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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

IN RE	:	x
	:	MDL NO. 1409
CURRENCY CONVERSION FEE ANTITRUST	:	M21-95
LITIGATION	:	
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THIS DOCUMENT RELATES TO:	:	x
	:	Index No. 05 CV 07116 (WHP)
ROBERT ROSS, et al.,	:	
	:	ECF CASE
Plaintiffs,	:	
vs.	:	
	:	DEFENDANT NATIONAL
BANK OF AMERICA, N.A. (USA) (N/K/A FIA	:	ARBITRATION FORUM, INC.'S
CARD SERVICES, N.A.), et al.,	:	ANSWER TO PLAINTIFFS'
	:	FIRST AMENDED CLASS ACTION
Defendants.	:	<u>COMPLAINT</u>
	:	
	:	x

Defendant National Arbitration Forum, Inc. (the "NAF"), by and through its undersigned counsel, answers and responds to the allegations contained in Plaintiffs' First Amended Class Action Complaint (the "Amended Complaint") as follows:

RESPONSE TO "INTRODUCTORY STATEMENT"

1. Admits the allegations contained in paragraph 1 to the extent that the Amended Complaint purports to be brought on behalf of consumers who hold general purpose credit cards, challenging the inclusion of arbitration clauses in their agreements with the Issuer Defendants,

and otherwise respectfully refers the Court to the Amended Complaint for the complete content of its allegations.

2. To the extent that paragraph 2 states legal conclusions, no response is required. The NAF otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 and footnote 1.

3. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3.

4. Denies the allegations to the extent that they are meant to apply to the NAF, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 4.

5. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5.

6. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6.

7. Admits that the NAF provided data to Ernst & Young in connection with a study regarding arbitration, and otherwise denies the allegations contained in paragraph 7.

RESPONSE TO “JURISDICTION AND VENUE”

8. Admits the allegations contained in paragraph 8 to the extent that the Amended Complaint purports to seek injunctive relief and to recover the costs of suit, including attorneys’ fees, and otherwise respectfully refers the Court to the Amended Complaint for the complete content of its allegations.

9. Paragraph 9 states legal conclusions, to which no response is required.

10. Paragraph 10 states legal conclusions, to which no response is required.

11. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11.

RESPONSE TO “THE PARTIES”

RESPONSE TO “THE PLAINTIFFS”

12. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12.

13. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14.

15. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15.

16. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16.

17. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17.

18. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18.

19. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19.

RESPONSE TO “THE DEFENDANTS”

Response To “The Bank of America/MBNA Defendants”

20. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20.

21. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21.

22. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22.

23. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23.

24. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24.

25. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25.

26. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26.

27. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27.

28. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28.

29. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29.

Response To “The Capital One Defendants”

30. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30.

31. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31.

32. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32.

33. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33.

Response To “The J. P. Morgan Chase/Providian Defendants”

34. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34.

35. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35.

36. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36.

37. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37.

38. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38.

39. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39.

40. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40.

41. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41.

42. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42.

43. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43.

44. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44.

Response To “The Citigroup/Citibank Defendants”

45. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45.

46. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46.

47. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47.

48. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48.

49. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49.

50. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50.

51. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51.

Response To “The Diners Club Entities”

52. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52.

53. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53.

54. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54.

Response To “The Discover Defendants”

55. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55.

56. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56.

57. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57.

58. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58.

Response To “The Household Defendants”

59. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59.

60. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60.

61. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61.

62. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62.

63. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63.

64. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64.

65. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65.

66. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66.

Response To “The National Arbitration Forum Defendant”

67. Admits the allegations to the extent that the NAF is a Minnesota corporation; avers that the NAF wholly owns NAF, LLC, a Delaware limited liability company that administers arbitration proceedings and collects fees in connection with the same; and otherwise denies the allegations contained in paragraph 67.

68. Admits that the NAF is (or was) listed as an arbitration provider for Defendants Capital One, Chase, Citibank, Diners Club, Discover, First USA, Household, MBNA, Providian, and alleged co-conspirator American Express, and denies the remaining allegations in paragraph 68.

Response To “American Express: Named Co-Conspirator”

69. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69.

70. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70.

71. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71.

72. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72.

Response To “Wells Fargo & Company: Named Co-Conspirator”

73. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73.

74. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74.

75. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 75.

76. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76.

77. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77.

78. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 78.

79. Offers no response to paragraph 79, which does not contain any factual assertions.

RESPONSE TO “TRADE AND COMMERCE”

80. Paragraph 80 states legal conclusions, to which no response is required.

81. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81.

82. To the extent that paragraph 82 states legal conclusions, no response is required. The NAF otherwise denies the allegations contained in paragraph 82.

RESPONSE TO “RELEVANT MARKET”

83. Paragraph 83 states legal conclusions, to which no response is required.

84. Paragraph 84 states legal conclusions, to which no response is required. The NAF respectfully refers the Court to *United States v. Visa, Inc.*, 163 F. Supp. 2d 322, 335 (S.D.N.Y. 2001), for its holdings and the rationales offered therefor.

85. To the extent that paragraph 85 states legal conclusions, no response is required. To the extent any response to the allegations is required, the NAF lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85.

86. The NAF lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86.

RESPONSE TO “STATEMENT OF FACTS”

Response To “The General Purpose Card Market”

87. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87.

88. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 88.

89. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 89.

90. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90.

91. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91.

92. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 92.

93. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 93 and footnote 2.

94. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 94.

95. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 95.

Response To “The Arbitration Coalition” and the Conspiracy to Impose Mandatory Arbitration Clauses”

96. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96.

97. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 97.

98. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 98.

99. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 99.

100. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 100.

101. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 101.

102. Denies the allegations contained in paragraph 102.

103. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103.

104. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 104.

105. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105.

106. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 106.

107. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 107.

108. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 108.

109. The NAF lacks knowledge or information sufficient for it to form a belief as to allegations contained in paragraph 109.

110. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 110 and footnote 3.

111. Admits that the NAF administered consumer arbitration proceedings and furnished certain data in connection with an Ernst & Young study, respectfully refers the Court to the San Francisco City Attorney's Complaint in *The People of the State of California v. National Arbitration Forum, et al.*, Case No. 080-98-473569 (Cal. App. Dep't Super. Ct.) for the complete contents of the allegations made therein, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 111.

112. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 112.

113. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 113.

114. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 114.

115. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 115.

116. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 116.

117. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 117.

118. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 118.

119. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 119.

Response To “The Arbitration Administrators”

120. Denies the allegations contained in paragraph 120 to the extent that they may be meant to apply to the NAF, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 120.

121. Admits that the NAF was designated as an arbitration administrator for Capital One, Chase, Citibank, Diners Club, Household, and Providian; avers that the NAF, in compliance with the Consent Judgment approved by the District Court (4th Judicial District) of the State of Minnesota on July 28, 2009, is divesting itself of that portion of its business which, *inter alia*, administers cardholder arbitrations involving individuals (*i.e.*, natural persons); and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 121.

122. Denies the allegations contained in paragraph 122 to the extent they relate to the NAF, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 122.

123. Admits that the City of San Francisco has made certain allegations in an action filed against the NAF, and respectfully refers the Court to the San Francisco City Attorney's Complaint in *The People of the State of California v. National Arbitration Forum, et al.*, Case No. 080-98-473569 (Cal. App. Dep't Super. Ct.) for the complete contents thereof.

124. Denies that the NAF retains arbitrators biased in any respect in favor of credit card issuers or refuses to use arbitrators who issue awards against them, denies using methods of service that are less likely to ensure consumers receive notice of an arbitration demand, or that such notice methods are responsible for "an extraordinarily high number of 'defaults,'" and respectfully refers the Court to the San Francisco City Attorney's Complaint in *The People of the State of California v. National Arbitration Forum, et al.*, Case No. 080-98-473569 (Cal. App. Dep't Super. Ct.) for the complete content of its allegations.

125. Refers the Court to Mr. Brown's correspondence for its complete and accurate contents, and otherwise denies the allegations contained in paragraph 125.

126. Refers the Court to the quoted documents for their complete and accurate contents, and otherwise denies the remaining allegations contained in paragraph 126.

127. Denies those allegations contained in paragraph 127 to the extent that they are intended to relate to the NAF, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 127.

Response To “Mandatory Arbitration Clauses”

128. To the extent that paragraph 128 states legal conclusions, no response is required. The NAF otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 128.

129. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 129.

130. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 130.

Response To “Effect of the Conspiracy”

131. To the extent that paragraph 131 states legal conclusions, no response is required. The NAF otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 131.

132. Denies the allegations to the extent they relate to the NAF, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 132.

133. To the extent that paragraph 133 states legal conclusions, no response is required. The NAF otherwise respectfully refers the Court to the California Supreme Court’s opinion in *Discover Bank v. Superior Court*, 36 Cal. 4th 148, 162-63 (Cal. 2005) for its complete and accurate contents.

134. Avers that, while pursuant to Rule 4 of the NAF’s Code of Procedure, “[a]rbitration proceedings [administered by the NAF] are confidential unless all Parties agree or the law requires arbitration information to be made public,” Rule 4 also provides that “[a]rbitration Orders and Awards are not confidential and may be disclosed by a Party,” and otherwise denies the allegations contained in paragraph 134.

135. Lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 135.

136. Denies the allegations in paragraph 136 to the extent they relate to the NAF, and is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 136.

137. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 137.

138. Denies the allegations in paragraph 138 to the extent that they may be meant to relate to the NAF and to the extent that they describe the supposed “Hobson’s choice” that consumers face, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 138.

139. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 139.

140. Denies the allegations in paragraph 140 to the extent that they may be meant to relate to the NAF, and is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 140.

141. Admits there are administrative fees associated with arbitration proceedings before the NAF, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 141.

142. Denies the allegations in paragraph 142 to the extent they relate to the NAF, respectfully refers the Court to the Statement of Eric Mogilnicki, Esq., Senate Committee on Administrative Oversight and the Courts, *Overview of Contractual Mandatory Binding Arbitration*, at pp.61-63 (March 1, 2000) for its complete contents, and otherwise lacks

knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 142.

143. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 143.

RESPONSE TO “CLASS ACTION ALLEGATIONS”

144. Admits the allegation contained in paragraph 144 that Plaintiffs purport to bring this action, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, individually and on behalf of a putative class, but denies that class certification as against the NAF would be warranted.

145. Admits the Class is purportedly composed of all United States holders of general purpose credit cards that the Defendants identified in paragraph 145 issued during the period in suit, but denies that certification of such a class, as against the NAF, would be warranted.

146. Admits the allegations contained in paragraph 146 that the Class purportedly includes a subclass composed of all United States cardholders to whom Discover issued general purpose credit cards who have “not previously successfully exercised their right to opt-out of the Arbitration of Disputes Provision.”

147. Paragraph 147 states legal conclusions to which no response is required.

148. Paragraph 148 states legal conclusions to which no response is required.

149. Offers no response to the legal conclusions stated in paragraph 149, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 149.

150. Paragraph 150 states legal conclusions, to which no response is required, and otherwise denies that certification of a class as against the NAF would be appropriate.

151. Offers no response to the allegations contained in paragraph 151, which constitutes legal conclusions to which no response is required. To the extent that a response is required, the NAF denies the allegations contained in paragraph 151.

152. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 152, and otherwise denies that certification and maintenance of a class as against the NAF would be appropriate.

RESPONSE TO “FRAUDULENT CONCEALMENT”

153. Denies that the NAF violated antitrust laws and engaged in the “fraudulent and active concealment of a conspiracy,” and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 153.

154. Denies the allegations in paragraph 154 to the extent they relate to the NAF, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 154.

155. Denies that the NAF engaged in any conspiracy, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 155.

156. Denies the allegations in paragraph 156 to the extent they may be meant to relate to the NAF, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 156.

157. Denies the allegations in paragraph 157 to the extent they may be meant to relate to the NAF, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 157.

158. Denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 158.

159. Denies the allegations in paragraph 159 to the extent that they are meant to relate to the NAF, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 159.

RESPONSE TO "VIOLATIONS ALLEGED"

RESPONSE TO "COUNT I"

Response To "Conspiracy to Impose Mandatory Arbitration Clauses in Violation of 15 U.S.C. § 1."

160. The NAF re-pleads the foregoing paragraphs as if fully stated herein.
161. Denies the allegations in paragraph 161 to the extent that they relate to the NAF.
162. Denies the allegations in paragraph 162 to the extent that they relate to the NAF.
163. Denies the allegations in paragraph 163 to the extent that they relate to the NAF.
164. Denies the allegations in paragraph 164 to the extent that they relate to the NAF.
165. Denies the allegations in paragraph 165 to the extent that they relate to the NAF.
166. Denies the allegations in paragraph 166 to the extent that they relate to the NAF.
167. Denies the allegations in paragraph 167 to the extent that they relate to the NAF.

RESPONSE TO "COUNT II"

Group Boycott/Concerted Refusal to Deal in Violation of 15 U.S.C. § 1.

168. The NAF re-pleads the foregoing paragraphs as if fully stated herein.
169. Denies the allegations in paragraph 169 to the extent that they relate to the NAF.
170. Denies the allegations in paragraph 170 to the extent that they relate to the NAF.
171. Denies the allegations in paragraph 171 to the extent that they relate to the NAF.
172. Denies the allegations in paragraph 172 to the extent that they relate to the NAF.
173. Denies the allegations in paragraph 173 to the extent that they relate to the NAF.

GENERAL DENIAL AND AFFIRMATIVE DEFENSES

The NAF denies all allegations contained in the Amended Complaint (including headings and captions) not specifically admitted in this Answer. Further, the NAF reserves the right to assert additional defenses when it determines the particulars of Plaintiffs' claims, which are not apparent on the face of the complaint.

FIRST DEFENSE

(Failure To State A Claim)

The Amended Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

(Statute of Limitations)

The claims set forth in the Amended Complaint are barred by the statute of limitations.

THIRD DEFENSE

(Laches)

The claims set forth in the Amended Complaint are barred by the doctrine of laches.

FOURTH DEFENSE

(Antitrust Standing and Injury)

Plaintiffs' claims are barred because they lack antitrust standing and/or have not suffered antitrust injury.

FIFTH DEFENSE

(Article III Standing)

Plaintiffs' claims or causes of action are barred because they lack standing under Article III of the U.S. Constitution.

SIXTH DEFENSE

(Noerr-Pennington)

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

SEVENTH DEFENSE

(Waiver/Estoppel/Ratification)

Plaintiffs and the putative class members have waived, ratified, and/or are otherwise estopped because they used The Issuer 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, and had an opportunity to opt out of some or all of the Issuer Defendants' arbitration and class action provisions but chose not to do so.

EIGHTH DEFENSE

(Arbitral Immunity)

To the extent that Plaintiffs' claims are to any extent predicated on allegations of alleged bias in the decision-making of arbitration panels in NAF-administered proceedings, they are barred in whole or in part by the doctrine of arbitral immunity.

RESERVED DEFENSES

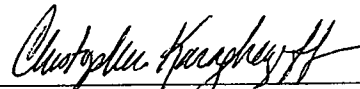
All separate affirmative defenses are reserved against the putative class and its members. It is not necessary at this time to delineate such defenses because no class has been certified as against the NAF, and the putative members are not parties to this action as against the NAF.

WHEREFORE, the NAF respectfully requests that the Court:

- (a) Dismiss the Amended Complaint against the NAF with prejudice;
- (b) Award the NAF its costs and disbursements incurred in connection with the defense of this action; and
- (c) Grant the NAF such other and further relief as the Court may deem just and proper.

Dated: February 16, 2010

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