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U.S. DISTRICT COURT
BRIDGEPORT, CONN.

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**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

PHOTOS ETC. CORPORATION;
CHS INC.;
TRADITIONS LTD.;
A DASH OF SALT, L.L.C.; and
KSARRA, L.L.C.,

Plaintiffs,

v.

VISA U.S.A. INC.;
VISA INTERNATIONAL SERVICE
ASSOCIATION;
MASTERCARD INCORPORATED;
MASTERCARD INTERNATIONAL INC.;
BANK OF AMERICA CORPORATION;
BANK OF AMERICA, N.A.;
NATIONAL PROCESSING, INC.;
BANK ONE CORPORATION;
BANK ONE, DELAWARE, N.A.;

305 CV 1007 RNC
Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Date: June 22, 2005

CHASE MANHATTAN BANK USA, N.A.;
JPMORGAN CHASE & CO.;
FIRST CENTURY BANK, N.A.;
FIRST CENTURY BANKSHARES, INC.;
FLEET BANK (RI), N.A.;
FLEET NATIONAL BANK;
CAPITAL ONE BANK;
CAPITAL ONE F.S.B.;
CAPITAL ONE FINANCIAL CORPORATION;
CITICORP;
CITIGROUP, INC.;
CITIBANK, N.A.;
FIRST NATIONAL BANK OF NEBRASKA;
FIRST NATIONAL BANK OF OMAHA;
HSBC FINANCE CORPORATION;
HSBC HOLDINGS, PLC;
HSBC NORTH AMERICA HOLDINGS, INC.;
MBNA AMERICA BANK, N.A.;
NATIONAL CITY CORPORATION;
NATIONAL CITY BANK OF KENTUCKY;
PROVIDIAN FINANCIAL CORPORATION;
PROVIDIAN NATIONAL BANK;
RBC CENTURA BANKS, INC.;
RBC ROYAL BANK OF CANADA;
PEOPLE'S BANK;
RBS NATIONAL BANK OF BRIDGEPORT;
ROYAL BANK OF SCOTLAND GROUP, PLC;
SUNTRUST BANKS, INC.;
TEXAS INDEPENDENT BANCSHARES, INC.;
USAA FEDERAL SAVINGS BANK;
WACHOVIA CORPORATION;
WACHOVIA BANK, N.A.; and
WESTPAC BANKING CORPORATION,

Defendants.

A class of retail merchants (“the Class”), by their undersigned attorneys herein, allege for their Complaint against Visa U.S.A. Inc. (“Visa”) and MasterCard International Incorporated (“MasterCard”) and the other Defendants named in the caption hereof

(collectively referred to as “Defendants”), upon knowledge with respect to their own acts and upon information and belief with respect to all other matters, as follows:

**I.
INTRODUCTION**

1. The Plaintiffs named in the caption hereof (the “Named Plaintiffs” or “Class Representatives”) represent a class of merchants that operate millions of commercial businesses throughout the United States. The Class accepts Visa and MasterCard Credit Cards as a form of payment along with cash, checks, travelers checks, and other plastic credit, debit, and charge cards.

2. The Named Plaintiffs on behalf of themselves and the class of merchants, more fully defined below, who accept Visa and MasterCard Credit Cards hereby challenge the collusive practices of the Defendants under the United States antitrust laws. The contracts, combinations, conspiracies, and understandings entered into by the Defendants harm competition and cause members of the class to pay supra-competitive, exorbitant, and fixed prices for General Purpose Card Network Services and raise the prices paid by all of their retail customers.

3. The actions of the Defendants constitute contracts, combinations, and conspiracies in restraint of trade, which, under Section 1 of the Sherman Act.

4. On behalf of the Class, the Named Plaintiffs seek declaratory and injunctive relief and damages to redress these violations of federal law.

**II.
JURISDICTION AND VENUE**

5. This Complaint is filed under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and for

damages under Section 4 of the Clayton Act, 15 U.S.C. § 15. This Court has jurisdiction of the federal antitrust law claims alleged herein under 28 U.S.C. §§ 1331, 1337, 2201, and 2202.

6. Venue in the District of Connecticut is proper under 28 U.S.C. § 1391 and 15 U.S.C. §§ 15, 22 and 26. Plaintiff A Dash Of Salt, L.L.C. is a Connecticut corporation with its principal place of business in this District. Plaintiff KSAARA, L.L.C. is a Connecticut corporation with its principal place of business in this District. Defendants transact business and are found in the District of Connecticut. Thousands of merchants located in the District of Connecticut accept Visa and/or MasterCard Credit Cards issued by one or more Defendants, and thus are members of the Class. Hundreds of bank members of Visa and/or MasterCard, including many of the banks named as Defendants, issue Visa and MasterCard Credit Cards and/or acquire retail merchant transactions for Visa and/or MasterCard in the District of Connecticut. A substantial part of the interstate trade and commerce involved and affected by the alleged violations of the antitrust laws was and is carried on in part within the District of Connecticut. The acts complained of have had, and will have, substantial anticompetitive effects in the District of Connecticut.

III. THE PARTIES

7. Plaintiff Photos Etc. Corporation (“Photos Etc.”) is a California corporation doing business as “30 Minute Photos Etc.” with its principal place of business in Irvine, California. Photos Etc. is engaged in the business of photograph finishing. Photos Etc. purchases General Purpose Card Network Services from one or more Defendants and as such pays the Merchant Discount and Interchange Fees associated with General Purpose Card transactions.

8. Plaintiff CHS Inc. ("CHS") is a Minnesota cooperative corporation with its principal place of business in Inver Grove Heights, Minnesota. CHS is an agricultural cooperative that, among its many activities, does the following: (i) owns farm stores, gas stations and convenience stores (the "Owned Stores") and (ii) provides products, supplies and services to other persons and entities that own gas stations and convenience stores (the "Non-Owned Stores"). CHS purchases General Purpose Card Network Services from one or more Defendants on behalf of both the Owned Stores and the Non-Owned Stores, and as such pays the Merchant Discount and Interchange Fees associated with transactions at those stores.

9. Plaintiff Traditions Ltd. is a Minnesota corporation which owns and operates retail furniture stores in St. Paul and Minneapolis, Minnesota and Naples, Florida. Traditions Ltd. purchases General Purpose Card Network Services from one or more Defendants and as such pays the Merchant Discount and Interchange Fees associated with General Purpose Card transactions.

10. Plaintiff A Dash Of Salt, LLC ("A Dash Of Salt") is a Connecticut corporation doing business as "Jams" with its principal place of business in Bridgeport, Connecticut. A Dash Of Salt is engaged in the restaurant and catering business. A Dash Of Salt purchases General Purpose Card Network Services from one or more Defendants and as such pays the Merchant Discount and Interchange Fees associated with General Purpose Card transactions.

11. Plaintiff KSARRA, LLC ("KSARRA") is a Connecticut corporation with its principal place of business in Newtown, Connecticut. KSARRA is engaged in the wine and liquor business. KSARRA purchases General Purpose Card Network Services from one or more Defendants and as such pays the Merchant Discount and Interchange Fees associated with General Purpose Card transactions.

12. As is more fully defined below, the Class consists of merchants who have accepted Visa and/or MasterCard Credit Cards, and who pay supra-competitively priced Interchange Fees for the General Purpose Card Network Services offered by the Defendants. Members of the Class are also harmed by Defendants' practices of bundling together fees for the payment guarantee, the "float," processing costs, and other services which are purportedly covered by the Interchange Fee. The collective setting of Interchange Fees by the Visa and MasterCard Associations causes an antitrust injury common to the Class, that is Interchange Fees for general-purpose card transactions that are fixed at supracompetitive levels.

13. Defendant Visa International Service Association is a non-stock, non-assessable Delaware membership corporation with its principal place of business in San Francisco, California. Its members include approximately 21,000 banks. Defendant Visa U.S.A. Inc. is the U.S. division of Visa and is also a non-stock, non-assessable Delaware membership corporation with its principal place of business in San Francisco, California. It is a national bank-card association whose members include approximately 14,000 banks. Defendants Visa International Service Association and Visa U.S.A. Inc. are collectively referred to herein as "Visa." Visa is doing business and transacts business in this judicial district.

14. 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 Service Corporation is a non-stock, membership corporation that consists of more than 23,000 member banks worldwide and is the principal operating subsidiary of MasterCard Incorporated.

15. Defendants Chase Manhattan Bank USA, N.A., a New York bank with its principal place of business in New York, New York; Bank One, Delaware, N.A., a national banking association with its principal place of business in Chicago, Illinois; and Bank One Corporation, a Delaware corporation with its principal place of business in Chicago, Illinois, are all subsidiaries of Defendant JPMorgan Chase & Co., a Delaware corporation with its principal place of business in New York, New York. Defendants Bank One, Delaware, N.A., Bank One Corporation, Chase Manhattan Bank USA, N.A., and JPMorgan Chase & Co. are referred to collectively herein as “Chase.”

16. Chase is a member of both Visa and MasterCard. It engages in interstate commerce. It is an Acquiring Bank which, throughout Connecticut, acquires for Named Plaintiffs and members of the Class, Visa and MasterCard credit receipts, or the electronic equivalent, for deposit in their commercial demand deposit bank account at the face amount less a fee. It is and/or has been represented on the Visa Board of Directors. It has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

17. Defendant First Century Bank, N.A. is a wholly-owned subsidiary of First Century Bankshares, Inc., a West Virginia corporation with its principal place of business in Bluefield, West Virginia. Defendants First Century Bank, N.A. and First Century Bankshares, Inc. are referred to collectively as “First Century”.

18. First Century is a member of both Visa and MasterCard. It engages in interstate commerce. It has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

19. Defendant Citibank N.A., a bank with its principal place of business in New York, New York, and Citicorp, a Delaware corporation with its principal place of business in New York, New York, are subsidiaries of Citigroup, Inc., a Delaware corporation with its principal place of business in New York, New York. Defendants Citibank N.A., Citicorp, and Citigroup, Inc. and are collectively referred to herein as “Citigroup.”

20. Citigroup is a member of both Visa and MasterCard. It engages in interstate commerce. It has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees. It is an Acquiring Bank which, throughout Connecticut, acquires for members of the Class and other retailers, Visa and MasterCard credit receipts, or the electronic equivalent, for deposit in their commercial demand deposit bank account at the face amount less a fee. It has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

21. Defendants Bank of America, N.A., a national banking association with its principal place of business in Charlotte, North Carolina; Fleet National Bank, a national bank with its principal place of business in Providence, Rhode Island; Fleet Bank (RI), N.A., a national bank with its principal place of business in Providence, Rhode Island; and National Processing, Inc., an Ohio corporation with its principal place of business in Louisville, Kentucky are all subsidiaries of Defendant Bank of America Corporation, a Delaware corporation with its principal place of business in Charlotte, North Carolina. Defendants Fleet National Bank, Fleet Bank (RI), N.A., National Processing, Inc., Bank of America, N.A., and Bank of America Corporation are collectively referred to as “Bank of America.”

22. Bank of America is a member of both Visa and MasterCard. It engages in interstate commerce. It is an Acquiring Bank which, throughout Connecticut, acquires for the

Class, Visa and MasterCard credit receipts, or the electronic equivalent, for deposit in their commercial demand deposit bank account at the face amount less a fee. It is and/or has been represented on the Visa Board of Directors. It has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

23. Defendants Capital One Bank, a Virginia bank with its principal place of business in Glen Allen, Virginia; and Capital One F.S.B., a national bank with its principal place of business in McLean, Virginia, are wholly-owned subsidiaries of Defendant Capital One Financial Corporation, a Delaware corporation with its principal place of business in McLean, Virginia. Defendants Capital One Bank, Capital One F.S.B., and Capital One Financial Corporation are collectively referred to as "Capital One."

24. Capital One is a member of both Visa and MasterCard. It engages in interstate commerce. It is and/or has been represented on the MasterCard Board of Directors. It has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

25. Defendant First National Bank of Nebraska is a Nebraska corporation with its principal place of business in Omaha, Nebraska.

26. First National Bank of Nebraska is a member of both Visa and MasterCard. It engages in interstate commerce. First National Bank of Nebraska is and/or has been represented on the Visa Board of Directors through its division, Defendant First National Bank of Omaha. Through its subsidiary, First National Bank of Omaha, it is an Acquiring Bank in the Visa network, which acquires for the Class, Visa and MasterCard credit receipts, or the electronic equivalent, for deposit in their commercial demand deposit bank account at

the face amount less a fee. First National Bank of Nebraska has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

27. Defendant HSBC Finance Corporation is the personal finance division of Defendant HSBC Holdings, plc, with its principal place of business in Prospect Heights, Illinois. It is a subsidiary of Defendant HSBC North America Holdings, Inc., which is a subsidiary of HSBC Holdings, plc, a corporation organized under the laws of the United Kingdom with its principal place of business in London, England. Defendants HSBC Finance Corporation, HSBC North America Holdings, Inc., and HSBC Holdings, plc are collectively referred to herein as "HSBC."

28. It is a member of both Visa and MasterCard. HSBC engages in interstate commerce. It is and/or has been represented on the MasterCard Board of Directors. It has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

29. Defendant MBNA America Bank, N.A. is a Delaware corporation with its principal place of business in Wilmington, Delaware. It is referred to herein as "MBNA."

30. MBNA is a member of both Visa and MasterCard. It engages in interstate commerce. It is currently and/or has been represented on the Board of Directors of MasterCard. It has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

31. Defendant National City Bank of Kentucky is a subsidiary of Defendant National City Corporation, a Delaware corporation with its principal place of business in Cleveland, Ohio. Defendants National City Corporation and National City Bank of Kentucky are collectively referred to herein as "National City."

32. National City is a member of both Visa and MasterCard. It engages in interstate commerce. National City was an Acquiring Bank through its former subsidiary, Defendant National Processing, Inc., until National Processing, Inc. was purchased by Bank of America in October 2004. Until then, National City was an Acquiring Bank which acquires for the Class, Visa and MasterCard credit receipts, or the electronic equivalent, for deposit in their commercial demand deposit bank account at the face amount less a fee. National City has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

33. Defendant People's Bank ("People's") is a Connecticut corporation with its principal place of business in Bridgeport, Connecticut. It engages in interstate commerce. It was a member of Visa and MasterCard until approximately March 5, 2004, when it sold its Credit Card operations to the Royal Bank of Scotland Group, plc. People's has had actual knowledge of, and has knowingly participated in, the conspiracy to fix Credit Card Interchange Fees.

34. Defendant, Royal Bank of Scotland Group, plc is a corporation organized under the laws of the United Kingdom with its principal place of business in Edinburgh, Scotland.

35. Royal Bank of Scotland Group, plc is a member of both Visa and MasterCard through its subsidiary, Defendant RBS National Bank of Bridgeport. It engages in interstate commerce. It is currently and/or has been represented on the MasterCard Board of Directors. Royal Bank of Scotland Group, plc has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

36. Defendant Providian National Bank, a national banking association with its principal place of business in Tilton, New Hampshire, is a wholly-owned subsidiary of Defendant Providian Financial Corporation, a Delaware corporation with its principal place of business in San Francisco, California. Defendants Providian National Bank and Providian Financial Corporation are referred to collectively herein as "Providian."

37. Providian is a member of both Visa and MasterCard. It engages in interstate commerce. It has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

38. Defendant RBC Centura Banks, Inc. is a North Carolina corporation with its principal place of business in Charlotte, North Carolina. It is a wholly-owned subsidiary of Defendant RBC Royal Bank of Canada, a Canadian corporation with its principal place of business in Toronto, Ontario, Canada. Defendants RBC Centura Banks, Inc. and RBC Royal Bank of Canada are collectively referred to herein as "RBC."

39. RBC is a member of both Visa and MasterCard. It engages in interstate commerce. It has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

40. Defendant SunTrust Banks, Inc. ("SunTrust") is a Delaware corporation with its principal place of business in Atlanta, Georgia.

41. SunTrust is a member of both Visa and MasterCard. It engages in interstate commerce. It is an Acquiring Bank, which acquires for retailers Visa and MasterCard credit receipts, or the electronic equivalent, for deposit in their commercial demand deposit bank account at the face amount less a fee. It is currently and/or has been represented on the Visa

Board of Directors. It has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

42. Defendant Texas Independent Bancshares, Inc. is a Texas corporation with its principal place of business in Texas City, Texas.

43. Texas Independent Bancshares, Inc. is a member of Visa and MasterCard. It engages in interstate commerce. It is and/or has been represented on the Visa Board of Directors. It has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

44. Defendant USAA Federal Savings Bank ("USAA"), a federal savings association with its principal place of business in San Antonio, Texas, is a wholly-owned subsidiary of United States Automobile Association.

45. USAA is a member of Visa and MasterCard. It engages in interstate commerce. It has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

46. Defendant Westpac Banking Corporation ("Westpac") is a corporation organized under the laws of Australia with its principal place of business in Sydney, New South Wales, Australia.

47. Westpac is a member of both Visa and MasterCard. It engages in interstate commerce. It is currently and/or has been represented on the MasterCard Board of Directors. Westpac has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

48. Defendant Wachovia Bank, N.A. is a subsidiary of Defendant Wachovia Corporation, a North Carolina corporation with its principal place of business in Charlotte,

North Carolina. Defendants Wachovia Bank, N.A. and Wachovia Corporation are collectively referred to herein as "Wachovia."

49. Wachovia is a member of both Visa and MasterCard. It engages in interstate commerce. It is an Acquiring Bank which, throughout Connecticut, acquires for the Class, Visa and MasterCard credit receipts, or the electronic equivalent, for deposit in their commercial demand deposit bank account at the face amount less a fee. It is and/or has been represented on the Visa Board of Directors. It has had actual knowledge of, and has knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

50. Defendants Bank of America Corporation; Bank of America, N.A.; National Processing, Inc.; Bank One Corporation; Bank One, Delaware, N.A.; Chase Manhattan Bank USA, N.A.; JPMorgan Chase & Co.; First Century Bank, N.A.; First Century Bankshares, Inc.; Fleet Bank (RI), N.A.; Fleet National Bank; Capital One Bank; Capital One F.S.B.; Capital One Financial Corporation; Citicorp; Citigroup, Inc.; Citibank, N.A.; First National Bank of Nebraska; First National Bank of Omaha; HSBC Finance Corporation; HSBC North America Holdings, Inc.; HSBC Holdings, plc; MBNA America Bank, N.A.; National City Corporation; National City Bank of Kentucky; Provident Financial Corporation; Provident National Bank; RBC Centura Banks, Inc.; RBC Royal Bank of Canada; People's Bank; RBS National Bank of Bridgeport; Royal Bank of Scotland Group, plc; SunTrust Banks, Inc.; Texas Independent Bancshares, Inc.; USAA Federal Savings Bank; Wachovia Corporation; Wachovia Bank, N.A., and Westpac Banking Corporation (collectively "Bank Defendants"), are member banks of the Visa and MasterCard networks. The Bank Defendants are potential competitors for the issuance of Credit Cards and acquisition of merchants. Each of the Bank Defendants belongs to both networks and have conspired with each other, with Visa and

MasterCard member banks, and with the Visa and MasterCard associations to fix the level of Interchange Fees. Many of the Bank Defendants are, or were during the relevant period, represented on the Visa and/or MasterCard Boards of Directors at the times when they collectively-fixed Interchange Fees. Each of the Bank Defendants had actual knowledge of the conspiracy to collectively fix Credit Card Interchange Fees, and participated in and consciously committed themselves to the conspiracy to collectively fix Credit Card and Interchange Fees.

51. The Bank Defendants, acting by and through the Boards of Directors of Visa and MasterCard, are therefore directly responsible for fixing Interchange Fees within each network and between the two networks. Bank Defendants, acting by and through the Boards of Directors of Visa and MasterCard, are also directly responsible for the bundling of separate and distinct services together in those Interchange Fees. Collectively, the Bank Defendants, through their operation of Visa and MasterCard, adopted and approved the above-mentioned policies and have significantly profited from those policies.

IV. CO-CONSPIRATORS

52. Various persons, firms, corporations, organizations, and other business entities, some unknown and others known, have participated as co-conspirators in the violations alleged and have performed acts in furtherance of the conspiracies. Co-conspirators whose identities are presently unknown include, but are not limited to, the following: (a) thousands of Issuing Banks that have issued Visa and/or MasterCard Credit Cards and have agreed to Visa and MasterCard Interchange Fees are co-conspirators; (b) certain banks that are or were members of the Boards of Directors of Visa or MasterCard and adopted and agreed to impose

the challenged rules upon retailers are co-conspirators; and (c) thousands of banks that are Acquiring Banks who acquire Visa and MasterCard transactions from merchants.

53. The Class purchases General Purpose Card Network Services from Visa and MasterCard through the Acquiring Bank members of Visa and MasterCard, including but not limited to, certain of the Bank Defendants.

54. The Acquiring Banks are members of the Visa and MasterCard Associations and are participants in the conspiracy to fix Interchange Fees. The Acquiring Banks have conspired with each other, with Issuing Banks, and with the Visa and MasterCard Associations to fix Interchange Fees at supra-competitive levels. The Visa and MasterCard Boards of Directors have directly set the respective level of Visa and MasterCard's Interchange Fees. The Bank Defendants have had actual knowledge of, and have knowingly participated in, the conspiracy to collectively fix Credit Card Interchange Fees.

V.
CLASS ACTION ALLEGATIONS

55. The Named Plaintiffs bring this action as a class action under Rule 23(b)(1), (2) and (3), Fed. R. Civ. P., for violations of 15 U.S.C. § 1. The Class is comprised of all persons and business entities who have accepted Visa and/or MasterCard Credit Cards during the fullest period permitted by the applicable statutes of limitations (the "Class"). The Class does not include the named Defendants, their directors, officers, or members of their families, or the Class Representatives in the previous class action against Visa and MasterCard, *In re Visa Check/MasterMoney Antitrust Litig.*, 192 F.R.D. 68 (E.D.N.Y. 2000), *aff'd*, 280 F.3d 124 (2d Cir. 2001).

56. The anticompetitive conduct of Defendants alleged herein has imposed a common antitrust injury on the members of the Class. The members of the Class are so numerous that joinder of all members is impracticable.

57. Defendants' relationships with the Class members and Defendants' anticompetitive conduct have been substantially uniform. Common questions of law and fact will predominate over any individual questions of law and fact.

58. Defendants have acted, continue to act, refused to act and continue to refuse to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

59. This class action is superior to any other method for the fair and efficient adjudication of this legal dispute, as joinder of all members is not only impracticable, but impossible. The damages suffered by many members of the Class are small in relation to the expense and burden of individual litigation, and, therefore, it is highly impractical for such Class members individually to attempt redress of the wrongful anticompetitive conduct alleged herein. There will be no extraordinary difficulty in the management of this Class action. Common questions of law and fact exist with respect to all Class members and predominate over any questions solely affecting individual members. Among the questions of law and fact common to the Class, many of which cannot be seriously disputed, are the following:

- a. Whether Defendants and their co-conspirators illegally fix the prices for General Purpose Card Network Services, and thereby cause the Class to pay supra-competitive Interchange Fees?
- b. Whether Visa, MasterCard, and their members possess and exercise market power, or monopoly power in the markets alleged in this Complaint?

- c. Whether the Visa and MasterCard associations conspired with each other to fix the price of Credit Card Interchange Fees?
- d. Whether Defendants' price fixing arrangements are illegal under Section 1 of the Sherman Act?
- e. The amount of Credit Card Interchange Fees and other Visa/MasterCard mandated fees and assessments that members of the Class have been forced to pay for Visa and MasterCard General Purpose Card Network Services.
- f. Whether Defendants' tying and bundling practices are illegal under Section 1 of the Sherman Act?
- g. Whether Defendants' exclusive dealing practices are illegal under the "rule of reason"?
- h. The proper measure of damages sustained by the Class as a result of Defendants' bundling and price fixing practices.

60. A class identical to the Class alleged hereinabove was certified, and affirmed on appeal, in *In re Visa Check/MasterMoney Antitrust Litig.*, 192 F.R.D. 68 (E.D.N.Y. 2000), *aff'd*, 280 F.3d 124 (2d Cir. 2001).

VI. DEFINITIONS

61. As used in this Complaint, the following terms are defined as:

- a. "Credit Card" is an access device, usually a payment card, enabling the holder to (i) effect transactions on credit for goods and services purchased, which are paid on behalf of the holder by the issuer of such device; or (ii) obtain cash with credit extended by the issuer. Examples of Credit Cards are the Visa and MasterCard Credit Cards issued by members of the Defendant Bank card networks, as well as the *Discover*, *Bravo* and *Private Issue* cards issued by Morgan Stanley, Dean Witter & Co., and the *Optima* and *Blue* cards issued by American Express. Proprietary cards of individual merchants for use only at particular merchants' outlets are not included in this definition.

b. “Charge Card” or “Travel & Entertainment Card” is an access device, usually a payment card, enabling the holder to purchase goods and services on credit to be paid on behalf of the holder by the issuer of such device. Typically, the contractual terms of such cards require that payment from the holder to the issuer be made in full each month, for all payments made on behalf of the cardholder by the issuer during the preceding month. The issuer does not extend credit to the holder beyond the date of the monthly statement, nor does it impose interest charges on the balance due except as a penalty for late payment. Examples of Charge Cards are the American Express Green, Gold, Platinum, and Black cards as well as the *Diners Club* and *Carte Blanche* cards issued by Citibank.

c. “General Purpose Cards” collectively refers to Credit Cards and Charge Cards.

d. “Network Services” or “Card Services” means the services and infrastructure that Visa and MasterCard and their members provide to merchants through which payment transactions are conducted, including authorization, settlement, and clearance of transactions, and those similar services offered by American Express and Discover. In particular, the network services enable the Visa and MasterCard Acquiring Banks to acquire payment transactions and to obtain authorization and payment from the Issuing Banks.

e. “Issuing Bank” or “Issuer Bank” means a member of Visa and/or MasterCard that issues Visa and/or MasterCard branded payment cards (“bank cards”) to consumers for their use as payment systems and access devices. Issuing Banks compete with each other to issue Visa and MasterCard cards to consumers.

f. “Acquiring Bank” or “Acquirer Bank” means a member of Visa and/or MasterCard that acquires payment transactions from merchants and acts as a liaison between

the merchant and the bank card network to assist in processing the payment transaction. In a typical payment transaction, when a customer presents a Visa or MasterCard card for payment, the merchant relays the transaction information to the Acquiring Bank. The Acquiring Bank then contacts the Issuing Bank via the network for approval based on available credit or funds. Acquiring Banks compete with each other for the right to acquire payment transactions from merchants.

g. “Interchange Fee” in the United States General Purpose Card Network Services markets means a fee that merchants pay to the Issuing Bank through the Acquiring Bank for each retail transaction where the Issuer’s card is used as a payment device at one of the Acquirer’s retail store accounts. The Interchange Fee is paid to the Issuing Bank through the Acquiring Bank by Class members, and constitutes a component of and a floor for the Merchant Discount Fee. The following example illustrates how the Visa and MasterCard Interchange Fees work. A customer presents a Visa or MasterCard card to a merchant as a payment method. The merchant contacts the Acquiring Bank to process the transaction. The Acquiring Bank contacts the Issuing Bank via the network service for authorization based on the available credit or funds. If the transaction is authorized, the Issuing Bank pays the Acquiring Bank the payment amount minus the “Interchange Fee,” which is fixed by Visa or MasterCard. The Acquiring Bank then pays the merchant the payment amount minus the Interchange Fee and other charges for processing the transaction. The total fee charged the merchant is known as the “Merchant Discount Fee” the largest component of which is the Interchange Fee. The Visa Interchange Fee is fixed periodically by the Visa Board of Directors and the MasterCard Interchange Fee is fixed periodically by the MasterCard Board of Directors. “Merchant Discount Fee” means the total amount that the merchant, such as one

of the Class members, pays to its Acquiring Bank for each transaction involving a Visa or MasterCard credit or off-line debit card. The Merchant Discount Fee includes three components, the Interchange Fee, association fees, and an additional processing fee that the Acquiring Bank charges.

h. “Grace Period” refers to the time between a consumer’s purchase and the date in which the consumer’s payment is due to the Issuing Bank.

i. “Float” refers to the expense the Issuing Bank incurs by extending interest-free credit to the consumer for the grace period between the date of purchase and the date of payment.

j. “Merchant Discount Fee” is the fee paid by the merchant for Network Services.

k. “Payment Guarantee Services” refers to a service a merchant might purchase that insures the merchant against Credit Card fraud, check fraud, and other forms of payment fraud.

l. “Payment Card” refers to a plastic card that enables consumers to make purchases from merchants that accept the consumer’s payment card. The term “Payment Cards” refers to several different types of cards, including, for example, General Purpose Cards, debit cards, Travel & Entertainment Cards, stored value cards, and merchant proprietary cards.

VII. RELEVANT MARKETS

62. General Purpose Cards are the product dimension of a relevant market.

63. The geographic dimension of this market is the United States ("General Purpose Card Market"). *United States v. Visa*, 163 F. Supp. 2d 322, 339-40 (S.D.N.Y. 2001), *aff'd*, 344 F.3d 229, 239 (2d Cir. 2003).

64. General Purpose Card Network Services is the product dimension of a relevant market. The geographic dimension of this market is the United States ("General Purpose Card Network Services Market"). *United States v. Visa*, 163 F. Supp. 2d at 338, *aff'd*, 344 F.3d at 239.

65. Both Visa and MasterCard, jointly and separately, have market power in the market for General Purpose Cards and General Purpose Card Network Services. *United States v. Visa*, 163 F. Supp. 2d at 340, *aff'd*, 340 F.3d at 239.

66. The market shares of Visa and MasterCard indicate that each has market power in the General Purpose Card Network Services market. In 1999, Visa had a 47% share of the General Purpose Card transactions by dollar volume in the United States, while MasterCard's share was 26%. Visa and MasterCard had a combined market share of 73%. *Visa*, 163 F. Supp. 2d at 341. At that time, Visa and MasterCard collectively issued 85% of the General Purpose Cards in the United States. *Id.*

67. Visa and MasterCard have exercised their market power in the General Purpose Card Network Services market. Visa and MasterCard can each raise Interchange Fees and have done so without losing retailers because "the cards are such preferred payment methods that customers would choose not to shop at merchants who do not accept them." *Visa*, 163 F. Supp. 2d at 340.

68. Visa and MasterCard have also demonstrated their market power by "price discriminating" in the level of Interchange Fees charged to various classes of merchants

based, in part, on the degree to which a class of merchants needs to accept General Purpose Cards. *Visa*, 163 F. Supp. 2d at 340.

69. There are significant barriers to entry in the General Purpose Card Network Services Market. No company has entered the market since 1985, when Sears entered with its Discover brand card. Entry would cost over \$1 billion and would involve a "'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." *Visa*, 163 F. Supp. 2d at 342.

70. Credit Cards permit consumers to borrow the money for a retail purchase from the card issuer and to repay the debt over time, according to the provisions of a revolving credit agreement with the issuer.

71. Both Credit Cards and Charge Cards permit a consumer to borrow the money for a retail purchase from a card issuer and to repay the debt without incurring interest charges during the "Grace Period," according to the provisions of an agreement with the issuer.

VIII. FACTUAL ALLEGATIONS

72. Visa and MasterCard (collectively, the "Associations") are national bank-card associations whose members include banks, regional banking associations, and other financial institutions. Visa and MasterCard were established by their members to develop, promote, and operate national bank Credit Card networks.

73. Visa and MasterCard evolved from regional and local Credit Card systems formed during the 1960's.

74. 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.

75. MasterCard is the successor to Mastercharge, which was created in 1967 when the Interbank Card Association of New York banks merged with the Western States Bankcard Association.

76. During the early years of the Visa and MasterCard Associations, merchants that accepted Credit Cards made paper records of transactions, which were then passed to the merchant's Acquiring Bank and the consumer's card Issuing Bank.

77. In the late 1980's, technology evolved such that transactions were processed electronically and paper records were not needed for most payment card transactions. Since that time, the costs of the various components of credit card transaction processing (for example, telephone service, internet service, and data processing services) have decreased significantly. These changes led to significant reductions in the costs of processing payment card transactions.

78. Since MasterCard and Visa began operating on a national scale, use of their cards has increased dramatically. The percentage of U.S. households with Credit Cards increased from 16% in 1970 to 68% in 1998.

79. Since 1970, the number of Visa member banks has increased from approximately 1,400 to nearly 14,000 in the United States and 21,000 worldwide. U.S. consumers now carry more than 429 million Visa-branded credit, commercial, prepaid, and check cards.

80. MasterCard has experienced similar growth and now includes more than 23,000 member banks worldwide. During MasterCard's 2004 fiscal year, it issued over 337 million MasterCard-branded cards in the United States.

A. Interchange Fees In The Context Of A Credit Card Transaction.

81. The Visa and MasterCard networks are clearinghouses that facilitate the exchange of funds between merchant, Acquiring Bank, Issuing Bank, and consumer.

82. When a customer makes a payment with a Credit Card, the merchant sends an electronic transmission to its Acquiring Bank, which in turn sends the merchant the payment amount minus the Merchant Discount Fee. The merchant's Acquiring Bank then sends an electronic transmission to the card-holder's Issuing Bank, which makes a payment to the Acquiring Bank for the purchase amount minus the Interchange Fee. Finally, the Issuing Bank charges the cardholder's credit account for the full amount of the purchase. Typically, during the Grace Period between the purchase and the date payment is due from the consumer, the Issuing Bank extends free credit to the consumer. Under this system, the Issuing Bank earns revenue from annual fees and interest charged to cardholders, as well as the amount of the Interchange Fee, while the Acquiring Bank earns revenue from the difference between the Merchant Discount Fee and the Interchange Fee.

83. Banks, acting through Visa and MasterCard, set uniform Interchange Fees to be imposed on merchants for Credit Card purchases among each of several classes of merchants. All prices are fixed at the Visa and MasterCard network level; these member banks do not independently negotiate Interchange Fees among themselves.

84. The Bank Defendants, acting as members of Visa by and through the Visa Board of Directors, fixed uniform Interchange Fees for all Visa General Purpose Card

transactions. Those same Bank Defendants, acting by and through the Board of Directors of MasterCard, set similar uniform Interchange Fees for all MasterCard General Purpose Card transactions.

85. Interchange Fees were devised in the early days of the Visa and MasterCard networks purportedly to pay for the costs of transferring transactional paper between Acquiring and Issuing Banks, and purportedly to balance network costs between Issuers and Acquirers. These early Interchange Fees were cost-based, set with the help of independent auditing firms.

86. Interchange Fees were purportedly necessary in the early days of the Visa and MasterCard Associations to induce banks to issue cards to cardholders and to “acquire” merchants for the Associations.

87. Those initial proffered justifications for collectively-set Interchange Fees are no longer valid, if they ever were. The Associations are no longer required to transfer large numbers of paper receipts between member banks, and Interchange Fees are no longer cost-based.

88. Unlike in the early days of the Associations, Visa and MasterCard now, jointly and severally, have market power in the market for General Purpose Card network services. Even in the face of frequent and significant increases in Interchange Fees, merchants have no choice but to continue to accept Visa and MasterCard’s dominant Credit Cards. *Visa*, 163 F. Supp. 2d at 340, *aff’d*, 340 F.3d at 240.

89. Therefore, given the ubiquity of Visa and MasterCard payment cards, banks now would find it in their interest to issue Visa and MasterCard payment cards and acquire merchants for the Associations, even without the promise of large Interchange Fee revenues.

90. Acquiring Banks charge retailers a Merchant Discount Fee for each Credit Card transaction completed on the Defendants' networks. The Credit Card Interchange Fee, fixed by Visa and MasterCard, is the major component of these Merchant Discounts. Indeed, the Interchange Fee is reflected in the Merchant Discount Fee, and effectively sets and fixes a minimum Merchant Discount Fee and sets and fixes the Interchange Fee component of the Merchant Discount Fee. It would therefore not be feasible for Acquiring Banks to set a Merchant Discount Fee below the Interchange Fee set by Visa and MasterCard. For this reason, the Interchange Fee acts as a minimum Merchant Discount Fee paid by the Class.

91. The Visa and MasterCard networks could function efficiently without collectively fixed Interchange Fees. Even if the members of Visa and MasterCard did not fix the Interchange Fees, the Visa and MasterCard networks could continue in their roles as clearinghouses between Issuing and Acquiring Banks. There are many examples of similar networks that function very efficiently without collectively-set Interchange Fees.

92. The collective fixing of the Interchange Fee is not reasonably necessary to the operation of the Visa and MasterCard networks. Even if some Interchange Fee were reasonably necessary, the collectively fixed Interchange Fee is more restrictive than is necessary to effectuate the business of Visa and MasterCard. Other four-party, two-sided markets function efficiently without Interchange Fees.

B. Defendants Tie And Bundle Several Distinct Services In Their Interchange Fees And Enter Into Agreements With Merchants For The Exclusive Provision Of Those Services.

93. The Defendants illegally tie and bundle together separate and distinct services in the Interchange Fee.

94. Interchange Fees purportedly pay for the costs of many separate and distinct services, including the “Float,” promotional costs of the Visa and MasterCard member banks and networks, transaction processing costs, and the limited Payment Guarantee Services.

95. Both Visa and MasterCard, jointly and separately, have market power in the market for General Purpose Card Network Services.

96. Visa and MasterCard, and the Bank Defendants, acting through the Associations, collectively decide to set a fixed Interchange Fee and bundle together the distinct services described above in their Interchange Fees. Because these products are bundled together, Interchange Fees, and thereby Merchant Discount Fees, are higher than they would have been absent these collectively-established bundling practices.

97. Visa and MasterCard, and the Bank Defendants, acting through the Associations, enter into arrangements with merchants that accept their General Purpose Card Network Services to be the exclusive provider of those merchants’ Payment Guarantee Services for General Purpose Card transactions.

98. These exclusive dealing arrangements foreclose a significant share of the market from competitors to Visa and MasterCard in the market for Payment Guarantee Services, among other things.

99. 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. If Visa, MasterCard, and the Bank Defendants did not tie and bundle together these separate and distinct services many merchants could and would choose to purchase the Payment Guarantee Services included in the Interchange Fee from other vendors or would choose to self-insure against fraud. Even those retailers that might choose to purchase the various unbundled

services from Visa and MasterCard would benefit from Visa and MasterCard lowering their prices for those services in response to competition from other providers offering these services.

100. Defendants' tying and bundling of the fees for these separate and distinct services prevents other firms from competing on the merits to offer those services independently and at lower prices, to merchants.

101. The members of the Class suffer harm from the Defendants' bundling of these services in the form of Interchange Fees for the tied and bundled services that are set at a higher rate than if those services were offered separately. This harm outweighs any efficiency benefit that the Defendants may argue arises from the tying and bundling of separate and distinct services.

102. These restraints on competition are not reasonably related to the operations of Visa and MasterCard and, even if they were reasonably necessary, they are more restrictive than necessary to effectuate the business of Visa and MasterCard.

C. **Duality Facilitates Interchange Fee Fixing, Tying and Bundling, and Exclusive Dealing.**

103. Since 1976, Visa's and MasterCard's rules have permitted banks to be members of both Visa and MasterCard and issue both brands of plastic Credit Cards. This is referred to as "Duality". Banks could also "acquire" retail stores for both Visa and MasterCard. Every major bank in the United States is a member of both Visa and MasterCard, and there is currently more than 95% overlap in the Associations' memberships. Furthermore, virtually every merchant that accepts Visa Credit Cards as a form of payment also accepts MasterCard Credit Cards.

104. There are very few exceptions to Duality among the thousands of financial institutions that issue Visa and/or MasterCard Credit Cards, and the financial institutions that acquire retail stores for Visa and/or MasterCard. Each of the Bank Defendants are members of both associations.

105. Duality accelerated two trends that have characterized and dominated the development of the Associations. Because their memberships are virtually identical, the Associations communicate frequently, exchange data, and coordinate much of their activity through joint programs, consciously parallel activity, and tacit collusion. Duality also facilitated a high degree of uniformity in interest rates and fees charged by the Associations' members to consumer General Purpose Cardholders, and Merchant Discount Fees charged by the Associations' members to merchants accepting Visa and MasterCard plastic cards.

106. Even absent explicit communication between Visa and MasterCard, banks, being members of both Associations, can and do easily pass information between the two Associations, in part through participation on the boards and committees of the two Associations.

107. The trend towards uniformity in pricing among dual Visa/MasterCard members has also been facilitated and exacerbated because Visa bank members collectively fix the Visa Interchange Fees and contemporaneously, acting as MasterCard members, collectively fix the MasterCard Interchange Fees.

108. Therefore, virtually without exception, an Interchange Fee increase by one network is followed by a similar Interchange Fee increase by the other network. These price fixed Interchange Fees are the largest component of the "Merchant Discount Fees" charged to

retailers who accept Visa and MasterCard cards. These collective acts are all manifestations of Duality and the parallel and interdependent behavior it has spawned.

109. The Network Services offered by Visa and MasterCard to merchants are virtually identical; a Visa transaction is indistinguishable from a MasterCard transaction. The transactions utilize the same relationships among the same member banks to provide the same method of payment to retailers. Because of this identity between products, Visa and MasterCard should principally compete on price. The lack of significant non-price competition further facilitates collusion between the Defendants.

D. The Practices Described Above Harm Competition.

110. The collective setting of Interchange Fees restrains competition between Visa and MasterCard member banks for the provision of General Purpose Card Network Services to merchants. This harms competition by imposing large and ever-increasing Interchange Fees and thereby elevating Merchant Discount Fees to supracompetitive levels.

111. The tying of Payment Guarantee Services to General Purpose Card Network Services harms competition by foreclosing competitors from a significant share of the market for Payment Guarantee Services. Under Defendants' tying and bundling practices, a merchant that purchases General Purpose Card Network Services from the Defendants must also purchase Payment Guarantee Services from the Defendants. Having foreclosed competition, these tying and bundling practices allow Defendants to raise the price of Payment Guarantee Services to supracompetitive levels.

112. Similarly, Defendants' exclusive dealing arrangements with merchants for the provision of Payment Guarantee Services harms competition by foreclosing competitors of

the Defendants from providing Payment Guarantee Services to merchants that accept Visa and MasterCard General Purpose Cards.

**FIRST CLAIM FOR RELIEF:
RULE OF REASON VIOLATIONS OF SHERMAN ACT, SECTION 1
UNLAWFUL PRICE FIXING OF INTERCHANGE FEES
BY VISA AND ITS MEMBER BANKS**

113. The Class repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth here.

114. Throughout the relevant period, Visa, and its member banks, including the Bank Defendants, who are all in competition with each other, engaged in unlawful contracts, combinations and conspiracies in an unreasonable restraint of interstate trade or commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

115. The unlawful contracts, combinations, and conspiracies consisted of continuing agreements, understandings, and concerts of action between and among Visa's issuing and acquiring members including the Bank Defendants and Visa, the substantial terms of which were to illegally fix, raise, maintain, or stabilize the Credit Card Interchange Fees for the Defendants' General Purpose Card Network Services.

116. The Visa Board of Directors, which includes representatives from several Bank Defendants, voted to fix, raise, maintain, or stabilize the Interchange Fees for Visa transactions, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

117. All of the member banks of Visa, including the Bank Defendants, have had actual knowledge of, and have knowingly participated in, the conspiracy alleged herein.

118. Defendants' contracts, combinations and conspiracies to fix the price for their General Purpose Card Network Services had, among others, the following intended and actual effects:

- a. Actual and potential competition in the General Purpose Card Network Services markets was substantially excluded, suppressed, and effectively foreclosed;
- b. Defendants acquired and maintained market power in the relevant markets;
- c. Defendants controlled, maintained, and elevated above competitive levels the Interchange Fees charged to merchants, including Plaintiffs, for General Purpose Card Network Services;
- d. All Class members were required to pay supracompetitive Credit Card Interchange Fees for each of Visa's General Purpose Card Network Services; and
- e. Defendants derived direct and substantial economic benefits from the supracompetitive Interchange Fees for their General Purpose Card Network Services.

119. As a consequence of the Defendants' illegal combinations and conspiracies, all Class members suffered a common injury to their business and property, in part, because they were charged higher Interchange Fees for General Purpose Card Network Services than they would have paid in the absence of the Defendants' conduct. The specific amount of damages suffered by the Class has not yet been determined, as such determination will require additional discovery and expert analysis, but the Class estimates damages will range in the tens of billions of dollars.

120. The contract, combination, conspiracy, and agreement has had, and/or is likely to have, among other things, the following effects which are common to the entire Class of Plaintiffs:

- a. Actual and potential competition in the General Purpose Card Network Services market was substantially excluded, suppressed, and effectively foreclosed;
- b. Visa acquired and maintained market power in the relevant markets;

- c. Visa controlled, maintained, and elevated above competitive levels the Interchange Fees charged to Class members for General Purpose Card Network Services;
- d. Class members were required to pay supracompetitive Interchange Fees for Visa and MasterCard General Purpose Card Network Services;
- e. Defendants derived direct and substantial economic benefits from the supracompetitive Interchange Fees for their General Purpose Card Network Services;
- f. But for the anticompetitive conduct of Visa and its member banks, competition among banks would have eliminated or greatly reduced the Interchange Fees for General Purpose Card Network Services in order to gain business from merchants; and
- g. But for the anticompetitive conduct of Defendants, Class members would have saved tens of billions of dollars by avoiding to pay collectively fixed Interchange Fees to accept payment with Visa Credit Cards and access to Visa's network services.

121. The collectively fixed Interchange Fee is illegal under the rule of reason. It is not necessary to accomplish any procompetitive benefit of the Visa joint venture. Even if some horizontal agreement were necessary to promote the efficiencies of the Visa network, the collectively set Interchange Fee is significantly more restrictive than necessary to bring about those efficiencies. Visa and its member banks' price fixing achieved few procompetitive benefits to counterbalance its demonstrated anticompetitive effects in the General Purpose Card Network Services market.

**SECOND CLAIM FOR RELIEF:
 RULE OF REASON VIOLATIONS OF SHERMAN ACT, SECTION 1
 UNLAWFUL PRICE FIXING OF INTERCHANGE FEES BY
MASTERCARD AND ITS MEMBER BANKS**

122. The Class repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth here.

123. Throughout the relevant period, MasterCard and its member banks, including Bank Defendants, who are all in competition with each other, engaged in unlawful contracts,

combinations and conspiracies in an unreasonable restraint of interstate trade or commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

124. The unlawful contracts, combinations, and conspiracies consisted of continuing agreements, understandings, and concerts of action between and among MasterCard's issuing and acquiring members, including Bank Defendants and MasterCard, the substantial terms of which were to illegally fix, raise, maintain, or stabilize the Credit Card Interchange Fees for the Defendants' General Purpose Card Network Services.

125. The MasterCard Board of Directors, which includes representatives from several Bank Defendants, voted to fix, raise, maintain, or stabilize the Interchange Fees for MasterCard transactions, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

126. All of the member banks in the MasterCard Association, including the Bank Defendants, have had actual knowledge of, and have knowingly participated in, the conspiracy alleged herein.

127. Defendants' contracts, combinations and conspiracies to fix the price for their General Purpose Card Network Services had, among others, the following intended and actual effects:

- a. Actual and potential competition in the general purpose and debit card network services markets was substantially excluded, suppressed, and effectively foreclosed;
- b. Defendants acquired and maintained market power in the relevant markets;
- c. Defendants controlled, maintained, and elevated above competitive levels the Credit Card Interchange Fees charged to class members, including Named Plaintiffs and the Class, for General Purpose Card Network Services;

- d. All Class members were required to pay supracompetitive Credit Card Interchange Fees for each of MasterCard's General Purpose Card Network Services; and
- e. Defendants derived direct and substantial economic benefits from the supracompetitive Interchange Fees for their general purpose and debit card services.

128. As a consequence of the Defendants' illegal combinations and conspiracies, all Class members suffered a common injury to their business and property, in part, because they were charged higher Interchange Fees for General Purpose Card Network Services than they would have paid in the absence of the Defendants' conduct. The specific amount of damages suffered by the Class has not yet been determined, as such determination will require additional discovery and expert analysis, but the Class estimates damages will range in the tens of billions of dollars.

129. The contract, combination, conspiracy, and agreement has, had, and/or is likely to have, among other things, the following effects which are common to the entire Class of Plaintiffs:

- a. Actual and potential competition in the General Purpose Card Network Services market was substantially excluded, suppressed, and effectively foreclosed;
- b. MasterCard acquired and maintained market power in the relevant markets;
- c. MasterCard controlled, maintained, and elevated above competitive levels the Interchange Fees charged to class members for General Purpose Card Network Services;
- d. Class members were required to pay supracompetitive Interchange Fees for MasterCard General Purpose Card Network Services;
- e. Defendants derived direct and substantial economic benefits from the supracompetitive Interchange Fees for their General Purpose Card Network Services;

- f. But for the anticompetitive conduct of MasterCard and its member banks, competition among MasterCard's member banks would have eliminated or greatly reduced the Interchange Fees for their General Purpose Card Network Services in order to gain business from merchants; and
- g. But for the anticompetitive conduct of Defendants, Class members would have saved tens of billions of dollars by avoiding to pay collectively fixed Interchange Fees to accept payment with MasterCard Credit Cards and access to MasterCard's network services.

130. The collectively fixed Interchange Fee is illegal under the rule of reason. It is not necessary to accomplish any procompetitive benefits of the MasterCard joint venture. Even if some horizontal agreement were necessary to promote the efficiencies of the MasterCard network, the collectively set Interchange Fee is significantly more restrictive than necessary to bring about those efficiencies. MasterCard and its member banks' price fixing achieved few procompetitive benefits to counterbalance its demonstrated anticompetitive effects in the General Purpose Card Network Services market.

**THIRD CLAIM FOR RELIEF:
VIOLATION OF THE SHERMAN ACT, SECTION 1
UNLAWFUL PRICE FIXING OF INTERCHANGE FEES
BETWEEN DEFENDANTS VISA AND MASTERCARD
AND THEIR MEMBER BANKS**

131. The Class repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth here.

132. Visa and MasterCard, together with Bank Defendants and other member banks, have agreed to fix, raise, maintain or stabilize Credit Card Interchange Fees set by Visa and MasterCard for General Purpose Card Network Services at similar supracompetitive levels, and have agreed not to reduce such Interchange Fees.

133. Throughout the relevant time period, Defendants consciously engaged in parallel conduct and other conduct which supports the inference of the above-described

agreement. In addition to consciously parallel conduct, the Defendants' conduct exhibits the following "plus factors," among others, which support the inference of the above-described agreement:

- a. A high level of communication regarding fees and promotions existed between and among Visa and MasterCard, both directly and through the Bank Defendants and other dual member banks;
- b. The Network Services that Visa and MasterCard provide to merchants are indistinguishable from each other;
- c. Credit Card Interchange Fees for both Visa and MasterCard move in parallel and stair-step fashion. Virtually without exception, an increase in Interchange Fees by one Association was met with an increase by the other; and
- d. Both Visa and MasterCard each have substantial market power and have an incentive and the ability to maintain Interchange Fees at supracompetitive levels to protect their profits from competition from each other.

134. Visa and MasterCard each achieved their anticompetitive objectives, in part, by agreeing, separately and together, to establish, implement, and maintain a price fixing scheme whereby they fixed supracompetitive Interchange Fees for each of their General Purpose Card Network Services.

135. The conspiracy by Visa and MasterCard to fix the price of their General Purpose Card Network Services had, among others, the following intended and actual effects:

- a. Actual and potential competition in the General Purpose Card Network Services markets was substantially excluded, suppressed, and effectively foreclosed;
- b. Defendants acquired and maintained market power in the relevant markets;
- c. Defendants controlled, maintained, and elevated above competitive levels the Interchange Fees charged to merchants, including Named Plaintiffs and the Class, for General Purpose Card Network Services;

- d. All Class members were required to pay supracompetitive Interchange Fees for each of Defendants' General Purpose Card Network Services; and
- e. Defendants derived direct and substantial economic benefits from the supracompetitive Interchange Fees for their General Purpose Card Network Services.

136. As a consequence of the Defendants' illegal conspiracies, the Class suffered a common injury to their business and property, in part, because they were caused to pay higher Interchange Fees for General Purpose Card Network Services than they would have paid in the absence of the Defendants' conduct. The specific amount of damages suffered by the Class has not yet been determined, as such determination will require additional discovery and expert analysis, but the Class estimate damages will range in the tens of billions of dollars.

137. The conspiracy and agreement have, had, and/or is likely to have, among other things, the following effects which are common to the entire Class of Plaintiffs:

- a. Actual and potential competition in the General Purpose Card Network Services markets was substantially excluded, suppressed, and effectively foreclosed;
- b. Defendants acquired and maintained market power in the relevant markets;
- c. Defendants controlled, maintained, and elevated above competitive levels the Interchange Fees charged to merchants for General Purpose Card Network Services; and
- d. The entire Class of merchants required to pay supracompetitive Interchange Fees for each Defendants' General Purpose Card Network Services.

138. These restraints on competition are illegal *per se*. They are not reasonably related to the operations of the Visa and MasterCard joint ventures, and even if they were

reasonably necessary, they are broader than necessary to effectuate the business of Visa and MasterCard.

**FOURTH CLAIM FOR RELIEF:
VIOLATION OF THE SHERMAN ACT, SECTION 1
UNLAWFUL TYING AND BUNDLING OF TRANSACTION PROCESSING
FEES AND OTHER SEPARATE AND DISTINCT SERVICES
BY DEFENDANT VISA AND BANK DEFENDANTS**

139. The Class repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth here.

140. Throughout the relevant period, Visa and its member banks, which are all in competition with each other, engaged in unlawful contracts, combinations and conspiracies in an unreasonable restraint of interstate trade or commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

141. The unlawful contracts, combinations, and conspiracies consisted of continuing agreements, understandings, and concerts of action between and among the Bank Defendants and Visa, the substantial terms of which were to illegally tie and bundle together the separate and distinct services identified in ¶ 94 above.

142. Visa and its member banks, including Bank Defendants, achieved their anticompetitive objectives, in part, by agreeing, separately and together, to establish, implement, and maintain this bundling arrangement, in which Visa and its members offered network services only to those retailers that accepted the other separate and distinct services as well.

143. Throughout the relevant time period, Visa acquired and maintained market power for General Purpose Card Network Services.

144. Throughout the relevant time period, Visa forced all merchants that accepted Visa General Purpose Card transactions to also purchase the Payment Guarantee Services from Visa. These merchants thus lost the ability to purchase Payment Guarantee Services from independent vendors or self-insure against loss to fraud.

145. Various forms of payment guarantees are often sold and purchased independently of General Purpose Card Network Services.

146. Absent this tying and bundling arrangement, many merchants, including some Named Plaintiffs and Class members, would have purchased payment guarantees from other sources or would have chosen to self-insure against loss to fraud.

147. These tying and bundling arrangements harmed competition in the market for Payment Guarantee Services. All Class Members were harmed by this tying and bundling arrangement by paying higher prices for the payment guarantee than they would have paid in a competitive environment.

148. Throughout the relevant time period, the bundling arrangements perpetrated by Visa, Bank Defendants, and other member banks affected a substantial amount of commerce in the markets for Payment Guarantee Services.

149. Defendants' contracts, combinations and conspiracies to bundle together these separate and distinct services had, among others, the following intended and actual effects that were common to all Class Members:

- a. Retailers, including Plaintiffs and the Class, were forced to purchase all of these separate and distinct services from Visa and pay Visa's supracompetitive Interchange Fees as a condition of accepting Visa's dominant and ubiquitous network services;
- b. The entire class of merchants paid fees for these separate and distinct services that exceeded the unbundled and competitive prices for those services;

- c. A substantial amount of commerce in the market for payment guarantees was affected by the contracts, combinations, and conspiracies between Visa and its members to tie fraud protection and transaction costs to its dominant network services; and
- d. The competitive harm caused by the bundling and tying arrangement between Visa and its members exceeded any efficiency benefit that Defendants may argue arose from these practices.

150. As a consequence of the Defendants' illegal combinations and conspiracies, Class members suffered a common injury to their business and property, in part, because they were forced to pay higher fees for these separate and distinct services than they would have paid in the absence of the Defendants' bundling arrangements. The specific amount of damages suffered by the Class has not yet been determined, as such determination will require additional discovery and expert analysis, but the Class estimates that damages will range in the tens of billions of dollars.

151. This tying and bundling arrangement is illegal under Section 1 of the Sherman Act.

**FIFTH CLAIM FOR RELIEF:
VIOLATION OF THE SHERMAN ACT, SECTION 1
UNLAWFUL TYING AND BUNDLING OF TRANSACTION PROCESSING
FEES AND OTHER SEPARATE AND DISTINCT SERVICES
BY DEFENDANT MASTERCARD AND BANK DEFENDANTS**

152. The Class repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth here.

153. Throughout the relevant period, MasterCard and its member banks, which are all in competition with each other, engaged in unlawful contracts, combinations and conspiracies in an unreasonable restraint of interstate trade or commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

154. The unlawful contracts, combinations, and conspiracies consisted of continuing agreements, understandings, and concerts of action between and among the Bank Defendants and MasterCard, the substantial terms of which were to illegally tie and bundle together the separate and distinct services identified in ¶ 94 above.

155. MasterCard and its member banks, including Bank Defendants, achieved their anticompetitive objectives, in part, by agreeing, separately and together, to establish, implement, and maintain this tying and bundling arrangement, in which MasterCard and its members offered network services only to those retailers that also accepted the other separate and distinct services as well.

156. Throughout the relevant time period, MasterCard acquired and maintained market power for General Purpose Card Network Services.

157. Throughout the relevant time period, MasterCard forced all merchants that accepted MasterCard General Purpose Card transactions to also purchase the payment guarantee from MasterCard. These merchants thus lost the ability to purchase payment guarantees from independent vendors or self-insure against loss to fraud.

158. Various forms of payment guarantees are often sold and purchased independently of General Purpose Card Network Services.

159. Absent this tying and bundling arrangement, many merchants, including some Named Plaintiffs and Class Members, would have purchased payment guarantees from other sources or would have chosen to self-insure against loss to fraud.

160. These tying and bundling arrangements harmed competition in the market for Payment Guarantee Services. All Class Members were harmed by this tying and bundling

arrangement by paying higher prices for the payment guarantee than they would have paid in a competitive environment.

161. Throughout the relevant time period, the tying and bundling arrangements perpetrated by MasterCard, Bank Defendants, and other member banks affected a substantial amount of commerce.

162. Defendants' contracts, combinations and conspiracies to tie and bundle together these separate and distinct services had, among others, the following intended and actual effects that were common to all Class Members:

- a. The entire Class of merchants was forced to purchase all of these separate and distinct services from MasterCard and pay MasterCard's supracompetitive Interchange Fees as a condition of accepting MasterCard's dominant and ubiquitous network services;
- b. The entire Class of merchants paid fees for these separate and distinct services that exceeded the untied and competitive prices for those services;
- c. A substantial amount of commerce was affected by the contracts, combinations, and conspiracies between MasterCard and its members to tie fraud protection and transaction costs to its dominant network services; and
- d. The competitive harm caused by the bundling arrangement between MasterCard and its members exceeded any efficiency benefit that Defendants may argue arose from these practices.

163. As a consequence of the Defendants' illegal combinations and conspiracies, Class members suffered a common injury to their business and property, in part, because they were forced to pay higher fees for these separate and distinct services than they would have paid in the absence of the Defendants' bundling arrangements. The specific amount of damages suffered by the Class has not yet been determined, as such determination will require additional discovery and expert analysis, but the Class estimates that damages will range in the tens of billions of dollars.

164. This tying and bundling arrangement is illegal under Section 1 of the Sherman Act.

**SIXTH CLAIM FOR RELIEF:
VIOLATION OF THE SHERMAN ACT, SECTION 1, 15 U.S.C. § 1
UNLAWFUL EXCLUSIVE DEALING
BY DEFENDANT VISA AND BANK DEFENDANTS**

165. The Class repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth here.

166. The agreements between Visa and its member banks, including several Bank Defendants, not to sell the payment guarantee untied from Visa's General Purpose Card Network Services unreasonably restrict competition and therefore violate Section 1 of the Sherman Act, 15 U.S.C. § 1.

167. By acting as the exclusive provider of Payment Guarantee Services to merchants that accept Visa, Visa unreasonably forecloses a significant share of the market from its competitors in the Payment Guarantee Services market.

168. Because competitors of Visa are foreclosed from selling Payment Guarantee Services to merchants accepting Visa General Purpose Cards, those merchants pay higher prices for the payment guarantee than they would have paid in a competitive market.

169. Because these merchants pay higher prices for payment guarantee than they would have paid in a competitive market, competition in the market for Payment Guarantee Services was harmed.

170. There exists no countervailing benefit to competition to offset the harm that Visa's exclusive dealing has imposed on the Class. Even if such a benefit did exist, it would not outweigh the harm to competition that Visa and its member banks impose.

**SEVENTH CLAIM FOR RELIEF:
VIOLATION OF THE SHERMAN ACT, SECTION 1, 15 U.S.C. § 1
UNLAWFUL EXCLUSIVE DEALING
BY MASTERCARD AND ITS MEMBER BANKS**

171. The Class repeat and re-allege each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth here.

172. The agreements between MasterCard and its member banks, including several Bank Defendants, not to sell the payment guarantee untied from MasterCard's General Purpose Card Network Services unreasonably restrict competition and therefore violate Section 1 of the Sherman Act, 15 U.S.C. § 1.

173. By acting as the exclusive provider of Payment Guarantee Services to merchants that accept MasterCard, MasterCard unreasonably forecloses a significant share of the market from its competitors in the Payment Guarantee Services market.

174. Because competitors of MasterCard are foreclosed from selling Payment Guarantee Services to merchants accepting MasterCard General Purpose Cards, those merchants pay higher prices for the payment guarantee than they would have paid in a competitive market.

175. Because these merchants pay higher prices for payment guarantee than they would have paid in a competitive market, competition in the market for Payment Guarantee Services was harmed.

176. There exists no countervailing benefit to competition to offset the harm that MasterCard's exclusive dealing has imposed on the Class. Even if such a benefit did exist, it would not outweigh the harm to competition that MasterCard and its member banks impose.

IX.
PRAYER FOR RELIEF

WHEREFORE, Named Plaintiffs and the Class respectfully pray that this Court:

- A. Declare, adjudge, and decree that Defendants have committed the violations of the federal antitrust laws as alleged herein;
- B. Order that Defendants, their directors, officers, employees, agents, successors, and members be enjoined and restrained from, in any manner, directly or indirectly, committing the violations of Section 1 of the Sherman Act, in which they and co-conspirators have been engaged;
- C. Order that Defendants, their directors, officers, employees, agents, successors, and members be enjoined and restrained from, in any manner, directly or indirectly, committing any other violations of statutes having a similar purpose or effect; and
- D. Award damages sustained by the Class in an amount to be proved at trial, attorneys' fees, and costs of suit; and award all other and further relief as this Court may deem just and proper.

X.
JURY DEMAND

The Named Plaintiffs and the Class hereby demand trial by jury of all issues properly triable thereby.

Dated: June 22, 2005

Respectfully submitted,

KOSKOFF, KOSKOFF & BIEDER PC

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