

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE CURRENCY CONVERSION FEE	: MDL Docket No. 1409
ANTITRUST LITIGATION	:
	: THIRD CONSOLIDATED AMENDED
THIS DOCUMENT RELATES TO:	: CLASS ACTION COMPLAINT
ALL ACTIONS	:
	: JURY TRIAL DEMANDED
	x

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ROBERT ROSS, RANDAL WACHSMUTH, : MDL Docket No. 1409  
CAMILLE LAPLACA-POST, MICHAEL H. :  
OSHRY, CHERIE R. DONALD, ANDREA : THIRD CONSOLIDATED AMENDED  
KUNE, HERVE SENEQUIER, LESLIE : CLASS ACTION COMPLAINT  
COOPER, BYRON BALBACH, JR., JEANNE H. :  
BALBACH, WOODROW CLARK, PAMELA : JURY TRIAL DEMANDED  
MEYERSON, DAVID SHRIEVE, TARA RADO, :  
ANTHONY RALPHS, KAYTA GEORGE, :  
DAVID ULTAN, SHANNON MATTINGLY, :  
TIMOR NUSRATTY, and JEFFREY ZAKEM, :  
on behalf of themselves and all others similarly :  
situated, :  
Plaintiffs, :  
vs. :  
VISA U.S.A. INC., VISA INTERNATIONAL :  
SERVICE ASSOCIATION, MASTERCARD :  
INTERNATIONAL INCORPORATED, :  
MASTERCARD INCORPORATED, :  
MASTERCARD INTERNATIONAL, LLC, :  
CITIGROUP, INC., CITIBANK (SOUTH :  
DAKOTA) N.A., UNIVERSAL BANK, N.A., :  
UNIVERSAL FINANCIAL CORP., CITICORP :  
DINERS CLUB INC., BANK OF AMERICA :  
CORPORATION, BANK OF AMERICA, N.A. :  
(USA), BANK OF AMERICA, N.A., :  
JPMORGAN CHASE & CO., CHASE BANK :  
USA, N.A., JPMORGAN CHASE BANK, N.A., :  
WASHINGTON MUTUAL, INC., :  
WASHINGTON MUTUAL BANK, NEW :  
AMERICAN CAPITAL, INC., HSBC FINANCE :  
CORPORATION, HSBC BANK NEVADA, :  
N.A., HOUSEHOLD INTERNATIONAL, INC., :  
HOUSEHOLD BANK (SB) N.A., MBNA :  
AMERICA BANK, N.A., and MBNA AMERICA :  
(DELAWARE), N.A., :  
Defendants. x

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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 and debit cardholders of VISA, MasterCard and Diners Club cards. The defendants are various entities which comprise the VISA, MasterCard, and Diners Club networks, and certain of the leading bank members of the VISA and MasterCard networks. This Third Consolidated Amended Complaint (“Complaint”) alleges that the Defendants (or, as applicable, their predecessor entities), among other things, individually and in concert engaged in conduct that had and has the purpose and effect of, *inter alia*, fixing, inflating, embedding, concealing and/or inadequately disclosing the nature, pricing and other aspects of Credit Card Foreign Transactions and Debit Card Foreign Transactions, in violation of the Sherman Act, 15 U.S.C. § 1 *et seq.*, the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and the Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq.*, and also alleges that such asserted conduct has violated various state statutes, including, but not limited to, state statutes relating to antitrust or unfair competition (e.g., the Cartwright Act, Section 16720 *et seq.* of the California Business and Professions Code, or the Donnelly Act, Section 340 *et seq.* of the New York General Business Law), disclosure (e.g., Article 10 of the New York Personal Property Law, or the Song-Beverly Credit Card Act, Section 1747 *et seq.* of the California Civil Code), or consumer protection or unfair or deceptive acts or practices (e.g., Section 17200 *et seq.* of the California Business & Professions Code, Section 17500 *et seq.* of the California Business and Professions Code, Section 1750 *et seq.* of the California Civil Code, Section 349 of the New York General Business Law, or Sections

37-24-6 and 37-24-31 of the South Dakota Codified Laws), and principles of common law and equity, including, but not limited to, breach of contract, breach of duty, fraud, conversion, good faith and fair dealing, negligent misrepresentation, unconscionability and unjust enrichment, entitling plaintiffs to the relief prayed for herein.

2. United States general purpose and debit cardholders throughout the VISA and MasterCard networks are charged hidden and embedded collusively set prices, including a hidden, embedded and collusively set base currency conversion fee equal to 1% of the amount of the foreign currency transaction. In addition, most member banks tack on a currency conversion fee of their own – generally 2% – on their general purpose card transactions and, where applicable, debit card transactions. The VISA and MasterCard networks have actively colluded with their member banks and assisted in implementing and facilitating these “second tier” currency conversion fees by amending their rules and procedures to accommodate these “second tier” fees, and by colluding with the member banks to charge these fees. Although TILA, EFTA and the state consumer protection laws require disclosure of such fees in, *inter alia*, cardholder solicitations and account statements, these currency conversion charges were not so disclosed.

### **JURISDICTION AND VENUE**

3. This action is instituted to recover damages and costs of suit, including reasonable attorneys’ fees, against defendants 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 against defendants 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.

4. Plaintiffs also bring this action pursuant to TILA, 15 U.S.C. §1601 *et seq.*, including the Federal Reserve Board Regulation Z, 12 C.F.R. §226, promulgated pursuant to TILA.

5. Plaintiffs also bring this action pursuant to the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.*, including the Federal Reserve Board Regulation E, 12 C.F.R. § 205, promulgated pursuant to EFTA.

6. Plaintiffs also bring this action to secure rights under various state laws and/or principles of common law and equity described in ¶1 above.

7. Jurisdiction is conferred upon this Court by 28 U.S.C. §§1331, 1332, 1337, 1367 and by §§4 and 16 of the Clayton Act, 15 U.S.C. §§15(a) & 26.

8. 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). Venue also lies in this district under 28 U.S.C. §1407, regarding multi-district litigation, and the Order of Transfer, dated August 17, 2001, by the Judicial Panel on Multidistrict Litigation.

9. Defendants have agents, transact business, and/or 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.

## **DEFINITIONS**

10. “General purpose cards” include credit cards and charge cards. They are payment vehicles that enable consumers to make purchases from unrelated merchants without immediately accessing or reserving funds.

11. “Credit cards” are general purpose cards which extend to cardholders a revolving line of credit. Cardholders may borrow against the credit line, carrying a balance with an agreed-upon interest rate. Credit cards include corporate and/or company cards and purchasing cards.

12. “Charge cards” are general purpose cards which require a full payment of the charge by the due date.

13. “Debit cards” or “ATM cards” are cards which enable cardholders to access deposits or other assets to pay for goods or services or withdraw cash. As used in this Complaint, debit card transactions include both on-line and off-line debit transactions. Debit cards also include ATM cards and stored value cards.

14. A “member bank” is a bank which is a member of the VISA and/or MasterCard associations.

15. A “cardholder” is a person or business which has been issued domestically a general purpose card or debit card.

16. “Foreign Transaction” means a purchase, cash advance or withdrawal or other transaction effected in any manner by use of a United States-issued Visa-, MasterCard-, or Diners Club-branded Credit Card (“Credit Card Foreign Transaction”) or Debit Card (“Debit Card Foreign Transaction”) which transaction (1) is originally denominated in a currency other than the United States dollar, or (2) is effected with a merchant or other Person outside the United States and a

Foreign Transaction Fee was applied.

17. “Foreign Transaction Fee” means, with regard to a Foreign Transaction, any amount (however characterized), over and above the amount of any base exchange amount, applied because the transaction is a Foreign Transaction or because currency conversion (or “translation”) was performed. Foreign Transaction Fees are also referred to herein as “currency conversion fees” or “currency conversion surcharges.”

18. “Issuing Banks” refers to defendant banks in this Complaint who issue cards to cardholders and who are member banks of VISA and/or MasterCard, either directly or through subsidiaries and/or affiliates. As used herein, “issuing banks” refers to any bank that issues VISA and/or MasterCard general purpose cards or debit cards to cardholders.

19. “Network Defendants” refers to VISA, MasterCard, and Diners Club.

20. The “Damages Period,” also referred to as the “Relevant Period,” is February 1, 1996 to the date of this Complaint, and continuing thereafter.

21. “Payment cards” refers to both “General purpose cards” and “Debit Cards,” as defined herein. Notwithstanding use of the term “Payment Cards,” plaintiffs allege that General Purpose Cards are a different product than and comprise a different relevant product market from Debit Cards and ATM Cards.

22. “Person” or “Persons” means natural persons, firms, banks, corporations, businesses, limited liability companies, partnerships, savings and loan institutions, credit unions, depository institutions, federal, state and other governments and their political subdivisions, agencies and instrumentalities, and all other entities.

## **THE PARTIES**

### **REPRESENTATIVE PLAINTIFFS**

23. Plaintiff Robert Ross is a resident of Montgomery County, Pennsylvania. Plaintiff R. Ross has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

24. Plaintiff Randal Wachsmuth is a resident of Montgomery County, Pennsylvania. Plaintiff R. Wachsmuth has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

25. Plaintiff Camille LaPlaca-Post is a resident of Rockland County, New York. Plaintiff C. LaPlaca-Post has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

26. Plaintiff Michael H. Oshry is a resident of Nassau County, New York. Plaintiff M. Oshry has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

27. Plaintiff Cherie R. Donald is a resident of San Mateo County, California. Plaintiff C. Donald has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

28. Plaintiff Andrea Kune is a resident of Los Angeles County, California. Plaintiff A. Kune has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

29. Plaintiff Herve Senequier is a resident of the County of New York, New York. Plaintiff H. Senequier has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

30. Plaintiff Leslie Cooper is a resident of St. Thomas, United States Virgin Islands. Plaintiff L. Cooper has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

31. Plaintiff S. Byron Balbach, Jr. is a resident of Champaign County, Illinois. Plaintiff S. Balbach, Jr. has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

32. Plaintiff Woodrow Clark is a resident of Los Angeles County, California. Plaintiff W. Clark has paid currency conversion fees to one or more of the defendants named herein, including Diners Club, and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

33. Plaintiff Pamela Meyerson is a resident of Montgomery County, Pennsylvania. Plaintiff P. Meyerson has paid currency conversion fees to one or more of the defendants named

herein, including Diners Club, and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

34. Plaintiff David Shrieve is a resident of Contra Costa County, California. Plaintiff D. Shrieve has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

35. Plaintiff Tara Rado is a resident of Alameda County, California. Plaintiff T. Rado has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

36. Plaintiff Anthony Ralphs is a resident of San Diego County, California. Plaintiff A. Ralphs has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

37. Plaintiff Kayta George is a resident of Alameda County, California. Plaintiff K. George has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

38. Plaintiff David Ultan is a resident of Alameda County, California. Plaintiff D. Ultan has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

39. Plaintiff Shannon Mattingly is a resident of Alameda County, California. Plaintiff S. Mattingly has paid currency conversion fees to one or more of the defendants named herein

and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

40. Plaintiff Timor Nusratty is a resident of Alameda County, California. Plaintiff T. Nusratty has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

41. Plaintiff Jeffrey Zakem is a resident of Cook County, Illinois. Plaintiff J. Zakem has paid currency conversion fees to one or more of the defendants named herein and/or other issuers of Visa- or MasterCard-branded general purpose or debit cards during the relevant period.

## **DEFENDANTS**

### **The VISA and MasterCard Defendants**

42. VISA U.S.A. Inc. (“VISA U.S.A.”) and VISA International Service Association (“VISA International”) (collectively, with all predecessors and subsidiaries, “VISA”) are membership corporations created, owned, governed and operated by their member financial institutions. VISA U.S.A. and VISA International are joined as defendants in this Complaint. VISA and its member financial institutions are a joint venture formed for the purpose of disseminating, encouraging and profiting from the use of VISA branded payment cards. During the Damages Period, VISA was and has been governed by a board of directors comprised of bank executives selected from its member banks, including some of the Issuing Banks.

43. VISA provides its member banks with a common set of operating rules, policies and procedures, and manuals which, among other things, dictate how transactions are conducted between

and among cardholders, merchants, its member banks and the VISA Associations. VISA operates extensive card authorization, transaction clearing, and member bank settlement facilities and technology.

44. Both VISA U.S.A. and VISA International are organized under the laws of the State of Delaware. VISA International's principal place of business is in Foster City, California, and VISA U.S.A.'s principal place of business is in San Francisco, California. During all or part of the Relevant Period, plaintiffs S. Balbach, J. Balbach, Clark, Cooper, Donald, Kune, LaPlaca-Post, Mattingly, Meyerson, Oshry, Ross, Senequier, and Wachsmuth are or were cardholders of VISA-branded general purpose cards. During all or part of the Relevant Period, plaintiffs Rado, Shrieve, and Ultan are or were cardholders of VISA branded debit cards.

45. MasterCard International Incorporated, MasterCard Incorporated and MasterCard International, LLC (collectively, "MasterCard") are membership corporations created, owned, governed and operated by their member financial institutions and are joined as defendants in this Complaint. MasterCard and its member financial institutions are a joint venture formed for the purpose of disseminating, encouraging and profiting from the use of MasterCard branded payment cards. During the Damages Period, MasterCard was and has been governed by a board of directors comprised of bank executives selected from its member banks, including some of the Issuing Banks.

46. MasterCard provides its member banks with a common set of operating rules, policies and procedures, and manuals which, among other things, dictate how transactions are conducted between and among cardholders, merchants, its member banks and the Association. MasterCard operates extensive card authorization, transaction clearing, and member bank settlement facilities and technology.

47. MasterCard Incorporated is organized under the laws of the State of Delaware, with its principal place of business in Purchase, New York. MasterCard International Incorporated is a wholly-owned subsidiary of MasterCard Incorporated. MasterCard International Incorporated is organized under the laws of Delaware, and maintains its principal place of business in Purchase, New York. MasterCard International, LLC is a subsidiary of MasterCard International Incorporated. MasterCard International, LLC was formed in Delaware and has its principal place of business in Missouri. During all or part of the Relevant Period, plaintiffs S. Balbach, J. Balbach, Clark, Donald, Kune, Meyerson, Nusratty, Oshry, and Wachsmuth are or were cardholders of MasterCard-branded general purpose cards. During all or part of the Relevant Period, plaintiffs George and Ralphs are or were cardholders of MasterCard-branded debit cards.

#### **The Citigroup/Citibank Defendants**

48. Citigroup, Inc. is a Delaware corporation with its principal place of business in New York, New York and is joined as a defendant in this Complaint. Citigroup was formed as a result of an October 8, 1998 merger of Citicorp, Inc., with and into a wholly owned subsidiary of Travelers Group, Inc. After the merger, Travelers Group changed its name to Citigroup, Inc. (hereinafter “Citigroup”). The merger included Travelers Group’s subsidiary Travelers Bank, which was the 32nd largest United States issuer of VISA and MasterCard credit cards in 1997. Citibank (South Dakota), N.A., an indirect wholly owned subsidiary of Citigroup, issues Citibank VISA and MasterCard credit cards and, at times during the Class Period, has issued Diners Club-branded cards. Universal Financial Corp. and Universal Bank, N.A., indirect wholly-owned subsidiaries of Citigroup, issued AT&T Universal VISA and MasterCard credit cards at times during the Class Period.

49. Citibank (South Dakota) N.A., is a National Banking Association organized under the laws of the United States with its principal place of business in Sioux Falls, South Dakota, and is joined as a defendant in this Complaint.

50. Universal Bank, N.A. was a National Banking Association organized under the laws of the United States with its principal place of business in Columbus, Georgia, and is joined as a defendant in this Complaint. Universal Bank, N.A. was a wholly-owned subsidiary of Citigroup and issued AT&T Universal Card credit cards. Citibank (South Dakota), N.A. is the successor in interest to Universal Bank, N.A., which no longer exists.

51. Universal Financial Corp. is a Utah industrial bank with its principal place of business in Salt Lake City, Utah, and is joined as a defendant in this Complaint. Universal Financial Corp. is a wholly-owned subsidiary of Citigroup and issued AT&T Universal Card credit cards at times during the Class Period.

52. At all relevant times, Citigroup exercised such dominion and control over its subsidiaries, Citibank (South Dakota) N.A., Universal Financial Corp., Universal Bank, N.A., Citibank (Nevada) N.A., and Citicorp Diners Club Inc., that it is liable according to law for the acts of such subsidiaries under the facts alleged in this Complaint. Citigroup and all of its predecessors, affiliates, and subsidiaries, other than Citicorp Diners Club Inc., are referred to collectively as “Citibank.” Citibank (South Dakota) N.A., Universal Financial Corp., and Universal Bank, N.A. are referred to collectively as the “Citibank Issuers”. During all or part of the Relevant Period, plaintiffs Wachsmuth, Oshry, Donald, Kune, Cooper, S. Balbach, and J. Balbach (the “Citibank Representatives”) are or were general purpose cardholders of one or more of the Citibank Issuers.

### **The Diners Club Entities**

53. Citicorp Diners Club Inc. is a Delaware corporation with its principal place of business in Chicago, Illinois, and is joined as a defendant in this Complaint. Citicorp Diners Club Inc. is an indirect wholly-owned subsidiary of Citigroup.

54. Citicorp Diners Club, Inc. used a general purpose card network for Diners Club branded cards. At times during the Class Period, Diners Club charge cards were issued by Citibank (South Dakota) N.A. Citibank (South Dakota) N.A., Citicorp Diners Club Inc., and their parents and all of their predecessors, affiliates, and subsidiaries are collectively referred to as “Diners Club.” During all or part of the class period, plaintiffs Clark and Meyerson are or were general purpose cardholders of Diners Club-branded cards.

### **The Bank of America Defendants**

55. Bank of America Corporation is a Bank Holding Company organized under the laws of the United States with its principal place of business in Charlotte, N.C. Bank of America, N.A. (USA) is a National Banking Association organized under the laws of the United States, with its principal place of business in Phoenix, Arizona. Bank of America, N.A. (USA) operates Bank of America Corporation’s payment card business. Bank of America, N.A. is a National Banking Association organized under the laws of the United States, with its principal place of business in Charlotte, N.C.. Bank of America, N.A. issues debit cards. Bank of America Corporation, Bank of America, N.A. (USA), and Bank of America, N.A. are joined as defendants in this Complaint.

56. Bank of America Corporation is the second largest commercial banking organization in the United States. Bank of America Corporation is the nation’s fifth largest issuer of VISA and MasterCard credit cards. Bank of America issues its credit cards and debit cards through its wholly-

owned subsidiary Bank of America, N.A. (USA). On March 31, 1999, NationsBank of Delaware, N.A., a leading payment card issuer, merged with and into Bank of America, N.A. On June 1, 2004, FleetBoston Financial Corporation merged with and into Bank of America Corporation. On June 13, 2005, Fleet National Bank merged with and into Bank of America, N.A. On January 1, 2006, MBNA Corporation merged with and into Bank of America Corporation. During all or part of the Relevant Period, plaintiffs Ross and Wachsmuth (the “Bank of America Representatives”) were general purpose cardholders of Bank of America, N.A. (USA). During all or part of the Relevant Period, plaintiff Clark (the “Bank of America Debit Representative”) is or was a debit cardholder of Bank of America, N.A. (USA).

57. At all relevant times, Bank of America Corporation exercised such dominion and control over its subsidiary Bank of America, N.A. (USA), that it is liable according to law for the acts of Bank of America, N.A. (USA) under the facts set forth herein. Bank of America Corporation, Bank of America, N.A. (USA), Bank of America, N.A., and all of their respective predecessors, affiliates, and subsidiaries are collectively referred to as “Bank of America.”

#### **The JPMorgan Chase & Co. Defendants**

58. JPMorgan Chase & Co. (“JPMC”), successor to the Chase Manhattan Corporation and Bank One Corporation, is a Bank Holding Company organized under the laws of the United States with its principal place of business located in New York, New York, and is joined as a defendant in this Complaint. JPMC does not issue general purpose or debit cards.

59. Chase Bank USA, N.A. is a National Banking Association organized under the laws of the United States with its principal place of business in Wilmington, Delaware. Chase Bank USA, N.A. issues credit cards, and is joined as a defendant in this Complaint. Chase Bank USA,

N.A. is the successor to Chase Manhattan Bank USA, N.A. and First USA Bank, N.A. (which changed its name to Bank One Delaware, N.A. prior to merging with Chase Manhattan Bank USA, N.A., which was subsequently renamed Chase Bank USA, N.A.).

60. JPMorgan Chase Bank, N.A. is a National Banking Association organized under the laws of the United States with its principal place of business in Columbus, Ohio. JPMorgan Chase Bank, N.A. is the successor in interest to Chase Manhattan Bank and Bank One, N.A. JPMorgan Chase Bank, N.A. issues debit cards and is joined as a defendant in this Complaint. Chase Bank USA, N.A., JPMorgan Chase Bank, N.A., JPMC, and their respective predecessors, affiliates and subsidiaries are referred to collectively herein as “the Chase Defendants” or “Chase.”

61. During all or part of the Relevant Period, plaintiffs Wachsmuth, LaPlaca-Post, M. Oshry, Kune, S. Balbach, J. Balbach, and Senequier (the “Chase Credit Representatives”) were general purpose credit or charge cardholders of Chase Bank USA, N.A. or one of its predecessors. During all or part of the Relevant Period, plaintiffs Senequier and Zakem (the “Chase Debit Representatives”) are or were debit cardholders of JPMorgan Chase Bank, N.A. or one of its predecessors.

62. At all relevant times, JPMC exercised such dominion and control over its subsidiaries Chase Bank USA, N.A., JPMorgan Chase Bank, N.A., and all their predecessors that it is liable according to law for the acts of those subsidiaries under the facts alleged in this Complaint.

### **The Washington Mutual Defendants**

63. Washington Mutual Inc. is a publicly traded holding company organized under the laws of Washington, with its principal place of business in Seattle, Washington.

64. Washington Mutual Bank is a nationally chartered federal savings association with

its headquarters in Henderson, Nevada.

65. On December 31, 2003, Providian Bank merged into Providian National Bank.

66. On October 1, 2005, Providian National Bank merged into Washington Mutual Bank and Providian Financial Corp. merged into New American Capital, Inc., a corporation organized under the laws of Delaware which is a wholly owned subsidiary of Washington Mutual Inc.

67. In connection with this merger, all of the former Providian credit card operations have been consolidated, along with the Washington Mutual debit card operations, under Washington Mutual Bank.

68. Washington Mutual Inc., Washington Mutual Bank, and New American Capital Inc., are collectively referred to as “Washington Mutual.” The Washington Mutual entities are joined as defendants solely by virtue of the above-described merger; and all references to Washington Mutual herein relate to the conduct of its predecessor Providian entities.

#### **The HSBC/Household Defendants**

69. HSBC Finance Corporation (formerly named Household International, Inc.) is a holding company incorporated under Delaware law, with its principal place of business in Prospect Heights, Illinois. HSBC Finance Corporation is joined as a defendant in this complaint, and is the same entity as was joined as defendant Household International, Inc. in Plaintiffs’ Second Consolidated Amended Class Action Complaint in this action.

70. HSBC Bank Nevada, N.A. (formerly named Household Bank (SB), N.A.) is a National Banking Association organized under the laws of the United States of America, with its principal place of business in Las Vegas, Nevada. HSBC Bank Nevada, N.A. is joined as a defendant in this complaint, and is the same entity as was joined as defendant Household Bank (SB),

N.A. in Plaintiffs' Second Consolidated Amended Class Action Complaint in this action

71. HSBC Bank Nevada, N.A. is a wholly-owned subsidiary of HSBC Finance Corporation, and issues credit cards. Prior to the corporate name changes stated in Paragraphs 68 and 69, above, Household Bank (SB), N.A. was a wholly-owned subsidiary of Household International, Inc., and issued credit cards.

72. HSBC Finance Corporation, Household International, Inc., HSBC Bank Nevada, N.A. and Household Bank (SB), N.A. are collectively referred to "HSBC" and/or "Household." During all or part of the Relevant Period, plaintiffs Stanley Balbach and Jeanne Balbach (the "HSBC Representatives" and/or the "Household Representatives") were general purpose cardholders of HSBC/Household.

#### **The MBNA Defendants**

73. MBNA America Bank, N.A. is a National Banking Association organized under the laws of the United States with its principal place of business in Wilmington, Delaware. MBNA America Bank, N.A. is the nation's third largest issuer of VISA and MasterCard credit cards, and is joined as a defendant in this Complaint. MBNA America (Delaware), N.A. is a National Banking Association organized under the laws of the United States with its principal place of business in Wilmington, Delaware. MBNA America (Delaware), N.A. issues VISA and MasterCard credit cards to businesses, and is joined as a defendant in this Complaint. MBNA America Bank, N.A. and MBNA America (Delaware), N.A. were wholly-owned subsidiaries of MBNA Corporation prior to January 1, 2006, when MBNA Corporation merged with and into Bank of America Corporation. MBNA America Bank, N.A. and MBNA America (Delaware), N.A. are now wholly-owned subsidiaries of Bank of America Corporation. During all or part of the Relevant Period, plaintiffs

Wachsmuth, S. Balbach, and J. Balbach (the “MBNA Representatives”) were general purpose cardholders of MBNA America Bank, N.A.

74. MBNA America Bank, N.A., MBNA America (Delaware), N.A., and all of their respective predecessors, affiliates, and subsidiaries are collectively referred to as “MBNA.”

75. Whenever in this Complaint reference is made to any act, deed or transaction of any corporation, the allegation means that the corporation engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control, or transaction of the corporation’s business or affairs.

76. The Issuing Banks are among the banks which owned and controlled the operations of VISA and MasterCard during the Damages Period. During the Damages Period and before, VISA’s Board of Directors allowed VISA member banks to own and participate in the governance of MasterCard and permitted MasterCard members to own and participate in the governance of VISA. Similarly, MasterCard’s board of directors permitted MasterCard member banks to own and govern VISA and VISA members to own and govern MasterCard. These business relationships provided mechanisms for the inter-firm and inter-association communications that are alleged in this Complaint to have violated the Sherman Act.

77. Both VISA and MasterCard, within the scope of their joint ventures, act on behalf of their member institutions, and the member institutions act on behalf of VISA and MasterCard, to further the joint ventures.

78. In connection with the currency conversion charges described in this Complaint, each of the non-Network Defendants operated as a co-venturer and co-conspirator with each other and with the Network Defendants.

79. Various other persons, firms and corporations, not named as defendants in this Complaint, including but not limited to Visa and MasterCard member banks, have participated as co-conspirators with defendants in the offenses complained of and have performed acts and made statements in furtherance of the conspiracy.

### **TRADE AND COMMERCE**

80. The trade and commerce relevant to this action is comprised of the issuance by defendants and other issuing banks, and use by plaintiffs and the plaintiff classes, of general purpose and debit cards which can be used to incur charges in foreign currencies.

81. During the relevant period, VISA, MasterCard and Diners Club have operated general purpose card networks both throughout the United States and abroad. During the relevant time period, Visa and MasterCard have also operated debit card networks in the United States and abroad. The networks are the mechanisms by which VISA, MasterCard and Diners Club effect the process of conducting and settling a transaction using their general purpose and debit cards. 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. The issuing banks issue VISA and MasterCard general purpose cards throughout the United States. Diners Club issues charge cards throughout the United States. Certain issuing banks also issue Visa and MasterCard debit cards throughout the United States. 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 converted 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.

82. 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.

### **RELEVANT FACTS**

83. Payment cards, like VISA and MasterCard branded general purpose and debit cards, are payment devices that a consumer can use to make purchases: (a) from unrelated merchants; and/or (b) acquire cash.

84. There are two principal types of general purpose cards:

- **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 charges within that time and pay the remainder in monthly installments plus a finance or interest charge; and
- **CHARGE CARDS** – such as the American Express Green Card and Diners Club Card – that require the cardholder to pay all charges within a set period after a monthly bill is presented.

85. There are two different types of debit cards:

- **OFF-LINE DEBIT CARDS** are signature-based payment devices used to access deposit accounts, which are cleared and settled by the association and their members

on the same system as general purpose cards

- **ON-LINE DEBIT CARDS**, which include ATM cards, are PIN-based payment devices used to access deposit accounts. Online debit cards are processed by the associations and their member banks through a separate system from general purpose cards.

86. Payment card transactions can involve four different entities: (1) cardholders who use the card to purchase goods or services; (2) merchants who accept the cards in exchange for goods and services; (3) banks that issue cards to cardholders (“issuing banks”); and (4) banks that contract with merchants to accept the credit cards (“acquiring banks”).

87. In a typical payment card transaction, such as a credit card or debit card, a merchant accepts a 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 or account balance. The issuer then indicates to the association that 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.

88. Banks that issue payment cards to consumers are generally referred to as “issuing banks.” Banks that provide the network related services to merchants, which enable the merchants to accept payments via the use of a payment card, are referred to as “acquirer banks” or “acquiring

banks.” Banks may, and often do, function as both issuing and acquiring banks in the VISA and MasterCard networks.

89. In the transactions at issue in this case, the cardholders are persons who are issued payment cards in the United States by United States issuers and who use those cards to purchase goods or services or acquire cash in a foreign currency and/or a foreign country. Those charges are converted to U.S. dollars in the VISA and MasterCard system and billed to the U.S. cardholder in U.S. dollars.

### **The Payment Card Networks**

90. VISA and MasterCard own and operate the two largest general purpose card networks. Together, they account for over 75% of all purchases made with general purpose cards and approximately 86% of the number of general purpose cards issued in the United States. Likewise, Visa and MasterCard dominate and exercise market power in the market for debit cards.

91. MasterCard has approximately 20,000 global members. VISA has 14,000 U.S. members, 6,000 of which issue credit cards.

92. VISA and MasterCard authorize the issuance of their branded general purpose cards and debit cards by their member banks.

93. Both VISA and MasterCard, among other things: implement systems and technologies to authorize and settle payment card transactions, including the imposition of foreign currency fees and/or surcharges; market and promote their brand names; and develop and impose rules and assess fees on their member banks.

94. 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 members.

Both VISA and MasterCard are organized as membership corporations. Their activities are principally financed through fees and assessments levied on their members, including the Issuing Banks. The 1% currency conversion fee imposed by both MasterCard and VISA is, however, a fee imposed by the associations directly on cardholders.

95. Control of both associations 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 Issuing Banks, established their control by simultaneously serving on the board of directors and/or on important committees of either, or in many cases both, associations. Additionally, each of these banks issued significant numbers of both VISA and MasterCard general purpose cards and/or debit cards. This relationship has lessened competition between the VISA and MasterCard associations because these large banks have been at times less willing to fund and implement competitive initiatives that would cause consumers to change from one general purpose and/or debit card to the other. This relationship also provided the vehicle for other anti-competitive behavior by both the associations and their members, including the Issuing Banks, including in this case the setting of a common minimum currency conversion fee or surcharge.

#### **The Member Banks of VISA and MasterCard**

96. Most member banks – including all of the Issuing Banks – also become owners of the association and receive a bundle of rights similar to those of a shareholder in a corporation. These rights include the opportunity to vote for a board of directors, participate in the governance of the association, and to receive dividends.

97. Individual member banks can have varying degrees of authority and power within either of the associations. For example, voting and dissolution rights are apportioned according to

the dollar volume of transactions that a member bank has transmitted through an association. In fact, the top ten banks who issue credit cards account for a substantial majority of the total volume of credit card purchases. As of the third quarter 2001, The Nilson Report identified defendants Citibank, MBNA, BankOne/First USA (prior to its merger with Chase), Chase Manhattan, Washington Mutual's predecessor Provident, Bank of America, and Household as seven of the top ten issuers of VISA and MasterCard credit cards. In that quarter, these seven defendants accounted for \$ 347.275 billion in receivables while the remaining forty-three of the top fifty issuers accounted for \$ 114.798 billion in receivables. As of January 1, 2001, these same seven issuing banks had a total of approximately 232 million card accounts – the remaining three issuers of VISA and MasterCard cards in the top ten accounted for approximately 29 million accounts that year.

98. The VISA and MasterCard associations have virtually identical member banks. Indeed, nearly every major bank in the United States, including all of the Issuing Banks, is, or was, during the relevant period a member of both the VISA and MasterCard associations – reflecting a 95% overlap in association membership. Most of these common member banks have an ownership interest in both the VISA and MasterCard associations. Since 1975, virtually all significant card-issuing member banks, including the Issuing Banks, have become owners in both the VISA and MasterCard associations.

99. Through their ownership interests in both the VISA and MasterCard associations, a small group of the largest member banks, including the Issuing Banks, exert control over the operations of both associations. Almost all of the largest card-issuing member banks had and have representatives participating on the board of directors and/or the important policy-influencing committees of both associations. For example, MasterCard's Business Committee and VISA's

Marketing Advisors Committee advise their respective association's professional staff and management on key strategic and competitive issues. In 1996, twelve of the twenty-one banks represented on VISA's Board of Directors were also represented on MasterCard's Business Committee. Seventeen of the twenty-seven banks on MasterCard's Business Committee had representatives on VISA's Marketing Advisors Committee. Seven of the twenty-two banks represented on MasterCard's Board of Directors also were represented on VISA's Marketing Advisors Committee.

100. In total, as of year-end 1996, approximately nineteen banks – including Issuing Bank Defendants Chase, Citibank, and Bank of America – had a representative on the board of directors of one association and on at least one important committee of the other association.

101. In 1992, MasterCard International's Executive Vice President and General Counsel wrote in a letter to the Department of Justice that "when one board acts with respect to a matter, the results of those actions are disseminated to the members which are members in both organizations. As a result, each of the associations is a fishbowl and officers and board members are aware of what the other is doing, much more so than in the normal corporate environment."

102. The member banks that govern VISA earned substantial profits from issuing MasterCard general purpose cards. The member banks that govern MasterCard earned an even greater percentage of their profits from issuing VISA payment cards. For example, as of year-end 1997, at least five member banks that placed directors on the MasterCard board for the United States Region issued more VISA cards than MasterCard cards. The most pronounced example among MasterCard's 1997 board members was Washington Mutual's predecessor, Providian, which had issued more than 95% of its general purpose cards on the VISA network.

103. VISA and MasterCard serve as clearinghouses for payment card transactions which occur in foreign countries using payment 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. Defendants effect payments to foreign merchants or ATM providers on behalf of, and as the agent or sub-agent of, cardholders. These network settlement systems also automatically imposed foreign currency surcharges, including both the VISA/MasterCard surcharges and surcharges implemented by issuing bank defendants.

104. The procedure by which VISA and MasterCard process any currency conversions involves a “netting out” procedure such that the bulk of transactions for which a currency conversion fee is charged do not, in fact, involve the actual purchase or sale of any currency. The defendants levy the fee 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, defendant VISA does not actually convert any currency. VISA nonetheless collects currency conversion fees on each of the United States cardholders’ transactions. MasterCard employs an identical procedure.

105. Visa and MasterCard also inflate and hide the base exchange rate of foreign transactions using general purpose and debit cards by adding a trading spread or “pips” to the rate by which they translate the value of one currency to another. This hidden trading spread, which is a component of the price paid by cardholders, more than covers the costs and risks of foreign exchange incurred by defendants Visa and MasterCard.

106. Both VISA and MasterCard – on behalf of, and in collaboration with, the member banks that govern them (including the Issuing Banks) – have assessed and continue to assess currency conversion fees and charges on VISA and/or MasterCard payment cards used by consumers to make transactions denominated in a foreign currency or with a foreign merchant including purchases, cash advances, cash withdrawals and internet transactions.

107. The currency conversion fees at issue in this case are imposed on two levels. First, VISA, MasterCard and its issuer members assess a currency conversion fee, at an identical one percent, which is retained by the associations. The 1% fee is referred to in this Complaint as a “first tier” fee. This first tier fee acts as an agreed floor price for currency conversion fees and has been charged for many years both predating and during the Damages Period in this Complaint. Second, the large issuing banks generally assess an additional currency conversion fee, which they retain, and which was instituted during the Damages Period. The second tier currency conversion fee is typically an additional 2%.

#### **The First Tier Currency Conversion Fee on Payment Cards**

108. Beginning in the 1980’s, VISA and MasterCard first imposed the first tier currency conversion fee on cardholders using a VISA or MasterCard payment card to make transactions denominated in a foreign currency or with a foreign merchant including purchases, cash advances, cash withdrawals and internet transactions. Defendants VISA and MasterCard have hidden the 1% fee from consumers by embedding it in the transaction amount on the billing statement.

109. From the time VISA and MasterCard initiated currency conversion fees and at all times since, it was contemplated and agreed that the 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 imposition of the currency conversion fees on the cardholders and not the members. Issuers routinely refer to the currency conversion fees as VISA or MasterCard imposed fees. The associations frequently refer to, and consider, the fee as a fee on the cardholder. The currency conversion 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.

110. Defendants 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.

111. While the members of VISA and MasterCard 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 the prices charged for charges denominated in a foreign currency. They jointly, through their associations, agreed to charge a floor price of 1% for the transaction fee on charges denominated in a foreign currency. Colluding on the price they will all charge for charges denominated in a foreign currency to raise revenue for their joint venture presents no different a situation than if the banks and associations had agreed to fix a minimum interest rate, with the monopoly profits going to fund the venture.

112. The first tier currency conversion fee levied by VISA and MasterCard was, and is, retained by them and is extremely profitable to both associations.

113. There is no relationship between any purported transaction cost to VISA and MasterCard, or to the value of the transaction itself, and the imposition of the first tier currency conversion fee. For example, the associations' incremental cost in connection with a \$10 meal or \$10,000 jewelry purchase is identical or nearly so. Yet the diner pays a \$.10 fee to the association

while the jewelry purchaser is forced to pay a \$100 fee. Such fees are much greater than any nominal transaction cost which may be incurred by VISA and MasterCard.

114. The common control of VISA and MasterCard by the largest banks (including the Issuing Banks), and the common issuance of VISA and MasterCard cards by the largest banks, provided the vehicle for the inter-firm communications necessary to create, fix and maintain the currency conversion fee between them.

115. VISA communicated its pricing intentions with respect to its currency conversion fee of 1% in a manner calculated to reach MasterCard well in advance of implementation. While plaintiffs are currently unaware of all communications which likely took place of VISA's pricing plans, by no later than four months prior to VISA's implementation of its 1% fee, VISA's pricing plans were communicated to MasterCard. Accordingly, MasterCard became aware of VISA's pricing intentions, as VISA knew it would. In response, MasterCard modified its prior plans to impose a currency conversion fee of only 25 basis points and quadrupled its planned fee to match VISA's planned pricing initiative of 1%. VISA's pre-announcement of its pricing plans with respect to the currency conversion fee and the widespread involvement of its large member banks had the purpose and effect of fixing the base currency conversion fee at 1% on both networks.

116. Imposition of the fixed currency conversion fee on VISA and MasterCard cardholders is not necessary to the operation of the VISA and MasterCard networks nor to the ability to process charges denominated in a foreign currency. Nor does imposition of the fee create a product that could not exist otherwise. Nor does it enhance competition in any market. To the contrary, imposition of a fixed currency conversion fee eliminates price competition on credit card and/or debit card foreign transactions among the member banks and between VISA and MasterCard.

117. Because imposition of a fixed minimum charge on cardholders is unnecessary to accomplish the ability to process charges denominated in a foreign currency in the VISA and MasterCard systems, its anti-competitive effects far outweigh its non-existent pro-competitive benefits.

118. The currency conversion fees have neither the purpose nor effect of shifting or allocating costs among the members of the association. Rather, the networks collusively impose the minimal actual costs of currency conversion on a third party, the cardholder, and additionally reap very substantial monopoly profits which they maintain and utilize for the common benefit and profit of all the conspirators.

119. The artificial price floor set by the first tier currency conversion fee restrains trade because (a) VISA's joint venturers (member banks) are not competing with one another, (b) MasterCard's joint venturers (member banks) are not competing with one another, and (c) defendants VISA and MasterCard do not compete with one another to charge lower fees. These anti-competitive practices harm consumers by maintaining an artificially high and fixed first tier currency conversion fee.

120. Because of dual issuance of MasterCard and VISA cards by the member banks, bank-to-bank (*i.e.*, issuer) competition, particularly with respect to prices and service, is critical to consumer welfare. Collective agreements on price, such as the collusively-set prices for incurring charges denominated in foreign currencies alleged in this Complaint, completely undermine and restrain bank-to-bank competition and injures consumer welfare.

121. With respect to the currency conversion 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 Currency Conversion Fee on Payment Cards**

122. The second tier currency conversion fees are imposed over and above the first tier floor fixed by VISA, MasterCard and their members. An issuing bank's second tier currency conversion fee is added to the amount of each and every transaction made by a cardholder in a foreign currency, 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 (as well as first tier) currency conversion fees are generated annually by purchases made in these and other countries.

123. The second tier fee is almost pure profit to the issuing banks because it is VISA and MasterCard that actually perform the exchange calculations, net the currency flows and purchase and sell the relatively small amount of currency necessary to effect transactions denominated in a foreign currency. The issuing banks have no involvement in and incur no expenses in connection with these activities. VISA and MasterCard actively aided and abetted the process of collecting the second tier fees by adding these surcharges for members at the network level, and by modifying their practices and procedures to accommodate, and encourage, the imposition of such surcharges.

124. In the otherwise competitive general purpose card issuer and debit card issuer markets, the imposition of the second tier currency conversion fee is against the individual economic self-interest of the issuing banks, absent collusion among the issuing banks, and leaves the cardholder without any meaningful alternative. If the defendants had not acted in concert, and with great efforts to conceal the practice, those banks which imposed the second tier currency conversion fee would stand to lose some of their best customers to those member banks which did not.

125. The years since the initiation of the currency conversion fees by MasterCard and VISA have seen a general decline in costs, rapid technological innovations and a decrease in fraud rates in general purpose and debit card transactions in general and in foreign exchange and conversion costs in particular, yet the price(s) charged by defendants for making transactions charges denominated in a foreign currency has dramatically increased. These prices have been set in collusion and free and open competition on charges imposed for transactions denominated in a foreign currency has been suppressed and restrained.

### **Diners Club**

126. Diners Club also used an electronic network and settlement system that bills United States cardholders in dollars for purchases in foreign countries. Now, however, the transactions of U.S. Diners Club cardholders are processed through MasterCard's network, which also allows cardholders to be billed in dollars for purchases in foreign countries, and U.S.-issued Diners Club cards also bear the MasterCard brand.

127. Defendant Diners Club, an integrated entity, has also imposed a currency conversion fee on its customers' use of the Diners Club charge card. Diners Club's currency conversion fee was one percent (1%). In line with the recent proliferation of the second tier currency conversion fees by the VISA and MasterCard issuing banks, Diners Club now imposes a 2% currency conversion fee on its customers. This fee was imposed by the Citigroup defendant-conspirators under the price-fixed "umbrella" created by their participation in the conspiracy with the VISA and MasterCard Associations and other member banks.

128. Diners Club participates as an active and integral part of the conspiracy to impose the currency conversion fees. Diners Club benefits from the price-fixing arrangements of the two

associations, VISA and MasterCard, because of the substantial participation in the associations by Diners Club owner Citibank. The ability of Diners Club to fix its currency conversion fee, first at 1% and now at its current 2% surcharge, was facilitated by Citibank's participation in the MasterCard and VISA networks, which provided the vehicle for the inter-firm communications necessary to coordinate and artificially inflate Diners Club's currency conversion fee.

129. Diners Club's imposition of its currency conversion fee is against its individual economic self-interest absent collusion among Citibank, the remaining issuing banks, VISA and MasterCard. If the defendants had not acted in concert, and with great efforts to conceal this practice, Diners Club could not have imposed and sustained its currency conversion fee without standing to lose some of its best customers to those banks which did not impose currency conversion fees.

#### **The Currency Conversion Fees Were Not Disclosed To Cardholders**

130. The existence and amount of these currency conversion fees were not disclosed to the cardholders on their monthly statements. Nor were these fees disclosed in solicitations and applications for VISA and MasterCard branded payment cards. In addition, the existence and amount of the trading spread or pips applied by the Network Defendants to foreign transactions was not disclosed to the cardholders on their monthly statement, cardholder agreements, solicitations or applications.

131. The amount and existence of both the first tier and second tier currency conversion fees were concealed by VISA and MasterCard, as well as by their member banks, and by Diners Club, from cardholders. Defendants have a duty to disclose to cardholders the true price of foreign transactions, including all foreign transaction fees and the components thereof. None of the

defendants disclosed the currency conversion fees in their cardholder solicitations and applications. Solicitations provide the primary source of information to prospective cardholders about fees, finance charges and card features. The importance of solicitations is illustrated by the fact that in 1999 issuers sent out 2.9 billion direct mail solicitations to households in the United States.

132. The defendants further hid the currency conversion fees from cardholders by failing to disclose them on the cardholders' monthly statements. 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 currency conversion fees were built into that rate. Also, the date of the conversion was often not set forth on the cardholders' statement.

133. 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 the Issuing Banks or Diners Club. The conversion was calculated based upon an undisclosed base exchange rate in effect on an undisclosed date. The actual base currency conversion rate and the additional first tier and second tier currency conversion fees were not separately itemized. Furthermore, the second tier currency conversion fee may actually be an amount in excess of a whole number percentile, *e.g.*, 2%, because the second tier fee is frequently calculated after the first tier fee has been computed and already added to the original post-converted amount.

134. The only place where defendants even partially disclosed the currency conversion fees was in either the Card Member Agreement or the initial disclosure statement, which the Issuing Banks and Diners Club send to their cardholders only after they have applied for and received their card. The references to currency conversion fees in the Card Member Agreements and initial

disclosure statements do not comply with or satisfy TILA, or the EFTA, and were further designed to obscure, rather than disclose, the fee.

135. As an integral part of the conspiracy, defendants, through the associations, discussed, coordinated and agreed not to disclose their foreign transaction pricing (including base exchange rate, foreign transaction fees and/or components of both) in solicitations or cardholder billing statements and on the misleading form of the disclosures in cardholder agreements, to facilitate the fixing, imposition and concealment of such charges.

136. In furtherance of the defendants' unlawful conspiracies, representatives of many of them met and discussed implementing compulsory arbitration clauses upon their cardholders to facilitate the conspiracies and deprive these cardholders of their rights under TILA, the EFTA, and the nation's antitrust laws.

137. VISA, MasterCard, Diners Club, and the issuing banks were able to impose these fees because together they control 75-80% of the market for general purpose cards used by United States residents traveling abroad. Likewise, Visa and MasterCard dominate and exercise market power in the market for debit cards.

138. Currency conversion pricing, including the described fees, is a huge profit center for all defendants. For example, during the Damages Period, VISA has processed many billions of dollars in payment card transactions by U.S. cardholders traveling abroad and has received well over one billion dollars merely from the first tier currency conversion fee. During that same time, MasterCard processed many billions of dollars in such charges and received hundreds of millions of dollars in first tier currency conversion fees. Their respective incremental costs for implementing and administering foreign exchange conversion services are a very small fraction of these amounts.

In addition, the issuing banks, which incur no independent expense in connection with the currency conversions, impose a currency conversion fee which is usually at least twice the amount assessed by VISA and MasterCard.

139. A relevant market for assessing defendants' collusive conduct is the provision of foreign denominated charge conversion services to domestic general purpose cardholders on general purpose card transactions.

140. The conspiracy alleged herein extended to the separate market for the provision of foreign denominated transaction conversion services to domestic debit card holders on debit card transactions.

141. The relevant geographic market for considering the alleged violations is the United States. Cards issued by foreign issuers and foreign exchange services for payment card transactions are not competitive or even reasonably available to cardholders in the United States. Solicitation by issuers for cardholders takes place at the national level by domestic issuers.

142. VISA and MasterCard and their issuer members facilitated their ability to reap monopoly prices for foreign exchange services by restricting competition at the network level. As the United States District Court for the Southern District of New York recently determined, VISA and MasterCard thwarted competition from competing networks by instituting exclusivity rules forbidding members of their respective associations from issuing cards on competing networks.

143. In or after 2005, Visa, MasterCard and certain issuing bank members expanded the application of the currency conversion fees on general purpose and debit card to include transactions made in a foreign country where the transaction amount was denominated in U.S. dollars, and thus no currency "conversion" or translation took place.

144. Defendants’ conduct alleged herein is unjust, unfair, inequitable, and has had the purpose and effect of, *inter alia*, fixing, inflating, embedding, concealing, and/or inadequately disclosing the nature of pricing and other aspects of payment card foreign transactions (including the currency conversion fee, base exchange rate, and/or components of both) is in violation of the common law or equitable principles of breach of contract, breach of duty, fraud, conversion, breach of good faith and fair dealing, negligent misrepresentation, unconscionability, and unjust enrichment, as well as the statutory provisions of the Sherman Act, 15 U.S.C. § 1 *et seq.*, the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.* and in violation of various state statutes, including, but not limited to, state statutes relating to antitrust or unfair competitions (*e.g.*, the Cartwright Act, Section 16720 *et seq.* of the California Business and Professions Code, or the Donnelly Act, Section 340 *et seq.* of the New York General Business Law), disclosure (*e.g.*, Article 10 of the New York Personal Property Law, or the Song-Beverly Credit Card Act, Section 1747 *et seq.* of the California Civil Code), or consumer protection or unfair or deceptive acts or practices (*e.g.*, Section 17200 *et seq.* of the California Business & Professions Code, Section 17500 *et seq.* of the California Business and Professions Code, Section 1750 *et seq.* of the California Civil Code, Section 349 of the New York General Business Law, or Sections 37-24-6 and 37-24-31 of the South Dakota Codified Laws).

### **CLASS ACTION ALLEGATIONS**

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

and (2) an “Injunctive Relief Class” (pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure).

146. The Damages Class is composed of all Persons who or which were holders of United States-issued MasterCard- or Visa-branded Credit or Debit Cards or United States-issued Diners Club-branded Credit Cards and made a Foreign Transaction from February 1, 1996 to the present.

147. The Damages Class includes but is not limited to the two (2) subclasses set forth below:

- (a) All general purpose cardholders of Bank of America, Chase, Citibank, Household, MBNA, and Providian (including former Providian cardholders who are now Washington Mutual cardholders) who or which made a Foreign Transaction from February 1, 1996 to the present; and
- (b) All debit cardholders of Bank of America, N.A. and Chase Manhattan (the “Debit Card Issuing Banks”) who or which made a foreign transaction from February 1, 1996 to the present.

148. The Injunctive Relief Class is composed of all Persons who or which were holders of United States issued VISA- or MasterCard-branded Credit or Debit cards and Diners Club-branded cards.

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

150. 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.

151. 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 and Subclasses**

152. 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 defendants and their co-conspirators engaged in a contract, combination, or conspiracy to raise, fix, maintain, or stabilize the currency conversion fee levied on cardholders who used MasterCard, VISA and/or Diners Club payment cards to purchase goods and/or services and/or acquire cash in a foreign country or foreign currency;

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

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

D. Whether defendants violated §1 of the Sherman Act;

E. Whether defendants and their co-conspirators took affirmative steps to conceal the contract, combination or conspiracy;

F. The effect of the contract, combination, or conspiracy on the currency conversion fee on MasterCard, VISA and/or Diners Club payment card transactions involving

foreign currency;

G. Whether defendants conspired to conceal the currency conversion 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;

I. Whether defendants violated the Truth in Lending Act, 15 U.S.C. §1601, *et seq.*;

J. Whether the Debit Issuing Bank Defendants violated the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.*; and

K. Whether the defendants violated Section 349 of the New York General Business Obligations Law, Section 17200 *et seq.* of the California Business & Professions Code, the South Dakota consumer protection laws, S.D. CODIFIED LAWS §§ 37-24-6, 37-24-31, and other state laws and/or principles of common law and equity governing, among other things, consumer protection, unfair competition, contract and fraud.

### **The Injunctive Relief Class**

153. 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 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 defendants and their co-conspirators engaged in a contract, combination, or conspiracy to raise, fix, maintain, or stabilize the currency conversion fee levied on cardholders who used MasterCard, VISA and/or Diners Club payment cards to purchase goods and/or services and/or acquisition of cash in a foreign country and/or foreign currency;

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

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

D. Whether defendants violated §1 of the Sherman Act;

E. Whether defendants and their co-conspirators took affirmative steps to conceal the contract, combination or conspiracy;

F. The effect of the contract, combination, or conspiracy on the currency conversion fee on payment card transactions involving foreign currency;

G. Whether defendants violated the various state and federal laws, and/or principles of common law and equity described in ¶1, above; and

H. Whether Injunctive Relief Class Members are threatened with continuing harm and damage from defendants' violations.

154. Defendants have 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.

## **VIOLATIONS ALLEGED**

### **COUNT I**

#### **(Conspiracy to Fix and Maintain Prices in Violation of 15 U.S.C. §1 All Plaintiffs vs. All Defendants)**

155. Count I is brought by Plaintiffs on behalf of the Classes alleged herein.

156. Plaintiffs incorporate by reference the allegations contained in ¶¶1-166, as if set forth fully herein.

157. Beginning in or around late 1986 or early 1987 and continuing to the present, defendants and their co-conspirators engaged in a continuing combination and conspiracy to unreasonably restrain trade and commerce in violation of §1 of the Sherman Act, 15 U.S.C. §1. The unlawful combination and conspiracy continues up to the date of this Complaint.

158. The combination and conspiracy in violation of §1 of the Sherman Act consists of a continuing agreement among defendants to establish, raise, fix and maintain at artificially high levels prices, including currency conversion fees of no less than 1% of the transaction amount and frequently more.

159. For the purpose of forming and effectuating the aforesaid combination and conspiracy, defendants and their co-conspirators did those things that they combined and conspired to do, including, among other things, instituting, in concert, minimum currency conversion fees.

160. The aforesaid combination and conspiracy had the following effects, among others:

A. Currency conversion prices are now, and have been, fixed, raised, maintained and stabilized at artificially high levels;

B. Cardholders who use their general purpose cards and debit cards have been deprived of the benefits of free and open competition; and

C. Price competition among the defendants has been restrained and suppressed.

161. 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.

162. As a result of defendants' and their members' conduct set forth above, plaintiffs have been injured in their business and property. Plaintiffs suffered, and continue to suffer, antitrust

injury as a result of the defendants' unlawful imposition of price-fixed and artificially inflated prices, including a currency conversion fee of at least 1% (and generally more) on all goods and services purchased and/or the acquisition of cash in the currencies of foreign countries and/or in foreign countries with general purpose and debit cards domestically issued by defendants.

## COUNT II

### **(Conspiracy to Fix and Maintain Prices in Violation of 15 U.S.C. §1 VISA Cardholder Plaintiffs vs. VISA and The Issuing Bank Defendants)**

163. Count II is brought by the Visa Cardholder Plaintiffs on behalf of the Classes alleged herein.

164. Plaintiffs incorporate by reference the allegations contained in ¶¶1-174, as if set forth fully herein.

165. Beginning in or around September of 1986 and continuing to the present, defendants and their co-conspirators engaged in a continuing combination and conspiracy to unreasonably restrain trade and commerce in violation of §1 of the Sherman Act, 15 U.S.C. §1. The unlawful combination and conspiracy continues up to the date of this Complaint.

166. The combination and conspiracy in violation of §1 of the Sherman Act consists of a continuing agreement among defendants to establish, raise, fix and maintain at artificially high levels currency conversion prices, including currency conversion fees of no less than 1% of the transaction amount.

167. For the purpose of forming and effectuating the aforesaid combination and conspiracy, defendants and their co-conspirators did those things that they combined and conspired to do, including, among other things, instituting, in concert, minimum first tier currency conversion

fees, and conspiring to facilitate and encourage institution – and collection – of second tier currency conversion surcharges.

168. The aforesaid combination and conspiracy had the following effects, among others:

A. Currency conversion prices are now, and have been, fixed, raised, maintained and stabilized at artificially high levels;

B. Cardholders who use their general purpose and debit cards have been deprived of the benefits of free and open competition; and

C. Price competition among the defendants has been restrained and suppressed.

169. 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.

170. As a result of defendants' and their members' conduct set forth above, plaintiffs have been injured in their business and property. Plaintiffs suffered, and continue to suffer, antitrust injury as a result of the defendants' unlawful imposition of price-fixed and artificially inflated currency conversion prices, including a currency conversion fee of at least 1% (and generally more) on all goods and services purchased in the currencies of foreign countries and/or acquisition of cash or in foreign countries with general purpose and debit cards domestically issued by defendants.

### COUNT III

#### **(Conspiracy to Fix and Maintain Prices in Violation of 15 U.S.C. §1 MasterCard Cardholder Plaintiffs vs. MasterCard and The Issuing Bank Defendants)**

171. Count III is brought by the MasterCard Cardholder Plaintiffs on behalf of the Classes alleged herein.

172. Plaintiffs incorporate by reference the allegations contained in ¶¶1-182, as if set forth fully herein.

173. Beginning in or around early 1987 and continuing to the present, defendants and their co-conspirators engaged in a continuing combination and conspiracy to unreasonably restrain trade and commerce in violation of §1 of the Sherman Act, 15 U.S.C. §1. The unlawful combination and conspiracy continues up to the date of this Complaint.

174. The combination and conspiracy in violation of §1 of the Sherman Act consists of a continuing agreement among defendants to establish, raise, fix and maintain at artificially high levels currency conversion prices, including currency conversion fees of no less than 1% of the transaction amount.

175. For the purpose of forming and effectuating the aforesaid combination and conspiracy, defendants and their co-conspirators did those things that they combined and conspired to do, including, among other things, instituting, in concert, minimum first tier currency conversion fees, and conspiring to facilitate and encourage institution – and collection – of second tier currency conversion surcharges.

176. The aforesaid combination and conspiracy had the following effects, among others:

A. Currency conversion prices are now, and have been, fixed, raised, maintained and stabilized at artificially high levels;

B. Cardholders who use their general purpose and debit cards have been deprived of the benefits of free and open competition; and

C. Price competition among the defendants has been restrained and suppressed.

177. 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.

178. As a result of defendants' and their members' conduct set forth above, plaintiffs have been injured in their business and property. Plaintiffs suffered, and continue to suffer, antitrust injury as a result of the defendants' unlawful imposition of price-fixed and artificially inflated currency conversion prices, including a currency conversion fee of at least 1% (and generally more) on all goods and services purchased and cash acquired in the currencies of foreign countries and/or in foreign countries with general purpose and debit cards domestically issued by defendants.

#### COUNT IV

**(Violation of Fee Disclosure and APR Disclosure Requirements as Set Forth in the Truth in Lending Act 15 U.S.C. §1601 *et seq.*)**

179. Count IV is brought by the Citibank, Diners Club, Bank of America, Bank One/First USA, Chase Manhattan, Household, and MBNA Representatives on behalf of the Classes alleged herein.

180. Plaintiffs incorporate by reference the allegations contained in ¶¶1-190, as if set forth fully herein.

181. The "TILA Defendants" are collectively defined as the Citibank Issuers (Citibank (South Dakota) N.A., Universal Financial Corp., and Universal Bank, N.A.), Bank of America, N.A.

(USA), Chase Bank USA, N.A. (and its predecessors), JPMC (and its predecessors), the Washington Mutual Issuers (solely in their capacity as successors to the Providian Issuers, Providian National Bank and Providian Bank), Household, and MBNA America Bank, N.A.

182. TILA Defendants have violated, *inter alia*, at least the following disclosure requirements set forth in the TILA, 15 U.S.C. §1601 *et seq.*, and the regulations promulgated thereunder as set forth in Federal Reserve Board Regulation Z, 12 C.F.R. §226:

A. TILA Defendants failed to comply with the requirements of Regulation Z governing credit and charge card applications and solicitations that require defendants to disclose “[a]ny transaction charge imposed for the use of the card for purchases.” 12 C.F.R. §226.5a(b)(4);

B. TILA Defendants failed to properly disclose currency conversion pricing, including the currency conversion fee, in the initial disclosure statement with an explanation of how any finance charge will be determined that includes “[t]he amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined.” 12 C.F.R. §226.6(a)(4) & (b);

C. TILA Defendants failed to disclose on consumers’ monthly statements the components of the finance charge such that they are “individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amount(s) of any other type of finance charge.” 12 C.F.R. §226.7(f);

D. TILA Defendants failed to disclose on consumers’ monthly statements “[t]he amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.” 12 C.F.R. §226.7(h); and

E. TILA Defendants failed to include prices for currency conversion, including

the currency conversion fee, in the calculation of the annual percentage rate (“APR”), as defined in TILA, disclosed to consumers, thereby understating the APR or finance charges on cardholders’ credit and charge card statements. 12 C.F.R. §226.14.

183. TILA Defendants have systematically violated their TILA obligations by failing to inform consumers in solicitations, applications and on their monthly statements of the currency conversion price, including the fees, that they impose on all card transactions made in a foreign country and/or foreign currency, and by failing to quantify and identify those charges.

## COUNT V

### **(Violation of Fee Disclosure Requirements as Set Forth in the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.*)**

184. Count V is brought by the Bank of America and Chase Debit Representatives on behalf of the Classes alleged herein.

185. Plaintiffs incorporate by reference the allegations contained in ¶¶1-195, as if set forth fully herein.

186. The Debit Issuing Bank Defendants have violated the following requirements of EFTA, 15 U.S.C. § 1601, *et seq.*, and the regulation promulgated thereafter as set forth in Federal Reserve Board Regulation E, 12 C.F.R. § 205.

187. The Debit Issuing Bank Defendants’ failure to disclose currency conversion prices, including the fee, on a cardholder’s monthly or periodic statement, is in violation of 15 U.S.C. § 1693d(c)(2) and 12 C.F.R. § 205.9(b)(3), which require “disclosure of the amount of any fee or charge during the period by the financial institution for any electronic funds transfer on the periodic statement.”

188. The Debit Issuing Bank Defendants have failed to properly or adequately disclose to its debit cardholders the existence of the currency conversion price, including the fee, in cardholder agreements or initial disclosures in violation of 15 U.S.C. §1693c(a)(4) and 12 C.F.R. §§ 205.7(b)(5) and 205.7(b)(11), which require that “any charges for electronic funds transfer or for the right to make such transfer” be disclosed at the time of contracting.

189. In failing to properly or adequately disclose the existence of the Networks’ price for foreign transactions, including the first tier fee imposed by Visa and MasterCard to its debit cardholders, the Debit Issuing Bank Defendants have failed to comply with 15 U.S.C. § 1693c(a)(10)(B), which requires a notice to the cardholders that a fee may be imposed by “any national, regional, or local network utilized to affect the transfer.”

190. The Debit Issuing Bank Defendants have systematically violated the EFTA by failing to inform their debit cardholders on their periodic statements and at the time of contract for transfer of the price that they impose on foreign transactions.

## COUNT VI

### **(Consumer Fraud Violation of South Dakota Consumer Protection Statutes)**

191. Count VI is brought by the Citibank and Diners Club Representatives on behalf of each of the Classes alleged herein.

192. Plaintiffs incorporate by reference the allegations contained in ¶¶1-202, as if set forth fully herein.

193. Defendant Citibank (South Dakota) N.A. knowingly and intentionally engaged in deceptive acts and/or practices by misrepresenting, suppressing, and/or omitting material facts in

connection with its foreign exchange or cash acquisition services provided to its cardholders who used their cards to purchase goods and services or acquire cash in a foreign currency.

194. Defendant Citibank (South Dakota) N.A. did not disclose the existence of the currency conversion price, including the fee, in its solicitations to prospective cardholders. Defendant Citibank (South Dakota) N.A. further hid the currency conversion price, including the fees, from its cardholders by failing to disclose the price of foreign transactions on the cardholders' monthly statements. 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 the price of currency conversion built into that rate. Also, the date of the conversion was often not set forth on the cardholders' statement.

195. Plaintiffs and members of the class relied upon defendant Citibank (South Dakota) N.A.'s solicitations to determine the nature and extent of any and all fees and charges that they may incur. Cardholders rely on defendant Citibank (South Dakota) N.A.'s monthly statements to verify the conversion rate used on a given purchase. The monthly statements do not disclose the actual base currency conversion rate and the additional first tier and second tier currency conversion fees are not separately itemized.

196. The conduct of defendant Citibank (South Dakota) N.A. as set forth above is in violation of the South Dakota consumer protection laws, S.D. CODIFIED LAWS §§ 37-24-6, 37-24-31.

197. Plaintiffs and the members of the class suffered monetary injury as a result of defendant Citibank (South Dakota) N.A.'s deceptive acts and/or practices.

## **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 the defendants' 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 and each of the subclasses 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 plaintiff and each and every member of the Damages Class, respectively, be entered against the defendants, and each of them;

D. That the defendants be enjoined from continuing the illegal course of conduct alleged herein;

E. That the defendants be required to prominently disclose any and all foreign transaction pricing, including all currency conversion fees and charges in each of their solicitations, applications, promotional materials, disclosure statements, monthly statements and agreements with cardholders;

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, including all applicable remedies under TILA and the EFTA, as the nature of the case may require or as may seem just and proper to this Court;

H. For an order requiring defendants to restore the hidden price of Foreign Transactions, plus a reasonable rate of interest, to all Damages Class members who were charged Foreign Transaction Fees imposed by defendants.

I. That defendant Citibank (South Dakota) N.A.'s actions alleged herein be adjudged and decreed to be in violation of the South Dakota consumer protection laws, S.D. CODIFIED LAWS §§ 37-24-6, 37-24-31.

#### 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.

DATED: July 18, 2006

BERGER & MONTAGUE, P.C.



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