JS 44 (Rev. 11/04)

CIVIL COVER SHEET

CV 05 4677

FILED IN CLERK'S OFFICE U.S. DISTRICT COURT E.D.N.Y. OCT - 4 2005

IN CLERK'S OFFICE U.S. DISTRICT COURT E.D.N.Y. OCT - 4 2005 BROOKLYN OFFICE

GLEESON, J.

MANN, M.J.

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS

blix Super Markets, Inc.

DEFENDANTS

(b) County of Residence of First Listed Plaintiff Polk County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Francisco
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

I. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
15 U.S.D.C. Section 1

Brief description of cause:
Price fixing and restraint of trade

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE John Gleeson DOCKET NUMBER 96-cv-5238, MDL 1575

DATE
09/29/2005

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ARBITRATION CERTIFICATION

I, Linda P. Nussbaum, counsel for Publix Super Markets, Inc. do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of $150,000 exclusive of interest and costs.

✓ Relief other than monetary damages is sought.

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks:

Did the cause arise in Nassau or Suffolk County? No

If answered yes, please indicate which county. _____

County of residence of plaintiff(s) (1) Polk
(2) _____
(3) _____

County of residence of defendant(s) (1) San Francisco
(2) San Francisco
(3) _____

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes ✓ **No** _____

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes _____ **(If yes, please explain)** **No** ✓

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.
(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

ATTORNEY BAR CODE: LN-9336

E-MAIL Address: lnussbaum@cmht.com

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures(EFP)", and consent to the electronic service of all papers.

Signature: _____

ATTACHMENT TO CIVIL COVER SHEET (full list of attorneys):

Linda P. Nussbaum (NY Bar # LN -9336)
COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.
150 East 52nd Street, 30th Floor
New York, NY 10022 - 6107
Tel: 212-838-7797
Fax: 212838-7745

Paul E. Slater
SPERLING & SLATER
55 West Monroe Street, Suite 3200
Chicago, Illinois 60603

Joe Vanek
David P. Germaine
DAAR & VANEK P.C
225 West Washington, 18th floor
Suite 1850
Chicago, IL 60606

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PUBLIX SUPER MARKETS, INC.

Plaintiff,

vs.

VISA U.S.A. INC., VISA INTERNATIONAL SERVICE ASSOCIATION, MASTERCARD INCORPORATED and MASTERCARD INTERNATIONAL INCORPORATED,

Defendants.

Civil Action No. CV 05 4677

GLEESON, J.

MANN, M.J.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Publix Super Markets, Inc. ("Publix"), brings this civil antitrust action against Defendants, Visa U.S.A. Inc. and Visa International Service Association (collectively "Visa") and MasterCard Incorporated and MasterCard International Incorporated (collectively "MasterCard"), under the antitrust laws of the United States. For its Complaint, Plaintiff states as follows:

NATURE OF ACTION

1. This is a civil antitrust action challenging two horizontal combinations, conspiracies or agreements. One alleged horizontal combination, conspiracy or agreement has been entered into by Visa and its co-conspirator member banks. A second illegal horizontal combination, conspiracy or agreement has been entered into by MasterCard and its co-conspirator member banks. In both cases, Visa and MasterCard have each agreed with their respective bank members as follows: (1) to fix, set and enforce interchange fees associated with general and premium credit cards paid by retail merchants such as Plaintiff; (2) to eliminate Plaintiff's ability to negotiate lower interchange fees through a set of restraints incorporated in Visa's and MasterCard's association rules known as

(i) the "No Surcharge" rule, (ii) the "Honor All Cards" rule, (iii) the "All Outlets" rule, (iv) the "No By-pass" rule, and (v) the "No Multi-Issuer" rule; and (3) to unlawfully tie together credit card products and separate network services. These horizontal combinations have unreasonably restricted competition in the alleged relevant markets and have allowed Visa and MasterCard to extract supracompetitive, artificially inflated interchange fees from Plaintiff and other retail merchants. Moreover, Visa and MasterCard have each monopolized or attempted to monopolize a relevant market for network services through a set of restraints which create barriers to entry and are designed to exclude competition from other sellers of such services. This has enabled both Visa and MasterCard to extract monopoly rents and maintain monopoly power in a relevant economic market. Plaintiff seeks damages from January 1, 2004 forward, as well as injunctive and other relief.

Plaintiff

2. Plaintiff, Publix Super Markets, Inc. ("Publix"), is a Florida corporation with its principal place of business in Lakeland, Florida. Publix owns and operates retail stores at which Visa and MasterCard payment cards are accepted as payment for goods and services. Publix has paid supracompetitive, artificially inflated interchange fees to members of each of the illegal horizontal conspiracies described above and has sustained injury and damage as a result of the unlawful conduct of Defendants and their respective co-conspirators.

DEFENDANTS

3. Defendants, Visa U.S.A. Inc. and Visa International, are non-stock Delaware corporations with their principal place of business in San Francisco, California. Visa is a national bank card association whose members include several thousand separate business entities that use Visa to set limitations on competition and who, in return, enforce these restrictions on their retail

customers like Plaintiff. As a practical matter Visa is controlled by the 25 member banks that issue over approximately 98% of the Visa cards issued to cardholders in the United States and acquire over 95% of all Visa transactions from retail merchants. Defendant, Visa International Service Association, is the parent corporation of the Visa system. Both Visa Defendants are and have been active and knowing participants in the illegal activity alleged below.

4. Defendant MasterCard Incorporated is a private, SEC-registered share company, organized under the laws of Delaware with its principal place of business in Purchase, New York. Defendant MasterCard International Incorporated is a non-stock, membership corporation and the principal operating subsidiary of Defendant MasterCard Incorporated. The shares of Defendant MasterCard Incorporated are owned by the members of Defendant MasterCard International Incorporated. As a practical matter, MasterCard is owned and controlled by the 25 member banks that issue over approximately 98% of the MasterCard payment cards issued to cardholders in the United States and acquire over 95% of all MasterCard transactions from retail merchants. Both MasterCard Defendants are and have been active and knowing participants in the illegal activity alleged below.

CO-CONSPIRATORS

5. Visa and MasterCard are associations of banks and financial institutions. The banks and financial institution members of Visa are actual or potential competitors of each other and the banks and financial institution members of MasterCard are actual or potential competitors of each other for: (1) the issuance of credit cards and (2) the provision of network services related to credit cards including, but not limited to, acquisition of credit card transactions and the issuance and promotion of various electronic payment services and other related financial services to retail merchants. Visa, MasterCard and their respective co-conspirator member banks are business entities

that are distinct from each other. The member banks within each association agree with each other and with Visa or MasterCard, as the case may be, to abide by all Visa and/or MasterCard's association bylaws, rules and regulations. By means of these bylaws, rules and regulations, Visa member banks and MasterCard member banks have respectively agreed among themselves and with Visa or MasterCard, as the case may be, to fix interchange fees charged to retail merchants, and to impose a number of restrictions on retail merchants including Plaintiff, the purpose and effect of which are to insulate interchange fees from competitive market forces and collusively set those interchange fees.

6. Defendants and each of their respective member banks have engaged in a conscious commitment to a common scheme to fix interchange fees and to adopt and enforce rules and regulations (e.g., the "Merchant Restraints" defined below) designed to prevent competitive market forces from lowering those fees. Member banks that issue Visa and/or MasterCard cards, as well as member banks that acquire Visa and/or MasterCard transactions from retail merchants such as Plaintiff, are knowing participants in the common scheme to restrain competition alleged in this Complaint. In light of the intentional involvement of the Visa and MasterCard member banks as individual entities in this anticompetitive scheme, each such bank is both a participant in and a beneficiary of the illegal conspiracies alleged herein.

7. Visa and MasterCard, in conjunction with the respective co-conspirator member banks of each collusively set the interchange fee and establish the Merchant Restraints (defined below) and the Visa and MasterCard acquiring member banks then enforce those restraints against Plaintiff and require Plaintiff to pay the collusively set interchange fee. Visa and MasterCard and their respective co-conspirator member banks have structured the enforcement of the Visa and

MasterCard rules and the routing of the charge for the interchange fee so as to create an artifice that does not reflect commercial realities. In fact, although it demands that Plaintiff abide by its rules, Visa refuses to provide Plaintiff with those rules and the acquiring banks within each association enforce that association's rules and fees against Plaintiff. This gerrymandering of the payment and rule enforcement mechanism is designed by Defendants and their co-conspirators to conceal their unlawful conduct and to evade the law. On each occasion where Plaintiff pays an interchange fee to a Visa or MasterCard member acquiring bank, that payment is, in commercial reality, a payment to the issuing bank by the retail merchant that is charged the fee.

JURISDICTION

8. Counts I through X of this Complaint are civil antitrust claims arising under Section 1 of the Sherman Act (15 U.S.C. § 1), and Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15(a) and 26). This Court has subject-matter jurisdiction over Counts I through X pursuant to 28 U.S.C. §§ 1331 and1337(a).

9. Counts XI through XIV of this Complaint are civil antitrust claims arising under Section 2 of the Sherman Act (15 U.S.C. § 2), and Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15(a) and 26). This Court has subject-matter jurisdiction over Counts XI through XIV pursuant to 28 U.S.C. §§ 1331 and 1337(a).

10. The allegations in this Complaint should be read in the alternative, if necessary, to avoid inconsistency.

VENUE

11. Venue is proper in this Court pursuant to Section 12 of the Clayton Act (15 U.S.C. § 22) and 28 U.S.C. § 1391 in that each Defendant is an inhabitant of this District or is found or transacts business here.

DEFINITIONS

12. The terms below have the following meanings as used in this Complaint:

(A) "General Purpose Payment Cards" are payment cards enabling the holder to purchase goods or services to be paid by the issuer of the card on behalf of the cardholder, repayment of which is set by agreement between the issuer and the holder. The terms of that agreement generally result in different classes of cards which are known and defined as follows:

(1) "Credit Cards" are payment cards not specific to a particular merchant which enable the cardholder to obtain goods, services or cash on credit issued by the issuing bank which is a member of a credit card association like Visa or MasterCard.

(2) "Charge Cards" are similar to Credit Cards except that the contract between the issuer and the cardholder requires full payment of the outstanding balance on a monthly basis.

(3) "Premium Cards" are Credit Cards that offer rewards or other benefits to the cardholder and impose higher interchange fees on retail merchants than standard or non-Premium Cards. In 2002, approximately 15% of Visa Credit Cards issued in the United States were Premium Cards. Visa plans to increase that figure to 40% by 2010.

(B) An "Issuing Bank" is a member of a credit card association, like Visa or MasterCard, and issues payment cards to consumers for use as a payment device. Subject to the

restrictions alleged below, Issuing Banks compete with one another to issue credit cards to consumers and to encourage the use of their cards by consumers.

(C) An "Acquiring Bank" is a member of a credit card association, like Visa or MasterCard, and acquires payment transactions from merchants and enforces card association rules, regulations and fee structures. Subject to the restrictions alleged below, Acquiring Banks compete against each other against merchants like the Plaintiff to acquire the transaction business of retail merchants.

(D) "Network Services" are the collection of services that Visa, MasterCard and other card associations provide retail merchants that accept payment cards. These Network Services include authorization, clearance and settlement of retail transactions by the Acquiring Bank from the Issuing Bank using the Visa or MasterCard networks and the purported payment guarantee services.

(E) "Interchange Fee" is the fee that retail merchants pay the Issuing Bank in order to receive payment for each retail transaction in which the Issuing Bank's card is used as a method of payment. Pursuant to the agreements by and among i)Visa and its member banks and ii) MasterCard and its member banks, the Interchange Fee is set by the rules of each association and enforced by the member banks through their contracts with retail merchants.

(F) "Payment Guarantee Services" are services available to retail merchants to insure against Credit Card fraud, check fraud and other forms of payment fraud.

(G) The "No Surcharge Rule" is a rule that has been adapted by both the Visa association and the MasterCard association. The "No Surcharge Rule" forbids retail merchants from charging cardholders a surcharge on their cards to reflect cost differences among various payment methods. (See e.g. MasterCard Bylaws & Rules, §912.2) For example, each association prohibits

retail merchants from surcharging cardholders who use their premium card rather than their standard card or surcharging cardholders who use a Visa card rather than a MasterCard or a MasterCard rather than a Visa card. Among other effects, the "No Surcharge Rule" eliminates any incentive by either Visa or Mastercard or any other competing network to charge a lower Interchange Fee than Visa or MasterCard, since those lower Interchange Fees will not be visible to consumers and will not lead to increased usage of that network's cards. The "No Surcharge Rule" also gives Visa and MasterCard an incentive to encourage consumers to use the most expensive (to the merchant) rather than the most cost-efficient card or payment method.

(H) The "Honor-All-Cards Rule" is a rule that has been adapted by both associations which requires a retail merchant to accept all of Visa's products or all of MasterCard's products (regardless of category or issuer) if the retail merchant accepts any Visa product or any MasterCard product respectively. (See e.g. MasterCard Bylaws & Rules, §9.11.1) This rule is enforced in two ways. With respect to products in the same category (e.g., standard cards and Premium Cards or cards issued by different member banks), adherence to the rule is an express condition of participating in the Visa network and the MasterCard network. With respect to products in different categories (e.g., credit and debit cards), the rule is enforced by each respective association by withholding favorable pricing from those merchants who decline one of the products, i.e., economic coercion.

(I) The "All-Outlets Rule" is a rule that has been adapted by both associations which requires a retail merchant with multiple outlets to accept either Visa or MasterCard at all of its outlets, even if those outlets are owned by a separate corporate entity, operated under a different brand name or employ a different business model.

(J) The "No-Bypass Rule" is a rule that has been adapted by both associations which respectively prohibits retail merchants and member banks from by-passing the Visa or the MasterCard system for clearing, authorizing or settling card transactions even if the Issuing and Acquiring Bank are the same.

(K) The "No-Multi-Issuer Rule" is a rule of both associations which prohibits a bank that processes any other card association transaction from also processing other card networks' transactions. Visa and MasterCard grant each other an exception to this rule.

(L) The No-Surcharge Rules, the Honor-All-Cards Rules, the All-Outlets Rules, the No-Bypass Rules and the No-Multi-Issuer Rules are referred to collectively below as the"Merchant Restraints."

TRADE AND COMMERCE

13. Defendants are engaged in interstate commerce and the unlawful activities alleged below have occurred in, and substantially affected, interstate commerce.

INJURY TO CONSUMER WELFARE AND COMPETITION

14. The two conspiracies alleged herein, to fix Interchange Fees and to insulate those fees from competitive forces, both reduce consumer welfare and result in a transfer of wealth from consumers to Issuing Banks who are members of either Visa or MasterCard. Each conspiracy accomplishes these results in at least the following ways:

(A) Supracompetitive Interchange Fees result in higher retail prices and lead to a reduction in output and economic welfare, causing cash customers, low-income customers and

other customers who use low-cost payment methods to subsidize Credit Card users and causing standard card customers to subsidize high-end or Premium Card users;

(B) Supracompetitive Interchange Fees create incentives for Issuing Banks to encourage the use of high-cost payment methods rather than low-cost payment methods, encouraging inefficiency and misallocation of resources; and

(C) Supracompetitive Interchange Fees distort competition between payment methods in favor of products with the highest Interchange Fees.

15. The collective setting of Interchange Fees and the Merchant Restraints by Visa and its member banks and by MasterCard and its member banks restricts competition among the member banks of each respective assoication for the provision of card Network Services to merchants. Absent the conspiracies alleged herein, the Issuing and Acquiring Bank members of both associations could negotiate individually with retail merchants and merchants would be free to accept or reject the cards issued by particular Issuing Banks and to surcharge their customers for the use of such cards as appropriate. Under these circumstances, prices and output would be responsive to cost and consumer preferences rather than being set at monopolistic levels by the cartel of commercial bank associations.

RELEVANT MARKET

16. A relevant market consists of a relevant geographic market and a relevant product market.

17. The relevant geographic market in this case is the United States.

18. There are at least three relevant product markets in which the restraints and other conduct alleged in this Complaint have had an anticompetitive effect. Those relevant product markets are:

(A) The relevant product market for Network Services for General Purpose Payment Cards. *See United States v. Visa and MasterCard*, 344 F.3d 229, 239 (2d Cir. 2003).

(B) The relevant product market for Network Services for Visa Credit Cards.

(C) The relevant product market for Network Services for MasterCard Credit Cards.

(D) The term "relevant market," as used in this Complaint, refers to the relevant product market alleged in Paragraphs 18(A) and, in the alternative thereto, to the relevant produce markets alleged in paragraph 19(B) and (C) unless one or the other product market is specifically alleged below.

19. In the relevant market, the sellers are card companies and their member banks and the buyers are retail merchants. The Interchange Fee is the price paid by retail merchants to receive payment for a transaction associated with a General Purpose Payment Card. Retail merchants, as a group, pay billions of dollars a year to purchase Network Services sold by sellers in the relevant market and this amount is increasing rapidly from year to year.

20. A seller with market power over Network Services associated with General Purpose Payment Cards in the United States can raise Interchange Fees to retail merchants substantially above the competitive level without losing sufficient business to make the price increase unprofitable. Retail merchants cannot substitute other payment methods (such as cash, checks or debit cards) because of the importance of General Purpose Payment Cards to their customers.

21. At all relevant times, Visa and MasterCard have each had substantial market power in the relevant market as demonstrated by: (1) their ability to raise Interchange Fees without losing business to other sellers or other payment methods; (2) their ability to price discriminate among different classes of merchants based, in part, on each class's ability to resist higher Interchange Fees; and (3) their ability to shift Credit Card usage from standard cards with historically increasing Interchange Fees to Premium Cards with even higher, and faster growing, Interchange Fees.

22. There are significant barriers to entry in the relevant market. No company has entered the market since 1985. Entry is estimated to cost over $1 billion to overcome the alleged "chicken-and-egg" problem of developing a merchant acceptance network without an initial network of cardholders who, in turn, are needed to induce merchants to accept the system's cards in the first place. In part, the "chicken-and-egg" justification which has been offered by the Defendants for their Interchange Fees is an admission of the existence of substantial barriers to entry.

FACTUAL ALLEGATIONS

23. Visa is a national bank-card association whose members include banks, regional banking associations and other financial institutions. Visa was established by its members to develop, promote and operate a national bank Credit Card network.

24. Visa's predecessor, Bank Americard, was the local credit card program of Bank of America, based in California. In 1970, the program was introduced throughout the United States under the name National Bank Americard, Inc. ("NBI"). In 1977, NBI changed its name to Visa.

25. MasterCard is a national bank-card association whose members include banks, regional banking associations and other financial institutions. MasterCard was established by its members to develop, promote and operate a national bank Credit Card network.

26. MasterCard's predecessor, the Interbank Card Association, was a credit card program established in 1966. In 1969, the program was purchased by the California Bank Association and its name was changed to "Master Charge." In 1979, the association was renamed MasterCard.

27. During Visa and MasterCard's early years, merchants that accepted general-purpose credit cards made paper records of transactions, which were then processed to the merchant's Acquiring Bank and the cardholder's Issuing Bank.

28. Since the simple and somewhat crude beginnings, the Visa and MasterCard systems have evolved into mature systems that place anticompetitive tariffs on the technologically efficient card payment market structure.

29. The general purpose credit card market today is a saturated market characterized by concentration of both Issuing and Acquiring Banks and low and decreasing transactional costs. These are vastly different economic characteristics than those that existed in the relevant market in the early 1980's during the last adjudicated challenge to collective price-setting by association member banks. *See National Bancard Corp. v. Visa U.S.A., Inc.*, 779 F.2d 592 (11th Cir. 1986). A comparison of market characteristics in or about 2004 and those in the early 1980's illustrates how radically different in every important economic characteristic the general purpose credit card market is today from its early years:

(A) In the early 1980's, about 16% of consumers had payment cards. In 2004, that figure had grown materially and was about 78%. In fact, in 2004, Issuing Banks sent out over five billion mail solicitations annually to achive growth of 2.7 million cardholders, which was approximately equivalent to the growth in the population of the United States.

(B) In the early 1980's, approximately $8 billion of transactions used general purpose payment cards. By 2004, the figure had increased over 20,000 percent to about $1.7 trillion. In 2004, Interchange Fees generated the highest profit margins of all banking services.

(C) In the early 1980's, interstate banking was in its incipiency. It had been nonexistent and its prohibited status was a primary motivation for the creation of a bank card association in the 1970's. By 2004, in contrast to the early 1980's, interstate banking was the norm. In the early 1980's, the top 10 card Issuing Banks issued only about 35% of the cards issued. By 2004, the top 10 Issuing Banks issued approximately 82% of the cards issued, and the top 25 Issuing Banks issued about 98% of the cards issued, and the trend is toward further consolidation.

(D) In the early 1980's, card transactions were primarily paper and card authorizations were primarily person-to-person by telephone. The manpower and time involved in such transactions was considerable. By 2004, these industry characteristics had materially changed. By then, virtually all of the steps in card authorization and processing were conducted electronically and almost instantaneously. The resulting cost savings, other rapidly declining costs and increasing volume has, counter-intuitively and unexpectedly, been accompanied by increasing Interchange Fees to retail merchants. In fact, in the early 1980's, Visa attempted to justify its Interchange Fees based on cost. However, by 2004, Visa claimed that the fees were profit maximizing.

(E) In the early 1980's, member banks were free to by-pass the Visa or MasterCard systems and the Interchange Fee was not mandatory. In 2004, by custom, agreement and practice, the Visa and MasterCard member banks treated both practices as mandatory.

30. Visa and MasterCard, in concert respectively with the Visa and MasterCard member banks, fix Interchange Fees paid by merchants. Issuing Banks do not, and have not, independently

negotiated Interchange Fees with merchants in a systematic or competitively significant manner. As a result of the Merchant Restraints, a retail merchant has no practical ability to negotiate a lower Interchange Fee because the merchant is required to accept a Visa or MasterCard card issued by the bank in question as long as it accepts any Visa or MasterCard card issued by other banks and is prohibited from creating normal economic incentives to reduce prices by surcharging. Thus, the merchant's only option in the face of an increase in Interchange Fees by either Visa or MasterCard is to decline Visa or MasterCard products entirely, an option that merchants are not in an economic position to exercise.

31. The Visa member banks and the MasterCard member banks, in concert respectively with Visa and MasterCard, have devised, adopted and agreed to enforce the Merchant Restraints, which have the purpose and effect of preventing retail merchants like Plaintiff from resisting increases in Interchange Fees by rejecting or influencing customers to reject more expensive credit cards and more expensive services. The Merchant Restraints have the effect of severing the connection that exists in a properly functioning market between higher prices (i.e., Interchange Fees) and lower consumer demand (i.e., Visa or MasterCard credit card usage). Indeed, the effect of the Merchant Restraints is to create a paradoxical relationship in which higher prices lead to higher demand and usage. Not surprisingly, the Merchant Restraints have resulted in exorbitant Interchange Fees that bear no relationship to the cost of the services being purchased.

32. Interchange Fees were devised in the early days of the Visa and MasterCard networks for the purpose of paying for the costs of transferring transactional paper between the Acquiring Banks and the Issuing Banks and, purportedly, to balance network costs between issuers and acquirers.

33. The justification offered in the early 1980's for Interchange Fees was that the fees were to induce banks to issue cards to cardholders and to "acquire" merchants for the association. With the maturation of the market as alleged above, those purported justifications ceased to have any currency as early as 1990 and certainly well before the 21st Century.

34. Today, in contrast to the early 1980's, Visa and MasterCard have each established market power as a matter of adjudicated fact and appellate affirmation. *See United States v. Visa*, 344 F.3d 229, 239 (2d Cir. 2003). As the Second Circuit noted, even in the face of frequent and significant increases in Interchange Fees, merchants have no choice but to continue to accept Visa and MasterCard credit cards.

35. In view of the present-day universal penetration of Visa and MasterCard payment cards, banks now would find it in their interest to issue Visa and/or MasterCard payment cards and acquire merchants, even without the promise of collusively set Interchange Fees. Visa, MasterCard and their respective co-conspirator member banks' unlawful conduct has prevented that from happening and has created inefficiencies in the relevant market.

36. The Visa and MasterCard networks could function efficiently without collectively fixed Interchange Fees and/or the Merchant Restraints. Even if Visa, MasterCard and their respective member banks did not fix Interchange Fees, Defendants could each continue to operate as a clearinghouse between Issuing and Acquiring Banks. In other words, establishing Interchange Fees and rules designed to prevent merchant resistance to the Interchange Fees are not functionally necessary to the existence and operation of the Visa network or the MasterCard network. There exist examples of similar networks that function very efficiently without collectively-set Interchange Fees. Checks clearing networks represent just one such example.

37. The collective fixing of the Interchange Fee is not reasonably necessary to the operation of either the Visa network or the MasterCard network. Market forces, rather than collective action, should determine the level of Interchange Fees.

38. In their quest to extract ever higher revenue from retail merchants, like the Plaintiff, through the exercise of their market power, Visa and its co-conspirator member banks and MasterCard and its co-conspirator member banks have each instituted a number of pricing tiers for different classes of retail merchants and have set Interchange Fee levels for general and premium cards using those pricing tiers. Through the coercive application of these pricing tiers and Interchange Fee levels, Visa and its co-conspirator member banks and MasterCard and its co-conspirator member banks each enforce their operating rules (i.e., the Merchant Restraints) which insulate the Interchange Fees from the competitive pressure of normal market forces.

39. In addition to fixing Interchange Fees and insulating those supracompetitive fees from competition, Defendants also illegally tie and bundle together separate and distinct services and charge merchants a single price (the Interchange Fee) for those services.

40. For example, Interchange Fees purportedly pay for the costs of many separate and distinct services, one of which is the limited Payment Guarantee Services.

41. Visa, in concert with its member banks, and MasterCard, in concert with its member banks, each use their market power to force merchants to buy their respective services that, absent the coercive tie, could and would be purchased at competitive prices from other sellers.

42. There exists a demand among merchants for each of the services described above that is separate and distinct from the demand for the other services provided by Visa and MasterCard. If Visa and MasterCard and their respective member banks did not tie and bundle together these

separate and distinct services, many merchants could and would choose to purchase the Payment Guarantee Services included and bundled into the Interchange Fee from other vendors or would self-insure against fraud. Even those retailers who might choose to purchase the various unbundled services from Visa or MasterCard would benefit from lower prices that both Visa and MasterCard would be forced to offer in response to competition from other providers of these services.

43. Defendants' tying and bundling of the fees for these separate and distinct services prevents other firms from competing on the merits by independently offering those services to merchants at lower prices and with superior quality.

44. Plaintiff and other retail merchants suffer harm from Defendants' inclusion in the Interchange Fee of the tied and bundled services that, in effect, are offered and sold at a higher rate than if those tied services were offered separately. This harm to the Plaintiff and other networks outweighs any efficiency benefit that may arguably arise from the tying and bundling of the separate and distinct services.

45. These restraints on competition are not reasonably related or necessary to the operation of either Visa or MasterCard, and, in any event, are more restrictive than necessary to effectuate any legitimate business goal of either Visa or MasterCard.

COUNT I
PER SE UNLAWFUL PRICE-FIXING AGAINST VISA
(Re: Interchange Fee)

46. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 45 above.

47. As alleged more fully below, the collective setting of Interchange Fees by Visa and its co-conspirator member banks constitutes horizontal price fixing and is a *per se* violation of Section 1 of the Sherman Act.

48. Visa and its co-conspirator member banks have entered into and engaged in a continuing combination and conspiracy to fix, raise or maintain the Interchange Fees charged to Plaintiff and others so as to commit a *per se* violation of Section 1 of the Sherman Act.

49. The combination and conspiracy among Visa and its co-conspirators described in the preceding paragraphs consists of a continuing course, practice and pattern of conduct regarding the setting of Interchange Fees charged to Plaintiff and others in violation of Section 1 of the Sherman Act.

50. The course, practice and pattern of conduct includes, among other things, a continuing agreement, and understanding among Visa and its co-conspirator member banks, the substantial terms and purpose of which were to refrain from competing against each other on the setting of Interchange Fees to Plaintiff and others and to fix, raise or maintain Interchange Fees charged to Plaintiff and others.

51. In order to effect the foregoing illegal combination and conspiracy, Visa and its co-conspirators have engaged in a number of overt acts, including, without limitation: (1) agreeing to exchange and exchanging current and future price information about Interchange Fees; (2) agreeing to coordinate, and coordinating, the Interchange Fees they charge to Plaintiff and others; (3) agreeing on the Interchange Fees to be charged to Plaintiff and others; and (4) agreeing to fix, raise or maintain the Interchange Fees charged to Plaintiff and others.

52. Visa and its co-conspirators entered into and refined their illegal combination and conspiracy through, among other things, participating in conversations and meetings to discuss Interchange Fees to charge retail merchants, issuing fee announcements and quotes for Interchange Fees in accordance with the conspiracy and exchanging information on Interchange Fees and other business information that, in a competitive environment, would be deemed commercially sensitive and not shared with competitors.

53. As part of its unlawful conduct Visa and each of its co-conspirator member banks knowingly, intentionally and actively participated as distinct business entities in the unlawful conspiracy alleged in this Count to fix, raise or maintain the Interchange Fees charged to Plaintiff and other retail merchants.

54. As a result of Visa's and its co-conspirators' per se violation of Section 1 of the Sherman Act, and during all times relevant to the allegations in this Complaint, Interchange Fees have been fixed, raised or maintained at artificially high and noncompetitive levels in the United States and Plaintiff and other retail merchants have been deprived of the benefit of free and open competition in the setting of Interchange Fees.

55. Plaintiff has been injured in its business or property by reason of the Interchange Fee price-fixing conspiracy entered into by Visa and its co-conspirator member banks in an amount not yet determined. Plaintiff's injury is the type of injury the antitrust laws were designed to prevent and flows from that which makes Visa's conduct unlawful.

56. Unless enjoined by this Court, Visa's Interchange Fee price-fixing conduct threatens Plaintiff with continuing loss or injury.

COUNT II

PER SE UNLAWFUL PRICE-FIXING AGAINST MASTERCARD
(Re: Interchange Fee)

57. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 45 above.

58. As alleged more fully below, the collective setting of Interchange Fees by MasterCard and its co-conspirator member banks constitutes horizontal price fixing and is a *per se* violation of Section 1 of the Sherman Act.

59. MasterCard and its co-conspirator member banks have entered into and engaged in a continuing combination and conspiracy to fix, raise or maintain the Interchange Fees charged to Plaintiff and others so as to commit a *per se* violation of Section 1 of the Sherman Act.

60. The combination and conspiracy among MasterCard and its co-conspirators described in the preceding paragraphs consists of a continuing course, practice and pattern of conduct regarding the setting of Interchange Fees to Plaintiff and others in violation of Section 1 of the Sherman Act.

61. The course, practice and pattern of conduct includes, among other things, a continuing agreement and understanding among MasterCard and its co-conspirator member banks, the substantial terms and purpose of which were to refrain from competing against each other on the setting of Interchange Fees to Plaintiff and others and to fix, raise or maintain Interchange Fees charged to Plaintiff and others.

62. In order to effect the foregoing illegal combination and conspiracy, MasterCard and its co-conspirators engaged in a number of overt acts, including, without limitation: (1) agreeing to exchange and exchanging current and future price information about Interchange Fees; (2) agreeing to coordinate and coordinating the Interchange Fees to be charged to Plaintiff and others; (3)

agreeing on the Interchange Fees to charge Plaintiff and others; and (4) agreeing to fix, raise or maintain the Interchange Fees charged to Plaintiff and others.

63. MasterCard and its co-conspirators entered into and refined their illegal combination and conspiracy through, among other things, participating in conversations and meetings to discuss Interchange Fees to charge retail merchants issuing fee announcements and quotes for Interchange Fees in accordance with the conspiracy and exchanging information on Interchange Fees and other business information that, in a competitive environment, would be deemed commercially sensitive and not shared with competitors.

64. As part of its unlawful conduct MasterCard and each of its co-conspirator member banks knowingly, intentionally and actively participated as distinct business entities in the unlawful conspiracy alleged in this Count to fix, raise or maintain the Interchange Fees charged to Plaintiff and other retail merchants.

65. As a result of MasterCard's and its co-conspirators' per se violation of Section 1 of the Sherman Act, and during all times relevant to the allegations in this Complaint, Interchange Fees have been fixed, raised or maintained at artificially high and noncompetitive levels in the United States and Plaintiff and other retail merchants have been deprived of the benefit of free and open competition in the setting of Interchange Fees.

66. Plaintiff has been injured in its business or property by reason of the Interchange Fee price-fixing conspiracy entered into by MasterCard and its co-conspirator member banks in an amount not yet determined. Plaintiff's injury is the type of injury the antitrust laws were designed to prevent and flows from that which makes MasterCard's conduct unlawful.

67. Unless enjoined by this Court, MasterCard's Interchange Fee price-fixing conduct threatens Plaintiff with continuing loss or injury.

COUNT III
UNREASONABLE RESTRAINT OF COMPETITION AGAINST VISA
(Re: Merchant Restraints)

68. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 45 and 51 through 53 above.

69. The adoption and enforcement of the Merchant Restraints (individually and as a group) by Visa and its member banks constitutes a contract, combination or conspiracy in unreasonable restraint of competition, which is violative of the Rule of Reason.

70. Visa's conspiracy has had a substantially adverse effect on competition in the relevant market and has resulted in higher prices and lower output than would exist in the absence of that conspiracy. There are no procompetitive justifications for Visa's restraints on competition and, even if there were, (i) they are outweighed by the anticompetitive effects of the conspiracy, and (ii) there are less restrictive means of achieving those purported procompetitive justifications.

71. Visa and its co-conspirator member banks have knowingly participated in and taken affirmative steps in furtherance of the conspiracy alleged herein.

72. As a direct and proximate result of the horizontal conspiracy between Visa and its member banks, Interchange Fees have been set at artificially high, supracompetitive levels and Plaintiff has suffered injury to its business and property by paying such artificially inflated fees. Plaintiff's injury is the type of injury the antitrust laws were designed to prevent and flows from that which makes Visa's conduct unlawful.

73. Unless enjoined by this Court, Visa's anticompetitive conduct threatens Plaintiff with continuing loss or injury.

COUNT IV
UNREASONABLE RESTRAINT OF TRADE AGAINST MASTERCARD
(Re: Merchant Restraints)

74. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 45 and 62 through 64 above.

75. The adoption and enforcement of the Merchant Restraints (individually or as a group of two or more) by MasterCard and its member banks constitutes a contract, combination or conspiracy in unreasonable restraint of competition, which is violative of the Rule of Reason.

76. MasterCard's conspiracy has had a substantially adverse effect on competition in the relevant market and has resulted in higher prices and lower output than would exist in the absence of that conspiracy. There are no procompetitive justifications for MasterCard's restraints on competition and, even if there were, (i) they are outweighed by the anticompetitive effects of the conspiracy, and (ii) there are less restrictive means of achieving those purported procompetitive justifications.

77. MasterCard and its co-conspirator member banks have knowingly participated in and taken affirmative steps in furtherance of the conspiracy alleged herein.

78. As a direct and proximate result of the horizontal conspiracy between MasterCard and its co-conspirator member banks, Interchange Fees have been set at artificially high, supracompetitive levels and Plaintiff has suffered injury to its business and property by paying such

artificially inflated fees. Plaintiff's injury is the type of injury the antitrust laws were designed to prevent and flows from that which makes MasterCard's conduct unlawful.

79. Unless enjoined by this Court, MasterCard's anticompetitive conduct threatens Plaintiff with continuing loss or injury.

COUNT V
UNREASONABLE RESTRAINT OF COMPETITION AGAINST VISA
(Re: Interchange Fee And Merchant Restraints)

80. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 45 and 47 through 54 above.

81. The collective setting of the Interchange Fees by Visa and its member banks, in conjunction with the Merchant Restraints (individually or as a group of two or more), constitutes a contract, combination or conspiracy in unreasonable restraint of competition, which is violative of the Rule of Reason.

82. Visa's conspiracy has had a substantially adverse effect on competition in the relevant market and has resulted in higher prices and lower output than would exist in the absence of the conspiracy. There are no procompetitive justifications for Visa's restraints and, even if there were, (i) they are outweighed by the anticompetitive effects of the conspiracy, and (ii) there are less restrictive means of achieving those purported procompetitive justifications.

83. Visa and its co-conspirators have knowingly participated in and taken affirmative steps in furtherance of the conspiracy alleged herein.

84. As a direct and proximate result of the horizontal conspiracy between Visa and its member banks, Interchange Fees have been set at artificially high, supracompetitive levels and Plaintiff has suffered injury to its business and property by paying such artificially inflated fees.

Plaintiff's injury is the type of injury the antitrust laws were designed to prevent and flows from that which makes Visa's conduct unlawful.

85. Unless enjoined by this Court, Visa's anticompetitive conduct threatens Plaintiff with continuing loss or injury.

COUNT VI
UNREASONABLE RESTRAINT OF TRADE AGAINST MASTERCARD
(Re: Interchange Fee And Merchant Restraints)

86. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 45 and 58 through 65 above.

87. The collective setting of the Interchange Fees by MasterCard and its member banks, in conjunction with the Merchant Restraints (individually or as a group of two or more), constitutes a contract, combination or conspiracy in unreasonable restraint of competition, which is violative of the Rule of Reason.

88. MasterCard's conspiracy has had a substantially adverse effect on competition in the relevant market and has resulted in higher prices and lower output than would exist in the absence of the conspiracy. There are no procompetitive justifications for MasterCard's restraints and, even if there were, (i) they are outweighed by the anticompetitive effects of the conspiracy, and (ii) there are less restrictive means of achieving those purported procompetitive justifications.

89. MasterCard and its co-conspirators have knowingly participated in and taken affirmative steps in furtherance of the conspiracy alleged herein.

90. As a direct and proximate result of the horizontal conspiracy between MasterCard and its member banks, Interchange Fees have been set at artificially high, supracompetitive levels and Plaintiff has suffered injury to its business and property by paying such artificially inflated fees.

Plaintiff's injury is the type of injury the antitrust laws were designed to prevent and flows from that which makes MasterCard's conduct unlawful.

91. Unless enjoined by this Court, MasterCard's anticompetitive conduct threatens Plaintiff with continuing loss or injury.

COUNT VII
UNLAWFUL TYING OF PREMIUM VISA CREDIT CARDS TO VISA CREDIT CARDS

92. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 45 above.

93. For purposes of this Count VII, the relevant product markets are: (1) the market for Network Services associated with Non-Premium Visa Credit Cards (the tying product market) and (2) the market for Network Services associated with Premium Visa Credit Cards (the tied product market). The relevant geographic market is the United States. A seller that was the only provider of Network Services for either Non-Premium Visa Credit Cards or Premium Visa Credit Cards in the United States would have the ability to raise Interchange Fees significantly above a competitive level without losing sufficient business to make the price increase unprofitable.

94. At all times relevant to the allegations in this Count, Visa has had substantial market power in the tying market, i.e., Visa has had the ability to raise prices substantially above a competitive level for network services associated with Non-Premium Visa Credit Cards without losing sufficient business to make the price increase unprofitable.

95. By means of the Honor-All-Cards Rule, Visa has tied the purchase of Network Services associated with Premium Visa Cards to (i.e., the tied product) the purchase of Network Services associated with Non-Premium Visa Cards (i.e., the tying product). As a result of this tying

arrangement, Plaintiff has been forced to accept Premium Visa Cards and to pay Interchange Fees associated with their use.

96. The tying arrangement described above has affected a substantial amount of commerce in the market for the tied product.

97. As a direct and proximate result of Visa's tying arrangement, Interchange Fees for Premium Visa Credit Cards have been set at artificial, supracompetitive levels and Plaintiff has suffered injury to its business and property by paying such artificially inflated, supracompetitive Interchange Fees. Plaintiff's injury is the type of injury the antitrust laws were designed to prevent and flows from that which makes Visa's conduct unlawful.

98. Visa's antitrust violation threatens continuing loss and injury to Plaintiff unless enjoined by this Court.

COUNT VIII
UNLAWFUL TYING OF PREMIUM MASTERCARD CREDIT CARDS TO MASTERCARD CREDIT CARDS

99. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 45 above.

100. For purposes of this Count VIII, the relevant product markets are: (1) the market for Network Services associated with Non-Premium MasterCard Credit Cards (the tying product market) and (2) the market for Network Services associated with Premium MasterCard Credit Cards (the tied product market). The relevant geographic market is the United States. A seller that was the only provider of Network Services for either Non-Premium MasterCard Credit Cards or Premium MasterCard Credit Cards in the United States would have the ability to raise Interchange Fees

significantly above a competitive level without losing sufficient business to make the price increase unprofitable.

101. At all times relevant to the allegations in this Count, MasterCard has had substantial market power in the tying market, i.e., MasterCard has had the ability to raise prices substantially above a competitive level for Network Services associated with Non-Premium MasterCard Credit Cards without losing sufficient business to make the price increase unprofitable.

102. By means of the Honor-All-Cards Rule, MasterCard has tied the purchase of Network Services associated with Premium MasterCard Cards (i.e., the tied product) to the purchase of Network Services associated with Non-Premium MasterCard Cards (i.e., the tying product.) As a result of this tying arrangement, Plaintiff has been forced to accept Premium MasterCard Cards and to pay Interchange Fees associated with their use.

103. The tying arrangement described above has affected a substantial amount of commerce in the market for the tied product.

104. As a direct and proximate result of MasterCard's tying arrangement, Interchange Fees for Premium MasterCard Credit Cards have been set at artificial, supracompetitive levels and Plaintiff has suffered injury to its business and property by paying such artificially inflated, supracompetitive Interchange Fees. Plaintiff's injury is the type of injury the antitrust laws were designed to prevent and flows from that which makes MasterCard's conduct unlawful.

105. MasterCard's antitrust violation threatens continuing loss and injury to Plaintiff unless enjoined by this Court.

COUNT IX
VISA'S UNLAWFUL TYING OF NETWORK SERVICES

106. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 45 above.

107. For purposes of this Count, the relevant product markets are: (1) the market for Network Services associated with General Purpose Payment Cards other than Payment Guarantee Services (the tying product market) and (2) the market for Payment Guarantee Services (the tied product market). The relevant geographic market is the United States. A seller that was the only provider of Network Services associated with General Purpose Payment Cards other than Payment Guarantee Services in the United States would have the ability to raise Interchange Fees significantly above a competitive level without losing sufficient business to make the price increase unprofitable.

108. At all times relevant to the allegations in this Count, Visa has had substantial market power in the tying market, i.e., Visa has had the ability to raise prices substantially above the competitive level without losing sufficient business to make the price increase unprofitable.

109. At all times relevant to the allegations in this Count, Visa has tied the sale of Payment Guarantee Services to the sale of Network Services other than Payment Guarantee Services. Merchants have lost the ability to negotiate with individual issuers and/or to purchase Payment Guarantee Services from independent vendors or to self-insure against loss due to fraud.

110. Various forms of payment guarantees are often sold and purchased independently of general-purpose Network Services.

111. Absent this tying arrangement, many merchants, including Plaintiff, would have purchased Payment Guarantee Services from sources other than Visa or would not have purchased such services at all (i.e., they would have chosen to self-insure against loss due to fraud). Even those

merchants that would have continued to purchase such services from Visa would have benefitted from the lower prices Visa would have offered in response to competition from other providers of those services.

112. The tying arrangement described above has affected a substantial amount of commerce in the market for the tied product.

113. As a direct and proximate result of Visa's tying arrangement, Interchange Fees for Payment Guarantee Services have been set at artificial, supracompetitive levels and Plaintiff has suffered injury to its business and property by paying such artificially inflated, supracompetitive Interchange Fees. Plaintiff's injury is the type of injury the antitrust laws were designed to prevent and flows from that which makes Visa's conduct unlawful.

114. Visa's antitrust violation threatens continuing loss and injury to Plaintiff unless enjoined by this Court.

COUNT X
MASTERCARD'S UNLAWFUL TYING OF NETWORK SERVICES

115. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 45 above.

116. For purposes of this Count, the relevant product markets are: (1) the market for Network Services associated with General Purpose Payment Cards other than Payment Guarantee Services (the tying product market) and (2) the market for Payment Guarantee Services (the tied product market). The relevant geographic market is the United States. A seller that was the only provider of Network Services associated with General Purpose Payment cards other than {Payment Guarantee Services in the United States would have the ability to raise Interchange Fees significantly

above a competitive level without losing sufficient business to make the price increase unprofitable.

117. At all times relevant to the allegations in this Count, MasterCard has had substantial market power in the tying market, i.e., MasterCard has had the ability to raise prices substantially above a competitive level without losing sufficient business to make the price increase unprofitable.

118. At all times relevant to the allegations in this Count, MasterCard has tied the sale of Payment Guarantee Services to the sale of Network Services other than Payment Guarantee Services. Merchants have lost the ability to negotiate with individual issuers and/or to purchase Payment Guarantee Services from independent vendors or to self-insure against loss due to fraud.

119. Various forms of payment guarantees are often sold and purchased independently of general-purpose Network Services.

120. Absent this tying arrangement, many merchants, including Plaintiff, would have purchased Payment Guarantee Services from sources other than MasterCard or would not have purchased such services at all (i.e., they would have chosen to self-insure against loss due to fraud). Even those merchants that would have continued to purchase such services from MasterCard would have benefitted from the lower prices MasterCard would have offered in response to competition from other providers of those services.

121. The tying arrangement described above has affected a substantial amount of commerce in the market for the tied product.

122. As a direct and proximate result of MasterCard's tying arrangement, Interchange Fees for Payment Guarantee Services have been set at artificial, supracompetitive levels and Plaintiff has suffered injury to its business and property by paying such artificially inflated, supracompetitive

Interchange Fees. Plaintiff's injury is the type of injury the antitrust laws were designed to prevent and flows from that which makes MasterCard's conduct unlawful.

123. MasterCard's antitrust violation threatens continuing loss and injury to Plaintiff unless enjoined by this Court.

COUNT XI
VISA'S MONOPOLIZATION

124. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 45 above.

125. Visa has monopoly power in the relevant market.

126. Visa has used its monopoly power to impose on Plaintiff and other retail merchants regulations and restrictions that have the purpose and effect of excluding competition from and raising the costs of other sellers in the relevant market. These regulations and restrictions include, but are not limited to, the Merchant Restraints. The regulations and restrictions imposed by Visa make it difficult or impossible for other card associations to increase the usage of their cards by offering lower Interchange Fees or other attractive terms to retail merchants like Plaintiff.

127. As a direct and proximate result of Visa's exclusionary conduct, Interchange Fees have been set at artificial, supracompetitive levels and Plaintiff has suffered injury to its business and property by paying such artificially inflated, supracompetitive Interchange Fees for Network Services. Plaintiff's injury is the type of injury the antitrust laws were designed to prevent and flows from that which makes Visa's conduct unlawful.

128. Visa's antitrust violation threatens continuing loss and injury to Plaintiff unless enjoined by this Court.

COUNT XII
MASTERCARD'S MONOPOLIZATION

129. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 45 above.

130. MasterCard has monopoly power in the relevant market.

131. MasterCard has used its monopoly power to impose on Plaintiff and other retail merchants regulations and restrictions that have the purpose and effect of excluding competition from and raising the costs of other sellers in the relevant market. These regulations and restrictions include, but are not limited to, the Merchant Restraints. The regulations and restrictions imposed by MasterCard make it difficult or impossible for other card associations to increase the usage of their cards by offering lower Interchange Fees or other attractive terms to retail merchants like Plaintiff.

132. As a direct and proximate result of MasterCard's exclusionary conduct, Interchange Fees have been set at artificial, supracompetitive levels and Plaintiff has suffered injury to its business and property by paying such artificially inflated, supracompetitive Interchange Fees for Network Services. Plaintiff's injury is the type of injury the antitrust laws were designed to prevent and flows from that which makes MasterCard's conduct unlawful.

133. MasterCard's antitrust violation threatens continuing loss and injury to Plaintiff unless enjoined by this Court.

COUNT XIII
ATTEMPTED MONOPOLIZATION BY VISA

134. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 45 above.

135. Visa has a dangerous probability of achieving monopoly power in the relevant market.

136. Visa has a specific intent to achieve monopoly power in the relevant market.

137. Visa has used its market power to impose on Plaintiff and other retail merchants regulations and restrictions that have the purpose and effect of excluding competition from and raising the costs of other sellers in the relevant market. These regulations and restrictions include, but are not limited to, the Merchant Restraints. The regulations and restrictions imposed by Visa make it difficult or impossible for other card associations to increase the usage of their cards by offering lower Interchange Fees or other attractive terms to retail merchants like Plaintiff.

138. As a direct and proximate result of Visa's exclusionary conduct, Interchange Fees have been set at artificial, supracompetitive levels and Plaintiff has suffered injury to its business and property by paying such artificially inflated, supracompetitive Interchange Fees for Network Services. Plaintiff's injury is the type of injury the antitrust laws were designed to prevent and flows from that which makes Defendants' conduct unlawful.

139. Visa's antitrust violation threatens continuing loss and injury to Plaintiff unless enjoined by this Court.

COUNT XIV
ATTEMPTED MONOPOLIZATION BY MASTERCARD

140. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 45 above.

141. MasterCard has a dangerous probability of achieving monopoly power in the relevant market.

142. MasterCard has a specific intent to achieve monopoly power in the relevant market.

143. MasterCard has used its market power to impose on Plaintiff and other retail merchants regulations and restrictions that have the purpose and effect of excluding competition from and raising the costs of other sellers in the relevant market. These regulations and restrictions include, but are not limited to, the Merchant Restraints. The regulations and restrictions imposed by MasterCard make it difficult or impossible for other card associations to increase the usage of their cards by offering lower Interchange Fees or other attractive terms to retail merchants like Plaintiff.

144. As a direct and proximate result of MasterCard's exclusionary conduct, Interchange Fees have been set at artificial, supracompetitive levels and Plaintiff has suffered injury to its business and property by paying such artificially inflated, supracompetitive Interchange Fees for Network Services. Plaintiff's injury is the type of injury the antitrust laws were designed to prevent and flows from that which makes MasterCard's conduct unlawful.

145. MasterCard's antitrust violation threatens continuing loss and injury to Plaintiff unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment in its favor and against Defendants and requests that the Court:

A. Declare that Defendants have violated the federal antitrust laws in each of the ways alleged above;

B. Issue permanent injunctive relief enjoining Defendants, their directors, officers, employees, agents, successors and members from continuing to commit the antitrust violations

alleged above and requiring them to take affirmative steps to dissipate the effects of their prior violations;

C. Order each Defendant to pay Plaintiff three times the damages caused by that Defendant and its co-conspirators and sustained by Plaintiff during the period from January 1, 2004 forward, as determined by a jury; and

D. Order the Defendants to pay Plaintiff the costs of this suit, including its reasonable attorneys' fees, and such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: September 29, 2005

COHEN, MILSTEN, HAUSFELD & TOLL, P.L.L.C.

Linda P. Nussbaum (LN-9336)
150 East 52nd Street, 30th Floor
New York, New York 10022-6017
212-838-7797
212-838 -7745 (facsimile)

Joseph M. Vanek
David P. Germaine
DAAR & VANEK, P.C.
225 West Washington, 18th Floor
Chicago, Illinois 60606
312-224-1500
312-224-1510 (facsimile)

Paul E. Slater
SPERLING & SLATER, P.C.
55 West Monroe Street, Suite 3200
Chicago, IL 60603
(312) 641-3200
(312) 641-6492 (facsimile)

Attorneys for Plaintiff