

Nebraska, the State of New Hampshire, the State of Ohio, the State of Rhode Island, the State of Tennessee, the State of Texas, the State of Utah, and the State of Vermont (collectively “Plaintiffs”) respond as set forth below. American Express generally states that it competes aggressively with Defendants Visa Inc. (“Visa”) and MasterCard International Incorporated (“MasterCard”), the dominant networks, and that the remedies sought by Plaintiffs would allow those dominant market players to pay merchants to discriminate against American Express and pressure cardmembers to favor Visa or MasterCard, but not allow American Express to compete for merchants that will agree to honor a customer’s choice of payment method or to otherwise treat American Express cardmembers fairly. The result of such remedies will be to create less, rather than more, competition.

1. Deny the averments of Paragraph 1 of the Complaint, except state that (a) American Express, Visa, and MasterCard operate the three largest credit and charge card networks in the United States in terms of charge volume; (b) merchants generally pay a fee to compensate American Express for the services that American Express provides to merchants; (c) American Express is without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard’s conduct, transaction volume, or fees; and (d) American Express is without knowledge or information to admit or deny the averments pertaining to merchant costs.

2. Deny the averments of Paragraph 2 of the Complaint, except state that American Express is without knowledge or information to admit or deny the averments pertaining to Plaintiffs’ purpose in bringing this action.

3. Deny the averments of Paragraph 3 of the Complaint, except state that (a) most consumers who use credit or charge cards carry more than one; and (b) to the extent the

references to “Defendants’ Merchant Restraints” are intended to refer to provisions of American Express’s card acceptance agreements with merchants, these agreements are written contracts that speak for themselves and American Express refers to these agreements for the contents thereof.

4. Deny the averments of Paragraph 4 of the Complaint.

5. Deny the averments of Paragraph 5 of the Complaint, except state that (a) American Express Company is a New York Corporation with its principal place of business in New York, New York; (b) American Express Travel Related Services Company, Inc. is a New York Corporation with its principal place of business in New York, New York; (c) American Express Travel Related Services Company, Inc. is a wholly owned subsidiary of American Express Company; and (d) in 2009, American Express reported \$423.7 billion in “billed business” in the United States, which includes activities (including cash advances) related to proprietary cards, cards issued under network partnership agreements, and certain insurance fees charged on proprietary cards.

6. State that they are without knowledge or information to admit or deny the averments of Paragraph 6 of the Complaint.

7. State that they are without knowledge or information to admit or deny the averments of Paragraph 7 of the Complaint.

8. Deny the averments of Paragraph 8 of the Complaint, except state that (a) Plaintiff United States purports to assert claims under Section 1 of the Sherman Act pursuant to Section 4 of the Sherman Act; and (b) Plaintiffs Arizona, Connecticut, Hawaii, Idaho, Illinois, Iowa, Maryland, Michigan, Missouri, Montana, Nebraska, New Hampshire, Ohio, Rhode Island,

Tennessee, Texas, Utah, and Vermont purport to bring this action pursuant to their *parens patriae* power and Section 16 of the Clayton Act.

9. Admit the averments of Paragraph 9 of the Complaint.

10. Deny the averments of Paragraph 10 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; (b) American Express transacts business within this District; (c) this Court has personal jurisdiction over American Express; and (d) venue is proper in this District.

11. Deny the averments of Paragraph 11 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; (b) American Express provides financial services in interstate commerce throughout the United States; and (c) American Express provides a variety of products and services throughout the United States, including issuing charge cards and credit cards that operate on the American Express network.

12. Deny the averments of Paragraph 12 of the Complaint, except state that (a) the Complaint uses the defined term “General Purpose Cards” to refer to general purpose credit and charge cards that permit a consumer to make purchases from a wide variety of merchants without accessing or reserving the consumer’s funds at the time of the purchase; (b) American Express issues charge cards that are primarily designed as a method of payment and not as a means of financing the purchase of goods and services and generally requires American Express cardmembers to pay the full amount billed each month for the approved charges incurred on a charge card, although most of American Express’s charge cards also offer revolving features; and (c) American Express also offers a variety of revolving credit cards with a range of payment

terms, grace periods, and rate and fee structures applicable to any balances not paid in full within a set period after a monthly bill is rendered.

13. Deny the averments of Paragraph 13 of the Complaint, except state that American Express issues cards to individuals for their personal use, and to individuals, organizations, and businesses for business use.

14. Deny the averments of Paragraph 14 of the Complaint, except state that as used by Plaintiffs in the Complaint the term “General Purpose Cards” does not include cards that can be used at only one merchant or cards that access funds on deposit in a checking or savings account or on the card itself.

15. State that they are without knowledge or information to admit or deny the averments of Paragraph 15 of the Complaint.

16. State that they are without knowledge or information to admit or deny the averments of Paragraph 16 of the Complaint.

17. State that they are without knowledge or information to admit or deny the averments of Paragraph 17 of the Complaint.

18. State that they are without knowledge or information to admit or deny the averments of Paragraph 18 of the Complaint.

19. Deny the averments of Paragraph 19 of the Complaint, except state that (a) in the United States, American Express issues the majority of its cards to cardmembers directly; (b) American Express Global Network Services, through its “NCL Model”, also enters into network card license arrangement with third-party financial institutions in the United States to issue American Express branded cards; (c) American Express has entered into different agreements with different merchants, these agreements are written contracts that speak for themselves, and

American Express refers to these agreements for the contents thereof; and (d) American Express has entered into different agreements with different third-party financial institutions, these agreements are written contracts that speak for themselves, and American Express refers to these agreements for the contents thereof.

20. Deny the averments of Paragraph 20 of the Complaint, except state that (a) merchants pay fees to American Express as consideration for the services they receive from American Express, which can vary according to the merchant agreement; and (b) the terms of the fee paid by merchants are set forth in the different agreements that American Express has with different merchants, these agreements are written contracts that speak for themselves, and American Express refers to these agreements for the contents thereof.

21. State that they are without knowledge or information to admit or deny the averments of Paragraph 21 of the Complaint.

22. Deny the averments of Paragraph 22 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; and (b) American Express has entered into different agreements with different merchants, these agreements are written contracts that speak for themselves, and American Express refers to these agreements for the contents thereof.

23. Deny the averments of Paragraph 23 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; and (b) American Express has entered into different agreements with different merchants, these agreements are written contracts that speak for themselves, and American Express refers to these agreements for the contents thereof.

24. Deny the averments of Paragraph 24 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; (b) American Express has entered into different agreements with different merchants, these agreements are written contracts that speak for themselves, and American Express refers to these agreements for the contents thereof; and (c) American Express has entered into different agreements with different third-party financial institutions, these agreements are written contracts that speak for themselves, and American Express refers to these agreements for the contents thereof.

25. Deny the averments of Paragraph 25 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; (b) they are without knowledge or information to admit or deny the averments pertaining to what merchants “understand”; and (c) American Express seeks to ensure that American Express cardmembers are able to use their American Express cards at merchants who have agreed to accept American Express cards.

26. State that they are without knowledge or information to admit or deny the averments of Paragraph 26 of the Complaint.

27. State that they are without knowledge or information to admit or deny the averments of Paragraph 27 of the Complaint.

28. Deny the averments of Paragraph 28 of the Complaint, except state that (a) American Express’s merchant agreements and the April 2010 version of the “Merchant Reference Guide-US” are written documents that speak for themselves and American Express refers to these documents for the contents thereof; and (b) the October 2010 version of the “Merchant Reference Guide-US” referenced in the averments in the footnotes to Paragraph 28 is

a written document that speaks for itself and American Express refers to this document for the contents thereof.

29. Deny the averments of Paragraph 29 of the Complaint, except state that the different versions of American Express Merchant Reference Guide-US are written documents that speak for themselves and American Express refers to these documents for the contents thereof.

30. Deny the averments of Paragraph 30 of the Complaint, except state that (a) Plaintiffs purport to challenge the rules and practices described in Paragraphs 26-29 of the Complaint; and (b) American Express is without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard.

31. Deny the averments of Paragraph 31 of the Complaint, except state that (a) to the extent these averments purport to summarize the provisions of Section 3.2 of any version of the American Express Merchant Reference Guide-US, these Guides are written documents that speak for themselves and American Express refers to these Guides for the contents thereof; (b) to the extent these averments purport to summarize the provisions of American Express's agreements with merchants, these agreements are written documents that speak for themselves and American Express refers to these agreements for the contents thereof; and (c) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard.

32. Deny the averments of Paragraph 32 of the Complaint, except state that (a) the provisions of Federal law regarding cash discounts speak for themselves and American Express refers to these laws for the contents thereof; (b) the Dodd-Frank Wall Street Reform and Consumer Protection Act speaks for itself and American Express refers to this law for the

contents thereof; and (c) the Complaint does not purport to seek relief relating to (i) discounts for cash transactions or (ii) discounts for an entire payment method category.

33. Admit that there is a relevant geographic market in the United States for an appropriately defined product market, and otherwise deny the averments of Paragraph 33 of the Complaint.

34. Deny the averments of Paragraph 34 of the Complaint, except state that (a) the American Express network provides infrastructure and mechanisms enabling the authorization, settlement, and clearance of American Express card transactions; and (b) American Express's price to merchants for using American Express's services reflects the price that merchants agree to pay for those services, including after significant negotiations.

35. Deny the averments of Paragraph 35 of the Complaint, except state that there is competition between and among American Express, Discover, MasterCard, Visa, and other firms.

36. Deny the averments of Paragraph 36 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; and (b) American Express services are provided to merchants pursuant to different agreements, these agreements are written contracts that speak for themselves, and American Express refers to these agreements for the contents thereof.

37. Deny the averments of Paragraph 37 of the Complaint, except state that (a) millions of consumers use credit cards and charge cards; and (b) credit and charge cards provide many benefits, including convenience, widespread acceptance, security, and deferred payment options.

38. Deny the averments of Paragraph 38 of the Complaint, except state that (a) American Express is without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; (b) American Express provides the services to merchants that enable acceptance of American Express cards; and (c) merchants make the choice whether they want to accept American Express cards.

39. Deny the averments of Paragraph 39 of the Complaint.

40. Deny the averments of Paragraph 40 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; and (b) American Express enters into network card license arrangements with third-party financial institutions in the United States to issue American Express branded cards.

41. Deny the averments of Paragraph 41 of the Complaint.

42. Deny the averments of Paragraph 42 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; and (b) American Express individually negotiates agreements with many merchants.

43. Deny the averments of Paragraph 43 of the Complaint.

44. Deny the averments of Paragraph 44 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; (b) American Express has discount rate tables for different merchant industries; (c) American Express has an agreement with each of its merchants which sets forth the agreed price that American Express charges that merchant; and (d) American Express has entered into different agreements with different merchants, these agreements are written

contracts that speak for themselves, and American Express refers to these agreements for the contents thereof.

45. Deny the averments of Paragraph 45 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; (b) American Express has entered into different agreements with different merchants, these agreements are written contracts that speak for themselves, and American Express refers to such agreements for the contents thereof; and (c) American Express currently has card acceptance agreements with the top 10 U.S. airlines.

46. Deny the averments of Paragraph 46 of the Complaint, except state that they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard.

47. Deny the averments of Paragraph 47 of the Complaint, except state that American Express provides the services to merchants that enable acceptance of American Express cards.

48. Deny the averments of Paragraph 48 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to “T&E merchants” and “employers” and “business travelers”; and (b) different employers have different rules, policies, and/or practices regarding the use by their employees of corporate cards of a particular network.

49. Deny the averments of Paragraph 49 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; (b) American Express Travel Related Services Company, Inc. is a wholly owned subsidiary of American Express Company; and (c) American Express Merchant Services

has at times organized its effort to attract and retain card acceptance relationships by industries, including the “Travel & Entertainment Industries”.

50. Deny the averments of Paragraph 50 of the Complaint.

51. Admit that there is a relevant geographic market in the United States for an appropriately defined product market, and otherwise deny the averments of Paragraph 51 of the Complaint.

52. Deny the averments of Paragraph 52 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; and (b) American Express provides services that enable acceptance of American Express cards to merchants located in the United States.

53. Deny the averments of Paragraph 53 of the Complaint, except state that (a) the majority of credit and charge card transaction with merchants located in the United States are made using cards issued in the United States; and (b) the majority of credit and charge cards currently issued in the United States are issued under the American Express, Discover, MasterCard, and Visa networks.

54. Deny the averments of Paragraph 54 of the Complaint.

55. Deny the averments of Paragraph 55 of the Complaint, except state that the Second Circuit’s holding regarding MasterCard’s and Visa’s market power in *U.S. v. Visa U.S.A., Inc.*, 344 F.3d 229 (2d Cir. 2003), speaks for itself and American Express refers to this opinion for the contents thereof.

56. Deny the averments of Paragraph 56 of the Complaint, except state that (a) merchant acceptance of Visa and MasterCard cards is widespread; (b) American Express cards

are accepted by fewer merchants than Visa and MasterCard cards; and (c) the vast majority of merchants that accept American Express cards also accept Visa and MasterCard.

57. Deny the averments of Paragraph 57 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to merchants' choices or customer preferences; and (b) there is survey data showing that, in a survey of a sample of American Express cardmembers covering their self-reported spending during the month of August 2009, 16% of American Express cardmembers in the sample who had used their American Express card in the past month stated that they had used only their American Express card and not any other major credit card or charge card in that month.

58. Deny the averments of Paragraph 58 of the Complaint, except state that they are without knowledge or information to admit or deny the averments pertaining to what merchants feel or purportedly must do.

59. State that they are without knowledge or information to admit or deny the averments of Paragraph 59 of the Complaint.

60. Deny the averments of Paragraph 60 of the Complaint, except state that the 2009 statements of Kenneth Chenault speak for themselves and American Express refers to those statements for the contents thereof.

61. Deny the averments of Paragraph 61 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to merchant conduct; and (b) to the extent the third sentence of this paragraph purports to summarize the terms of American Express's agreement with merchants, these agreements are written contracts that speak for themselves and American Express refers to these agreements for the contents thereof.

62. Deny the averments of Paragraph 62 of the Complaint.

63. Deny the averments of Paragraph 63 of the Complaint, except state that (a) Nilson's 2009 data are set forth in a written document that speaks for itself and American Express refers to this document for the contents thereof; (b) the Second Circuit's holding regarding MasterCard's market power is set forth in a written opinion that speaks for itself and American Express refers to this opinion for the contents thereof; and (c) American Express's allegations regarding MasterCard's market power are set forth in a written Complaint that speaks for itself and American Express refers to this Complaint for the contents thereof.

64. Deny the averments of Paragraph 64 of the Complaint, except state that (a) American Express is without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; (b) American Express is accepted at millions of merchant locations; (c) American Express is accepted at substantially fewer merchant locations than Visa, MasterCard, and Discover; (d) American Express, since 2004, has entered into agreements with McDonalds, Safeway, Food Lion, and Dollar Tree, these agreements are written contracts that speak for themselves, and American Express refers to these agreements for the contents thereof; and (e) American Express's 2009 Form 10-k states: "Management estimates that, as of the end of 2009, our merchant network in the United States accommodated more than 90% of our Cardmembers' general-purpose charge and credit card spending ... based on comparing our Cardmembers' spending on our network currently with our estimate of what our Cardmembers would spend on our network if all merchants that accept general-purpose credit and charge cards accepted American Express Cards."

65. Deny the averments of Paragraph 65 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants

Visa or MasterCard; and (b) American Express currently has card acceptance agreements with the top 10 U.S. airlines.

66. Deny the averments of Paragraph 66 of the Complaint, except state that (a) Discover began issuing General Purpose Cards on its network in 1985; (b) Discover has developed a larger acceptance network than American Express and has greater numbers of cards in force than American Express; and (c) Discover's charge volume has historically been, and remains, smaller than the respective volumes of Visa, MasterCard, or American Express.

67. Deny the averments of Paragraph 67 of the Complaint, except state that they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard.

68. Deny the averments of Paragraph 68 of the Complaint, except state that they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard.

69. Deny the averments of Paragraph 69 of the Complaint, except state that they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard.

70. Deny the averments of Paragraph 70 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments regarding what merchants might hypothetically do; and (b) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard or pertaining to hypothetical merchant conduct.

71. Deny the averments of Paragraph 71 of the Complaint, except state that there is competition between American Express charge and credit cards and other payment methods.

72. Deny the averments of Paragraph 72 of the Complaint, except state that they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard or pertaining to hypothetical merchant conduct.

73. Deny the averments of Paragraph 73 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; and (b) to the extent the second sentence of Paragraph 73 purports to refer to certain terms of American Express's agreements with certain merchants, these agreements are written documents that speak for themselves and American Express refers to these agreements for the contents thereof.

74. Deny the averments of Paragraph 74 of the Complaint, except state that (a) they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard; and (b) they are without knowledge or information to admit or deny the averments pertaining to merchant conduct.

75. Deny the averments of Paragraph 75 of the Complaint, except state that they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard.

76. Deny the averments of Paragraph 76 of the Complaint, except state that they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard.

77. Deny the averments of Paragraph 77 of the Complaint, except state that they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard.

78. Deny the averments of Paragraph 78 of the Complaint, except state that they are without knowledge or information to admit or deny the averments pertaining to Defendants Visa or MasterCard.

Deny each and every averment in the Complaint not specifically admitted above.

PRAYER FOR RELIEF

WHEREFORE, American Express respectfully requests that the Court enter judgment as follows:

- (a) dismissing the Complaint in its entirety;
- (b) awarding costs for defending this action; and
- (c) such other relief as is deemed just and proper.

AFFIRMATIVE DEFENSES

Defendants state the following affirmative defenses without assuming the burden of proof on such defenses that would otherwise rest with Plaintiffs. Defendants reserve the right to assert further defenses as discovery proceeds.

FIRST AFFIRMATIVE DEFENSE

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

Dated: New York, New York
January 4, 2011

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