

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

**IN RE PAYMENT CARD INTERCHANGE
FEE AND MERCHANT DISCOUNT
ANTITRUST LITIGATION**

No. 05-MD-01720 (MKB) (VMS)

This Document Applies to:

*Old Jericho Enterprise, Inc., et al. v. Visa Inc.,
et al.*, No. 20-cv-02394 (MKB) (VMS).

**ANSWER OF DEFENDANT VISA INC.
TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

Defendant Visa Inc. ("Visa"), by its attorneys, hereby responds to Plaintiffs' First Amended Class Action Complaint on Behalf of Indirect-Purchaser Gasoline Retailers filed on December 11, 2020 on the docket for MDL 1720 and filed on December 21, 2020 on the individual case docket ("Complaint").

To the extent that the preamble of the Complaint, the headings, or the prayer for relief require a response, Visa denies the allegations therein. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in the Complaint relating to Mastercard, Inc. ("Mastercard") and on that basis denies each and every one of them unless specifically admitted below. With respect to the allegations in the numbered paragraphs of the Complaint, Visa responds as follows:

1. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences of paragraph 1 of the Complaint and on that basis denies them. Visa denies the remaining allegations in paragraph 1 of the Complaint.
2. Visa denies the allegations in paragraph 2 of the Complaint.

3. Visa denies the allegations in paragraph 3 of the Complaint.

4. Visa admits that the Complaint purports to bring an action against Visa under certain state laws. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences of paragraph 4 of the Complaint and on that basis denies them. Visa denies the remaining allegations in paragraph 4 of the Complaint.

5. Visa admits that the Complaint purports to be brought under the laws of the states listed in paragraph 5 of the Complaint, and that Plaintiffs seek damages. Visa is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 5 of the Complaint and on that basis denies them.

6. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint and on that basis denies them.

7. Visa admits that venue is proper in the United States District Court for the Eastern District of New York and that it transacts business in this district. Visa admits that MDL 1720 has been centralized in this district, and that the instant case has been included in MDL 1720. Visa denies the remaining allegations in paragraph 7 of the Complaint.

8. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Complaint and on that basis denies them.

9. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Complaint and on that basis denies them.

10. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Complaint and on that basis denies them.

11. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint and on that basis denies them.

12. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint and on that basis denies them.

13. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint and on that basis denies them.

14. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint and on that basis denies them.

15. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint and on that basis denies them.

16. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint and on that basis denies them.

17. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Complaint and on that basis denies them.

18. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint and on that basis denies them.

19. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint and on that basis denies them.

20. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint and on that basis denies them.

21. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Complaint and on that basis denies them.

22. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Complaint and on that basis denies them.

23. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 of the Complaint and on that basis denies them.

24. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Complaint and on that basis denies them.

25. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint and on that basis denies them.

26. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Complaint and on that basis denies them.

27. Visa admits that Visa Inc. is a publicly traded Delaware corporation with its principal place of business in Foster City, California, and that Visa operates a payment card network. Visa denies the remaining allegations in paragraph 27 of the Complaint.

28. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Complaint and on that basis denies them.

29. To the extent a response is required, Visa denies the allegations in paragraph 29 of the Complaint.

30. Visa admits that a Visa-branded credit transaction generally involves an acquiring bank and issuing bank; that issuing banks issue Visa-branded payment cards to consumers; and that merchants can contract with acquiring banks to accept Visa-branded payment card transactions. To the extent that the allegations in paragraph 30 of the Complaint purport to define terms, Visa denies that the definitions, terminology, or descriptions set forth in paragraph 30 of the Complaint are accurate or complete. To the extent a further response is required, Visa denies the remaining allegations in paragraph 30 of the Complaint.

31. Visa admits that a Visa-branded credit transaction generally involves an authorization process in which an acquiring bank presents transaction data to Visa, which Visa relays to an issuing bank. Visa further admits that the issuing bank may consider the availability of funds and the status of the account in determining whether to authorize the transaction. To the extent that the allegations in paragraph 31 of the Complaint purport to define terms, Visa denies that the definitions, terminology, or descriptions set forth in paragraph 31 of the Complaint are accurate or complete. To the extent a further response is required, Visa denies the remaining allegations in paragraph 31 of the Complaint.

32. Visa admits that it has established default interchange reimbursement fee schedules that apply to transactions where issuing and acquiring banks have not set their own financial terms for the interchange of Visa transactions, and that these default interchange rates may vary based on factors such as merchant characteristics and type of card used. Visa denies the remaining allegations in paragraph 32 of the Complaint.

33. To the extent that the allegations in paragraph 33 of the Complaint purport only to define terms, no response is required. Visa denies that the definitions, terminology, or descriptions set forth in paragraph 33 of the Complaint are accurate or complete. To the extent a further response is required to this hypothetical, Visa denies the allegations in paragraph 33 of the Complaint.

34. To the extent that a response is required to this hypothetical, Visa denies the allegations in paragraph 34 of the Complaint.

35. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 of the Complaint and on that basis denies them.

36. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 of the Complaint and on that basis denies them.

37. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 of the Complaint and on that basis denies them.

38. To the extent Plaintiffs cite to the decision in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), Visa refers to that decision for its contents and context. Visa denies the remaining allegations in paragraph 38 of the Complaint.

39. To the extent Plaintiffs cite to the state laws referenced in their complaints, Visa refers to those laws for their contents and context. Visa is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 39 of the Complaint and on that basis denies them.

40. Visa admits that in December 2019 the U.S. District Court of the Eastern District of New York (Brodie, J.) granted final approval of the Rule 23(b)(3) class settlement in MDL 1720 (*In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, No. 05-md-1720), a federal multi-district litigation, and that the Rule 23(b)(3) plaintiffs asserted claims against Visa, Mastercard, and certain banks. Visa denies the remaining allegations in paragraph 40 of the Complaint.

41. Visa admits that on December 16, 2019, the Eastern District of New York issued a Memorandum and Order explaining its approval of the Rule 23(b)(3) class settlement in MDL 1720, and to the extent Plaintiffs cite that memorandum and order, and the Rule 23(b)(3) class settlement agreement, Visa refers to those documents for their contents and context. Visa denies the remaining allegations in paragraph 41 of the Complaint.

42. To the extent Plaintiffs cite the Rule 23(b)(3) class settlement agreement, Visa refers to that agreement for its contents and context. Visa denies the remaining allegations in paragraph 42 of the Complaint.

43. To the extent Plaintiffs cite to the State Taxation of Depositories Act, Pub. L. No. 94-222, 90 Stat. 197 (1976) and Irvin Molotsky, *Extension of Credit Surcharge Ban*, N.Y. Times, Feb. 29, 1984, Visa refers to those documents for their contents and context. Visa denies the remaining allegations in paragraph 43 of the Complaint.

44. To the extent Plaintiffs cite to Congressional testimony or other Congressional records, Visa refers to those documents for their contents and context. Visa denies the remaining allegations in paragraph 44 of the Complaint.

45. To the extent Plaintiffs cite to the complaint in *Animal Land, Inc. v. Visa U.S.A., Inc.*, No. 05-cv-1210 (N.D. Ga.) or the complaints filed in cases in MDL 1720, Visa refers to those complaints for their contents and context. Visa denies the remaining allegations in paragraph 45 of the Complaint.

46. Visa admits that in 2010 the United States Department of Justice challenged certain network rules of Visa, Mastercard, and American Express. Visa is without knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 46 of the Complaint and on that basis denies them.

47. Visa admits that it entered into a consent decree with the United States Department of Justice, which was entered as a final judgment on July 20, 2011. Visa admits that pursuant to that final judgment, Visa modified certain rules in the Visa International Operating Regulations that relate to discounts that may be provided to cardholders, and refers to the final judgment for its contents and context. Visa is without knowledge or information sufficient to

form a belief as to the truth of the remaining allegations in paragraph 47 of the Complaint and on that basis denies them.

48. Visa admits that, in 2012, Defendants entered into a class settlement agreement in MDL 1720 (*In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, No. 05-md-1720). Visa admits that the district court approved that settlement in December 2013, and the Second Circuit reversed the approval of the settlement in 2016. Visa admits that pursuant to that MDL 1720 settlement agreement, it modified certain operating regulations. To the extent Plaintiffs cite to the court decisions relating to the 2012 class settlement and the Visa Core Rules and Visa Product and Service Rules, Visa refers to those document for their contents and context. Visa denies the remaining allegations in paragraph 48 of the Complaint.

49. Visa denies the allegations in paragraph 49 of the Complaint.

50. To the extent Plaintiffs cite to the Visa Core Rules and Visa Product and Service Rules, Visa refers to those rules for their contents and context. Visa denies the remaining allegations in paragraph 50 of the Complaint.

51. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 of the Complaint and on that basis denies them.

52. Visa denies the allegations in paragraph 52 of the Complaint. To the extent Plaintiffs otherwise refer to the Visa Core Rules and Visa Product and Service Rules, Visa refers to those rules for their contents and context. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in the third and fourth sentences of paragraph 52 of the Complaint and on that basis denies them.

53. To the extent Plaintiffs cite to the Visa Core Rules and Visa Product and Service Rules, Visa refers to those rules for their contents and context. Visa denies the remaining allegations in paragraph 53 of the Complaint.

54. To the extent Plaintiffs cite to the Visa Core Rules and Visa Product and Service Rules, Visa refers to those rules for their contents and context. Visa is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 54 of the Complaint and on that basis denies them.

55. Visa denies the allegations in paragraph 55 of the Complaint.

56. Visa denies the allegations in paragraph 56 of the Complaint.

57. Visa admits, on information and belief, that banks that issue Visa-branded payment cards compete with other banks to issue payment cards and in other aspects of their businesses. Visa denies the remaining allegations in paragraph 57 of the Complaint.

58. To the extent Plaintiffs cite to the decision in *Am. Needle, Inc. v. Nat'l Football League*, 560 U.S. 183 (2010), Visa refers to that decision for its contents and context. Visa denies the remaining allegations in paragraph 58 of the Complaint.

59. To the extent Plaintiffs cite to the decision in *United States v. Visa U.S.A., Inc.*, 163 F. Supp. 2d 322 (S.D.N.Y. 2001), *aff'd*, 344 F.3d 229 (2d Cir. 2003), Visa refers to that decision for its contents and context. Visa denies the remaining allegations in paragraph 59 of the Complaint.

60. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 of the Complaint and on that basis denies them.

61. To the extent Plaintiffs cite to one or more complaints in MDL 1720, Visa refers to those complaints for their contents and context. Visa is without knowledge or information

sufficient to form a belief as to the truth of the remaining allegations in paragraph 61 of the Complaint and on that basis denies them.

62. Visa admits that it commenced an IPO in 2008. Visa denies the remaining allegations in paragraph 62 of the Complaint.

63. Visa denies the allegations in the first sentence of paragraph 63 of the Complaint. Visa is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 63 of the Complaint and on that basis denies them.

64. To the extent Plaintiffs cite to a document drafted by Tolan Steele, Visa refers to that document for its contents and context. Visa denies the remaining allegations in paragraph 64 of the Complaint.

65. Visa denies the allegations in paragraph 65 of the Complaint.

66. To the extent Plaintiffs cite to the November 20, 2019 memorandum and order in *Barry's Cut Rate Stores, Inc. v. Visa, Inc.*, No. 05-MD-1720 (E.D.N.Y.), Visa refers to that decision for its contents and context. Visa denies the remaining allegations in paragraph 66 of the Complaint.

67. To the extent Plaintiffs cite to the November 20, 2019 memorandum and order in *Barry's Cut Rate Stores, Inc. v. Visa, Inc.*, No. 05-MD-1720 (E.D.N.Y.), Visa refers to that decision for its contents and context. Visa denies the remaining allegations in paragraph 67 of the Complaint.

68. Visa denies the allegations in paragraph 68 of the Complaint.

69. Visa denies the allegations in paragraph 69 of the Complaint.

70. Visa denies the allegations in paragraph 70 of the Complaint.

71. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of paragraph 71 of the Complaint and on that basis denies them. The allegations set forth in the second sentence of paragraph 71 of the Complaint constitute legal conclusions to which no response is required or appropriate other than to deny.

72. Visa denies the allegations in the first sentence of paragraph 72 of the Complaint. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 72 of the Complaint and on that basis denies them.

73. To the extent Plaintiffs cite to the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission, Visa refers to those guidelines for their contents and context. Visa denies the remaining allegations in paragraph 73 of the Complaint.

74. Visa denies the allegations in paragraph 74 of the Complaint.

75. To the extent Plaintiffs purport to characterize the so-called Durbin Amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Final Rule issued by the Federal Reserve pursuant to that Act, Visa refers to those documents for their contents and context. Visa denies the remaining allegations in paragraph 75 of the Complaint.

76. To the extent Plaintiffs cite to the decision in *U.S. Airways, Inc. v. Sabre Holdings Corp.*, 938 F.3d 43 (2d Cir. 2019), Visa refers to that decision for its contents and context. Visa denies the remaining allegations in paragraph 76 of the Complaint.

77. Visa denies the allegations in paragraph 77 of the Complaint.

78. Visa denies the allegations in paragraph 78 of the Complaint.

79. Visa is without knowledge and information sufficient to form a belief as to the truth of the allegations in the final sentence of paragraph 79 of the complaint and on that basis denies them. Visa denies the remaining allegations in paragraph 79 of the Complaint.

80. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 80 of the Complaint and on that basis denies them.

81. Visa denies the allegations in paragraph 81 of the Complaint.

82. Visa denies the allegations in paragraph 82 of the Complaint.

83. To the extent Plaintiffs cite certain trial transcripts or other court records, Visa refers to those documents for their contents and context. Visa denies the remaining allegation in paragraph 83 of the Complaint.

84. To the extent Plaintiffs cite Justice Breyer's dissent in *Ohio v. Am. Express Co.*, 138 S. Ct. 2274 (2018), Visa refers to that opinion for its contents and context. Visa denies the remaining allegations in paragraph 84 of the Complaint.

85. To the extent Plaintiffs cite Justice Breyer's dissent in *Ohio v. Am. Express Co.*, 138 S. Ct. 2274 (2018), Visa refers to that opinion for its contents and context. Visa denies the remaining allegations in paragraph 85 of the Complaint.

86. Visa denies the allegations in paragraph 86 of the Complaint.

87. Visa denies the allegations in paragraph 87 of the Complaint.

88. Visa denies the allegations in paragraph 88 of the Complaint.

89. To the extent a response is required, Visa denies the allegations in paragraph 89 of the Complaint.

90. To the extent a response is required, Visa denies the allegations in paragraph 90 of the Complaint.

91. To the extent a response is required, Visa denies the allegations in paragraph 91 of the Complaint.

92. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 92 of the Complaint and on that basis denies them.

93. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 93 of the Complaint and on that basis denies them. Visa denies the remaining allegations in paragraph 93 of the Complaint.

94. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 94 of the Complaint and on that basis denies them. Visa denies the remaining allegations in paragraph 94 of the Complaint.

95. Visa denies the allegations in paragraph 95 of the Complaint.

96. Visa denies the allegations in paragraph 96 of the Complaint.

97. Visa responds to the allegations in paragraph 97 of the Complaint as it did when those allegations were made separately.

98. Visa denies the allegations in paragraph 98 of the Complaint.

99. Visa denies the allegations in paragraph 99 of the Complaint.

100. Visa denies the allegations in paragraph 100 of the Complaint.

101. Visa responds to the allegations in paragraph 101 of the Complaint as it did when those allegations were made separately.

102. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 102 of the Complaint and on that basis denies them.

103. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 103 of the Complaint and on that basis denies them.

104. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 104 of the Complaint and on that basis denies them.

105. Visa responds to the allegations in paragraph 105 of the Complaint as it did when those allegations were made separately.

106. Visa denies the allegations in paragraph 106 of the Complaint.

107. Visa denies the allegations in paragraph 107 of the Complaint.

108. Visa denies the allegations in paragraph 108 of the Complaint.

109. Visa denies the allegations in paragraph 109 of the Complaint.

110. Visa responds to the allegations in paragraph 110 of the Complaint as it did when those allegations were made separately.

111. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 111 of the Complaint and on that basis denies them.

112. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 112 of the Complaint and on that basis denies them.

113. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 113 of the Complaint and on that basis denies them.

114. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 114 of the Complaint and on that basis denies them.

115. Visa responds to the allegations in paragraph 115 of the Complaint as it did when those allegations were made separately.

116. Visa denies the allegations in paragraph 116 of the Complaint.

117. Visa denies the allegations in paragraph 117 of the Complaint.

118. Visa responds to the allegations in paragraph 118 of the Complaint as it did when those allegations were made separately.

119. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 119 of the Complaint and on that basis denies them.

120. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 120 of the Complaint and on that basis denies them.

121. Visa responds to the allegations in paragraph 121 of the Complaint as it did when those allegations were made separately.

122. Visa denies the allegations in paragraph 122 of the Complaint.

123. Visa denies the allegations in paragraph 123 of the Complaint.

124. Visa responds to the allegations in paragraph 124 of the Complaint as it did when those allegations were made separately.

125. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 125 of the Complaint and on that basis denies them.

126. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 126 of the Complaint and on that basis denies them.

127. Visa responds to the allegations in paragraph 127 of the Complaint as it did when those allegations were made separately.

128. Visa denies the allegations in paragraph 128 of the Complaint.

129. Visa denies the allegations in paragraph 129 of the Complaint.

130. Visa responds to the allegations in paragraph 130 of the Complaint as it did when those allegations were made separately.

131. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 131 of the Complaint and on that basis denies them.

132. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 132 of the Complaint and on that basis denies them.

133. Visa responds to the allegations in paragraph 133 of the Complaint as it did when those allegations were made separately.

134. Visa denies the allegations in paragraph 134 of the Complaint.

135. Visa denies the allegations in paragraph 135 of the Complaint.

136. Visa denies the allegations in paragraph 136 of the Complaint.

137. Visa denies the allegations in paragraph 137 of the Complaint.

138. Visa denies the allegations in paragraph 138 of the Complaint.

139. Visa denies the allegations in paragraph 139 of the Complaint.

140. Visa responds to the allegations in paragraph 140 of the Complaint as it did when those allegations were made separately.

141. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 141 of the Complaint and on that basis denies them.

142. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 142 of the Complaint and on that basis denies them.

143. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 143 of the Complaint and on that basis denies them.

144. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 144 of the Complaint and on that basis denies them.

145. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 145 of the Complaint and on that basis denies them.

146. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 146 of the Complaint and on that basis denies them.

147. Visa responds to the allegations in paragraph 147 of the Complaint as it did when those allegations were made separately.

148. Visa denies the allegations in paragraph 148 of the Complaint.

149. Visa denies the allegations in paragraph 149 of the Complaint.

150. Visa denies the allegations in paragraph 150 of the Complaint.

151. Visa responds to the allegations in paragraph 151 of the Complaint as it did when those allegations were made separately.

152. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 152 of the Complaint and on that basis denies them.

153. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 153 of the Complaint and on that basis denies them.

154. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 154 of the Complaint and on that basis denies them.

155. Visa responds to the allegations in paragraph 155 of the Complaint as it did when those allegations were made separately.

156. Visa denies the allegations in paragraph 156 of the Complaint.

157. Visa denies the allegations in paragraph 157 of the Complaint.

158. Visa responds to the allegations in paragraph 158 of the Complaint as it did when those allegations were made separately.

159. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 159 of the Complaint and on that basis denies them.

160. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 160 of the Complaint and on that basis denies them.

161. Visa responds to the allegations in paragraph 161 of the Complaint as it did when those allegations were made separately.

162. Visa denies the allegations in paragraph 162 of the Complaint.

163. Visa denies the allegations in paragraph 163 of the Complaint.

164. Visa responds to the allegations in paragraph 164 of the Complaint as it did when those allegations were made separately.

165. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 165 of the Complaint and on that basis denies them.

166. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 166 of the Complaint and on that basis denies them.

167. Visa responds to the allegations in paragraph 167 of the Complaint as it did when those allegations were made separately.

168. Visa denies the allegations in paragraph 168 of the Complaint.

169. Visa denies the allegations in paragraph 169 of the Complaint.

170. Visa denies the allegations in paragraph 170 of the Complaint.

171. Visa responds to the allegations in paragraph 171 of the Complaint as it did when those allegations were made separately.

172. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 172 of the Complaint and on that basis denies them.

173. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 173 of the Complaint and on that basis denies them.

174. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 174 of the Complaint and on that basis denies them.

175. Visa responds to the allegations in paragraph 175 of the Complaint as it did when those allegations were made separately.

176. Visa denies the allegations in paragraph 176 of the Complaint.

177. Visa denies the allegations in paragraph 177 of the Complaint.

178. Visa responds to the allegations in paragraph 178 of the Complaint as it did when those allegations were made separately.

179. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 179 of the Complaint and on that basis denies them.

180. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 180 of the Complaint and on that basis denies them.

181. Visa responds to the allegations in paragraph 181 of the Complaint as it did when those allegations were made separately.

182. Visa denies the allegations in paragraph 182 of the Complaint.

183. Visa denies the allegations in paragraph 183 of the Complaint.

184. Visa denies the allegations in paragraph 184 of the Complaint.

185. Visa responds to the allegations in paragraph 185 of the Complaint as it did when those allegations were made separately.

186. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 186 of the Complaint and on that basis denies them.

187. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 187 of the Complaint and on that basis denies them.

188. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 188 of the Complaint and on that basis denies them.

189. Visa responds to the allegations in paragraph 189 of the Complaint as it did when those allegations were made separately.

190. Visa denies the allegations in paragraph 190 of the Complaint.

191. Visa denies the allegations in paragraph 191 of the Complaint.

192. Visa responds to the allegations in paragraph 192 of the Complaint as it did when those allegations were made separately.

193. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 193 of the Complaint and on that basis denies them.

194. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 194 of the Complaint and on that basis denies them.

195. Visa responds to the allegations in paragraph 195 of the Complaint as it did when those allegations were made separately.

196. Visa denies the allegations in paragraph 196 of the Complaint.

197. Visa denies the allegations in paragraph 197 of the Complaint.

198. Visa responds to the allegations in paragraph 198 of the Complaint as it did when those allegations were made separately.

199. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 199 of the Complaint and on that basis denies them.

200. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 200 of the Complaint and on that basis denies them.

201. Visa responds to the allegations in paragraph 201 of the Complaint as it did when those allegations were made separately.

202. Visa denies the allegations in paragraph 202 of the Complaint.

203. Visa denies the allegations in paragraph 203 of the Complaint.

204. Visa denies the allegations in paragraph 204 of the Complaint.

205. Visa responds to the allegations in paragraph 205 of the Complaint as it did when those allegations were made separately.

206. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 206 of the Complaint and on that basis denies them.

207. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 207 of the Complaint and on that basis denies them.

208. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 208 of the Complaint and on that basis denies them.

209. Visa responds to the allegations in paragraph 209 of the Complaint as it did when those allegations were made separately.

210. Visa denies the allegations in paragraph 210 of the Complaint.

211. Visa denies the allegations in paragraph 211 of the Complaint.

212. Visa responds to the allegations in paragraph 212 of the Complaint as it did when those allegations were made separately.

213. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 213 of the Complaint and on that basis denies them.

214. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 214 of the Complaint and on that basis denies them.

215. Visa responds to the allegations in paragraph 215 of the Complaint as it did when those allegations were made separately.

216. Visa denies the allegations in paragraph 216 of the Complaint.

217. Visa denies the allegations in paragraph 217 of the Complaint.

218. Visa responds to the allegations in paragraph 218 of the Complaint as it did when those allegations were made separately.

219. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 219 of the Complaint and on that basis denies them.

220. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 220 of the Complaint and on that basis denies them.

221. Visa responds to the allegations in paragraph 221 of the Complaint as it did when those allegations were made separately.

222. Visa denies the allegations in paragraph 222 of the Complaint.

223. Visa denies the allegations in paragraph 223 of the Complaint.

224. Visa responds to the allegations in paragraph 224 of the Complaint as it did when those allegations were made separately.

225. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 225 of the Complaint and on that basis denies them.

226. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 226 of the Complaint and on that basis denies them.

227. Visa responds to the allegations in paragraph 227 of the Complaint as it did when those allegations were made separately.

228. Visa denies the allegations in paragraph 228 of the Complaint.

229. Visa denies the allegations in paragraph 229 of the Complaint.

230. Visa denies the allegations in paragraph 230 of the Complaint.

231. Visa responds to the allegations in paragraph 231 of the Complaint as it did when those allegations were made separately.

232. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 232 of the Complaint and on that basis denies them.

233. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 233 of the Complaint and on that basis denies them.

234. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 234 of the Complaint and on that basis denies them.

235. Visa responds to the allegations in paragraph 235 of the Complaint as it did when those allegations were made separately.

236. Visa denies the allegations in paragraph 236 of the Complaint.

237. Visa denies the allegations in paragraph 237 of the Complaint.

238. Visa responds to the allegations in paragraph 238 of the Complaint as it did when those allegations were made separately.

239. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 239 of the Complaint and on that basis denies them.

240. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 240 of the Complaint and on that basis denies them.

241. Visa responds to the allegations in paragraph 241 of the Complaint as it did when those allegations were made separately.

242. Visa denies the allegations in paragraph 242 of the Complaint.

243. Visa denies the allegations in paragraph 243 of the Complaint.

244. Visa responds to the allegations in paragraph 244 of the Complaint as it did when those allegations were made separately.

245. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 245 of the Complaint and on that basis denies them.

246. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 246 of the Complaint and on that basis denies them.

247. Visa responds to the allegations in paragraph 247 of the Complaint as it did when those allegations were made separately.

248. Visa denies the allegations in paragraph 248 of the Complaint.

249. Visa denies the allegations in paragraph 249 of the Complaint.

250. Visa responds to the allegations in paragraph 250 of the Complaint as it did when those allegations were made separately.

251. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 251 of the Complaint and on that basis denies them.

252. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 252 of the Complaint and on that basis denies them.

253. Visa responds to the allegations in paragraph 253 of the Complaint as it did when those allegations were made separately.

254. Visa denies the allegations in paragraph 254 of the Complaint.

255. Visa denies the allegations in paragraph 255 of the Complaint.

256. Visa responds to the allegations in paragraph 256 of the Complaint as it did when those allegations were made separately.

257. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 257 of the Complaint and on that basis denies them.

258. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 258 of the Complaint and on that basis denies them.

259. Visa responds to the allegations in paragraph 259 of the Complaint as it did when those allegations were made separately.

260. Visa denies the allegations in paragraph 260 of the Complaint.

261. Visa denies the allegations in paragraph 261 of the Complaint.

262. Visa responds to the allegations in paragraph 262 of the Complaint as it did when those allegations were made separately.

263. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 263 of the Complaint and on that basis denies them.

264. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 264 of the Complaint and on that basis denies them.

265. Visa responds to the allegations in paragraph 265 of the Complaint as it did when those allegations were made separately.

266. Visa denies the allegations in paragraph 266 of the Complaint.

267. Visa denies the allegations in paragraph 267 of the Complaint.

268. Visa responds to the allegations in paragraph 268 of the Complaint as it did when those allegations were made separately.

269. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 269 of the Complaint and on that basis denies them.

270. Visa is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 270 of the Complaint and on that basis denies them.

Visa denies each and every allegation not specifically admitted above. Visa denies that plaintiffs are entitled to the relief requested.

AFFIRMATIVE OR OTHER DEFENSES

Without assuming any burden of proof it would not otherwise bear, Visa asserts the following affirmative or other defenses. Visa reserves the right to assert further defenses as the case proceeds.

FIRST DEFENSE

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

SECOND DEFENSE

Plaintiffs' claims are barred in whole or in part because Plaintiffs lack authority, capacity, or standing to assert them.

THIRD DEFENSE

Plaintiffs' claims are barred in whole or in part because Plaintiffs have failed to allege and have not sustained antitrust injury.

FOURTH DEFENSE

Plaintiffs' claims are barred in whole or in part because Visa had legitimate business justifications for the conduct at issue, its conduct was pro-competitive, and its practices were and are reasonably justified.

FIFTH DEFENSE

Plaintiffs' claims have been released or are barred in whole or in part by the doctrines of waiver or estoppel.

SIXTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the applicable statutes of limitations.

SEVENTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrine of laches.

EIGHTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrine of *res judicata* or collateral estoppel.

NINTH DEFENSE

Injuries alleged by Plaintiffs were caused in whole or in part by the conduct of third parties for whom Visa was not responsible, through forces in the marketplace over which Visa had no control, or through acts or omissions on the part of one or more of the Plaintiffs, including failure to mitigate damages.

TENTH DEFENSE

Plaintiffs' claims are barred in whole or in part to the extent that they are subject to mandatory arbitration agreements and may not properly be before this Court.

ELEVENTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrine of accord and satisfaction.

TWELFTH DEFENSE

Plaintiffs' claims are barred in whole or in part because Visa was entitled to, and did, reasonably rely on the decision in *National Bancard Corp. v. Visa U.S.A. Inc.*, 779 F.2d 492 (11th Cir. 1986).

THIRTEENTH DEFENSE

Plaintiffs' claims are released or otherwise barred in whole or in part by the settlements and final judgments in *In re Visa Check/MasterMoney Antitrust Litigation*, No. 96-CV-5238 (E.D.N.Y.).

FOURTEENTH DEFENSE

Plaintiffs' claims are barred in whole or in part to the extent that they seek to require Visa to act inconsistently with state laws prohibiting surcharging, the Dodd-Frank Act, or the Final Judgment As To Defendants MasterCard International Incorporated and Visa Inc. entered in connection with *United States et al. v. American Express Co., et al.*, No. CV-10-4496 (E.D.N.Y. July 20, 2011).

FIFTEENTH DEFENSE

Plaintiffs' claims are released or otherwise barred in whole or in part by the settlements, orders and/or final judgments in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, No. 05-MD-1720 (E.D.N.Y.).

SIXTEENTH DEFENSE

Plaintiffs' claims are or in the future may be barred in whole or in part by the "filed rate" doctrine or the terms and implementing regulations of the Dodd-Frank Act.

SEVENTEENTH DEFENSE

Plaintiffs' claims are barred in whole or in part because of ratification, agreement, acquiescence, or consent to Visa's alleged conduct.

EIGHTEENTH DEFENSE

Plaintiffs' claims are barred in whole or in part by Visa's restructuring or IPO.

NINETEENTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the decision in *Ohio v. American Express*, -- U.S.--, 138 S. Ct. 2274 (2018), and related cases.

TWENTIETH DEFENSE

Plaintiffs' claims are barred in whole or in part by the decision in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), and related cases.

TWENTY-FIRST DEFENSE

Plaintiffs' claims are barred because plaintiffs have failed to join indispensable parties.

TWENTY-SECOND DEFENSE

Plaintiffs' claims are barred insofar as they are brought on behalf of separately organized subsidiaries or affiliates that are not named as Plaintiffs, including because Plaintiffs lack standing or authority to bring those claims.

TWENTY-THIRD DEFENSE

Plaintiffs' claims for damages are barred in whole or in part to the extent that Plaintiffs seek damages, restitution, or other monetary relief that is duplicative of damages, restitution, or other monetary relief sought or recovered in other actions.

TWENTY-FOURTH DEFENSE

Plaintiffs' claims are barred in whole or in part because Visa's conduct was expressly permitted by federal or state laws or regulations.

TWENTY-FIFTH DEFENSE

Any injury sustained by Plaintiffs is subject to offset.

TWENTY-SIXTH DEFENSE

Plaintiffs' claims are barred in whole or in part because the claimed monetary relief is speculative and impossible to ascertain.

TWENTY-SEVENTH DEFENSE

Plaintiffs have not suffered a compensable injury.

TWENTY-EIGHTH DEFENSE

Plaintiffs, or persons or entities on whose behalf Plaintiffs may be seeking to sue, failed to mitigate damages, if any.

TWENTY-NINTH DEFENSE

Plaintiffs' claims for damages are barred in whole or in part because those allegedly injured by overcharges passed on such overcharges to others.

THIRTIETH DEFENSE

Plaintiffs' claims are barred in whole or in part due to express contracts.

THIRTY-FIRST DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands.

THIRTY-SECOND DEFENSE

The business practices that are the subject of the Complaint do not restrain trade and are not "anticompetitive" within the meaning of Arizona Rev. Stat. § 44-1401 et seq., California

Bus. & Prof. Code § 16700, et seq., Connecticut Gen. Stat. § 35-24 et seq., District of Columbia Code § 28-4501 et seq., Hawaii Rev. Stat. § 480-4, 740 Illinois Comp. Stat. Ann 10/3 et seq., Iowa Code § 553.1 et seq., Kansas Stat. Ann. § 50-101 et seq., Maine Rev. Stat. Ann. Tit. 10, § 1101 et seq., Michigan Comp. Laws Ann. § 445.772, Minnesota Stat. § 325D.49 et seq., Mississippi. Code Ann. § 75-21-1 et seq., Nebraska Rev. Stat. § 59-801 et seq., Nevada Rev. Stat. § 598A.060, New Hampshire Rev. Stat. Ann. § 356 et seq., New Mexico Stat. Ann. § 57-1-1 et seq., New York Gen. Bus. Law § 340, North Carolina Gen. Stat. § 75-1, et seq., North Dakota Cent. Code § 51-08.1 et seq., Rhode Island Gen. Laws § 6-36-1 et seq., South Dakota Codified Laws § 37-1-3.1 et seq., Utah Code Ann. § 76-10-911 et seq., 9 Vermont Stat. Ann. § 2453, West Virginia Code § 47-18-1 et seq., or Wisconsin Stat. Ann. § 133.01 et seq.

THIRTY-THIRD DEFENSE

With respect to each of Plaintiffs' claims, Visa acted in good faith and its conduct was fully privileged.

THIRTY-FOURTH DEFENSE

The Complaint fails to state facts sufficient to state a claim for attorneys' fees.

THIRTY-FIFTH DEFENSE

The Complaint fails to state facts sufficient to maintain a class action.

THIRTY-SIXTH DEFENSE

Plaintiffs' claims fail to the extent that they may seek restitution because Visa did not accrue, directly or indirectly, any monetary benefit and/or property from Plaintiffs.

THIRTY-SEVENTH DEFENSE

Plaintiffs' claims are barred in whole or in part because they have no direct relationship with Visa.

THIRTY-EIGHTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the Commerce Clause of the United States Constitution.

THIRTY-NINTH DEFENSE

Visa incorporates by reference any applicable defense asserted by any other defendant.

WHEREFORE, defendant Visa Inc. respectfully requests that the Court dismiss the Complaint with prejudice, enter judgment in its favor and against the Plaintiffs, award it attorneys' fees, costs, and expenses, and grant it such further relief as is just and equitable.

Dated: December 23, 2020

Respectfully submitted,

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