, as well as American Express’ fee, were not disclosed on any cardholder statement.

43. It was generally impossible or very difficult to verify the conversion rate used on a given purchase by the information contained on the cardholder statements from either American Express or the MDL Defendant Banks. The conversion was calculated based upon an undisclosed base exchange rate in effect on an undisclosed date.

44. The only place where American Express or the MDL Defendant Banks even partially disclosed the foreign transaction fees was in either the Card Member Agreement, Change in Terms notices, or the initial disclosure statement, which American Express and the MDL Defendant Banks send to their cardholders only after they had applied for and received their cards. The references to foreign transaction fees in the Card Member Agreements and initial disclosure statements do not comply with or satisfy the Truth in Lending Act, and were further designed to obscure, rather than disclose, the fees.

45. As an integral part of the conspiracy, American Express and the MDL Defendant Banks discussed, coordinated and agreed not to disclose these fees in solicitations or cardholder billing agreements and on the misleading form of the disclosures in cardholder agreements, in order to facilitate the fixing, imposition and concealment of such charges.

American Express' Role in the Conspiracy to Fix Foreign Transaction Fees

46. American Express is a horizontal competitor of VISA, MasterCard and Diners Club, because it maintains a general purpose card network, in competition with the networks for general purpose cards maintained by VISA, MasterCard and Diners Club.

47. American Express is also a horizontal competitor of issuing banks of VISA and MasterCard (including, but not limited to, the MDL Defendant Banks) because American Express issues general purpose cards, and competes for customers with the member banks that issue VISA-branded and MasterCard-branded general purpose cards.

48. Like VISA and MasterCard, American Express uses an electronic network and settlement system that permits United States cardholders to make payments in dollars for purchases in foreign countries denominated in foreign currencies. In or about the mid-1980's,

American Express implemented an initial foreign transaction fee of 1% on its cardholders who used their American Express cards to purchase goods or services in a foreign currency.

49. In April 1999, American Express revised its cardholder agreements to, among other things, issue notification to its cardmembers to purportedly permit American Express to increase its foreign transaction fee to its customers from 1% to 2%, on or after June 15, 1999.

50. On May 25, 1999, American Express co-sponsored a private meeting of horizontal competitors. The other co-sponsors of the meeting were Sears and MDL Defendant Banks Citigroup and Bank One/First USA. Additional attendees at the meeting included MDL Defendant Banks Household, Provident, and Chase Manhattan, among others. The formal, advance agenda for the meeting included topics such as arbitration and bankruptcy, but not the foreign transaction fee.

51. Although the foreign transaction fee was absent from the agenda, the attendees participated in a discussion regarding the competitors' actual or contemplated implementation of foreign transaction fees. During the meeting, it was revealed that American Express intentionally did not disclose the foreign transaction fee on its customer billing statements. The import of this information was that American Express cardholders could not learn from the billing statement the amount and/or existence of this fee. A 2% foreign transaction fee levied or to be levied by other issuing banks was also discussed at that meeting.

52. Subsequent to the May 25, 1999 meeting, uniform 2% foreign transaction fees, over and above the 1% being charged to cardholders by VISA and MasterCard, were set by all MDL Defendant Banks (except MBNA), and American Express and Diners Club increased their respective fees from 1% to 2%. MBNA has imposed the fee on certain of its "business card" portfolios, but has not imposed it on consumer portfolios.

53. As a direct result of the disclosures at this meeting relating to American Express, the MDL Defendant Banks were assured that they could fix, maintain and stabilize their foreign transaction fees, and could conceal the fees on their customers' monthly billing statements, without facing competition from American Express.

54. American Express joined, participated, ratified, and materially supported a collusive arrangement between and among the MDL Defendants regarding the foreign transaction fee that was already in progress, which has been described in part above, and in the MDL Complaint.

55. Subsequent to the May 25, 1999 meeting, American Express attended numerous meetings with its horizontal competitors, including (but not limited to) meetings held on July 28, 1999; September 29, 1999; January 12, 2000; March 2, 2000; October 3, 2000; February 14, 2001; May 30, 2001; November 28, 2001; January 13, 2002; and April 22, 2003. These meetings provided additional opportunities for inter-firm communications relative to foreign transaction fees.

56. A primary purpose of these meetings among horizontal competitors was to discuss the implementation of compulsory arbitration clauses on general purpose cardholders in an effort to impede consumer litigation, with a particular emphasis on class actions. Many of these meetings were referred to as either "Arbitration Users Group" or "Arbitration Group" meetings. Attendees of at least two of these meetings referred to the group as the "Coalition". Such conduct constitutes an illegal conspiracy pursuant to § 1 of the Sherman Act.

57. For example, at the meeting held on July 28, 1999, which was another meeting co-chaired by American Express, participants discussed ways to insert arbitration clauses in cardholder agreements. One of the topics listed on the agenda for this meeting was titled

“Working together to turn the tide [against class actions]”. Another of the topics listed on the meeting agenda was “Coalition Activities”, whose sub-topics included “[f]requency of meetings” and “[p]articipation/expansion of Coalition”.

58. By colluding with its competitors to insert compulsory arbitration clauses in its cardholder agreements, American Express and its co-conspirators intended to suppress competition and deprive their cardholders of a meaningful choice concerning the arbitration of disputes; shield themselves from potential liability arising from their illegal conduct; facilitate the conspiracies alleged herein; and deprive their cardholders of their rights under the Truth in Lending Act and the nation’s antitrust laws.

59. The foreign transaction fees are a huge profit center for American Express and the MDL Defendants. For example, during the Damages Period, VISA has processed many billions of dollars in general purpose card transactions by U.S. cardholders traveling abroad and has, on information and belief, received over a billion dollars from the first tier foreign transaction fee. During that same time, MasterCard processed many billions of dollars in such charges and received at least hundreds of millions of dollars in first tier foreign transaction fees. Their respective incremental costs for implementing and administering payments for foreign purchases are *de minimus*. In addition, the MDL Defendants Banks, which incur no independent expense in connection with processing transactions in foreign currencies, impose a foreign transaction fee which is usually at least twice the amount assessed by VISA and MasterCard.

60. A relevant market for assessing American Express’ collusive conduct is the provision of foreign transaction services to domestic general purpose cardholders on general purpose card transactions.

61. There is no mode of payment for foreign transactions for goods and services which is reasonably interchangeable with general purpose cards in the eyes of consumers. Other modes of payment do not provide the flexibility of purchasing goods without the necessity of immediately having to reserve or access funds.

62. Relative to general purpose cards, cash and travelers' checks are cumbersome, time-consuming, inflexible and/or insecure. Checks have much lower merchant acceptance than general purpose cards, particularly in a foreign country. United States banks do not offer their customers foreign-currency denominated checking accounts. Proprietary cards are accepted at only a single merchant and U.S. residents rarely possess proprietary cards which can be used with an appreciable number or variety of foreign merchants. Similarly, debit cards, because of their relative lack of merchant acceptance, regional scope, and lack of a credit function, are also not viewed as adequate substitutes for general purpose cards. General purpose cards are a practical, if not an actual, necessity when booking and reserving hotels, rental cars, airline tickets and other travel arrangements abroad.

63. American Express and the MDL Defendant Banks do not view cash or checks as competitive with general purpose cards.

64. The relevant geographic market is the United States. Cards issued by foreign issuers and foreign charge services for general purpose card transactions are not competitive or even reasonably available to cardholders in the United States. Solicitation by issuers for cardholders takes place throughout the United States by domestic issuers.

65. In the otherwise competitive general purpose card issuer market, the imposition of foreign transaction fees and the doubling of the American Express and Diners Club fees are against the individual economic self-interest of the MDL Defendant Banks and American

Express, absent collusion and an agreement to conceal and not to compete on fees assessed on transactions in foreign currencies, and leaves the cardholder without any meaningful alternative. If American Express and the MDL Defendants had not acted in concert, and with great efforts to conceal the practice, those general purpose card issuers (including the MDL Defendant Banks and American Express) which increased their foreign transaction fees would stand to lose some of their best customers to those member banks which did not.

66. Since the initial imposition of their foreign transaction fees, American Express, MasterCard and VISA, as well as their member banks (including the MDL Defendant Banks), have experienced a general decline in costs, rapid technological innovations and a decrease in fraud rates in general purpose card transactions in general, and in foreign exchange and conversion costs in particular. Yet, the price charged by American Express and the MDL Defendant Banks for foreign exchange services has dramatically increased. The foreign transaction fees have been set collusively, and free and open competition in foreign transaction services for general purpose cards has been suppressed and restrained.

67. The facts set forth above concerning American Express' participation in the conspiracy alleged herein were not known to plaintiffs, and could not have been learned through the exercise of due diligence, until recently. Plaintiffs' counsel first learned of the existence of the meeting of May 25, 1999 in September, 2002 when Chase answered interrogatories in MDL 1409. However, it was not until the fall of 2003, when First USA produced the handwritten notes of the meeting taken by Joanne Sundheim, Esquire, a representative of co-sponsor Bank One/First USA, that plaintiffs learned the particulars of what had transpired at the meeting, including discussions concerning the concealing by American Express of its fee on foreign transactions from its cardholders on its monthly billing statements.

68. Throughout the course of the MDL action, American Express has engaged in obstructionist tactics designed to impede legitimate third party discovery in order to, among other things, conceal its participation in the conspiracies with the MDL Defendants.

69. Based upon its participation in the conspiracies described in part above, and in the MDL Complaint, American Express is jointly and severally liable for the acts of its co-conspirators, including the MDL Defendants, in furtherance of the conspiracy.

CLASS ACTION ALLEGATIONS

70. Plaintiffs bring this action, pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, on their own behalf and as representatives of two separate classes (collectively, the “Classes”): (1) a “Damages Class”; and (2) an “Injunctive Relief Class”.

71. The Damages Class is composed of all VISA, MasterCard and Diners Club general purpose cardholders who used cards issued by any of the Co-Conspiring Banks⁵ during the Damages Period from July 22, 2000 to November 8, 2006, and were assessed a foreign transaction fee or surcharge for using such cards to purchase goods and/or services priced in foreign currencies or in foreign countries and who have submitted valid claims, regardless of timeliness in the settlement of *In re Currency Conversion Fee Antitrust Litigation*, No. 01-MD-1409 (WHP), Master File No. 21-95 (S.D.N.Y.).

⁵ “Co-Conspiring Banks” means the following banks (and affiliated companies): (i) Citibank (South Dakota) N.A., Universal Bank, N.A., Universal Financial Corp., Citigroup, Inc. (collectively, “Citi”), (ii) Bank of America Corporation, Bank of America, N.A. (USA), (iii) First USA Bank, N.A. and Bank One Corporation, (iv) J.P. Morgan Chase & Co., Chase Manhattan Bank USA, N.A., the Chase Manhattan Bank, (v) Provident Financial Corp., Provident National Bank, Provident Bank, (vi) Household International, Inc., Household Bank (SB) N.A., and (vii) MBNA Corporation and MBNA America Bank, N.A. These banks are also referred to as “MDL Defendant Banks.”

72. The Injunctive Relief Class is composed of all VISA, MasterCard and Diners Club general purpose cardholders of the MDL Defendant Banks.

73. The members of the Classes are so numerous and geographically dispersed that joinder of all class members in this action is impracticable.

74. Plaintiffs' claims are typical of the claims of the members of the Classes, because plaintiffs and all Class members were damaged by the same wrongful conduct of the defendants, and will continue to be so damaged and/or are threatened with such damage in the absence of injunctive relief.

75. Plaintiffs will fairly and adequately protect the interests of the Classes. The interests of plaintiffs are coincident with, and not antagonistic to, those of the Classes. In addition, plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex class action antitrust litigation.

The Damages Class

76. Questions of law and fact common to the members of the Damages Class predominate over questions which may affect only individual members, if any, in that defendants have acted on grounds generally applicable to all members of the Damages Class. Among the questions of law and fact common to the Damages Class are:

A. Whether American Express, the MDL Defendants and their co-conspirators engaged in a contract, combination, or conspiracy to raise, fix, maintain, or stabilize, and to conceal and not to compete over, the foreign transaction fee levied on cardholders who used MasterCard, VISA and/or Diners Club general purpose cards to purchase goods and/or services in a foreign country;

B. Whether American Express, the MDL Defendants and their co-conspirators engaged in a contract, combination or conspiracy to impose compulsory arbitration clauses on their cardmembers or cardholders to facilitate their unlawful activities and to deprive their cardmembers or cardholders of their legal rights;

C. The duration and extent of the contract, combination or conspiracy alleged in the Complaint;

D. The mechanisms used to accomplish the contract, combination or conspiracy;

E. Whether American Express, the MDL Defendants and their co-conspirators violated § 1 of the Sherman Act;

F. The effect of the contract, combination, or conspiracy on the foreign transaction fee on MasterCard, VISA and/or Diners Club general purpose card transactions involving foreign currency;

G. Whether American Express, the MDL Defendants and their co-conspirators conspired to conceal the foreign transaction fees;

H. The effect upon and the extent of injuries sustained by plaintiffs and members of the Damages Class and the appropriate type and/or measure of damages; and

I. Whether American Express is jointly and severally liable for the illegal conduct alleged herein.

The Injunctive Relief Class

77. Questions of law and fact common to the members of the Injunctive Relief Class predominate over questions which may affect only individual members, if any, in that American Express and the MDL Defendants have acted on grounds generally applicable to all members of

the Injunctive Relief Class. Among the questions of law and fact common to the Injunctive Relief Class are:

A. Whether American Express, the MDL Defendants and their co-conspirators engaged in a contract, combination, or conspiracy to raise, fix, maintain, or stabilize, and to conceal and not to compete over, the foreign transaction fee levied on cardholders who used MasterCard, VISA and/or Diners Club general purpose cards to purchase goods and/or services in a foreign country;

B. Whether American Express, the MDL Defendants and their co-conspirators engaged in a contract, combination or conspiracy to impose compulsory arbitration clauses on their cardmembers or cardholders to facilitate their unlawful activities and to deprive their cardmembers or cardholders of their legal rights;

C. The duration and extent of the contract, combination or conspiracy alleged in the Complaint;

D. The mechanisms used to accomplish the contract, combination or conspiracy;

E. Whether American Express, MDL Defendants and their co-conspirators violated § 1 of the Sherman Act;

F. The effect of the contract, combination, or conspiracy on the foreign transaction fee on general purpose card transactions involving foreign currency; and

G. Whether Injunctive Relief Class Members are threatened with continuing harm and damage from violations.

78. American Express has acted on grounds generally applicable to the Injunctive Relief Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Injunctive Relief Class as a whole.

79. As to both Classes, class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by members of the Damages Class, nearly all of whom could not afford to individually litigate an antitrust claim against large corporate defendants.

80. Plaintiffs know of no unusual difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VIOLATIONS ALLEGED

COUNT I

Conspiracy to Fix and Maintain Prices in Violation of 15 U.S.C. § 1

81. The facts set forth in ¶¶ 1-80 above are incorporated by reference.

82. American Express participated in a conspiracy with MDL Defendants and their co-conspirators to artificially raise, fix, inflate and maintain foreign transaction fees, and is jointly and severally liable for the damages of that conspiracy.

83. American Express engaged with its competitors in the following:

- (A) mutually interdependent conduct;
- (B) direct discussion of present and future pricing information;

(C) an exchange of pricing information; and

(D) an exchange of information and reassurance that the existence of the fee

would be concealed from cardholders on monthly billing statements and that American Express would not compete with the MDL Defendant Banks over the fee.

84. American Express had a common motive to collude in that it, like the MDL Defendant Banks, was in the process of raising its foreign transaction fee. Unilateral conduct by American Express was against its own business interest absent an illicit agreement to conceal and not to compete over the fee on transactions in foreign currencies. The meetings set forth above constitute numerous high level inter-firm communications.

COUNT II

Conspiracy to Impose Arbitration Clauses in Violation of 15 U.S.C. § 1

85. The facts set forth in ¶¶ 1-84 above are incorporated by reference.

86. American Express participated in a conspiracy to impose compulsory arbitration clauses on its cardholders and the cardholders of its co-conspirators.

87. American Express engaged with its competitors in the following:

(A) Mutually interdependent conduct;

(B) Direct discussion of present and future plans concerning compulsory arbitration clauses;

(C) An exchange of information regarding compulsory arbitration clauses; and

(D) An agreement to uniformly impose compulsory arbitration clauses.

88. By colluding with its competitors to insert compulsory arbitration clauses in its cardholder agreements, American Express and its co-conspirators intended to suppress

competition and deprive their cardholders of a meaningful choice concerning the arbitration of disputes; shield themselves from potential liability arising from their illegal conduct; facilitate the conspiracies alleged herein; and, deprive their cardholders of their rights under the Truth in Lending Act and the nation's antitrust laws.

89. Accordingly, American Express had a common motive to collude in that it, like the MDL Defendant Banks, would benefit by impeding access to the court system by its cardholders seeking redress on an individual or class-wide basis stemming from their respective deceptive and illegal general purpose card practices.

90. The defendants' conduct constitutes a *per se* violation of § 1 of the Sherman Act. Alternatively, their conduct constitutes an unreasonable restraint of trade when judged against the rule of reason.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray:

A. That the Court determine that this action may be maintained as a class action under the Federal Rules of Civil Procedure, and direct that reasonable notice of this action, as provided by Rule 23(c)(2), Federal Rules of Civil Procedure, be given each and every member of the Damages Class;

B. That American Express' actions alleged herein be adjudged and decreed to be in violation of § 1 of the Sherman Act, 15 U.S.C. §1;

C. That plaintiffs and each and every member of the Damages Class recover damages, as provided by law, determined to have been sustained by each of them to their

business or property, and that joint and several judgments in favor of plaintiffs and each and every member of the Damages Class, respectively, be entered against American Express;

D. That American Express be enjoined from continuing the illegal course of conduct concerning the foreign transaction fee alleged herein;

E. That American Express be enjoined from continuing the illegal course of conduct concerning the compulsory arbitration clauses alleged herein;

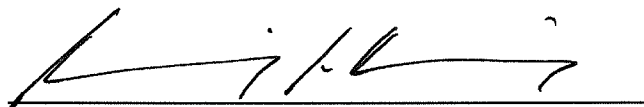
F. That plaintiffs and other members of the Classes recover their costs of this suit, including reasonable attorneys' fees, as provided by law;

G. That plaintiffs and the other members of the Classes be granted such other, further and different relief.

JURY DEMAND

Please take notice that plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable as of right by jury.

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