

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAN 20 2012

IN RE CURRENCY CONVERSION FEE	:	X
ANTITRUST LITIGATION	:	MDL Docket No. 1409
	:	
	:	CONSOLIDATED AMENDED CLASS
THIS DOCUMENT RELATES TO:	:	ACTION COMPLAINT
ALL ACTIONS EXCEPT WALDMAN v.	:	
CITIBANK (SOUTH DAKOTA) N.A.	:	JURY TRIAL DEMANDED
	:	X

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT ROSS, RANDAL WACHSMUTH, :
CAMILLE LAPLACA-POST, MICHAEL H. :
OSHRY, PAMELA GELLER OSHRY, :
ROBERT L. DONALD, CHERIE R. DONALD, :
ESTER GRACE JAVIER, CARAN RUGA, :
JULIE FINKELMAN, ANDREA KUNE, :
INDUCON PARK ASSOCIATES, INC., :
LESLIE COOPER, JONATHAN LIPNER, :
HOWARD STEINLAUF, BYRON BALBACH, :
JR., JEANNE H. BALBACH, TIM LYNCH, :
and DIANE LYNCH, on behalf of themselves :
and all others similarly situated, :

Plaintiffs,

vs.

VISA U.S.A. INC., VISA INTERNATIONAL :
SERVICE ASSOCIATION, MASTERCARD :
INTERNATIONAL INCORPORATED, :
CITIGROUP, INC., CITIBANK (SOUTH :
DAKOTA) N.A., UNIVERSAL BANK, N.A., :
UNIVERSAL FINANCIAL CORP., :
CITIBANK (NEVADA) N.A., CITICORP :
DINERS CLUB, INC., BANK OF AMERICA :
CORPORATION, BANK OF AMERICA, N.A. :
(USA), BANK ONE CORPORATION, FIRST :
USA BANK, N.A., J.P. MORGAN CHASE & :
CO., CHASE MANHATTAN BANK USA, :
N.A., THE CHASE MANHATTAN BANK, :
PROVIDIAN FINANCIAL CORP., :
PROVIDIAN NATIONAL BANK, :
PROVIDIAN BANK, HOUSEHOLD :
INTERNATIONAL, INC., HOUSEHOLD :
FINANCE CORPORATION, HOUSEHOLD :
CREDIT CARD SERVICES, INC., MBNA :
CORPORATION, and MBNA AMERICA :
BANK, N.A.,

Defendants.

x

: MDL Docket No. 1409

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: CONSOLIDATED AMENDED CLASS

: ACTION COMPLAINT

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: JURY TRIAL DEMANDED

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

INTRODUCTORY STATEMENT

1. This is a class action brought on behalf of general purpose cardholders of VISA, MasterCard and Diners Club. The defendants are various entities which comprise the VISA, MasterCard, and Diner Club networks, and certain of the leading bank members of the VISA and MasterCard networks. This Consolidated Amended Complaint (“Complaint”) alleges a series of conspiracies among and between the VISA and MasterCard networks to fix and maintain prices and to violate the Truth in Lending Act (“TILA”) disclosure requirements, all in connection with fees charged to United States cardholders for transactions effected in foreign currencies. U.S. cardholders throughout the VISA and MasterCard networks are charged a collusively set base currency conversion fee equal to 1% of the amount of the foreign currency transaction. In addition, most member banks tack on an additional conversion fee of their own, generally 2%. The VISA and MasterCard networks have actively colluded with their member banks and assisted in implementing and facilitating these “second tier” currency conversion fees by amending their rules and procedures to accommodate these “second tier” fees, and by colluding with the member banks to change these fees at the network stage of the process. Although TILA requires disclosure of such charges in, *inter alia*, cardholder solicitations and billing statements, these currency conversion charges were not so disclosed. In addition to antitrust and TILA conspiracy claims, plaintiffs allege primary TILA violations against the defendants and aiding and abetting violations of TILA against the network defendants, VISA and MasterCard.

JURISDICTION AND VENUE

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

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

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

5. Venue is proper in this judicial district pursuant to §§4, 12 and 16 of the Clayton Act, 15 U.S.C. §§15, 22 & 26, and 28 U.S.C. §§1391(b), (c) & (d). Venue also lies in this district under 28 U.S.C. §1407, regarding multi-district litigation, and the Order of Transfer, dated August 17, 2001, by the Judicial Panel on Multidistrict Litigation.

6. Defendants have agents, transact business, and/or are found within this judicial district. The causes of action alleged in this Complaint arose in part within this district. The interstate trade and commerce described in this Complaint is and has been carried out in part within this district.

DEFINITIONS

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

8. “Credit cards” are general purpose cards which extend to cardholders a revolving line of credit. Cardholders may borrow against the credit line, carrying a balance with an agreed-upon interest rate.

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

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

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

12. “Currency conversion fee” or “currency conversion surcharge” is a fee and/or surcharge levied upon cardholders for general purpose card foreign exchange services, whether or not foreign currency is actually converted or exchanged.

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

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

15. The “Damages Period,” also referred to as the “Relevant Period,” is March 1, 1997 to the date of this Complaint, and continuing thereafter.

THE PARTIES

REPRESENTATIVE PLAINTIFFS¹

16. Plaintiff Robert Ross is a resident of Montgomery County, Pennsylvania. Plaintiff R. Ross has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

17. Plaintiff Randal Wachsmuth is a resident of Montgomery County, Pennsylvania. Plaintiff R. Wachsmuth has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

18. Plaintiff Camille LaPlaca-Post is a resident of Rockland County, New York. Plaintiff C. LaPlaca-Post has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

19. Plaintiff Michael H. Oshry is a resident of Nassau County, New York. Plaintiff M. Oshry has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

20. Plaintiff Pamela Geller Oshry is a resident of Nassau County, New York. Plaintiff P. Oshry has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

21. Plaintiff Robert L. Donald is a resident of San Mateo, California. Plaintiff R. Donald has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

¹ Additional plaintiffs from other actions consolidated in MDL 1409 are set forth in Exhibit A.

22. Plaintiff Cherie R. Donald is a resident of San Mateo County, California. Plaintiff C. Donald has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

23. Plaintiff Ester Grace Javier is a resident of Sacramento County, California. Plaintiff E. Javier has paid currency conversion fees to one or more of the defendants named herein during the relevant period

24. Plaintiff Caran Ruga is a resident of San Francisco County, California. Plaintiff C. Ruga has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

25. Plaintiff Julie Finkelman is a resident of Philadelphia County, Pennsylvania. Plaintiff J. Finkelman has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

26. Plaintiff Andrea Kune is a resident of Los Angeles, California. Plaintiff A. Kune has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

27. Plaintiff Inducon Park Associates, Inc. is a New York corporation with its principal place of business located at 210 Walnut Street, Lockport, New York 14094, in Niagara County, New York. Plaintiff Inducon Park Associates, Inc. has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

28. Plaintiff Leslie Cooper is a resident of St. Thomas, United States Virgin Islands. Plaintiff L. Cooper has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

29. Plaintiff Jonathan Lipner is a resident of Montgomery County, Pennsylvania. Plaintiff J. Lipner has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

30. Plaintiff Howard Steinlauf is a resident of Broward County, Florida. Plaintiff H. Steinlauf has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

31. Plaintiff S. Byron Balbach, Jr. is a resident of Champaign County, Illinois. Plaintiff S. Balbach, Jr. has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

32. Plaintiff Jeanne H. Balbach is a resident of Champaign County, Illinois. Plaintiff J. Balbach has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

33. Plaintiff Tim Lynch is a resident of Cook County, Illinois. Plaintiff T. Lynch has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

34. Plaintiff Diane Lynch is a resident of Cook County, Illinois. Plaintiff D. Lynch has paid currency conversion fees to one or more of the defendants named herein during the relevant period.

DEFENDANTS

The VISA and MasterCard Defendants

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

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

37. Both VISA U.S.A. and VISA International are organized under the laws of the State of Delaware. VISA International’s principal place of business is in Foster City, California, and VISA U.S.A.’s principal place of business is in San Francisco, California.

38. MasterCard International, Incorporated (“MasterCard”) is a membership corporation created, owned, governed and operated by its member financial institutions and is joined as a defendant in this Complaint. MasterCard and its member financial institutions are a joint venture formed for the purpose of disseminating, encouraging and profiting from the use of MasterCard branded credit cards. During the Damages Period, MasterCard was and has been governed by a

board of directors comprised of bank executives selected from its member banks, including some of the Issuing Banks.

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

40. MasterCard is organized under the laws of the State of Delaware, with its principal place of business in Purchase, New York.

The Citigroup/Citibank Defendants

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

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

subsidiary of Citigroup and issues Citibank VISA and MasterCard credit cards and Citicorp Diners Club, Inc. charge cards. Citibank (South Dakota) N.A. is the largest issuer of VISA and MasterCard credit cards in the United States. Citibank (South Dakota) N.A. also is an indirect parent company of Citicorp Diners Club, Inc.

43. Universal Bank, N.A. is a National Banking Association organized under the laws of the United States with its principal place of business in Columbus, Georgia, and is joined as a defendant in this Complaint. Universal Bank, N.A. is a wholly-owned subsidiary of Citigroup and issues AT&T Universal Card credit cards.

44. Universal Financial Corp. is a Utah corporation with its principal place of business in Salt Lake City, Utah, and is joined as a defendant in this Complaint. Universal Financial Corp. is a wholly-owned subsidiary of Citigroup and issues the AT&T Universal Card credit card.

45. Citibank (Nevada) N.A. is a National Banking Association organized under the laws of the United States with its headquarters located in The Lakes, Nevada, and is joined as a defendant in this Complaint. Citibank (Nevada) N.A. provides general purpose card processing services for Citigroup, Inc. and its subsidiaries.

46. At all relevant times, Citigroup exercised such dominion and control over its subsidiaries, Citibank (South Dakota) N.A., Universal Financial Corp., Universal Bank, N.A., Citibank (Nevada) N.A., and Citicorp Diners Club, Inc., that it is liable according to law for the acts of such subsidiaries under the facts alleged in this Complaint. Citigroup and all of its predecessors, affiliates, and subsidiaries, other than Citicorp Diners Club, Inc., are referred to collectively as “Citibank.”

The Diners Club Entities

47. Citicorp Diners Club, Inc. is a Delaware corporation with its principal place of business in Chicago, Illinois, and is joined as a defendant in this Complaint. Citicorp Diners Club, Inc. is a wholly-owned subsidiary of Citibank (South Dakota) N.A., which in turn is a wholly owned subsidiary of Citigroup.

48. Citicorp Diners Club, Inc. owns and operates a general purpose card network and is an issuer of charge cards. Citibank (South Dakota) N.A., Citicorp Diners Club, Inc., and their parents and all of their predecessors, affiliates, and subsidiaries are collectively referred to as “Diners Club.”

The Bank of America Defendants

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

50. Bank of America Corporation is the second largest commercial banking organization in the United States. Bank of America Corporation is the nation’s fifth largest issuer of VISA and MasterCard credit cards. Bank of America issues its credit cards through its wholly-owned subsidiary Bank of America, N.A. (USA). On March 31, 1999, NationsBank of Delaware, N.A., a leading general purpose card issuer, merged with and into Bank of America, N.A. (USA).

51. At all relevant times, Bank of America Corporation exercised such dominion and control over its subsidiary Bank of America, N.A.(USA), that it is liable according to law for the acts

of Bank of America, N.A. (USA) under the facts set forth herein. Bank of America Corporation and all of its predecessors, affiliates, and subsidiaries are collectively referred to as “Bank of America.”

The Bank One/First USA Defendants

52. Bank One Corporation, the nation’s fifth largest Bank Holding Company, is organized under the laws of the United States and maintains its principal place of business in Chicago, Illinois. Bank One Corporation is joined as a defendant.

53. First USA Bank, N.A., is a National Banking Association organized under the laws of the United States, maintains its principal place of business in Wilmington, Delaware, and is joined as a defendant in this Complaint.

54. Bank One Corporation is the nation’s second largest issuer of VISA and MasterCard credit cards. Bank One Corporation issues its VISA and MasterCard credit cards through its subsidiary First USA Bank, N.A.

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

The J. P. Morgan Chase & Co. Defendants

56. J.P. Morgan Chase & Co., successor to the Chase Manhattan Corporation, is a Bank Holding Company organized under the laws of the United States with its principal place of business located in New York, New York, and is joined as a defendant in this Complaint.

57. Chase Manhattan Bank USA, N.A. is a National Banking Association organized under the laws of the United States with its principal place of business in New York, New York, and is joined as a defendant in this Complaint.

58. The Chase Manhattan Bank, a wholly-owned subsidiary of J.P. Morgan Chase & Co., is a New York corporation with its principal place of business in New York, New York, and is joined as a defendant in this Complaint.

59. J.P. Morgan Chase & Co., the nation's fourth largest issuer of VISA and MasterCard credit cards, issues its credit cards through its wholly-owned subsidiary Chase Manhattan Bank USA, N.A. and The Chase Manhattan Bank.

60. At all relevant times J.P. Morgan Chase & Co. exercised such dominion and control over its subsidiaries Chase Manhattan Bank USA, N.A. and the Chase Manhattan Bank that it is liable according to law for the acts of those subsidiaries under the facts alleged in this Complaint. J.P. Morgan Chase & Co. and all of its predecessors, affiliates and subsidiaries are collectively referred to as "Chase Manhattan."

The Providian Defendants

61. Providian Financial Corp. ("Providian Financial"), a publicly traded company headquartered in San Francisco, California, is joined as a defendant in this Complaint.

62. Providian National Bank is a National Banking Association organized under the laws of the United States with its headquarters located in Tilton, New Hampshire. Providian National Bank is a wholly-owned subsidiary of Providian Financial, and is also joined as a defendant in this Complaint.

63. Providian Bank is a Utah State chartered bank based in Salt Lake City, Utah. Providian Bank is a wholly-owned subsidiary of Providian Financial, and is also joined as a defendant in this Complaint.

64. Providian Financial is the nation's sixth largest issuer of VISA and MasterCard credit cards. Providian Financial issues its VISA and MasterCard credit cards through its wholly-owned subsidiaries Providian National Bank and Providian Bank.

65. At all relevant times Providian Financial exercised such dominion and control over its subsidiaries Providian National Bank and Providian Bank that it is liable according to the law for their acts as set forth herein. Providian Financial and all its predecessors, affiliates and subsidiaries are collectively referred to as "Providian."

The Household Defendants

66. Household International, Inc. ("Household International") is the second largest consumer finance corporation in the United States. Household International is a Delaware corporation and maintains its principal place of business in Prospect Heights, Illinois. Household International is joined as a defendant in this Complaint.

67. Household Finance Corporation ("HFC") and Household Credit Card Services, Inc. are wholly-owned subsidiaries of Household International and are also joined as defendants in this Complaint.

68. HFC is the nation's ninth largest issuer of VISA and MasterCard credit cards. HFC is a Delaware corporation and maintains its principal place of business in Prospect Heights, Illinois. Household Credit Card Services, Inc. processes certain general purpose card transactions via which currency conversion fees are assessed. Household Credit Card Services, Inc. is a Delaware corporation and maintains its principal place of business in Salinas, California.

69. At all relevant times, Household International exercised such dominion and control over its subsidiaries HFC and Household Credit Card Services, Inc. that it is liable according to the law for their acts as set forth herein. Household International and all its predecessors, affiliates and subsidiaries are collectively referred to as "Household."

The MBNA Defendants

70. MBNA Corporation is a Bank Holding Company organized under the laws of Maryland, maintains its principal place of business in Wilmington, Delaware, and is joined as a defendant in this Complaint. MBNA Corporation issues its credit cards through its wholly-owned subsidiary MBNA America Bank, N.A.

71. MBNA America Bank, N.A. is a National Banking Association organized under the laws of the United States with its principal place of business in Wilmington, Delaware. MBNA America Bank, N.A. is the nation's third largest issuer of VISA and MasterCard credit cards, and is joined as a defendant in this Complaint.

72. At all relevant times, MBNA Corporation exercised such dominion and control over its subsidiary MBNA America Bank, N.A., that it is liable according to law for the acts of MBNA America Bank, N.A. as set forth herein. MBNA Corporation and all of its predecessors, affiliates, and subsidiaries are collectively referred to as "MBNA."

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

74. The Issuing Banks are among the banks which owned and controlled the operations of VISA and MasterCard during the Damages Period. During the Damages Period and before, VISA's Board of Directors allowed VISA member banks to own and participate in the governance of MasterCard and permitted MasterCard members to own and participate in the governance of VISA. Similarly, MasterCard's board of directors permitted MasterCard member banks to own and govern VISA and VISA members to own and govern MasterCard. These business relationships

provided mechanisms for the inter-firm and inter-association communications that are alleged in this Complaint to have violated both the Sherman Act and TILA.

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

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

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

TRADE AND COMMERCE

78. The trade and commerce relevant to this action is comprised of the issuance by defendants, and use by plaintiffs and the plaintiff classes, of general purpose cards and the provision of foreign exchange services in connection with the use of such cards abroad.

79. During the relevant period, VISA, MasterCard and Diners Club have operated general purpose card networks both throughout the United States and abroad. The networks are the mechanisms by which VISA, MasterCard and Diners Club effect the process of conducting and settling a transaction using their general purpose cards. MasterCard, VISA and Diners Club provide the networks and related products and services, in the United States and abroad, and those networks, products and services affect a substantial amount of interstate commerce. The issuing banks issue VISA and MasterCard general purpose cards throughout the United States. Diners Club issues charge cards throughout the United States. VISA, MasterCard and Diners Club cards issued in the United States can be and are used to make purchases in foreign countries. Purchases are

denominated in the currency of the country in which the purchase is made and then converted into U.S. dollars through the networks and billed to U.S. cardholders in U.S. dollars in transactions and communications that cross state lines and national borders.

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

RELEVANT FACTS

81. General purpose cards, like VISA and MasterCard branded cards, are payment devices that a consumer can use to make purchases: (a) from unrelated merchants; and (b) without accessing or reserving the consumer's funds at the time of the purchase. There are two principal types of general purpose cards:

- **CREDIT CARDS** – such as VISA cards, MasterCard Classic and Gold cards, and the American Express Optima and Blue cards – that usually permit the cardholder to either (i) pay all charges within a set period after a monthly bill is presented, or (ii) pay only a portion of the charges within that time and pay the remainder in monthly installments plus a finance or interest charge; and

- **CHARGE CARDS** – such as the American Express Green Card and Diners Club Card – that require the cardholder to pay all charges within a set period after a monthly bill is presented.

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

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

84. Banks that issue general purpose cards to consumers are generally referred to as “issuing banks.” Banks that provide the network related services to merchants, which enable the merchants to accept payments via the use of a general purpose card, are referred to as “acquirer banks” or “acquiring banks.” Banks may, and often do, function as both issuing and acquiring banks in the VISA and MasterCard networks.

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

The General Purpose Card Networks

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

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

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

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

90. Both VISA and MasterCard are joint ventures – or, as they call themselves, “associations” – created, owned, governed, and operated by and in the interests of their members. Both VISA and MasterCard are organized as membership corporations. Their activities are principally financed through fees and assessments levied on their members, including the Issuing Banks. The 1% currency conversion fee imposed by both MasterCard and VISA is, however, a fee imposed by the association directly on cardholders.

91. Control of both associations is exerted by a select group of member banks – essentially a group of the largest banks operating in the general purpose card market. These large

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

The Member Banks of VISA and MasterCard

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

93. Individual member banks can have varying degrees of authority and power within either of the associations. For example, voting and dissolution rights are apportioned according to the dollar volume of transactions that a member bank has transmitted through an association. In fact, the top ten banks who issue credit cards account for a substantial majority of the total volume of credit card purchases. As of the third quarter 2001, The Nilson Report identified defendants Citibank, MBNA, BankOne/First USA, Chase Manhattan, Provident, Bank of America, and Household as seven of the top ten issuers of VISA and MasterCard credit cards. In that quarter, these seven defendants accounted for \$ 347.275 billion in receivables while the remaining forty-three of the top fifty issuers accounted for \$ 114.798 billion in receivables. As of January 1, 2001, these same seven issuing banks had a total of approximately 232 million card accounts – the

remaining three issuers of VISA and MasterCard cards in the top ten accounted for approximately 29 million accounts that year.

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

95. Through their ownership interests in both the VISA and MasterCard associations, a small group of the largest member banks, including the Issuing Banks, exert control over the operations of both associations. Almost all of the largest card-issuing member banks had and have representatives participating on the board of directors and/or the important policy-influencing committees of both associations. For example, MasterCard's Business Committee and VISA's Marketing Advisors Committee advise their respective association's professional staff and management on key strategic and competitive issues. In 1996, twelve of the twenty-one banks represented on VISA's Board of Directors were also represented on MasterCard's Business Committee. Seventeen of the twenty-seven banks on MasterCard's Business Committee had representatives on VISA's Marketing Advisors Committee. Seven of the twenty-two banks represented on MasterCard's Board of Directors also were represented on VISA's Marketing Advisors Committee.

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

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

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

99. VISA and MasterCard serve as clearinghouses for general purpose card transactions which occur in foreign countries using credit cards issued by their member banks. VISA and MasterCard each use an electronic network and settlement system that permits United States cardholders to make payments in dollars for purchases in foreign countries denominated in foreign currencies. These network settlement systems also automatically imposed foreign currency surcharges, including both the VISA/MasterCard surcharges and the surcharges implemented by issuing bank defendants.

100. The procedure by which VISA and MasterCard process any currency conversions involves a “netting out” procedure such that the bulk of transactions for which a currency conversion fee is charged do not, in fact, involve the actual purchase or sale of any currency. The defendants levy the fee on all foreign currency charge transactions despite the fact that most of this “foreign exchange” is illusory due to the “netting out” procedures. For example, if 100 U.S. VISA cardholders in France charge U.S. \$10,000 in French francs in goods on March 26, 2001, and 100 French VISA cardholders in the U.S. spend the equivalent of U.S. \$10,000 on the same day, defendant VISA does not actually convert any currency. VISA nonetheless collects currency conversion fees on each of the United States’ cardholders transactions. MasterCard employs an identical procedure.

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

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

The First Tier Currency Conversion Fee

103. Beginning in the 1980's, VISA and MasterCard first imposed the first tier currency conversion fee on cardholders using a VISA or MasterCard general purpose card to purchase goods or services in a foreign currency.

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

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

106. While the members of VISA and MasterCard generally compete against each other on many price terms, such as interest rates, annual fees, service charges and the like, they have acted and elected to collude on the prices charged for foreign exchange services. They jointly, through their associations, agreed to charge a floor price of 1% for the transaction fee for foreign exchange services. Colluding on the price they will all charge for foreign exchange services to raise revenue for their joint venture presents no different a situation than if the banks and associations had agreed to fix a minimum interest rate, with the monopoly profits going to fund the venture.

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

108. There is no relationship between any purported transaction cost to VISA and MasterCard, or to the value of the transaction itself, and the imposition of the first tier currency conversion fee. For example, the associations' incremental cost in connection with a \$10 meal or \$10,000 jewelry purchase is identical or nearly so. Yet the diner pays a \$.10 fee to the association while the jewelry purchaser is forced to pay a \$ 100 fee. Such fees are much greater than any nominal transaction cost which may be incurred by VISA and MasterCard.

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

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

111. Imposition of the fixed currency conversion fee on VISA and MasterCard cardholders is not necessary to the operation of the VISA and MasterCard networks nor to the provision of foreign exchange services on foreign credit card transactions. Nor does imposition of the fee create a product that could not exist otherwise. Nor does it enhance competition in any market. To the contrary, imposition of a fixed currency conversion fee eliminates price competition for foreign exchange services on foreign credit card transactions among the member banks and between VISA and MasterCard.

112. Because imposition of a fixed minimum charge on cardholders is unnecessary to accomplish foreign exchange services in the VISA and MasterCard systems, its anti-competitive effects far outweigh its non-existent pro-competitive benefits.

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

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

115. Because of dual issuance of MasterCard and VISA cards by the member banks, bank-to-bank (*i.e.*, issuer) competition, particularly with respect to prices and service, is critical to consumer welfare. Collective agreements on price, such as the collusively-set price of foreign

exchange services alleged in this Complaint, completely undermine and restrain bank-to-bank competition and injures consumer welfare.

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

The Second Tier Currency Conversion Fee

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

118. The second tier fee is almost pure profit to the issuing banks because it is VISA and MasterCard that actually convert foreign currency. The issuing banks have no involvement in and incur no expenses in connection with the currency conversion. VISA and MasterCard actively aided and abetted the process of collecting the second tier fees by adding these surcharges for members at the network level, and by modifying their practices and procedures to accommodate, and encourage, the imposition of such surcharges.

119. In the otherwise competitive general purpose card issuer market, the imposition of the second tier currency conversion fee is against the individual economic self-interest of the issuing banks, absent collusion among the issuing banks, and leaves the cardholder without any meaningful alternative. If the defendants had not acted in concert, and with great efforts to conceal the practice,

those banks which imposed the second tier currency conversion fee would stand to lose some of their best customers to those member banks which did not.

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

Diners Club

121. Diners Club also operates an electronic network and settlement system that bills United States cardholders in dollars for purchases in foreign countries. As with the VISA and MasterCard electronic networks, the foreign party, who has accepted payment via the use of the Diners Club charge card, may receive the payment for that purchase in the currency of the foreign country.

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

123. Diners Club participates as an active and integral part of the conspiracy to impose the currency conversion fees. Diners Club benefits from the price-fixing arrangements of the two associations, VISA and MasterCard, because of the substantial participation in the associations by Diners Club owner Citibank. The ability of Diners Club to fix its currency conversion fee, first at 1% and now at its current 2% surcharge, was facilitated by Citibank's participation in the MasterCard and VISA networks, which provided the vehicle for the inter-firm communications necessary to coordinate and artificially inflate Diner Club's currency conversion fee.

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

The Currency Conversion Fees Were Not Disclosed To Cardholders

125. The existence and amount of these currency conversion fees were not disclosed to the cardholders on their monthly billing statements. Nor were these fees disclosed in solicitations and applications for VISA and MasterCard branded cards.

126. The amount and existence of both the first tier and second tier currency conversion fees were concealed by VISA and MasterCard, as well as their member banks, and by Diners Club, from cardholders. None of the defendants disclosed the currency conversion fees in their cardholder solicitations and applications. Solicitations provide the primary source of information to prospective cardholders about fees, finance charges and card features. The importance of solicitations is illustrated by the fact that in 1999 issuers sent out 2.9 billion direct mail solicitations to households in the United States.

127. The defendants further hid the currency conversion fees from cardholders by failing to disclose them on the cardholders' monthly statements. On some monthly statements, the consumer charging the goods or services abroad only saw the amount of the charge in the foreign currency and the corresponding amount owed in dollars. Other statements listed a "rate," but failed to disclose in the billing statements that currency conversion fees were built into that rate. Also, the date of the conversion was often not set forth on the cardholders' statement.

128. It was generally impossible or very difficult to verify the conversion rate used on a given purchase by the information contained on the cardholder statements from either the Issuing Banks or Diners Club. The conversion was calculated based upon an undisclosed base exchange rate in effect on an undisclosed date. The actual base currency conversion rate and the additional first tier and second tier currency conversion fees were not separately itemized. Furthermore, the second tier currency conversion fee may actually be an amount in excess of a whole number percentile, *e.g.*, 2%, because the second tier fee is frequently calculated after the first tier fee has been computed and already added to the original post-converted amount.

129. The only place where defendants even partially disclosed the currency conversion fees was in either the Card Member Agreement or the initial disclosure statement, which the Issuing Banks and Diners Club send to their cardholders only after they have applied for and received their card. The references to currency conversion fees in the Card Member Agreements and initial disclosure statements do not comply with or satisfy TILA, and were further designed to obscure, rather than disclose, the fee.

130. As an integral part of the conspiracy, defendants, through the associations, discussed, coordinated and agreed not to disclose these fees in solicitations or cardholder billing agreements and on the misleading form of the disclosures in cardholder agreements, to facilitate the fixing, imposition and concealment of such charges.

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

132. The currency conversion fees are a huge profit center for all defendants. For example, during the Damages period, VISA has processed many billions of dollars in general purpose card transactions by U.S. cardholders traveling abroad and has received hundreds of millions of dollars from the first tier currency conversion fee. During that same time, MasterCard processed many billions of dollars in such charges and received hundreds of millions of dollars in first tier currency conversion fees. Their respective incremental costs for implementing and administering foreign exchange conversion services are a very small fraction of these amounts. In addition, the issuing banks, which incur no independent expense in connection with the currency conversions, impose a currency conversion fee which is usually at least twice the amount assessed by VISA and MasterCard.

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

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

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

135. Defendants do not view cash or checks as competitive with general purpose cards.

136. The inferiority of other modes of payment relative to general purpose cards in foreign countries has been articulated by the networks themselves. For example, a 2001 MasterCard submission to the Reserve Bank of Australia states:

One of the most significant contributions of the credit card, and inexplicably very rarely mentioned, is in international travel. Today, the ease with which a tourist can pay for his/her accommodation, meals, shopping and transportation in a foreign country without having to deal with the cumbersome and time consuming business of conducting foreign currency exchange at home or abroad, is entirely due to services provided by credit cards. It also eases the planning of foreign visits allowing the tourist to prolong the stay spontaneously without having to worry about the lack of foreign exchange.

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

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

CLASS ACTION ALLEGATIONS

139. Plaintiffs bring this action, pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, on their own behalf and as representatives of two classes (collectively, the “Classes”), one entitled to injunctive relief (the “Injunctive Relief Class”) and one entitled to monetary damages (the “Damages Class”). The Damages Class is composed of all VISA, MasterCard and Diners Club general purpose cardholders who used cards issued by any of the issuing bank defendants and/or Diners Club during the Damages Period, and were assessed a currency conversion fee or currency conversion surcharge for using such cards to purchase goods and/or services in foreign countries. The Injunctive Relief Class is composed of all VISA, MasterCard and Diners Club general purpose cardholders of the issuing bank defendants and/or Diners Club.

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

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

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

The Damages Class

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

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

(b) The duration and extent of the contract, combination or conspiracy alleged in the Complaint;

(c) The mechanisms used to accomplish the contract, combination or conspiracy;

(d) Whether defendants violated §1 of the Sherman Act;

(e) Whether defendants and their co-conspirators took affirmative steps to conceal the contract, combination or conspiracy;

(f) The effect of the contract, combination, or conspiracy on the currency conversion fee on MasterCard, VISA and/or Diners Club general purpose card transactions involving foreign currency;

(g) Whether defendants violated the Truth in Lending Act;

(h) Whether defendants conspired to violate the Truth in Lending Act;

(i) Whether MasterCard and VISA aided and abetted violations of the Truth in Lending Act by its member issuer banks;

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

(k) Whether defendant Citibank (South Dakota) N.A.'s actions have been in violation of the South Dakota consumer protection laws, S.D. CODIFIED LAWS §§ 37-24-6, 37-24-31.

The Injunctive Relief Class

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

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

(b) The duration and extent of the contract, combination or conspiracy alleged in the Complaint;

(c) The mechanisms used to accomplish the contract, combination or conspiracy;

(d) Whether defendants violated §1 of the Sherman Act;

(e) Whether defendants and their co-conspirators took affirmative steps to conceal the contract, combination or conspiracy;

(f) The effect of the contract, combination, or conspiracy on the currency conversion fee on general purpose card transactions involving foreign currency; and

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

145. Defendants have acted on grounds generally applicable to the Injunctive Relief Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Injunctive Relief Class as a whole.

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

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

VIOLATIONS ALLEGED

COUNT I

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

148. Plaintiffs incorporate by reference the allegations contained in ¶¶1-147, as if set forth fully herein.

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

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

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

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

(a) Currency conversion fees are now, and have been, fixed, raised, maintained and stabilized at artificially high levels;

(b) Cardholders who use their general purpose cards have been deprived of the benefits of free and open competition; and

(c) Price competition among the defendants has been restrained and suppressed.

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

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

COUNT II

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

155. Plaintiffs incorporate by reference the allegations contained in ¶¶1-154, as if set forth fully herein.

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

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

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

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

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

(a) Currency conversion fees are now, and have been, fixed, raised, maintained and stabilized at artificially high levels;

(b) Cardholders who use their general purpose cards have been deprived of the benefits of free and open competition; and

(c) Price competition among the defendants has been restrained and suppressed.

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

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

COUNT III

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

162. Plaintiffs incorporate by reference the allegations contained in ¶¶1-161, as if set forth fully herein.

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

conspiracy continues up to the date of this Complaint.

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

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

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

(a) Currency conversion fees are now, and have been, fixed, raised, maintained and stabilized at artificially high levels;

(b) Cardholders who use their general purpose cards have been deprived of the benefits of free and open competition; and

(c) Price competition among the defendants has been restrained and suppressed.

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

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

COUNT IV

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

169. Plaintiffs incorporate by reference the allegations contained in ¶¶1-168, as if set forth fully herein.

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

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

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

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

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

(e) Defendants failed to include charges for the currency conversion fee in the calculation of the annual percentage rate (“APR”), as defined in TILA, disclosed to consumers,

thereby understating the APR or finance charges on cardholders credit and charge card statements.
12 C.F.R. §226.14.

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

172. Defendants VISA and MasterCard are agents of the Issuing Bank defendants within the meaning of TILA and Regulation Z. Defendants VISA and MasterCard have entered into contractual agreements with the Issuing Bank defendants which permits the Issuing Banks to become members of the VISA and MasterCard associations. Only membership in an association will provide an Issuing Bank defendant the necessary means by which the bank may offer its customers the VISA and/or MasterCard branded general purpose card products, and their corresponding credit and/or charge lines/privileges. The VISA or MasterCard brand is used on all the general purpose credit cards, credit card solicitations, account agreements and billing statements sent by the defendant banks to the Class members. The establishment, implementation and collection of the first tier currency conversion fee is performed by VISA and MasterCard as the agents of the Issuing Bank defendants. The first tier currency conversion fee is charged directly to the cardholder and goes to VISA and MasterCard. With respect to implementation and collection of second tier currency conversion fees, VISA and MasterCard also act as the agents of the Issuing Bank defendants which charge such fees. VISA and MasterCard have also directed the Issuing Bank defendants with respect to policies concerning disclosure and nondisclosure of the currency conversion fees to the card holders as well as actual disclosure language in cardholder agreements.

173. VISA and MasterCard are also liable for violations of TILA by their member banks because the banks act as the agents of defendants VISA and MasterCard with respect to the first tier currency conversion fees.

174. VISA, MasterCard and the Issuing Bank defendants conspired to violate the disclosure requirements as set forth in TILA, 15 U.S.C. §1601 *et seq.* and the regulations promulgated thereunder as set forth above.

175. VISA, MasterCard and the Issuing Banks committed wrongful acts in furtherance of their conspiracy by doing the acts herein alleged including: failing to disclose on solicitations and monthly statements mailed to consumers that they impose currency conversion fees or surcharges on all card charges made in a foreign country; failing to disclose the components of the finance charge; failing to disclose the charged amounts, itemized and identified by type, of any charges other than finance charges debited to consumer accounts; and by failing to include the currency conversion fee or surcharge in the calculation of the APR leading to an inaccurate and understated APR on the monthly statements.

176. By committing the acts alleged, MasterCard and VISA have also aided and abetted the violations of TILA by their member financial institutions. MasterCard and VISA defendants were aware of the obligations of their member financial institutions not to violate TILA. By doing the acts alleged, MasterCard and VISA substantially assisted and/or encouraged their member financial institutions in their commission of TILA violations.

COUNT V

(Consumer Fraud Violation of South Dakota Consumer Protection Statutes Balbach & Lynch vs. Citibank (South Dakota) N.A.)

177. Plaintiffs S. Byron Balbach, Jr., Jeanne H. Balbach, Tim Lynch, and Diane Lynch (hereinafter, for purposes of this count only, “Plaintiffs”) incorporate by reference the allegations contained in ¶¶1-176, as if set forth fully herein.

178. Defendant Citibank (South Dakota) N.A. knowingly and intentionally engaged in deceptive acts and/or practices by misrepresenting, suppressing, and/or omitting material facts in connection with its foreign exchange services provided to its cardholders who used their cards to purchase goods and services in a foreign currency.

179. Defendant Citibank (South Dakota) N.A. did not disclose the existence of the currency conversion fee in its solicitations to prospective cardholders. Defendant Citibank (South Dakota) N.A. further hid the currency conversion fees from its cardholders by failing to disclose such fees on the cardholders’ monthly statements. On some monthly statements, the consumer charging the goods or services abroad only saw the amount of the charge in the foreign currency and the corresponding amount owed in dollars. Other statements listed a “rate,” but failed to disclose in the billing statements that currency conversion fees were built into that rate. Also, the date of the conversion was often not set forth on the cardholders’ statement.

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

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

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

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray:

A. That the Court determine that this action may be maintained as a class action for two Classes under each of Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable notice of this action, as provided by Rule 23(c)(2), Federal Rules of Civil Procedure, be given each and every member of the Damages Class;

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

C. That plaintiffs and each and every member of the Damages Class recover damages, as provided by law, determined to have been sustained by each of them to their business or property, and that joint and several judgments in favor of plaintiff and each and every member of the Damages Class, respectively, be entered against the defendants, and each of them;

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

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

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

G. That plaintiffs and the other members of the Classes be granted such other, further and different relief, including all applicable remedies under TILA, as the nature of the case may require or as may seem just and proper to this Court; and

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

JURY DEMAND

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

DATED: January 22, 2002

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EXHIBIT “A”

EXHIBIT "A"

PLAINTIFFS	CASE NAME	DOCKET #	COURT
Joseph C. Chatham	<u>Chatham v. VISA U.S.A., Inc., et al.</u>	2:01cv1682	E.D. Pennsylvania
Donald E. Wood	<u>Wood v. VISA U.S.A., Inc., et al.</u>	1:01cv3617	S.D. New York
Eleanor M. Ramsey Keith Brown	<u>Ramsey, et al. v. VISA U.S.A., Inc., et al.</u>	3:01cv1968	N.D. California
Robert R. LaPlace	<u>LaPlace v. VISA U.S.A., Inc., et al.</u>	3:01cv2238	N.D. California
Phil Salvaggio	<u>Salvagio v. VISA U.S.A., Inc., et al.</u>	3:01cv2268	N.D. California
Charles Matthews	<u>Matthews v. VISA U.S.A., Inc., et al.</u>	1:01cv5749	S.D. New York
Christopher G. Lamarca	<u>Lamarca v. VISA U.S.A., Inc., et al.</u>	2:01cv3587	E.D. Pennsylvania
Jeffrey Silberman Gary Brandeis	<u>Silberman, et al. v. VISA U.S.A., Inc., et al.</u>	1:01cv3342	S.D. New York

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