

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

BANK OF AMERICA, N.A. (USA), CAPITAL ONE  
BANK, CAPITAL ONE, F.S.B., JPMORGAN  
CHASE & CO., 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., NOVUS CREDIT SERVICES,  
INC., DISCOVER FINANCIAL SERVICES,  
DISCOVER BANK, HSBC FINANCE CORP.,  
HSBC BANK, NEVADA, N.A., MBNA  
AMERICA BANK, N.A., MBNA AMERICA  
(DELAWARE), N.A., PROVIDIAN FINANCIAL  
CORP., and PROVIDIAN NATIONAL BANK,

Defendants.

05 CV 7116 (WHP) (THK)

**DEFENDANTS JPMORGAN CHASE & CO. AND CHASE BANK USA, N.A.'S FIRST  
AMENDED ANSWER TO PLAINTIFFS' FIRST AMENDED CLASS ACTION  
COMPLAINT**

Defendants JPMorgan Chase & Co. (erroneously referred to in the plaintiffs' First Amended Complaint as J.P. Morgan Chase) and Chase Bank USA, N.A. (collectively referred to herein as "Chase" for the sole purpose of jointly answering this First Amended Complaint), by and through their undersigned counsel, hereby answer plaintiffs' First Amended Complaint as follows:

Chase denies the allegations in the prefatory paragraph of the First Amended Complaint and the prayer for relief, as well as any allegations contained in any headings, footnotes, or any other text that is not contained in a numbered paragraph, except as expressly stated below.

1. Chase admits that plaintiffs purport to bring this action on behalf of general purpose cardholders of Bank of America, JP Morgan Chase, Capital One, Citibank, Diners Club, Discover, HSBC/Household, MBNA and Providian and that in the First Amended Complaint plaintiffs purport to allege a conspiracy among the defendants to impose and maintain arbitration clauses in cardholder agreements, but Chase denies the truth of those allegations. Chase further denies that it "owns" Providian. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in the final sentence of paragraph 1 and denies them on that basis. Chase denies the remaining allegations in paragraph 1 of the First Amended Complaint.

2. Denied, except that Chase admits that footnote 1 identifies the defendants in certain actions.

3. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegation that most cardholders are unaware of the existence or implications of the arbitration clauses and denies the allegation on that basis. Chase denies the remaining

allegations of paragraph 3, except that Chase admits that the terms and conditions of its pre-existing cardholder agreements were lawfully amended to include arbitration clauses, and that Chase is entitled to enforce its arbitration agreements.

4. Denied, except that Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegation that arbitration proceedings are often conducted in secret and that the results are not publicly available and denies the allegation on that basis.

5. Denied.

6. Denied.

7. Chase admits that the First Amended Complaint purports to add NAF as a defendant. Chase denies that it was party to any "collusive scheme" and further denies that it participated in an organization "to impose arbitration clauses that ban class actions." Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 7 and denies the allegations on that basis.

8. Chase admits that the plaintiffs purport to seek the relief stated in the First Amended Complaint, but denies that plaintiffs are entitled to such relief.

9. This paragraph states a legal conclusion, to which no answer is required.

10. This paragraph states a legal conclusion, to which no answer is required.

11. Chase admits the first sentence of this paragraph as it pertains to Chase, but lacks knowledge and information sufficient to form a belief as to the truth of the allegations with respect to other defendants and denies the allegations on that basis. The second sentence states a legal conclusion, to which no answer is required, but to the extent an answer may be required Chase denies the allegation. Chase admits that the plaintiffs violated the protective order in MDL 1409 and relied on discovery in that proceeding to bring this Complaint, but denies that

such discovery constitutes information that supports the allegations in the First Amended Complaint. The final sentence in this paragraph states a legal conclusion, to which no answer is required, but to the extent an answer may be required Chase denies the allegation.

12. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 12 and denies them on that basis.

13. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 13 and denies them on that basis.

14. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 14 and denies them on that basis.

15. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 15 and denies them on that basis.

16. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 16 and denies them on that basis.

17. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 17 and denies them on that basis.

18. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 18 and denies them on that basis.

19. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 19 and denies them on that basis.

20. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 20 and denies them on that basis.

21. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 21 and denies them on that basis.

22. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 22 and denies them on that basis.

23. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 23 and denies them on that basis.

24. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 24 and denies them on that basis.

25. Chase admits that plaintiffs purport to refer to MBNA America Bank, N.A. as "MBNA America" but otherwise lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 25 and denies them on that basis.

26. Chase admits that plaintiffs purport to refer to MBNA America (Delaware), N.A. as "MBNA Delaware" but otherwise lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 26 and denies them on that basis.

27. Chase admits that plaintiffs purport to refer to FIA Card Services, N.A. as "FIA" but otherwise lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 27 and denies them on that basis.

28. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 28 and denies them on that basis.

29. Chase admits that plaintiffs purport to refer to FIA and all of its predecessors, affiliates, and subsidiaries collectively as "Bank of America" and to MBNA America, MBNA Delaware, and all of their predecessors, affiliates, and subsidiaries, prior to their acquisition by Bank of America and name change to FIA collectively as "MBNA." Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 29.

30. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 30 and denies them on that basis.

31. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 31 and denies them on that basis.

32. Chase admits that plaintiffs purport to refer to Capital One Bank (USA), N.A., Capital One, N.A. and all of their predecessors, affiliates, and subsidiaries as "Capital One" but otherwise lacks knowledge and information sufficient to form a belief as to the truth of this allegation.

33. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 33 and denies them on that basis.

34. Chase admits that JPMorgan Chase & Co. is a financial holding company organized under Delaware law with its principal place of business in New York, New York, and is joined as a defendant in the First Amended Complaint. Chase admits that on July 1, 2004, Bank One Corporation merged with and into J.P. Morgan Chase & Co. under the name J.P. Morgan Chase & Co. Chase lacks knowledge and information sufficient to form a belief as to the truth of the final sentence of this paragraph and denies it on this basis, and denies the remaining allegations in paragraph 34.

35. Chase admits that JPMorgan Chase & Co. was and is a financial holding company incorporated under Delaware law. Chase admits that on December 31, 2000, J.P. Morgan & Co., Inc. merged with and into The Chase Manhattan Corporation under the name J.P. Morgan Chase & Co. Chase denies the remaining allegations of paragraph 35.

36. Chase admits that JPMorgan Chase Bank, N.A. is a national banking association organized under the laws of the United States, that Chase Bank USA, N.A., is a national banking

association organized under the laws of the United States which is headquartered in Delaware, and that those entities are the principal bank subsidiaries of JPMorgan Chase & Co., but otherwise denies the allegations in this paragraph.

37. Chase admits that Chase Bank USA, N.A. issues credit cards and is joined as a defendant in the First Amended Complaint, but otherwise denies the allegations of the first sentence in this paragraph. Chase admits that Chase Bank USA, N.A. is the surviving entity of a transaction in which Bank One Delaware, N.A. merged into Chase Manhattan Bank USA, N.A. Chase admits that Chase Bank USA, N.A., Chase Manhattan Bank USA, N.A., Bank One Delaware, N.A. and First USA Bank, N.A. at one time issued credit cards. Chase denies the remaining allegations of this paragraph.

38. Chase admits the first sentence of this paragraph, admits that Bank One Corporation is the product of a merger, admits that FCC National Bank, the bank that issued credit cards under the First Card trade name, merged with a Bank One Corporation subsidiary, and otherwise denies the allegations in paragraph 38.

39. Chase admits the first sentence of this paragraph and admits that First USA Bank, N.A., a national banking association organized under the laws of the United States with its principal place of business in Wilmington, issued credit cards. Chase lacks knowledge and information sufficient to form a belief as to the truth of the final two sentences of this paragraph, and denies them on that basis. Chase otherwise denies the allegations in paragraph 39.

40. Chase admits that plaintiffs purport to use the terms "Bank One/First USA" and/or "First USA" to refer to Bank One Corporation and all of its predecessors, affiliates, and subsidiaries, including First USA, Inc. and First USA Bank, N.A., but denies the remaining allegations of this paragraph, if any.

41. Chase admits that the credit card issuing bank subsidiary of Bank One Corporation acquired more than forty credit card portfolios during the period in question, denies that Bank One Corporation or Bank One/First USA did so, admits that a Bank One subsidiary engaged in the four acquisitions or ventures listed, and otherwise lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 41, and denies them on that basis.

42. Chase admits that the Office of Thrift Supervision closed Washington Mutual Bank and appointed the FDIC as receiver on September 25, 2008 and that JPMorgan Chase Bank, N.A. agreed to purchase from the FDIC substantially all of the assets formerly held by Washington Mutual Bank, but otherwise denies the allegations in the first sentence of paragraph 42. Chase admits the second, third, and fourth sentences of this paragraph.

43. Chase admits plaintiffs purport to use the term "J.P. Morgan Chase" to refer to JPMorgan Chase & Co. and all of its predecessors, affiliates and subsidiaries; admits that plaintiffs purport to use the term "Chase" to refer to JPMorgan Chase & Co. and all of its predecessors, affiliates and subsidiaries for the period prior to the merger with Bank One Corporation; and admits that plaintiffs purport to use the term "Providian" to refer to Providian Financial Corp., Providian National Bank, and Washington Mutual Bank and all of their predecessors, affiliates and subsidiaries for the period prior to September 25, 2008, but denies the remaining allegations of paragraph 43, if any.

44. Denied.

45. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 45 and denies them on that basis.

46. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 46 and denies them on that basis.

47. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 47 and denies them on that basis.

48. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 48 and denies them on that basis.

49. Chase admits that plaintiffs purport to refer to Citigroup and all of its predecessors, affiliates, and subsidiaries, other than Citicorp Diners Club, Inc., as "Citibank" but otherwise lacks knowledge and information sufficient to form a belief as to the truth of this allegation.

50. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 50 and denies them on that basis.

51. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 51 and denies them on that basis.

52. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 52 and denies them on that basis.

53. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 53 and denies them on that basis, except to admit 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."

54. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 54 and denies them on that basis.

55. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 55 and denies them on that basis, except to admit that DFS Services LLC, Discover Financial Services, and Discover Bank are joined as defendants in the First Amended Complaint and that plaintiffs purport to refer to DFS Services LLC, Discover Financial Services, and Discover Bank collectively as "Discover."

56. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 56 and denies them on that basis.

57. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 57 and denies them on that basis.

58. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 58 and denies them on that basis.

59. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 59 and denies them on that basis.

60. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 60 and denies them on that basis.

61. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 61 and denies them on that basis.

62. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 62 and denies them on that basis.

63. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 63 and denies them on that basis.

64. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 64 and denies them on that basis.

65. Chase admits that plaintiffs purport to refer to HSBC North America, HSBC Finance Corporation (and its predecessor Household International, Inc.), HBSB, HSBC Bank USA, N.A., HSBC Bank, Nevada, N.A. and all their predecessors, affiliates and subsidiaries as "Household" but lacks knowledge and information sufficient to form a belief as to the truth of this allegation.

66. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 66 and denies them on that basis.

67. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 67 and denies them on that basis except that it admits that plaintiffs purport to join the National Arbitration Forum as a defendant in their First Amended Complaint, that plaintiffs purport to refer to the National Arbitration Forum as "NAF," and that NAF is an arbitration administrator that collects fees for the arbitration services that it administers.

68. Chase admits that NAF has served as an arbitration administrator in proceedings to which Chase is a party, but lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in the first sentence of this paragraph and denies them on that basis. Chase admits that Chase, First USA, and Providian cardholder agreements have listed NAF and other organizations as arbitration administrators, denies that Chase was party to any conspiracy, and lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in the second sentence of this paragraph and denies them on that basis.

69. Chase admits that plaintiffs purport to refer to American Express Travel Related Services, Inc., American Express Centurion Bank, and American Express Bank, FSB together as

“American Express” but lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 69 and denies them on that basis.

70. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 70 and denies them on that basis.

71. Chase admits that American Express entered into agreements with one or more banks pursuant to which they issue or issued cards that operate on the American Express network. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 71 and denies them on that basis.

72. Chase denies the allegations of paragraph 72 except to admit that American Express is a defendant in *Ross v. American Express Co.*, and that plaintiffs in that case allege that American Express engaged in a conspiracy to fix foreign exchange fees and to include compulsory arbitration clauses prohibiting class actions in their cardholder agreements. For the avoidance of doubt, Chase denies that the *Ross v. American Express Co.* allegations have merit.

73. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 73 and denies them on that basis.

74. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 74 and denies them on that basis.

75. Chase admits that plaintiffs purport to refer to Wells Fargo & Company and all its predecessors, affiliates and subsidiaries as “Wells Fargo” but lacks knowledge and information sufficient to form a belief as to the truth of this allegation.

76. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 76 and denies them on that basis.

77. Chase denies the allegations of paragraph 77 insofar as they pertain to Chase. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 77 and denies them on that basis.

78. Chase denies the allegations of paragraph 78 insofar as they pertain to Chase. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 78 and denies them on that basis.

79. Chase admits that plaintiffs purport to interpret the allegations in the First Amended Complaint in the way stated in paragraph 79 but otherwise lacks knowledge and information sufficient to form a belief as to the truth of those allegations and denies them on that basis.

80. This paragraph consists of a legal conclusion to which no response is required; however, to the extent a response is required, Chase lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 80 and denies them on that basis.

81. Chase denies the allegations of this paragraph as they relate to Chase, except that Chase admits that Chase Bank USA, N.A. has issued and continues to issue credit cards throughout the United States pursuant to valid and effective cardholder agreements, and admits that use of these credit cards and the related processes and communications, including customer billing, cross state lines and national borders. Chase lacks knowledge and information sufficient to form a belief as to truth of the allegations of this paragraph as they pertain to any entities other than Chase, and denies them on that basis.

82. Denied, except that Chase admits that certain activities described in the First Amended Complaint took place in interstate commerce.

83. This paragraph consists of a legal conclusion to which no response is required; however, to the extent a response is required, Chase lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 83 and denies them on that basis.

84. Chase admits that the First Amended Complaint contains ellipsed partial quotations from the cited opinion, avers that the decision speaks for itself, and otherwise lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 84 and denies them on that basis.

85. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 85 and denies them on that basis.

86. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 86 and denies them on that basis.

87. Chase admits that the credit cards issued by Chase Bank USA, N.A. have one or more of the attributes described in paragraph 87. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations of paragraph 87, including as they pertain to any entity other than Chase and as they pertain to "General purpose cards, which include Visa-branded, MasterCard-branded, Discover-branded and American Express-branded cards" as a general matter, and denies these allegations on that basis.

88. Chase admits that Visa, MasterCard and American Express operate and own three large payment card networks and that card transactions are processed through networks. Chase denies the allegations in the final sentence of paragraph 88. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 88 and denies them on that basis.

89. Chase admits that Chase Bank USA, N.A. issues credit cards to cardholders in accordance with agreements with Visa and MasterCard. Chase denies that Visa and MasterCard are associations or joint ventures and denies that American Express and Discover are closed networks. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations of paragraph 89 and denies them on that basis.

90. Admitted, except that Chase denies that the same banks that issue cards necessarily contract with merchants to accept cards.

91. Admitted, except that it is more accurate to say that Visa and MasterCard earn fees from their customer banks.

92. Denied with respect to Chase. Chase lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning what merchants do. For a description of the qualifications for providing merchant acquiring services and of the procedures for the authorization, clearance and settlement of a credit card transaction over the Visa or MasterCard networks, Chase refers to the rules and regulations of Visa, in the case of transactions authorized, cleared and settled over the Visa network, and of MasterCard in the case of transactions authorized, cleared and settled over the MasterCard network.

93. Chase admits the first two sentences of paragraph 93 except that it denies that American Express and Discover are closed networks. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 93 and denies them on that basis, except that Chase admits that American Express and Discover own their networks and most of the corresponding cardholder accounts and that American Express has entered into agreements with certain issuers who issue cards over the American Express network.

Chase denies the allegations of footnote 2 except that it admits that the decisions in the cited cases speak for themselves.

94. Admitted, except that Chase denies that American Express is a closed network and lacks knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 94 that such a transaction is "typical."

95. Chase admits that American Express and Discover compete with Chase Bank USA, N.A., Visa, and MasterCard. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 95 and denies them on that basis.

96. Denied with respect to Chase. Chase lacks knowledge and information sufficient to form a belief about the truth of the allegations as they relate to the conduct of other defendants and denies the allegations with respect to other defendants on that basis.

97. Chase admits that an individual affiliated with First USA<sup>1</sup> communicated with an attorney at WCP about a meeting of in-house credit card counsel, denies the remaining allegations of paragraph 97 with respect to Chase, and lacks knowledge and information sufficient to form a belief about the truth of the remaining allegations of paragraph 97 and denies them on that basis.

98. Chase admits that a meeting took place on or about May 25, 1999, at the Washington, DC offices of WCP, and that a First USA employee, a Providian<sup>2</sup> employee, and a

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<sup>1</sup> As used herein, "First USA" refers to First USA Bank, N.A. or its successors at the relevant time.

<sup>2</sup> As used herein, "Providian" refers to Providian National Bank or its successors at the relevant time.

Chase Manhattan<sup>3</sup> employee attended. Chase denies all other allegations in paragraph 98 as they relate to Chase. Chase lacks knowledge and information sufficient to form a belief about the truth of the remaining allegations in paragraph 98 and denies them on that basis.

99. Chase admits that as of May 25, 1999 First USA had already incorporated arbitration clauses into its cardholder agreements, and that Chase Manhattan and Providian had not incorporated arbitration clauses into their respective cardholder agreements. Chase otherwise denies the allegations in paragraph 99 as they pertain to Chase. Chase lacks knowledge and information sufficient to form a belief about the truth of the remaining allegations in paragraph 99 and denies them on that basis.

100. Chase admits that one or more employees of First USA, one or more employees of Providian, and one or more employees of Chase Manhattan attended a meeting or meetings among lawyers interested in the law of arbitration. Chase lacks knowledge and information sufficient to form a belief as to how the individuals who attended those meetings are properly referred to and denies the remaining allegations in paragraph 100 as they relate to Chase. Chase lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 100 as they relate to entities other than Chase, and denies the allegations with respect to such entities on that basis.

101. Chase admits that a consultant to First USA had communications regarding the identity of individuals who might be interested in or invited to a meeting on the subject of the law of arbitration. With respect to the remaining allegations of paragraph 101, Chase denies those allegations insofar as they pertain to Chase, and otherwise lacks knowledge and

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<sup>3</sup> As used herein, "Chase Manhattan" refers to Chase Manhattan Bank USA, N.A. or its successor at the relevant time.

information sufficient to form a belief as to the truth of the allegations and denies them on that basis.

102. Chase admits that a consultant to First USA contacted NAF regarding who might be interested in the subject of the law of arbitration and received suggestions from NAF. With respect to the remaining allegations of paragraph 102, Chase denies those allegations insofar as they pertain to Chase, and otherwise lacks knowledge and information sufficient to form a belief as to the truth of the allegations and denies them on that basis.

103. Chase admits that on or about July 28, 1999, a meeting on the subject of the law of arbitration took place at the offices of WCP. Chase further admits that one or more individuals associated with First USA and other institutions attended that meeting. Chase further admits that paragraph 103 partially, selectively, and inaccurately quotes from documents that purport to relate to such a meeting. Chase denies the allegations in the third sentence of paragraph 103. Chase denies the allegations in the fourth sentence of paragraph 103, except that Chase admits that one of the bullet points on the document that Plaintiffs appear to quote in part was "Sharing best practices," and that another bullet point was "Drafting fair, enforceable arbitration provisions." Chase lacks knowledge and information sufficient to form a belief about the truth of the allegations in the fifth sentence of paragraph 103, but admits that Chase Manhattan and Providian had not yet incorporated an arbitration clause in its cardholder agreements as of July 28, 1999, although First USA had done so prior to that date. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 103 and denies them on that basis.

104. Denied as to Chase, except that Chase admits that an August 4, 1999 e-mail apparently sent by a First USA consultant to a First USA in-house counsel and a WCP lawyer

lists as “things we might cover” in a possible telephone call the subjects partially and selectively quoted in paragraph 104. Chase lacks knowledge and information sufficient to form a belief about the truth of the remaining allegations in paragraph 104, and denies those allegations on that basis.

105. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 105 and denies them on that basis, except that Chase admits that DM000102, a confidential document produced in MDL 1409, contains the quoted language and purports to be an email from Eric Mogilnicki at WCP to various individuals, and otherwise denies that plaintiffs’ summaries and characterizations of this document are accurate.

106. Chase admits that an individual affiliated with First USA and an individual affiliated with Chase Manhattan attended a meeting among lawyers relating to the law of arbitration on or about September 29, 1999, and that, upon information and belief, employees or persons otherwise affiliated with Bank of America, Citibank, Discover, Household, Ballard Spahr, and WCP also may have attended. Chase admits that plaintiffs selectively quote from a document purporting to be a meeting agenda, but denies that plaintiffs have accurately described or characterized the document. Chase otherwise denies the allegations in paragraph 106 as they pertain to Chase. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 106 and denies them on that basis.

107. Chase denies the allegations in paragraph 107, except Chase admits that an individual employed by Chase Manhattan testified at a deposition that an employee of Bank of America commented on Wells Fargo's arbitration clause and that a Sears employee commented on Sears' frustration with class action litigation.

108. Denied as to Chase, except that Chase admits that Chase Manhattan and Providian had not adopted an arbitration clause at the time in question. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations of paragraph 108, and denies them on that basis.

109. Chase admits that First USA's use of NAF as an arbitration administrator and its payment of filing fees to NAF were noted at a meeting on or about September 29 relating to the law of arbitration, denies that First USA "heavily relied" on NAF to assist its collection practices, denies the final sentence of paragraph 109, and otherwise lacks knowledge and information sufficient to form a belief as to the truth of the allegations of this paragraph and denies the allegations on that basis.

110. Chase denies the allegations of paragraph 110 as they pertain to Chase, except to admit that First USA exercised its First Amendment rights to retain outside counsel to draft and file *amicus curiae* briefs relating to the enforceability of arbitration clauses. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations as they relate to entities other than Chase, and denies the allegations with respect to such entities on that basis. The first sentence of footnote 3 is a legal conclusion and requires no answer; however, to the extent an answer is required, Chase admits that the filing of *amicus curiae* briefs and joint lobbying of legislators is protected by the Noerr-Pennington doctrine and otherwise denies the allegations in footnote 3.

111. Chase admits that C022089, a confidential document produced in MDL 1409, contains the language quoted in the second sentence of paragraph 111 and purports to be an email from Eric Mogilnicki to various individuals. Chase otherwise denies the allegations in paragraph 111 as they pertain to Chase, including the allegation that Chase "collusive[ly]

impos[ed]" a compulsory arbitration clause. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 111 and denies them on that basis.

112. Chase admits that one or more individuals affiliated with First USA attended a meeting among lawyers relating to the law of arbitration on or around January 12, 2000. Chase further admits that it has seen an e-mail from an individual at WCP to various individuals asking for suggested topics for such a meeting. Chase further admits that First USA had adopted arbitration clauses in its cardholder agreements prior to January 2000, while Chase Manhattan and Providian had not. Chase otherwise denies the allegations of paragraph 112 as they relate to Chase. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations of paragraph 112 and denies them on that basis.

113. Denied with respect to Chase, except that Chase admits that one or more individuals affiliated with Providian, Chase Manhattan and/or First USA attended or called in to a meeting or meetings of lawyers relating to the law of arbitration on or about January 2000, March 2000, October 3, 2000, January 16, 2001, and January 31, 2002, and possibly one or more other dates. Chase otherwise denies the allegations of paragraph 113 as they pertain to Chase. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations of paragraph 113 and denies them on that basis.

114. Denied as to Chase, except that Chase admits that one or more individuals affiliated with Providian, Chase Manhattan, and First USA attended at least one meeting among lawyers that discussed the law and public policy aspects of class actions, and that one or more individuals affiliated with Providian, Chase Manhattan, and/or First USA attended at least one telephone call with in-house counsel at other financial services institutions to discuss

developments in the law, case decisions, and recommendations for outside counsel. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations of paragraph 114, and denies them on that basis.

115. Chase denies the allegations of paragraph 114 insofar as they pertain to Chase, except that Chase admits that one or more individuals affiliated with Chase Manhattan, Providian, and First USA attended a meeting of lawyers on February 14, 2001 concerning the law of class actions and class action abuses. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 115 as they relate to entities other than Chase, and denies them on that basis.

116. Chase admits that a meeting relating to the law of class actions and class action abuses was held at a Chase office on May 30, 2001, that individuals affiliated with Chase Manhattan and First USA attended, and that the meeting has been referred to as a meeting of a "Consumer Companies' Class Action Working Group." Chase denies the remaining allegations of paragraph 116 as they pertain to Chase, except that Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegation that a representative of Providian attended the meeting. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 116 as they relate to entities other than Chase, and denies the allegations with respect to such entities on that basis.

117. Denied as to Chase, except to admit that one or more individuals affiliated with Chase Manhattan participated in at least one telephone call with in-house counsel at other financial services institutions to discuss developments in the law, case decisions, and recommendations for outside counsel. Chase lacks knowledge and information sufficient to

form a belief as to the truth of the allegations of paragraph 117 as they pertain to entities other than Chase, and denies the allegations on that basis.

118. Chase denies that it “continued to emphasize sharing information and ‘best practices’ among Defendants for the purposes of developing means to collectively protect themselves from plaintiff actions” and further denies that arbitration was discussed on the August 7, 2001 conference call. Chase denies the allegations in the final sentence of paragraph 118 as to Chase. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and denies them on that basis.

119. Denied as to Chase. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 119 as they relate to entities other than Chase and denies them on that basis.

120. Chase denies the allegations of paragraph 120 with respect to Chase except that it admits that Chase Bank USA, N.A.’s cardholder agreements specify and have specified arbitration administrators. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 120 and denies them on that basis.

121. Chase denies that NAF is “egregious” or an “egregious example” and denies the second sentence of paragraph 121 as to Chase. Chase admits that NAF was the only administrator listed in First USA cardholder agreements from 1997 until 2003, admits that NAF and others were listed as arbitration providers in Provident cardholder agreements beginning in 2001, and admits that NAF is designated as an arbitration administrator for Chase Bank USA, N.A. Chase admits that plaintiffs have selectively and partially quoted from notes taken by a Chase in-house counsel and denies that paragraph 121 fairly characterizes the notes. Chase lacks

knowledge and information sufficient to form a belief as to the remaining allegations in paragraph 121 and denies them on that basis.

122. Chase denies the first sentence in paragraph 122, avers that the cited statistics from *Bownes* relate to collection actions against cardholders whose accounts were in default, in which the success rate would have been the same or better in court as compared to arbitration, denies that the cited statistics accurately reflect the information produced in *Bownes*, and lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 122, and denies them on that basis.

123. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 123 and denies them on that basis.

124. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 124 and denies them on that basis.

125. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 125 and denies them on that basis.

126. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 126 and its subparts and denies them on that basis.

127. Chase admits that certain of its cardholder agreements have listed JAMS as an arbitration administrator and admits that it issued a change in terms notice in February 2005 that among other things eliminated JAMS as an arbitration provider. Chase denies that it “pressured” JAMS to revise its practices. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 127 and denies them on that basis.

128. Denied as to Chase. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 128 as they pertain to entities other than Chase and denies them on that basis.

129. Denied as to Chase. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 129 as they pertain to entities other than Chase and denies them on that basis.

130. Denied as to Chase except that Chase admits that arbitration clauses were validly incorporated into cardholder agreements by way of Change in Terms notices mailed to cardholders and that some issuers allowed cardholders to opt out of arbitration clauses and retain their accounts. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 130 and denies them on that basis.

131. Denied as to Chase. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 131 as they pertain to entities other than Chase and denies them on that basis.

132. Chase denies the allegations in the first sentence of paragraph 132 as they pertain to Chase; Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in this sentence as they pertain to entities other than Chase and denies them on that basis. With respect to the remaining allegations in this paragraph, Chase admits that arbitrators are not necessarily required to follow the rules of evidence, to allow the same scope of discovery available in court, or to provide written decisions. Chase denies that the discovery in MDL 1409 produced evidence of any form of collusion with respect to arbitration clauses; and Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in these sentences and denies them on that basis.

133. Chase admits that the First Amended Complaint contains an ellipsed partial quotation from the cited case, avers that the decision speaks for itself, and otherwise denies the allegations in this paragraph.

134. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 134 and denies them on that basis.

135. Denied as to Chase. Chase lacks knowledge and information sufficient to form a belief as to truth of the allegations in this paragraph as they pertain to entities other than Chase and denies them on that basis.

136. The allegations of paragraph 136 are denied insofar as they pertain to Chase. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 136 and denies them on that basis.

137. Chase denies that it “collusive[ly] impos[ed] [] compulsory arbitration clauses” and denies that arbitration clauses have reduced the value of the general purpose cards Chase issues. Chase lacks knowledge and information sufficient to form a belief as to truth of the remaining allegations in this paragraph and denies them on that basis.

138. Chase denies that it participated in a “conspiracy to impose class-barring arbitration clauses” and denies that its arbitration clauses have diminished the overall value of its general purpose card services to cardholders. Chase lacks knowledge and information sufficient to form a belief as to truth of the remaining allegations in the first sentence of paragraph 138 and denies them on that basis. Chase denies the remaining allegations in this paragraph.

139. Chase denies that its arbitration clauses were “collusively imposed” and denies that its general purpose cards with arbitration clauses “are less valuable to cardholders.” Chase lacks knowledge and information sufficient to form a belief as to truth of the allegations in the

last sentence of this paragraph as they pertain to entities other than Chase and denies them on that basis. Chase denies the remaining allegations in this paragraph.

140. Denied as to Chase. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph as they pertain to entities other than Chase and denies them on that basis.

141. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph and denies them on that basis. Chase admits that arbitration administrators assess certain fees for their services, but denies the remaining allegations in this paragraph.

142. Chase admits that plaintiffs have selectively and partially quoted from the statement referenced above, avers that the statement speaks for itself, denies the remaining allegations in this paragraph as they pertain to Chase, and states that it lacks knowledge and information sufficient to form a belief as to the remaining allegations in this paragraph as they pertain to entities other than Chase and denies them on that basis.

143. Chase denies the allegations in paragraph 143 with respect to Chase, including the allegation that there was any conspiracy that included Chase, avers that Chase *did* offer different products and compete for business, and lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations of paragraph 143 and denies them on that basis.

144. Chase admits that plaintiffs purport to bring a class action on their own behalf and under Rule 23(b)(2).

145. Chase admits that plaintiffs purport to bring suit on behalf of a putative class as described in paragraph 145, denies that JPMorgan Chase & Co. issues credit cards, and

otherwise lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 145.

146. Chase admits that plaintiffs purport to bring suit on behalf of a putative subclass as described in paragraph 146 and otherwise lacks knowledge and information sufficient to form a belief as the truth of the allegations in paragraph 146.

147. Chase admits that the members of the proposed class are so numerous and geographically dispersed that joinder of all proposed class members in this action is impracticable and otherwise lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 147.

148. Denied, except that Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 148 that plaintiffs' claims are typical of the claims of members of the putative class.

149. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 149.

150. Chase denies that it committed any wrongful acts or violations of law, denies that plaintiffs are entitled to any relief, and denies that plaintiffs are threatened with any harm. The remaining allegations in paragraph 150 and its subparts are conclusions of law that do not require any answer, but to the extent an answer is required, they are denied.

151. Denied as to Chase. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 151 as they pertain to entities other than Chase and denies them on that basis.

152. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 152.

153. Chase denies that it violated the antitrust laws, that it was a party to a conspiracy, or that it concealed any conspiracy, but otherwise lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 153 and denies them on that basis.

154. Denied as to Chase. Chase lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 154 and denies them on that basis.

155. Chase admits that plaintiffs violated the protective order in MDL 1409 and relied on discovery in that proceeding in this Complaint, but denies that the discovery in MDL 1409 supports the allegations in the First Amended Complaint. Chase admits that a meeting of in-house counsel for a number of banks occurred on or about May 25, 1999 and that Chase provided information about that meeting in discovery in MDL 1409. Chase denies that it made any efforts to “hide the truth.” Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 155 as they pertain to any entities other than Chase and denies them on that basis. Chase denies the remaining allegations in this paragraph.

156. Chase denies that it engaged in any conspiratorial conduct or took any actions “for the purpose of harming consumer welfare by banning class actions and blocking access to the judicial system,” but otherwise lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 156 and denies them on that basis.

157. Chase denies the allegations in paragraph 157 as they pertain to Chase, and lacks knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph as they pertain to any entities other than Chase, and denies them on that basis.

158. Chase denies the allegations in paragraph 158 as they pertain to Chase, and lacks knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph as they pertain to any entities other than Chase, and denies them on that basis.

159. Chase denies the allegations in this paragraph as they pertain to Chase, except that it admits that some of its cardholder agreements contain an arbitration clause. Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph as they pertain to any entities other than Chase, and denies them on that basis.

160. The responses set forth in ¶¶ 1-159 above are incorporated by reference.

161. Chase denies the allegations in this paragraph as they pertain to Chase, and lacks knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph as they pertain to any entities other than Chase, and denies them on that basis.

162. Chase denies the allegations in paragraph 162 and its subparts as they pertain to Chase, and lacks knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and its subparts as they pertain to any entities other than Chase, and denies them on that basis.

163. Chase denies the allegations in paragraph 163 as they pertain to Chase, and lacks knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph as they pertain to any entities other than Chase, and denies them on that basis.

164. Chase denies the allegations in paragraph 164 as they pertain to Chase, and lacks knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph as they pertain to any entities other than Chase, and denies them on that basis.

165. Chase denies the allegations in paragraph 165 as they pertain to Chase, and lacks knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph as they pertain to any entities other than Chase, and denies them on that basis.

166. This paragraph contains a legal conclusion to which no answer is required; however, to the extent an answer is required, Chase denies the allegations in paragraph 166 as

they pertain to Chase, and lacks knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph as they pertain to any entities other than Chase, and denies them on that basis.

167. Denied.

168. The responses set forth in ¶¶ 1-168 above are incorporated by reference.

169. Denied with respect to Chase; Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 169 as they pertain to any entities other than Chase and denies them on that basis.

170. Denied with respect to Chase; Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 170 as they pertain to any entities other than Chase and denies them on that basis.

171. Denied with respect to Chase; Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 171 as they pertain to any entities other than Chase and denies them on that basis.

172. This paragraph contains a legal conclusion, which does not require a response. Nevertheless, to the extent a response is required, the allegations in paragraph 172 are denied with respect to Chase; Chase lacks knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph as they pertain to any entities other than Chase and denies them on that basis.

173. This paragraph contains a legal conclusion, which does not require a response. Nevertheless, to the extent a response is required, the allegations in paragraph 173 are denied with respect to Chase; Chase lacks knowledge and information sufficient to form a belief as to

the truth of the allegations in this paragraph as they pertain to any entities other than Chase and denies them on that basis.

174. Denied.

For its answer to plaintiffs' jury demand, Chase states that the demand for trial by jury is inapplicable and should be stricken because plaintiffs have no constitutional, statutory, or other right to a jury trial for the claims asserted in the First Amended Complaint.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Plaintiffs' claims, in whole or in part, fail to state a claim on which relief can be granted.

#### **Second Affirmative Defense**

The claims of plaintiffs and putative class members who (i) participated in arbitration without challenging the enforceability of defendants' arbitration provisions; (ii) used defendants' credit cards subject to their cardholder agreements, including the arbitration and class action provisions, without challenging the enforceability of those arbitration and class action provisions, or (iii) received a cardmember agreement or change-in-terms notice that permitted the plaintiff or putative class member to opt out of the arbitration provision and did not exercise the right to opt out, are barred by waiver, ratification, acquiescence, consent, and/or estoppel.

#### **Third Affirmative Defense**

Plaintiffs' claims are barred by the doctrine of laches. Plaintiffs were or should have been aware of the facts forming the basis of their claims as early as 1998. For example, the implementation of arbitration clauses by one or more of the defendants was known to the public as early as 1998. Due to Plaintiffs' unreasonable delay in bringing suit, Chase entities expended time and money in enforcing and invoking arbitration clauses. Plaintiffs' claims are therefore barred for the failure to bring their claims in a timely manner.

In addition, to the extent that Plaintiffs seek an order requiring Chase to notify all courts and arbitration forums that have enforced Chase's arbitration clauses of the alleged antitrust conspiracy, Plaintiffs' claims are waived and are barred by laches and/or the statute of limitations as a result of Plaintiffs' undue delay in seeking such relief.

#### **Fourth Affirmative Defense**

Plaintiffs lack antitrust standing to sue Chase and have not alleged a cognizable antitrust injury.

**Fifth Affirmative Defense**

Plaintiffs' claims are based, in whole or in part, upon a violation of a protective order in a related proceeding, and should be dismissed as a sanction for the violation.

**Sixth Affirmative Defense**

As part of the settlement In re Currency Conversion Fee Antitrust Litigation, MDL 1409, plaintiffs released not only any claims or causes of action against the defendants in that action regarding foreign currency exchange rates, but also any right to relitigate the facts, circumstances, and allegations of an alleged conspiracy regarding such rates against those defendants. To the extent that any allegations in this Action are based in whole or in part on the allegations in In re Currency Conversion Fee Antitrust Litig., MDL No. 1409, they are barred by the settlement of that action.

**Seventh Affirmative Defense**

Jurisdiction over plaintiffs' claims is lacking under Article III of the United States Constitution.

**Eighth Affirmative Defense**

To the extent that Plaintiffs seek to predicate liability on communications made for the purpose of petitioning the courts, legislative bodies, or government regulators, Plaintiffs' claims are barred by the doctrine of *Noerr-Pennington*.

**Ninth Affirmative Defense**

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

**PRAYER FOR RELIEF**

WHEREFORE, Chase prays for relief as follows:

1. That plaintiffs and members of the putative class on whose behalf plaintiffs purport to sue take nothing by way of their First Amended Complaint and that said Complaint be dismissed with prejudice;

2. That Defendants be awarded their costs of suit and attorneys' fees incurred herein; and
3. For such other and further relief as this Court may deem proper and just.

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