

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

IN RE :

MDL NO. 1409

CURRENCY CONVERSION FEE :

M21-95

ANTITRUST LITIGATION :

-----X

ROBERT ROSS et al., :

05 Civ. 7116 (WHI)

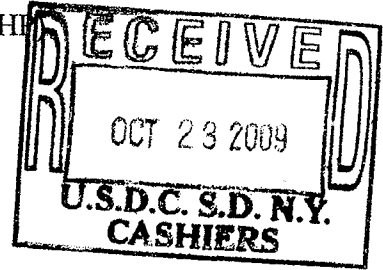
Plaintiffs, :

-against- :

BANK OF AMERICA, N.A. (USA) et al., :

Defendants. :

-----X



**DEFENDANTS DFS SERVICES LLC, DISCOVER BANK, AND DISCOVER
FINANCIAL SERVICES' ANSWER TO PLAINTIFFS' FIRST AMENDED CLASS
ACTION COMPLAINT AND AMENDED AFFIRMATIVE DEFENSES**

Defendants DFS Services LLC, Discover Bank, and Discover Financial Services (collectively "Discover"), by and through their counsel, hereby answer Plaintiffs' First Amended Class Action Complaint ("Amended Complaint") as follows:

1. Discover admits that Plaintiffs purport to bring this action on behalf of general purpose cardholders of Defendants and that the Plaintiffs purport to allege a conspiracy among the Defendants to impose and maintain arbitration clauses in cardholder agreements, but Discover denies the truth of those allegations. Discover denies the remaining allegations in paragraph 1 of the Amended Complaint.

2. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 2 of the Amended Complaint. Discover

denies the remaining allegations in paragraph 2 and footnote 1 of the Amended Complaint. Discover admits that footnote 1 identifies certain Defendants other than Discover in certain actions, and that Discover now owns the Diners Club network.

3. Discover denies the allegations in paragraph 3 of the Amended Complaint as they relate to Discover, and affirmatively states that Discover's cardmember agreements incorporate clauses that specifically give Discover customers the right to opt out of arbitration without forfeiting any of their cardmember rights and privileges. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 3 of the Amended Complaint as they relate to the other Defendants.

4. Discover denies the allegations in paragraph 4 of the Amended Complaint, and affirmatively states that Discover's cardmember agreements incorporate clauses that specifically give Discover customers the right to opt out of arbitration without forfeiting any of their cardmember rights and privileges.

5. Discover denies the allegations in the first and third sentences of paragraph 5 of the Amended Complaint. The second sentence of Paragraph 5 of the Amended Complaint states a legal conclusion to which no answer is required, but to the extent an answer may be required, Discover denies the allegations in paragraph 5 of the Amended Complaint.

6. Discover denies the allegations in paragraph 6 of the Amended Complaint, and affirmatively states that Discover's cardmember agreements incorporate clauses that specifically give Discover customers the right to opt out of arbitration without forfeiting any of their cardmember rights and privileges.

7. Discover admits that Plaintiffs purport to join the National Arbitration Forum as a defendant in this action. Discover denies the existence of any collusive scheme. Discover

denies the remaining allegations in paragraph 7 of the Amended Complaint as they relate to Discover. To the extent the allegations relate to other Defendants, Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Amended Complaint.

8. Discover admits that the Plaintiffs purport to seek the relief stated in paragraph 8 of the Amended Complaint, but Discover denies that Plaintiffs are entitled to such relief. Discover denies the remaining allegations of Paragraph 8 of the Amended Complaint.

9. Paragraph 9 of the Amended Complaint states a legal conclusion to which no answer is required, but to the extent an answer may be required, Discover admits that jurisdiction is purportedly conferred on this Court by 28 U.S.C. §§ 1331 and 1337 and by 15 U.S.C. §26, but denies that Plaintiffs are entitled to relief of any kind.

10. Paragraph 10 of the Amended Complaint states a legal conclusion to which no answer is required, but to the extent an answer may be required, Discover 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. Discover admits the first sentence of paragraph 11 of the Amended Complaint as it relates to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Amended Complaint as they relate to the other Defendants. The second sentence states a legal conclusion to which no answer is required, but to the extent an answer may be required, Discover denies the allegation. The last sentence of paragraph 11 of the Amended Complaint states a legal conclusion to which no answer is required, but to the extent an answer may be required, Discover denies the allegation. Discover denies the remaining allegations in paragraph 11 of the Amended Complaint.

12. Discover states that, upon information and belief, an individual by the name of Robert Ross did open a credit card account with Discover prior to the time the Amended Complaint was filed, however, the credit card account opened in the name of Robert Ross had expired as of the time the Amended Complaint was filed. Discover denies that the Discover-issued card account opened by Robert Ross had a mandatory pre-dispute arbitration clause at the time the Amended Complaint was filed, and affirmatively states that Discover's cardmember agreements incorporate clauses that specifically give Discover customers the right to opt out of arbitration without forfeiting any of their cardmember rights and privileges. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 12 of the Amended Complaint.

13. Discover states that upon information and belief, as of the time the Amended Complaint was filed, Discover did not have a credit card account open in the name of Andrea Kune of Los Angeles County. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 13 of the Amended Complaint.

14. Discover states that as of the time the Amended Complaint was filed, Discover had a credit card account open in the name of Woodrow W. Clark II. Discover denies that the Discover-issued card held by Woodrow W. Clark II had a mandatory pre-dispute arbitration clause at the time the Amended Complaint was filed, and affirmatively states that Discover's cardmember agreements incorporate clauses that specifically give Discover customers the right to opt out of arbitration without forfeiting any of their cardmember rights and privileges. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 14 of the Amended Complaint.

15. Discover states that upon information and belief, as of the time the Amended Complaint was filed, Discover did not have a credit card account open in the name of Herve Senequier of New York, New York. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 15 of the Amended Complaint.

16. Discover states that upon information and belief, as of the time the Amended Complaint was filed, Discover did not have a credit card account open in the name of S. Byron Balbach, Jr. of Champaign County, Illinois. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 16 of the Amended Complaint.

17. Discover states that upon information and belief, as of the time the Amended Complaint was filed, Discover did not have a credit card account open in the name of Matthew R. Grabell of Bergen County, New Jersey. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 17 of the Amended Complaint.

18. Discover states that upon information and belief, as of the time the Amended Complaint was filed, Discover did not have a credit card account open in the name of Paul Impellezzeri of Los Angeles County. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 18 of the Amended Complaint.

19. Discover states that as of the time the Amended Complaint was filed, Discover had a credit card account open in the name of Richard Mandell of Riverside County, California. Discover denies that the Discover-issued card held by Richard Mandell had a mandatory pre-

dispute arbitration clause at the time the Amended Complaint was filed, and affirmatively states that Discover's cardmember agreements incorporate clauses that specifically give Discover customers the right to opt out of arbitration without forfeiting any of their cardmember rights and privileges. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 19 of the Amended Complaint.

20. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Amended Complaint.

21. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Amended Complaint.

22. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Amended Complaint.

23. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 23 of the Amended Complaint.

24. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Amended Complaint.

25. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Amended Complaint.

26. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Amended Complaint.

27. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Amended Complaint.

28. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Amended Complaint.

29. Discover admits that Plaintiffs purport to refer to "Bank of America Corporation" and "MBNA Corporation" separately, but also collectively along with all of their predecessors, affiliates, and subsidiaries as "MBNA" but otherwise lacks knowledge and information sufficient to form a belief as to the truth of these allegations.

30. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Amended Complaint.

31. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 31 of the Amended Complaint.

32. Discover 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 these allegations.

33. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 33 of the Amended Complaint.

34. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 34 of the Amended Complaint.

35. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 35 of the Amended Complaint.

36. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 36 of the Amended Complaint.

37. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 37 of the Amended Complaint.

38. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 38 of the Amended Complaint.

39. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 39 of the Amended Complaint.

40. Discover admits that Plaintiffs purport to refer to First USA, Inc. and First USA Bank, N.A. as "Bank One/First USA" and/or "First USA" but otherwise lacks knowledge and information sufficient to form a belief as to the truth of these allegations.

41. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 41 of the Amended Complaint.

42. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 42 of the Amended Complaint. To the extent that paragraph 42 of the Amended Complaint purports to quote from or summarize an opinion or court order, Discover respectfully refers the Court to the entire opinion or order for a complete and accurate recitation of its contents.

43. Discover admits that Plaintiffs purport to refer to J.P. Morgan Chase and all of its predecessors, affiliates and subsidiaries as "J.P. Morgan Chase" and Plaintiffs purport to refer J.P. Morgan Chase & Co. and all of its predecessors, affiliates and subsidiaries for the period prior to the merger with Bank One Corporation as "Chase" and Plaintiffs purport to refer to Providian Financial Corp., Providian National Bank and Washington Mutual Bank and all of their predecessors, affiliates and subsidiaries collectively as "Providian" but Discover otherwise lacks knowledge and information sufficient to form a belief as to the truth of these allegations.

44. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 44 of the Amended Complaint.

45. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 45 of the Amended Complaint.

46. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 46 of the Amended Complaint.

47. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 47 of the Amended Complaint.

48. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 48 of the Amended Complaint.

49. Discover 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 Discover otherwise lacks knowledge and information sufficient to form a belief as to the truth of these allegations.

50. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 50 of the Amended Complaint.

51. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 51 of the Amended Complaint.

52. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 52 of the Amended Complaint.

53. Discover admits 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, as "Diners Club." Discover also admits that on June 30, 2008 DFS Services LLC acquired the Diners Club network, and that Diners Club Cards continue to be issued by the Citigroup

defendants. Discover otherwise lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 53 of the Amended Complaint.

54. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 54 of the Amended Complaint.

55. Discover admits that DFS Services LLC was formerly known as Discover Financial Services LLC, and that DFS Services LLC is a limited liability company formed under the laws of the State of Delaware, with its principal place of business in Riverwoods, Illinois. Discover further admits that Discover Bank is a wholly owned subsidiary of Discover Financial Services, and is a Delaware state chartered bank with its principal place of business in Greenwood, Delaware. Discover admits that Discover Bank issues Discover-branded general purpose cards and other consumer finance products and services. Discover admits that the plaintiffs purport to name DFS Services LLC, Discover Financial Services, and Discover Bank as defendants in this action and collectively refer to these entities as "Discover." Discover denies the remaining allegations in paragraph 55 of the Amended Complaint.

56. Discover admits that prior to June 30, 2007, Discover was a fully-owned subsidiary of Morgan Stanley. Discover states that, upon information and belief, Morgan Stanley announced on April 4, 2005, that it had authorized management to pursue a spin-off of Discover Financial Services and the Discover brand. Discover denies the remaining allegations in paragraph 56 of the Amended Complaint.

57. Discover admits the allegations contained in paragraph 57 of the Amended Complaint.

58. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 58 of the Amended Complaint.

59. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 59 of the Amended Complaint.

60. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 60 of the Amended Complaint.

61. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 61 of the Amended Complaint.

62. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 62 of the Amended Complaint.

63. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 63 of the Amended Complaint.

64. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 64 of the Amended Complaint.

65. Discover 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 Discover otherwise lacks knowledge and information sufficient to form a belief as to the truth of these allegations.

66. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 66 of the Amended Complaint.

67. Discover admits that the Plaintiffs purport to join the National Arbitration Form, which they refer to as "NAF," as a defendant in the Amended Complaint. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 67 of the Amended Complaint.

68. Discover admits that NAF has served as an arbitration administrator in proceedings to which Discover was 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. Discover admits that its cardholder agreements have listed NAF and other organizations as arbitration administrators. Discover denies the remaining allegations of paragraph 68 of the Amended Complaint to the extent they relate to Discover, and lacks knowledge and information sufficient to form a belief as to the truth of remaining the allegations in paragraph 68 of the Amended Complaint.

69. Discover admits that Plaintiffs purport to refer to American Express Company, and its subsidiaries American Express Travel Related Services, Inc. and American Express Centurion Bank and American Express Bank, FSB as "American Express," but Discover otherwise lacks knowledge and information sufficient to form a belief as to the truth of these allegations. Discover also lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 69 of the Amended Complaint.

70. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 70 of the Amended Complaint.

71. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 71 of the Amended Complaint.

72. Discover denies the allegations of the first sentence of paragraph 72. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 72 of the Amended Complaint.

73. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 73 of the Amended Complaint.

74. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 74 of the Amended Complaint.

75. Discover admits that Plaintiffs purport to refer to Wells Fargo & Company and all its predecessors, affiliates and subsidiaries as "Wells Fargo," but Discover otherwise lacks knowledge and information sufficient to form a belief as to the truth of these allegations.

76. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 76 of the Amended Complaint.

77. Discover denies the allegations in paragraph 77 of the Amended Complaint to the extent that they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 77 of the Amended Complaint.

78. Discover denies the allegations in paragraph 78 of the Amended Complaint to the extent that they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 78 of the Amended Complaint.

79. Discover admits that the Plaintiffs purport to interpret the allegations in the Amended Complaint in the manner phrased in paragraph 79 of the Amended Complaint. Discover denies the allegations in paragraph 79 of the Amended Complaint to the extent that they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 79 of the Amended Complaint.

80. Paragraph 80 of the Amended Complaint states a legal conclusion to which no answer is required.

81. Discover denies the allegations in paragraph 81 of the Amended Complaint as they relate to Discover, except that Discover admits that it has issued and continues to issue credit cards throughout the United States pursuant to valid and enforceable cardmember

agreements, and admits that use of these credit cards and the related processes and communications, including customer billing, cross state lines and national borders. Discover further states that the cardmember agreements include arbitration clauses that specifically give customers the right to opt out of arbitration without forfeiting any of their cardmember rights and privileges. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 81 of the Amended Complaint.

82. Paragraph 82 of the Amended Complaint states a legal conclusion to which no answer is required, but to the extent an answer may be required, Discover denies the allegations in paragraph 82 of the Amended Complaint as they relate to Discover, except to the extent that it has issued and continues to issue credit cards throughout the United States pursuant to valid and enforceable 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. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 82 of the Amended Complaint as they relate to the other Defendants.

83. Paragraph 83 of the Amended Complaint states a legal conclusion to which no answer is required.

84. Paragraph 84 of the Amended Complaint states a legal conclusion to which no answer is required. To the extent that paragraph 84 of the Amended Complaint purports to quote from or summarize an opinion, Discover respectfully refers the Court to the entire opinion for a complete and accurate recitation of its contents.

85. Paragraph 85 of the Amended Complaint states a legal conclusion to which no answer is required.

86. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 86 of the Amended Complaint.

87. Discover admits that the credit cards issued by Discover have one or more of the attributes listed in paragraph 87 of the Amended Complaint. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 87 of the Amended Complaint.

88. Discover admits the allegations in the first sentence of paragraph 88 of the Amended Complaint. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in the second and third sentences of paragraph 88 of the Amended Complaint. Discover denies the allegations in the last sentence of paragraph 88 of the Amended Complaint, except to admit that Discover now owns the Diner's Club network.

89. Discover denies the allegations in paragraph 89 as they relate to Discover, but admits that Discover operated a "closed network" at one time and that Discover owns the Diners Club network. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 89 of the Amended Complaint.

90. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 90 of the Amended Complaint.

91. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 91 of the Amended Complaint.

92. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 92 of the Amended Complaint.

93. Discover denies the allegations in paragraph 93 and footnote 2 as they relate to Discover, but admits that Discover operated a "closed network" at one time, and admits that

Discover was adversely affected by the “exclusionary rules,” as set forth in the opinions referenced in footnote 2 of the Amended Complaint. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 93 and footnote 2 of the Amended Complaint as they relate to the other Defendants. To the extent that paragraph 93 and footnote 2 of the Amended Complaint purport to quote from or summarize an opinion, Discover respectfully refers the Court to the entire opinion for a complete and accurate recitation of its contents.

94. Discover denies the allegations in paragraph 94 as they relate to Discover, but admits that Discover operated a “closed network” at one time. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 94 of the Amended Complaint.

95. Discover admits that it competes with both the Visa and MasterCard networks, and their issuing and acquiring banks. Discover denies the allegations in paragraph 95 as they relate to Discover, but admits that Discover operated a “closed network” at one time. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 95 of the Amended Complaint.

96. Discover denies the allegations in paragraph 96 of the Amended Complaint to the extent that they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 96 of the Amended Complaint.

97. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 97 of the Amended Complaint.

98. Discover denies the allegations in paragraph 98 of the Amended Complaint as they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as

to the truth of the allegations in paragraph 98 of the Amended Complaint as they relate to the other Defendants.

99. Discover admits that as of May 25, 1999, the arbitration clause of the Discover cardmember agreements had not yet taken effect. Discover denies the remaining allegations in paragraph 99 of the Amended Complaint as they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 99 of the Amended Complaint as they relate to the other Defendants.

100. Discover denies the allegations in paragraph 100 of the Amended Complaint.

101. Discover denies the allegations in paragraph 101 of the Amended Complaint as they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 101 of the Amended Complaint as they relate to the other Defendants. To the extent that paragraph 101 of the Amended Complaint purports to quote from or summarize a document, Discover respectfully refers the Court to the entire document for a complete and accurate recitation of its contents.

102. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 102 of the Amended Complaint.

103. Discover admits that on or about July 28, 1999, an attorney employed by Discover attended a meeting at the offices of WCP. Discover denies the remaining allegations in paragraph 103 of the Amended Complaint. To the extent that paragraph 103 of the Amended Complaint purports to quote from or summarize a document, Discover respectfully refers the Court to the entire document for a complete and accurate recitation of its contents.

104. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in the first, second and third sentences of paragraph 104 of the Amended Complaint. Discover denies the last sentence of paragraph 104 of the Amended Complaint.

105. Discover denies the allegations in paragraph 105 of the Amended Complaint. To the extent that paragraph 105 purports to quote from or summarize an e-mail, Discover respectfully refers the Court to the entire e-mail for a complete and accurate recitation of its contents.

106. Discover admits that on or about September 29, 1999, an attorney employed by Discover attended a meeting at the offices of WCP. Discover denies the remaining allegations in paragraph 106 of the Amended Complaint. To the extent that paragraph 106 of the Amended Complaint purports to quote from or summarize a document, Discover respectfully refers the Court to the entire document for a complete and accurate recitation of its contents.

107. Discover denies the allegations in paragraph 107 of the Amended Complaint. Discover denies that it committed any action in violation of the federal antitrust laws or engaged in any illegal conduct. To the extent that paragraph 107 purports to quote from or summarize a document, Discover respectfully refers the Court to the entire document for a complete and accurate recitation of its contents.

108. Discover denies the allegations in paragraph 108 of the Amended Complaint. Discover denies that it committed any action in violation of the federal antitrust laws or engaged in any illegal conduct.

109. Discover admits that as of 2005, its cardmember agreements permitted Discover or Discover cardmembers to use NAF as an arbitration administrator, but denies that NAF was

the exclusive administrator. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 109 of the Amended Complaint.

110. Discover denies the allegations in paragraph 110 and footnote 3 of the Amended Complaint, except that Discover admits the allegation in footnote 3 that “the filing of amicus curiae briefs and joint lobbying of legislators is protected by the Noerr-Pennington doctrine.”

111. Discover denies the allegations in paragraph 111 of the Amended Complaint. To the extent that paragraph 111 purports to quote from or summarize a document or legal proceeding, Discover respectfully refers the Court to the entire document and legal proceeding for a complete and accurate recitation of its contents.

112. Discover admits that on or about January 12, 2000, an attorney employed by Discover attended a meeting in Washington, D.C. Discover denies the remaining allegations in paragraph 112 of the Amended Complaint as they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 112 of the Amended Complaint as they relate to the other Defendants. To the extent that paragraph 112 purports to quote from or summarize a document, Discover respectfully refers the Court to the entire document for a complete and accurate recitation of its contents.

113. Discover admits that on or about January 12, 2000, an attorney employed by Discover attended a meeting in Washington, D.C. Discover denies the last sentence of paragraph 113. Discover denies the remaining allegations in paragraph 113 as they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in paragraph 113 of the Amended Complaint as they relate to the other Defendants.

114. Discover denies the allegations in paragraph 114 of the Amended Complaint as they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 114 of the Amended Complaint as they relate to the other Defendants.

115. Discover denies the allegations in paragraph 115 of the Amended Complaint as they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 115 of the Amended Complaint as they relate to the other Defendants.

116. Discover denies the allegations in paragraph 116 of the Amended Complaint as they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 116 of the Amended Complaint as they relate to the other Defendants.

117. Discover denies the allegations in paragraph 117 of the Amended Complaint as they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 117 of the Amended Complaint as they relate to the other Defendants.

118. Discover denies the allegations in paragraph 118 of the Amended Complaint as they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 118 of the Amended Complaint as they relate to the other Defendants.

119. Discover denies the allegations in paragraph 119 of the Amended Complaint as they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as

to the truth of the allegations in paragraph 119 of the Amended Complaint as they relate to the other Defendants.

120. Discover states that its cardmember agreements allow parties to choose between more than one arbitration administrator. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in the third sentence of paragraph 120 of the Amended Complaint as they relate to the other Defendants. Discover denies the remaining allegations in paragraph 120 of the Amended Complaint.

121. Discover admits that as of 2005, its cardmember agreements permitted Discover or Discover cardmembers to use NAF as an arbitration administrator, but denies that NAF was the exclusive administrator. Discover denies the remaining allegations in paragraph 121 of the Amended Complaint as they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 121 of the Amended Complaint as they relate to the other Defendants. To the extent that paragraph 121 of the Amended Complaint purports to quote from or summarize a document, Discover respectfully refers the Court to the entire document for a complete and accurate recitation of its contents.

122. Discover denies the allegations in the first sentence of paragraph 122 of the Amended Complaint. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 122 of the Amended Complaint. To the extent that paragraph 122 of the Amended Complaint purports to quote from or summarize a document, Discover respectfully refers the Court to the entire document for a complete and accurate recitation of its contents.

123. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 123 of the Amended Complaint. To the extent that

paragraph 123 of the Amended Complaint purports to quote from or summarize a document, Discover respectfully refers the Court to the entire document for a complete and accurate recitation of its contents.

124. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 124 of the Amended Complaint. To the extent that paragraph 124 of the Amended Complaint purports to quote from or summarize a document, Discover respectfully refers the Court to the entire document for a complete and accurate recitation of its contents.

125. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 125 of the Amended Complaint. To the extent that paragraph 125 of the Amended Complaint purports to quote from or summarize a document, Discover respectfully refers the Court to the entire document for a complete and accurate recitation of its contents.

126. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 126 of the Amended Complaint and its subparts. To the extent that paragraph 126 of the Amended Complaint and its subparts purport to quote from or summarize documents, Discover respectfully refers the Court to those documents for a complete and accurate recitation of their contents.

127. Discover denies the allegations in paragraph 127 of the Amended Complaint, except that Discover stopped using JAMS as an arbitration administrator effective April 1, 2005.

128. Discover denies the allegations in paragraph 128 of the Amended Complaint.

129. Discover denies the allegations in paragraph 129 of the Amended Complaint.

130. Discover denies the allegations in paragraph 130 of the Amended Complaint.

131. Discover denies the allegations in paragraph 131 of the Amended Complaint.

132. Discover 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. Discover denies the remaining allegations in paragraph 132 and footnote 4 of the Amended Complaint as they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 132 and footnote 4 of the Amended Complaint as they relate to the other Defendants. To the extent that paragraph 132 and footnote 4 of the Amended Complaint purport to quote from or summarize a document, Discover respectfully refers the Court to the entire document for a complete and accurate recitation of its contents.

133. To the extent that paragraph 133 of the Amended Complaint purports to quote from or summarize an opinion from the California Supreme Court, Discover respectfully refers the Court to the entire opinion and any subsequent decisions in that matter. Discover states that a subsequent decision, on remand from the decision cited in paragraph 133 of the Amended Complaint, is available at *Discover Bank v. Superior Court*, 134 Cal. App. 4th 886, 36 Cal. Rptr. 3d 456 (2005), and that in this subsequent decision, the Court of Appeal enforced the arbitration provision requiring arbitration on an individual, non-class basis. *Id.* at 898, 36 Cal. Rptr. 3d at 464. Discover denies the remaining allegations in paragraph 133 of the Amended Complaint.

134. Discover denies the allegations in paragraph 134 of the Amended Complaint.

135. Discover denies the allegations in paragraph 135 of the Amended Complaint.

136. Discover denies the allegations in paragraph 136 of the Amended Complaint as they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 136 of the Amended Complaint as they relate to the

other Defendants. To the extent that paragraph 136 of the Amended Complaint purports to quote from or summarize a document, Discover respectfully refers the Court to the entirety of the document for a complete and accurate recitation of its contents.

137. Discover denies the allegations in paragraph 137 of the Amended Complaint.

138. Discover denies the allegations in paragraph 138 of the Amended Complaint.

139. Discover denies the allegations in paragraph 139 of the Amended Complaint.

140. Discover denies the allegations in paragraph 140 of the Amended Complaint.

141. Discover denies the allegations in paragraph 141 of the Amended Complaint.

142. Discover denies the allegations in paragraph 142 of the Amended Complaint. To the extent that paragraph 142 of the Amended Complaint purports to quote from or summarize a document, Discover respectfully refers the Court to the entirety of the document for a complete and accurate recitation of its contents.

143. Discover denies the allegations in paragraph 143 of the Amended Complaint. To the extent that paragraph 143 of the Amended Complaint purports to quote from or summarize a document, Discover respectfully refers the Court to the entirety of the document for a complete and accurate recitation of its contents.

144. Paragraph 144 of the Amended Complaint states a legal conclusion to which no answer is required, but to the extent an answer may be required, Discover denies the allegations in paragraph 144 of the Amended Complaint.

145. Discover admits that Plaintiffs purport to define a putative class in paragraph 145 of the Amended Complaint. Discover denies the remaining allegations in paragraph 145 of the Amended Complaint.

146. Discover admits that Plaintiffs purport to define a subclass in paragraph 146 of the Amended Complaint. Discover denies the remaining allegations in paragraph 146 of the Amended Complaint.

147. Discover denies the allegations in paragraph 147 of the Amended Complaint.

148. Discover denies the allegations in paragraph 148 of the Amended Complaint.

149. Discover lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 149 of the Amended Complaint.

150. Paragraph 150 of the Amended Complaint states legal conclusions to which no answers are required, but to the extent any answers may be required, Discover denies the allegations in paragraph 150 of the Amended Complaint.

151. Discover denies the allegations in paragraph 151 of the Amended Complaint.

152. Discover denies the allegations in paragraph 152 of the Amended Complaint.

153. Discover denies the allegations in paragraph 153 of the Amended Complaint. Discover denies that it committed any action in violation of the federal antitrust laws or engaged in any illegal conduct.

154. Discover denies the allegations in paragraph 154 of the Amended Complaint. Discover denies that it committed any action in violation of the federal antitrust laws or engaged in any illegal conduct.

155. Discover denies the allegations in paragraph 155 of the Amended Complaint as they relate to Discover. Discover denies the existence of the conspiracy alleged in paragraph 155 of the Amended Complaint, and that Discover committed any action in violation of the federal antitrust laws or engaged in any illegal conduct. Discover lacks knowledge and information

sufficient to form a belief as to the truth of the allegations in paragraph 155 of the Amended Complaint as they relate to the other Defendants.

156. Discover denies the allegations in paragraph 156 of the Amended Complaint as they relate to Discover. Discover denies that it committed any action in violation of the federal antitrust laws or engaged in any illegal conduct or took any action “for the purpose of harming consumer welfare by banning class actions and blocking access to the judicial system.” Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 156 of the Amended Complaint as they relate to the other Defendants.

157. Discover denies the allegations in paragraph 157 of the Amended Complaint as they relate to Discover. Discover denies that it committed any action in violation of the federal antitrust laws or engaged in any illegal conduct. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 157 of the Amended Complaint as they relate to the other Defendants.

158. Discover denies the allegations in paragraph 158 of the Amended Complaint as they relate to Discover. Discover lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 158 of the Amended Complaint as they relate to the other Defendants.

159. Discover denies the allegations in paragraph 159 of the Amended Complaint.

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

161. Discover denies the allegations in paragraph 161 of the Amended Complaint.

162. Discover denies the allegations in paragraph 162 of the Amended Complaint.

163. Discover denies the allegations in paragraph 163 of the Amended Complaint.

164. Discover denies the allegations in paragraph 164 of the Amended Complaint.
165. Discover denies the allegations in paragraph 165 of the Amended Complaint.
166. Discover denies the allegations in paragraph 166 of the Amended Complaint.
167. Discover denies the allegations in paragraph 167 of the Amended Complaint.
168. Discover incorporates by reference its answers to the allegations set forth in paragraphs 1-167 of the Amended Complaint as if fully set forth herein.

169. Discover denies the allegations in paragraph 169 of the Amended Complaint.
170. Discover denies the allegations in paragraph 170 of the Amended Complaint.
171. Discover denies the allegations in paragraph 171 of the Amended Complaint.
172. Discover denies the allegations in paragraph 172 of the Amended Complaint.
173. Discover denies the allegations in paragraph 173 of the Amended Complaint.
174. Discover denies the allegations in paragraph 174 of the Amended Complaint.

JURY DEMAND

Discover states that on January 21, 2009, the Court granted the Defendants' motion to strike the Plaintiffs' jury demand. In any event, the Plaintiffs' 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 Amended Complaint.

AMENDED 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

Plaintiffs' claims are barred by the statute of limitations. Plaintiffs' claims are subject to a four-year statute of limitations. *See* 15 U.S.C. § 15b. The initial complaint was filed on

August 11, 2005. To be timely, Plaintiffs' claims must have accrued no earlier than August 11, 2001. Plaintiffs allege that Discover participated in meetings only from 1999 until 2000, and do not allege that Discover took any action as part of any alleged conspiracy thereafter. Plaintiffs have not alleged any facts entitling them to an extension of the statute of limitations as to their claims against Discover. Therefore Plaintiffs' claims as to Discover are time barred by the statute of limitations, which expired in early 2004, more than a year before the complaint was first filed in this matter.

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 1999. For example, the implementation of arbitration clauses by Discover and other of the defendants were known to the public as early as 1999. Due to Plaintiffs' unreasonable delay in bringing suit, Discover expended time and money in enforcing and invoking its arbitration clauses. Plaintiffs' claims are therefore equitably barred for the failure to bring their claims in a timely manner.

Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver and estoppel because, among other things, Plaintiffs or putative class members (1) participated in arbitration without challenging the enforceability of defendants' arbitration provisions; (2) used defendants' credit cards subject to their cardholder agreements, including the arbitration provisions, without challenging the enforceability of those arbitration provisions; and (3) had an opportunity to opt out of defendants' arbitration provisions but chose not to opt out. As it specifically relates to Discover, Discover uses arbitration clauses that give customers the right to opt out of arbitration without forfeiting any of their cardmember rights and privileges. Plaintiffs or putative members of the subclass who have held Discover cards elected not to exercise their right to opt out of arbitration as they were entitled to do pursuant to their cardmember agreements with Discover.

Plaintiffs or putative members of the subclass who have held Discover cards thereby agreed to the arbitration of disputes with Discover, and have waived any claim of harm resulting from the arbitration clauses in their cardmember agreements with Discover and are likewise estopped from claiming the same.

Plaintiffs' claims are barred, in whole or in part, on the grounds of Plaintiffs' ratification of, acquiescence or consent to the conduct of defendants because, among other things, plaintiffs or putative class members (1) participated in arbitration without challenging the enforceability of defendants' arbitration provisions; (2) used defendants' credit cards subject to their cardholder agreements, including the arbitration provisions, without challenging the enforceability of those arbitration provisions; and (3) had an opportunity to opt out of defendants' arbitration provisions but chose not to opt out. As it specifically relates to Discover, Discover uses arbitration clauses that give customers the right to opt out of arbitration without forfeiting any of their cardmember rights and privileges. Plaintiffs or putative members of the subclass who have held Discover cards elected not to exercise their right to opt out of arbitration as they were entitled to do pursuant to their cardmember agreements with Discover. Plaintiffs or putative members of the subclass who have held Discover cards thereby ratified, acquiesced and/or consented to the mandatory arbitration of disputes with Discover.

Third Affirmative Defense

Plaintiffs' claims are barred because Plaintiffs lack standing under Article III of the United States Constitution.

Fourth 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.

Fifth Affirmative Defense

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

Sixth Affirmative Defense

Because Discover uses arbitration clauses that specifically give customers the right to opt out of arbitration without forfeiting any of their cardmember rights and privileges, Plaintiffs' request for injunctive relief is moot as to Discover.

Seventh Affirmative Defense

Discover reserves the right to raise additional defenses.

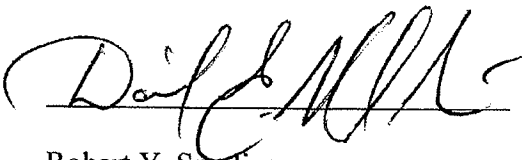
PRAYER FOR RELIEF

WHEREFORE, Discover 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 Amended Complaint and that the Amended Complaint be dismissed with prejudice;
2. That Discover be awarded its costs of suit and attorneys' fees; and
3. For such other and further relief that this Court may deem just and proper.

Dated: October 23, 2009

By:



Robert Y. Sperling
Ronald S. Betman
Linda T. Coberly
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, Illinois 60601
(312) 558-5600
rsperling@winston.com
rbetman@winston.com
lcoberly@winston.com

David E. Mollón
Christopher C. Costello
WINSTON & STRAWN LLP
200 Park Avenue
New York, NY 10166
(212) 294-2605
dmollon@winston.com
cccostello@winston.com

*Attorneys for Defendants DFS Services LLC,
Discover Bank, and Discover Financial
Services*