

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT ROSS, ANDREA KUNE,
WOODROW CLARK, HERVE SENEQUIER,
BYRON BALBACH, JR., MATTHEW
GRABELL, PAUL IMPELLEZZERI, and
RICHARD MANDELL, on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

BANK OF AMERICA, N.A. (USA) (N/K/A FIA
CARD SERVICES, N.A.), BANK OF AMERICA,
N.A., CAPITAL ONE BANK (USA), N.A.,
CAPITAL ONE, N.A., J.P. MORGAN CHASE,
CHASE, CHASE BANK USA, N.A., CITIGROUP,
INC., CITIBANK (SOUTH DAKOTA) N.A.,
CITIBANK USA, N.A., UNIVERSAL BANK,
N.A., UNIVERSAL FINANCIAL CORP.,
CITICORP DINERS CLUB, INC., DFS
SERVICES LLC, DISCOVER FINANCIAL
SERVICES, DISCOVER BANK, HSBC
FINANCE CORP., HSBC BANK, NEVADA,
N.A., and NATIONAL ARBITRATION FORUM,

Defendants.

05-CV-7116 (WHP)

**THIRD AMENDED ANSWER OF
DEFENDANTS BANK OF
AMERICA, N.A. (USA),
PREDECESSOR-IN-INTEREST TO
FIA CARD SERVICES, N.A., AND
BANK OF AMERICA, N.A. TO THE
FIRST AMENDED CLASS ACTION
COMPLAINT**

Defendants Bank of America, N.A. (USA), predecessor-in-interest to FIA Card Services, N.A., and Bank of America, N.A. (collectively, "Bank of America"), by and through their undersigned counsel, hereby answer the allegations in the First Amended Class Action Complaint (the "First Amended Complaint") as follows:

To the extent that the headings or prayer for relief set forth within the First Amended Complaint require a response, Bank of America denies the allegations set forth therein.

1. Bank of America denies the allegations set forth in paragraph 1 of the First Amended Complaint, except Bank of America admits that plaintiffs purport to assert a class action lawsuit against Bank of America and other defendants in this action.

2. Bank of America denies the allegations set forth in paragraph 2 of the First Amended Complaint, except Bank of America admits that its predecessor entities were sued in an earlier litigation captioned In re Currency Conversion Fee Antitrust Litigation, MDL 1409 (S.D.N.Y.).

3. Bank of America denies the allegations set forth in paragraph 3 of the First Amended Complaint.

4. Bank of America denies the allegations set forth in paragraph 4 of the First Amended Complaint.

5. To the extent that paragraph 5 of the First Amended Complaint merely purports to state legal conclusions, no response is required thereto; to the extent a response is required, Bank of America denies the allegations set forth in paragraph 5.

6. Bank of America denies the allegations set forth in paragraph 6 of the First Amended Complaint.

7. Bank of America denies the allegations set forth in the first three sentences of paragraph 7 of the First Amended Complaint, except Bank of America admits that plaintiffs purport to name the National Arbitration Forum as a defendant in this action; to the extent that paragraph 7 purports to quote from or summarize a document, Bank of America respectfully refers the Court to the entire document for a complete and accurate recitation of its contents; and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 7.

8. Bank of America denies the allegations set forth in paragraph 8 of the First Amended Complaint, except Bank of America admits that plaintiffs purport to bring this action under Section 16 of the Clayton Act (15 U.S.C. § 26) and purport to seek attorneys' fees and costs in this action, but denies that plaintiffs are entitled to relief of any kind.

9. Bank of America denies the allegations set forth in paragraph 9 of the First Amended Complaint, except Bank of America admits that jurisdiction is purportedly conferred on this Court by 28 U.S.C. §§ 1331 and 1337 and by Section 16 of the Clayton Act (15 U.S.C. § 26).

10. Bank of America denies the allegations set forth in paragraph 10 of the First Amended Complaint, except Bank of America admits that venue in the Southern District of New York is purportedly established by 15 U.S.C. § 26 and 28 U.S.C. §§ 1391 (b), (c) and (d).

11. Bank of America denies the allegations set forth in paragraph 11 of the First Amended Complaint, except Bank of America admits that venue in the Southern District of New York is purportedly established.

12. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of the First Amended Complaint, except Bank of America admits that an individual named Robert Ross has been a Bank of America cardholder and respectfully refers the Court to agreement(s) between Bank of America and Mr. Ross for their full terms and legal effects.

13. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 of the First Amended Complaint, except Bank of America admits that an individual named Andrea Kune has been a Bank of America

cardholder and respectfully refers the Court to agreement(s) between Bank of America and Ms. Kune for their full terms and legal effects.

14. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14 of the First Amended Complaint, except Bank of America admits that an individual named Woodrow Clark has been a Bank of America cardholder and respectfully refers the Court to agreement(s) between Bank of America and Mr. Clark for their full terms and legal effects.

15. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15 of the First Amended Complaint.

16. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 16 of the First Amended Complaint, except Bank of America admits that an individual named Byron Balbach has been a Bank of America cardholder and respectfully refers the Court to agreement(s) between Bank of America and Mr. Balbach for their full terms and legal effects.

17. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 17 of the First Amended Complaint, except Bank of America admits that an individual named Matthew Grabell has been a Bank of America cardholder and respectfully refers the Court to agreement(s) between Bank of America and Mr. Grabell for their full terms and legal effects.

18. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 18 of the First Amended Complaint, except Bank of America admits that an individual named Paul Impellezzeri has been a Bank of America

cardholder and respectfully refers the Court to agreement(s) between Bank of America and Mr. Impellezzeri for their full terms and legal effects.

19. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 of the First Amended Complaint, except Bank of America admits that an individual named Richard Mandell has been a Bank of America cardholder and respectfully refers the Court to agreement(s) between Bank of America and Mr. Mandell for their full terms and legal effects.

20. Bank of America denies the allegations set forth in paragraph 20 of the First Amended Complaint, except Bank of America admits that Bank of America Corporation is a Delaware corporation with its principal place of business in Charlotte, North Carolina; that the entity named Bank of America, N.A. (USA) no longer exists and its successor institution is FIA Card Services, N.A.; and that, on April 1, 2004, Bank of America Corporation acquired 100 percent of the stock of FleetBoston Financial Corporation.

21. Bank of America denies the allegations set forth in paragraph 21 of the First Amended Complaint, except Bank of America admits that, in 1998, Bank of America Corporation merged with NationsBank Corporation.

22. Bank of America denies that the descriptions of its size or the characterization of its merger with FleetBoston Financial Corporation set forth in paragraph 22 of the First Amended Complaint are either accurate or complete, and Bank of America otherwise denies the allegations set forth in paragraph 22, except Bank of America admits that on April 1, 2004, Bank of America Corporation acquired 100 percent of the stock of FleetBoston Financial Corporation.

23. Bank of America denies that the characterization of its merger with MBNA Corporation set forth in paragraph 23 of the First Amended Complaint is either accurate or

complete, and Bank of America otherwise denies the allegations set forth in paragraph 23, except Bank of America admits that, on January 1, 2006, Bank of America Corporation acquired 100 percent of the stock of MBNA Corporation.

24. Bank of America denies the allegations set forth in paragraph 24 of the First Amended Complaint, except Bank of America states that the entity named MBNA Corporation no longer exists and its successor institution is Bank of America Corporation.

25. Bank of America denies the allegations set forth in paragraph 25 of the First Amended Complaint, except Bank of America states that the entity named MBNA America Bank, N.A. no longer exists and its successor institution is FIA Card Services, N.A.

26. Bank of America denies the allegations set forth in paragraph 26 of the First Amended Complaint, except Bank of America states that the entity named MBNA America (Delaware), N.A. no longer exists and its successor institution is Bank of America, N.A., and Bank of America admits that plaintiffs purport to name Bank of America, N.A. as a defendant in this action.

27. Bank of America denies the allegations set forth in paragraph 27 of the First Amended Complaint, except Bank of America admits that the entity named MBNA America Bank, N.A. no longer exists and its successor institution is FIA Card Services, N.A.; that on October 20, 2006, Bank of America, N.A. (U.S.A), merged with and into FIA Card Services, N.A.; and that plaintiffs purport to name FIA Card Services, N.A. as a defendant in this action.

28. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations regarding Bank of America's size and market share set forth in paragraph 28 of the First Amended Complaint, and Bank of America denies the remaining allegations set forth in paragraph 28.

29. Paragraph 29 of the First Amended Complaint contains a definition of terms as to which no response is required; to the extent a response is required, Bank of America admits that, in the First Amended Complaint, plaintiffs purport to refer to FIA Card Services, N.A. (which has merged with Bank of America, N.A. (U.S.A.)) and all of its predecessors, affiliates and subsidiaries as "Bank of America," collectively, and plaintiffs purport to refer to MBNA America, N.A. and MBNA Delaware, N.A. (which had merged with Bank of America, N.A.) and all of their predecessors, affiliates, and subsidiaries, prior to their merger with Bank of America, N.A., as "MBNA," collectively. Bank of America does not incorporate plaintiffs' definition of "Bank of America" or "MBNA" in its Second Amended Answer.

30. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 30 of the First Amended Complaint, except Bank of America admits that plaintiffs purport to name Capital One Bank and Capital One, N.A. as defendants in this action.

31. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 31 of the First Amended Complaint.

32. Paragraph 32 of the First Amended Complaint contains a definition of terms as to which no response is required; to the extent a response is required, Bank of America admits that plaintiffs purport to refer to Capital One Bank, Capital One, N.A., and all of their predecessors, affiliates and subsidiaries as "Capital One," collectively, in the First Amended Complaint.

33. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 33 of the First Amended Complaint.

34. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 34 of the First Amended Complaint, except

Bank of America admits that plaintiffs purport to name J.P. Morgan Chase as a defendant in this action.

35. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 35 of the First Amended Complaint.

36. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 36 of the First Amended Complaint.

37. Bank of America denies the existence of the conspiracy alleged in the final sentence of paragraph 37 of the First Amended Complaint, and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 37, except Bank of America admits that plaintiffs purport to name Chase Bank, N.A. as a defendant in this action.

38. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 38 of the First Amended Complaint.

39. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 39 of the First Amended Complaint.

40. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 40 of the First Amended Complaint, except Bank of America admits that plaintiffs purport to refer to Bank One Corporation and all of its predecessors, affiliates and subsidiaries, including First USA, Inc. and First USA, N.A., as "Bank One/First USA" and/or "First USA," collectively, in the First Amended Complaint.

41. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 41 of the First Amended Complaint.

42. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 42 of the First Amended Complaint.

43. Paragraph 43 of the First Amended Complaint contains definitions of terms as to which no response is required; to the extent a response is required, Bank of America admits that, in the First Amended Complaint, plaintiffs purport to refer to J.P. Morgan Chase and all of its predecessors, affiliates and subsidiaries as "J.P. Morgan Chase," collectively; for the period prior to J.P. Morgan Chase & Co.'s merger with Bank One Corporation, plaintiffs purport to refer to J.P. Morgan Chase & Co. and all of its predecessors, affiliates and subsidiaries as "Chase," collectively; and for the period prior to September 25, 2008, plaintiffs purport to refer to Providian Financial Corp., Providian National Bank and Washington Mutual Bank and all of their predecessors, affiliates and subsidiaries as "Providian," collectively.

44. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 44 of the First Amended Complaint.

45. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 45 of the First Amended Complaint, except Bank of America admits that plaintiffs purport to name Citigroup, Inc. as a defendant in this action.

46. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 46 of the First Amended Complaint, except Bank of America admits that plaintiffs purport to name Citibank (South Dakota) N.A. as a defendant in this action.

47. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 47 of the First Amended Complaint, except

Bank of America admits that plaintiffs purport to name Universal Bank, N.A. as a defendant in this action.

48. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 48 of the First Amended Complaint, except Bank of America admits that plaintiffs purport to name Universal Financial Corp. as a defendant in this action.

49. Paragraph 49 of the First Amended Complaint contains a definition of terms as to which no response is required; to the extent a response is required, Bank of America admits that plaintiffs purport to refer to Citigroup, Inc., and all of its predecessors, affiliates and subsidiaries, other than Citicorp Diners Club, Inc., as "Citibank," collectively, in the First Amended Complaint.

50. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 50 of the First Amended Complaint.

51. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 51 of the First Amended Complaint.

52. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 52 of the First Amended Complaint, except Bank of America admits that plaintiffs purport to name Citicorp Diners Club, Inc. as a defendant in this action.

53. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 53 of the First Amended Complaint, except Bank of America admits that plaintiffs purport to name Citibank USA, N.A. as a defendant in this action, and that plaintiffs purport to refer to Citibank (South Dakota) N.A., Citibank USA,

N.A., Citicorp Diners Club, Inc., and their parents and all of their predecessors, affiliates and subsidiaries as "Diners Club," collectively, in the First Amended Complaint.

54. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 54 of the First Amended Complaint.

55. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 55 of the First Amended Complaint, except Bank of America admits that plaintiffs purport to name DFS Services LLC, Discover Financial Services and Discover Bank as defendants in this action, and that plaintiffs purport to refer to DFS Services LLC, Discover Financial Services and Discover Bank as "Discover," collectively, in the First Amended Complaint.

56. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 56 of the First Amended Complaint.

57. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 57 of the First Amended Complaint.

58. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 58 of the First Amended Complaint.

59. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 59 of the First Amended Complaint.

60. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 60 of the First Amended Complaint.

61. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 61 of the First Amended Complaint, except

Bank of America admits that plaintiffs purport to name HSBC Finance Corporation as a defendant in this action.

62. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 62 of the First Amended Complaint, except Bank of America admits that plaintiffs purport to name HSBC Bank, Nevada, N.A. as a defendant in this action.

63. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 63 of the First Amended Complaint.

64. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 64 of the First Amended Complaint.

65. Paragraph 65 of the First Amended Complaint contains a definition of terms as to which no response is required; to the extent a response is required, Bank of America admits that plaintiffs purport to refer to HSBC North America Holdings, Inc., HSBC Finance Corporation (and its predecessor Household International, Inc.), Household Bank (SB) N.A., HSBC Bank USA, N.A., HSBC Bank, Nevada, N.A., and all their predecessors, affiliates and subsidiaries as "Household," collectively, in the First Amended Complaint.

66. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 66 of the First Amended Complaint.

67. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 67 of the First Amended Complaint, except Bank of America admits that plaintiffs purport to name the National Arbitration Forum as a defendant in this action and that the National Arbitration Forum is an administrator of arbitration services.

68. Bank of America denies the existence of the conspiracy alleged in the final sentence of paragraph 68 of the First Amended Complaint, and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 68, except Bank of America states that arbitration provisions in Bank of America cardholder agreements have listed the National Arbitration Forum as an arbitration administrator, and Bank of America respectfully refers the Court to those agreements for their full terms and legal effects.

69. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 69 of the First Amended Complaint.

70. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 70 of the First Amended Complaint.

71. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 71 of the First Amended Complaint, except Bank of America states on information and belief that other financial institutions issue cards with the American Express brand, and Bank of America states that, on January 28, 2004, MBNA America Bank, N.A. entered into an agreement with American Express whereby MBNA America Bank, N.A. agreed to issue credit cards with the American Express brand.

72. Bank of America denies the allegations set forth in paragraph 72 of the First Amended Complaint, except admits on information and belief that American Express Company, American Express Travel Related Services Company, and American Express Centurion Bank are defendants in the case of Ross v. American Express Co., No. 04-cv-05723 (WHP) (S.D.N.Y.), and to the extent that the allegations in paragraph 72 rely upon the complaint filed in Ross v.

American Express Co., to which Bank of America is not a party, Bank of America respectfully refers the Court to that complaint for a complete and accurate recitation of its contents.

73. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 73 of the First Amended Complaint.

74. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 74 of the First Amended Complaint.

75. Paragraph 75 of the First Amended Complaint contains a definition of terms as to which no response is required; to the extent a response is required, Bank of America admits that plaintiffs purport to refer to Wells Fargo & Company and all its predecessors, affiliates and subsidiaries as "Wells Fargo," collectively, in the First Amended Complaint.

76. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 76 of the First Amended Complaint.

77. Bank of America denies the allegations set forth in the first sentence of paragraph 77 of the First Amended Complaint, and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 77, except Bank of America denies that plaintiffs have correctly alleged the existence of a relevant product market.

78. Bank of America denies the allegations set forth in paragraph 78 of the First Amended Complaint.

79. Paragraph 79 merely purports to characterize the nature of the allegations set forth in the First Amended Complaint, and accordingly no response is required thereto; to the extent a response is required, Bank of America denies the allegations set forth in paragraph 79.

80. Paragraph 80 of the First Amended Complaint merely purports to characterize this action and/or to state legal conclusions, and accordingly no response is required thereto; to the extent a response is required, Bank of America denies the allegations set forth in paragraph 80.

81. Bank of America denies the allegations set forth in paragraph 81 of the First Amended Complaint as to itself, except Bank of America admits that FIA Card Services, N.A., has issued and continues to issue general purpose credit cards. As to entities other than Bank of America, Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 81.

82. Bank of America admits that it is involved in interstate commerce, and Bank of America otherwise denies the allegations set forth in paragraph 82 of the First Amended Complaint.

83. Paragraph 83 of the First Amended Complaint merely purports to state legal conclusions, and accordingly no response is required thereto; to the extent a response is required, Bank of America denies the allegations set forth in paragraph 83.

84. Paragraph 84 of the First Amended Complaint merely purports to state legal conclusions, and accordingly no response is required thereto; to the extent a response is required and to the extent that paragraph 84 purports to quote from or summarize the opinion in United States v. Visa USA, Inc., et al., 163 F. Supp. 2d 322 (S.D.N.Y. 2001), to which Bank of America was not a party, Bank of America respectfully refers the Court to that entire opinion and any subsequent decisions in that case for a complete and accurate recitation of their contents, and Bank of America otherwise denies the allegations set forth in paragraph 84.

85. Paragraph 85 of the First Amended Complaint merely purports to state legal conclusions, and accordingly no response is required thereto; to the extent a response is required, Bank of America denies the allegations set forth in paragraph 85.

86. Bank of America denies knowledge or information sufficient to form a belief as to how consumers view general purpose cards, and Bank of America otherwise denies the allegations set forth in paragraph 86 of the First Amended Complaint.

87. Bank of America denies that the description of general purpose cards set forth in paragraph 87 of the First Amended Complaint is either accurate or complete.

88. Bank of America admits the allegations set forth in the first sentence of paragraph 88 of the First Amended Complaint, and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 88, except Bank of America states on information and belief that Visa, MasterCard, American Express, Discover and Diners Club operate payment card networks.

89. Bank of America denies that the description of the issuance of general purpose cards to cardholders set forth in paragraph 89 of the First Amended Complaint is either accurate or complete.

90. Bank of America denies that the descriptions of general purpose card networks and card issuance set forth in paragraph 90 of the First Amended Complaint are either accurate or complete, but Bank of America states on information and belief that Visa and MasterCard operate payment card networks and have members that include banks and financial institutions that issue payment cards and/or provide acquiring services to merchants, and Bank of America otherwise denies the allegations set forth in paragraph 90.

91. Bank of America denies that the descriptions of Visa and MasterCard set forth in paragraph 91 of the First Amended Complaint are either accurate or complete, but Bank of America states on information and belief that Visa and MasterCard operate payment card networks and have members that include banks and financial institutions that issue payment cards and/or provide acquiring services to merchants, and Bank of America otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 91.

92. Bank of America denies that the allegations set forth in paragraph 92 of the First Amended Complaint provide an accurate or complete description of every credit or offline-debit card transaction and/or activity associated with every transaction, and Bank of America otherwise denies the allegations set forth in paragraph 92.

93. To the extent that paragraph 93 of the First Amended Complaint purports to quote from or summarize the contents of the opinion in United States v. Visa U.S.A., Inc., et al., 344 F.3d 229 (2d Cir. 2003), to which Bank of America was not a party, Bank of America respectfully refers the Court to that entire opinion and any subsequent decisions in that case for a complete and accurate recitation of their contents; Bank of America denies that the allegations set forth in paragraph 93 provide an accurate or complete description of every transaction on the American Express or Discover networks; and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 93, except Bank of America states on information and belief that American Express and Discover issue cards directly to cardholders and contract directly with merchants that accept cards, and that other financial institutions also issue cards with the American Express brand. Bank of America further states that, on January 28, 2004, MBNA America Bank, N.A. entered into an agreement with

American Express whereby MBNA America Bank, N.A. agreed to issue credit cards with the American Express brand.

94. Bank of America admits on information and belief that certain credit card transactions on the American Express network generally occur as described in paragraph 94 of the First Amended Complaint, but denies that the transaction described in paragraph 94 is “typical.”

95. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 95 of the First Amended Complaint, except Bank of America states on information and belief that Visa and MasterCard compete with other networks like American Express and Discover.

96. Bank of America denies the allegations set forth in paragraph 96 of the First Amended Complaint.

97. Bank of America denies the existence of the conspiracy alleged in paragraph 97 of the First Amended Complaint; to the extent that paragraph 97 purports to quote from or summarize document(s), Bank of America respectfully refers the Court to the entire document(s) for a complete and accurate recitation of their contents; and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 97.

98. The allegations set forth in paragraph 98 of the First Amended Complaint are not directed at Bank of America, and accordingly no response is required thereto; to the extent a response is required, Bank of America denies the existence of the conspiracy alleged in paragraph 98 and the allegations set forth in the last sentence of paragraph 98, and Bank of

America denies knowledge or information sufficient to form a belief as to the remaining allegations set forth in paragraph 98.

99. Bank of America denies the existence of the conspiracy alleged in paragraph 99 of the First Amended Complaint and the allegations set forth in the third sentence of paragraph 99, except Bank of America states that, in 1999 and earlier, versions of the Bank of America, N.A. (USA) cardmember agreement contained a clause providing that either party to the agreement could request that any controversy be decided by arbitration and Bank of America respectfully refers the Court to those agreements for their full terms and legal effects, and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 99.

100. Bank of America denies the allegations set forth in paragraph 100 of the First Amended Complaint.

101. The allegations set forth in paragraph 101 of the First Amended Complaint are not directed at Bank of America, and accordingly no response is required thereto; to the extent a response is required, Bank of America denies the existence of the conspiracy alleged in paragraph 101; to the extent that paragraph 101 purports to quote from or summarize an e-mail or other documents, Bank of America respectfully refers the Court to the entire e-mail and other documents for a complete and accurate recitation of their contents; and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 101.

102. The allegations set forth in paragraph 102 of the First Amended Complaint are not directed at Bank of America, and accordingly no response is required thereto; to the extent a

response is required, Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 102.

103. Bank of America denies the existence of the conspiracy alleged in paragraph 103 of the First Amended Complaint and the allegations in the fifth sentence of paragraph 103, and states that, in 1999 and earlier, versions of the Bank of America, N.A. (USA) cardmember agreement contained a clause providing that either party to the agreement could request that any controversy be decided by arbitration, and Bank of America respectfully refers the Court to those agreements for their full terms and legal effects; to the extent that paragraph 103 purports to quote from or summarize a document, Bank of America respectfully refers the Court to the entire document for a complete and accurate recitation of its contents; and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 103, except Bank of America admits that a Bank of America employee attended a meeting on July 28, 1999, at which arbitration issues were discussed.

104. To the extent that paragraph 104 of the First Amended Complaint purports to quote from or summarize a document, Bank of America respectfully refers the Court to the entire document for a complete and accurate recitation of its contents; and Bank of America otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 104.

105. Bank of America denies the allegations set forth in the second sentence of paragraph 105 of the First Amended Complaint; to the extent that paragraph 105 purports to quote from or summarize an e-mail, Bank of America respectfully refers the Court to the entire e-mail for a complete and accurate recitation of its contents; and Bank of America denies

knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 105.

106. Bank of America denies the existence of the conspiracy alleged in paragraph 106 of the First Amended Complaint and the allegations set forth in the second sentence of paragraph 106; to the extent that paragraph 106 purports to quote from or summarize a document, Bank of America respectfully refers the Court to the entire document for a complete and accurate recitation of its contents; and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 106.

107. Bank of America denies the existence of the conspiracy alleged in paragraph 107 of the First Amended Complaint and the allegations set forth in the first sentence of paragraph 107; to the extent that paragraph 107 purports to quote from or summarize a document, Bank of America respectfully refers the Court to the entire document for a complete and accurate recitation of its contents; and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 107.

108. Bank of America denies the allegations set forth in paragraph 108 of the First Amended Complaint.

109. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 109 of the First Amended Complaint, except Bank of America states that arbitration provisions in Bank of America cardholder agreements have listed the National Arbitration Forum as an arbitration administrator, and Bank of America respectfully refers the Court to those agreements for their full terms and legal effects.

110. Bank of America denies the allegations set forth in paragraph 110 of the First Amended Complaint, except Bank of America admits the allegation that “the filing of *amicus curiae* briefs and joint lobbying of legislators is protected by the Noerr-Pennington doctrine.”

111. Bank of America denies the existence of the conspiracy alleged in paragraph 111 of the First Amended Complaint and the allegations set forth in the first and last sentences of paragraph 111; to the extent that the allegations in paragraph 111 rely upon the complaint filed in The People of the State of California v. National Arbitration Forum, et al., Case No. 080-98-473569 (Cal. App. Dep’t Super. Ct.) (filed Mar. 24, 2008), Bank of America respectfully refers the Court to that complaint for a complete and accurate recitation of its contents; to the extent that paragraph 111 purports to quote from or summarize other document(s), Bank of America respectfully refers the Court to the entire document(s) for a complete and accurate recitation of their contents; and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 111.

112. Bank of America denies the allegations set forth in the last sentence of paragraph 112 of the First Amended Complaint, and states that, in 2000 and earlier, versions of Bank of America’s cardmember agreement contained a clause providing that either party to the agreement could request that any controversy be decided by arbitration, and Bank of America respectfully refers the Court to those agreements for their full terms and legal effects; to the extent that paragraph 112 purports to quote from or summarize an e-mail, Bank of America respectfully refers the Court to the entire e-mail for a complete and accurate recitation of its contents; and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 112.

113. Bank of America denies that it participated in all of the meetings and/or conference calls alleged in the first sentence of paragraph 113 of the First Amended Complaint. With respect to any other entity, Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of paragraph 113. Bank of America denies the allegations set forth in the second sentence of paragraph 113.

114. Bank of America denies the allegations set forth in paragraph 114 of the First Amended Complaint.

115. The allegations set forth in paragraph 115 of the First Amended Complaint are not directed at Bank of America, and accordingly no response is required thereto; to the extent a response is required, Bank of America denies the existence of the conspiracy alleged in paragraph 115 and the allegations set forth in the first, sixth and last sentences of paragraph 115; to the extent that paragraph 115 purports to quote from or summarize document(s), Bank of America respectfully refers the Court to the entire document(s) for a complete and accurate recitation of their contents; and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 115.

116. Bank of America denies the existence of the conspiracy alleged in paragraph 116 of the First Amended Complaint and the allegations set forth in the second sentence of paragraph 116; and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 116, except Bank of America admits that an MBNA employee attended a meeting in New York on May 30, 2001, at which class action issues were discussed.

117. Bank of America denies the allegations set forth in paragraph 117 of the First Amended Complaint.

118. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the third and fifth sentences of paragraph 118 of the First Amended Complaint; to the extent that paragraph 118 purports to quote from or summarize documents, Bank of America respectfully refers the Court to the entire documents for a complete and accurate recitation of their contents; and Bank of America denies the remaining allegations set forth in paragraph 118.

119. Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of paragraph 119 of the First Amended Complaint, and Bank of America denies the allegations set forth in the second sentence of paragraph 119.

120. Bank of America denies the allegations set forth in paragraph 120 of the First Amended Complaint.

121. Bank of America denies the allegations set forth in the first sentence of paragraph 121 of the First Amended Complaint; to the extent that paragraph 121 purports to quote from or summarize a document, Bank of America respectfully refers the Court to the entire document for a complete and accurate recitation of its contents; and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 121, except Bank of America states that arbitration provisions in Bank of America cardholder agreements have listed the National Arbitration Forum as an arbitration administrator, and Bank of America respectfully refers the Court to those agreements for their full terms and legal effects.

122. The allegations set forth in paragraph 122 of the First Amended Complaint are not directed at Bank of America, and accordingly no response is required thereto; to the extent a

response is required, Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second sentence of paragraph 122, and Bank of America denies the remaining allegations set forth in paragraph 122, except to the extent that paragraph 122 purports to summarize document(s), Bank of America respectfully refers the Court to the entire document(s) for a complete and accurate recitation of their contents.

123. To the extent that the allegations in paragraph 123 of the First Amended Complaint rely upon the complaint filed in The People of the State of California v. National Arbitration Forum, et al., Case No. 080-98-473569 (Cal. App. Dep't Super. Ct.) (filed Mar. 24, 2008), Bank of America respectfully refers the Court to the entire complaint for a complete and accurate recitation of its contents; and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 123, except Bank of America admits that FIA Card Services, N.A. is named as a defendant in The People of the State of California v. National Arbitration Forum, et al.

124. To the extent that the allegations in paragraph 124 of the First Amended Complaint rely upon the complaint filed in The People of the State of California v. National Arbitration Forum, et al., Case No. 080-98-473569 (Cal. App. Dep't Super. Ct.) (filed Mar. 24, 2008), Bank of America respectfully refers the Court to the entire complaint for a complete and accurate recitation of its contents; to the extent that the allegations in paragraph 124 do not rely upon the allegations made in that complaint, Bank of America denies the allegations set forth in the second and third sentences of paragraph 124, and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 124.

125. Bank of America denies the allegations set forth in the first, second and last sentences of paragraph 125 of the First Amended Complaint, and to the extent that paragraph 125 purports to quote from or summarize a document, Bank of America respectfully refers the Court to the entire document for a complete and accurate recitation of its content, and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 125.

126. Bank of America denies the allegations set forth in paragraph 126 of the First Amended Complaint.

127. Bank of America denies the allegations set forth in the first, second and fourth sentences of paragraph 127 of the First Amended Complaint; to the extent that the allegations in paragraph 127 purport to summarize Bank of America's 2005 disclosures to cardholders, Bank of America respectfully refers the Court to those documents for their full terms and legal effects; and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 127.

128. Bank of America denies the allegations set forth in paragraph 128 of the First Amended Complaint.

129. Bank of America denies the allegations set forth in paragraph 129 of the First Amended Complaint.

130. Bank of America denies the allegations set forth in paragraph 130 of the First Amended Complaint.

131. Bank of America denies the allegations set forth in paragraph 131 of the First Amended Complaint.

132. To the extent that paragraph 132 of the First Amended Complaint purports to quote from or summarize the content of written work by Alan S. Kaplinsky and Mark S. Levin, Bank of America respectfully refers the Court to the entire written work for a complete and accurate recitation of its contents, and Bank of America otherwise denies the allegations set forth in paragraph 132.

133. To the extent that paragraph 133 of the First Amended Complaint purports to quote from or summarize the opinion in Discover Bank v. Superior Court, 36 Cal. 4th 148, 113 P.3d 1100 (2005), to which Bank of America was not a party, Bank of America respectfully refers the Court to that entire opinion and any subsequent decisions in that case for a complete and accurate recitation of their contents, and Bank of America otherwise denies the allegations set forth in paragraph 133.

134. Bank of America denies the allegations set forth in paragraph 134 of the First Amended Complaint.

135. Bank of America denies the allegations set forth in paragraph 135 of the First Amended Complaint.

136. To the extent that paragraph 136 of the First Amended Complaint purports to quote from or summarize document(s), Bank of America respectfully refers the Court to the entire document(s) for a complete and accurate recitation of their contents; Bank of America denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second and last sentences of paragraph 136; and Bank of America denies the remaining allegations set forth in paragraph 136.

137. Bank of America denies the allegations set forth in paragraph 137 of the First Amended Complaint.

138. Bank of America denies the allegations set forth in paragraph 138 of the First Amended Complaint.

139. Bank of America denies the allegations set forth in paragraph 139 of the First Amended Complaint.

140. Bank of America denies the allegations set forth in paragraph 140 of the First Amended Complaint.

141. Bank of America denies the allegations set forth in the last sentence of paragraph 141 of the First Amended Complaint, and Bank of America denies knowledge or information sufficient to form a belief as to the remaining allegations set forth in paragraph 141.

142. To the extent that paragraph 142 of the First Amended Complaint purports to quote from or summarize the content of a statement by Eric Mogilnicki, Bank of America respectfully refers the Court to the entire statement for a complete and accurate recitation of its contents, and Bank of America otherwise denies the allegations set forth in paragraph 142.

143. To the extent that paragraph 143 of the First Amended Complaint purports to quote from or summarize documents, Bank of America respectfully refers the Court to the entire documents for a complete and accurate recitation of their contents, and Bank of America otherwise denies the allegations set forth in paragraph 143, except avers that Bank of America did offer different products and competed for business.

144. Paragraph 144 of the First Amended Complaint merely purports to characterize this action and/or to state legal conclusions, and accordingly no response is required thereto; to the extent a response is required, Bank of America admits that plaintiffs purport to assert a class action lawsuit against Bank of America and the other defendants in this action, but Bank of America otherwise denies the allegations set forth in paragraph 144.

145. Bank of America admits that plaintiffs purport to assert a class action lawsuit against Bank of America and the other defendants in this action.

146. Bank of America admits that plaintiffs purport to assert a class action lawsuit against Bank of America and the other defendants in this action.

147. Bank of America denies the allegations set forth in paragraph 147 of the First Amended Complaint.

148. Bank of America denies the allegations set forth in paragraph 148 of the First Amended Complaint.

149. Bank of America denies the allegations set forth in paragraph 149 of the First Amended Complaint.

150. Bank of America denies the allegations set forth in paragraph 150 of the First Amended Complaint.

151. Bank of America denies the allegations set forth in paragraph 151 of the First Amended Complaint.

152. Bank of America denies knowledge or information sufficient to form a belief as to plaintiffs' knowledge as alleged in paragraph 152 of the First Amended Complaint, and Bank of America otherwise denies the allegations set forth in paragraph 152.

153. Bank of America denies knowledge or information sufficient to form a belief as to plaintiffs' knowledge as alleged in paragraph 153 of the First Amended Complaint, and Bank of America otherwise denies the allegations set forth in paragraph 153.

154. Bank of America denies the allegations set forth in paragraph 154 of the First Amended Complaint.

155. The allegations set forth in paragraph 155 of the First Amended Complaint are not directed at Bank of America, and accordingly no response is required thereto; to the extent that the allegations set forth in paragraph 155 are directed at Bank of America and a response is required, Bank of America denies the existence of the conspiracy alleged in paragraph 155, and Bank of America denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 155.

156. Bank of America denies knowledge or information sufficient to form a belief as to plaintiffs' knowledge as alleged in paragraph 156 of the First Amended Complaint, and Bank of America otherwise denies the allegations set forth in paragraph 156.

157. Bank of America denies the allegations set forth in paragraph 157 of the First Amended Complaint.

158. Bank of America denies that plaintiffs' description of any attendees at any alleged meetings in paragraph 158 of the First Amended Complaint is accurate or complete, and Bank of America otherwise denies the allegations set forth in paragraph 158.

159. Bank of America denies the allegations set forth in paragraph 159 of the First Amended Complaint.

160. Bank of America incorporates by reference its answers to the allegations set forth in paragraphs 1-159 of the First Amended Complaint as if set forth fully herein.

161. Bank of America denies the allegations set forth in paragraph 161 of the First Amended Complaint.

162. Bank of America denies the allegations set forth in paragraph 162 of the First Amended Complaint.

163. Bank of America denies the allegations set forth in paragraph 163 of the First Amended Complaint.

164. Bank of America denies the allegations set forth in paragraph 164 of the First Amended Complaint.

165. Bank of America denies the allegations set forth in paragraph 165 of the First Amended Complaint.

166. Bank of America denies the allegations set forth in paragraph 166 of the First Amended Complaint.

167. Bank of America denies the allegations set forth in paragraph 167 of the First Amended Complaint.

168. Bank of America incorporates by reference its answers to the allegations set forth in paragraphs 1-167 of the First Amended Complaint as if set forth fully herein.

169. Bank of America denies the allegations set forth in paragraph 169 of the First Amended Complaint.

170. Bank of America denies the allegations set forth in paragraph 170 of the First Amended Complaint.

171. Bank of America denies the allegations set forth in paragraph 171 of the First Amended Complaint.

172. Bank of America denies the allegations set forth in paragraph 172 of the First Amended Complaint.

173. Bank of America denies the allegations set forth in paragraph 173 of the First Amended Complaint.

174. Bank of America denies the allegations set forth in paragraph 174 of the First Amended Complaint.

JURY DEMAND

Bank of America admits that plaintiffs purport to make a demand for a jury trial on page 56 of the First Amended Complaint, but denies that plaintiffs are entitled to any jury trial in this action.

AFFIRMATIVE AND OTHER DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs have failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because plaintiffs lack standing under Article III of the U.S. Constitution.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because plaintiffs have not suffered injury within the meaning of 15 U.S.C. § 26 and, thus, lack standing under the antitrust laws to assert their claims.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' requested relief requiring Bank of America to notify courts that enforced the arbitration provision of the alleged antitrust conspiracy is barred by, *inter alia*, the equitable doctrine of laches because of Plaintiffs' undue delay in seeking such relief.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver, estoppel and ratification as to class members (1) who failed to exercise the ability to opt out of an arbitration provision, or (2) who failed to close an account after it became subject to arbitration.

SIXTH AFFIRMATIVE DEFENSE

The First Amended Complaint and this action should be dismissed as a sanction for plaintiffs' violation of the protective order entered in In re Currency Conversion Fee Antitrust Litigation, MDL 1409 (S.D.N.Y.). A motion for such relief has been filed and remains pending in that proceeding.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the terms of the settlement agreement in In re Currency Conversion Fee Antitrust Litigation, MDL 1409 (S.D.N.Y.).

EIGHTH AFFIRMATIVE DEFENSE

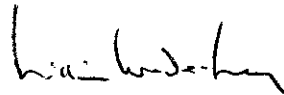
Bank of America specifically reserves all separate and affirmative defenses that it may have against the putative class and its members. It is not necessary at this time for Bank of America to delineate such defenses because no class has been certified and the putative class members are not parties to this action.

NINTH AFFIRMATIVE DEFENSE

Bank of America incorporates by reference, as if fully set forth herein, all of the other defenses asserted by other defendants to this action, and Bank of America reserves the right to raise additional defenses.

WHEREFORE, Bank of America respectfully requests that the Court dismiss the First Amended Complaint in its entirety with prejudice, enter judgment in its favor and against the plaintiffs, and award Bank of America its costs and disbursements, including attorneys' fees, incurred in defending this action, together with such other relief as the Court deems just and proper.

Dated: New York, New York
October 23, 2009



Mark P. Ladner
William R. Wade-Gery
Jodi K. Miller
MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, NY 10104-0050
Telephone: (212) 468-8000
Facsimile: (212) 468-7900

*Attorneys for Defendants Bank of America, N.A. (USA),
predecessor-in-interest to FIA Card Services, N.A., and
Bank of America, N.A.*