

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

IN RE AMERICAN EXPRESS ANTI-  
STEERING RULES ANTITRUST  
LITIGATION (II)

11-MD-02221-NGG-RER

THIS DOCUMENT RELATES TO:

Individual Plaintiff Actions

No. 08-CV-2315  
No. 08-CV-2316  
No. 08-CV-2317  
No. 08-CV-2380  
No. 08-CV-2406  
No. 11-CV-0337  
No. 11-CV-0338

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS AMERICAN  
EXPRESS COMPANY AND AMERICAN EXPRESS TRAVEL RELATED  
SERVICES COMPANY, INC. TO PLAINTIFFS' FIRST AMENDED AND  
CONSOLIDATED COMPLAINT**

Defendants American Express Travel Related Services Company, Inc. and American Express Company (“Amex”), by their attorneys, hereby answer the First Amended and Consolidated Complaint of plaintiffs Ahold U.S.A., Inc. (“Ahold”); Albertson’s, LLC (“Albertson’s”); BI-LO, LLC (“BI-LO”); CVS Pharmacy, Inc. (“CVS”); The Great Atlantic & Pacific Tea Company, Inc. (“A&P”); H.E. Butt Grocery Co. (“HEB”); Hy-Vee, Inc. (“Hy-Vee”); The Kroger Co. (“Kroger”); Meijer, Inc. (“Meijer”); Publix Super Markets, Inc. (“Publix”); Raley’s Inc. (“Raley’s”); Rite Aid Corporation and Rite Aid HDQTRS. Corp. (“Rite Aid”); Safeway Inc. (“Safeway”); Supervalu Inc. (“Supervalu”); and Walgreen Co. (“Walgreen”) (collectively, “Plaintiffs”) as follows:

1. Amex denies the allegations of paragraph 1, except admits that: (a) Plaintiffs purport to bring a civil antitrust action under Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2); and (b) Plaintiffs, who are retail merchants, and Amex have entered into certain agreements, including agreements concerning the terms of Plaintiffs' acceptance of American Express cards, and refers to such agreements for their contents.

2. Amex denies the allegations of paragraph 2, except states that Plaintiffs and Amex have entered into certain agreements, including agreements concerning the terms of Plaintiffs' acceptance of American Express cards, and refers to such agreements for their contents.

3. Amex denies the allegations of paragraph 3, except states that Plaintiffs and Amex have entered into certain agreements, including agreements concerning the terms of Plaintiffs' acceptance of American Express cards, and refers to such agreements for their contents.

4. Amex denies the allegations of paragraph 4. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

5. Amex denies the allegations of paragraph 5. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

6. Amex denies the allegations of paragraph 6. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to

which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

7. Amex denies the allegations of paragraph 7. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

8. Amex denies the allegations of paragraph 8. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

9. Amex denies the allegations of paragraph 9. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

10. Amex denies the allegations of paragraph 10. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

11. Amex denies the allegations of paragraph 11, except admits that Plaintiffs purport to seek treble damages and injunctive relief. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

12. Amex denies the allegations of paragraph 12, except states that Amex is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding entities other than Amex, and states that: (a) Ahold has accepted and accepts American Express cards in payment for purchases by consumers; and (b) Ahold and Amex entered into certain agreements, including a November 15, 2006 agreement, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

13. Amex denies the allegations of paragraph 13, except states that Amex is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding entities other than Amex, and states that: (a) Albertson's has accepted and accepts American Express cards in payment for purchases by consumers; and (b) Albertson's and Amex entered into certain agreements, including a February 27, 2007 agreement, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

14. Amex denies the allegations of paragraph 14, except states that Amex is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding entities other than Amex, and states that: (a) BI-LO has accepted and accepts American Express cards in payment for purchases by consumers; and (b) BI-LO and Amex entered into certain agreements and refers to such agreements

for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

15. Amex denies the allegations of paragraph 15, except states that Amex is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding entities other than Amex, and states that: (a) CVS has accepted and accepts American Express cards in payment for purchases by consumers; and (b) CVS and Amex entered into certain agreements and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

16. Amex denies the allegations of paragraph 16, except states that Amex is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding entities other than Amex, and states that: (a) A&P has accepted American Express cards in payment for purchases by consumers; and (b) A&P and Amex entered into certain agreements, including a September 13, 1995 agreement, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

17. Amex denies the allegations of paragraph 17, except states that Amex is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding entities other than Amex, and states that: (a) HEB has accepted and accepts American Express cards in payment for purchases by consumers; and (b)

HEB and Amex entered into certain agreements, including a November 1, 1999 agreement, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

18. Amex denies the allegations of paragraph 18, except states that Amex is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding entities other than Amex, and states that: (a) Hy-Vee has accepted and accepts American Express cards in payment for purchases by consumers; and (b) Hy-Vee and Amex entered into certain agreements, including a June 15, 2001 agreement, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

19. Amex denies the allegations of paragraph 19, except states that Amex is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding entities other than Amex, and states that: (a) Kroger has accepted and accepts American Express cards in payment for purchases by consumers; and (b) Kroger and Amex entered into certain agreements, including a February 1, 2003 agreement, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

20. Amex denies the allegations of paragraph 20, except states that Amex is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding entities other than Amex, and states that: (a) Meijer has accepted and accepts American Express cards in payment for purchases by consumers; and (b) Meijer and Amex entered into certain agreements, including a June 9, 1998 agreement, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

21. Amex denies the allegations of paragraph 21, except states that Amex is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding entities other than Amex, and states that: (a) Publix has accepted and accepts American Express cards in payment for purchases by consumers; and (b) Publix and Amex entered into certain agreements, including a May 5, 1999 agreement, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

22. Amex denies the allegations of paragraph 22, except states that Amex is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding entities other than Amex, and states that: (a) Raley's has accepted and accepts American Express cards in payment for purchases by consumers; and (b) Raley's and Amex entered into certain agreements, including a August 10, 1998

agreement, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

23. Amex denies the allegations of paragraph 23, except states that Amex is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding entities other than Amex, and states that: (a) Rite Aid has accepted and accepts American Express cards in payment for purchases by consumers; and (b) Rite Aid and Amex entered into certain agreements, including a December 30, 1996 agreement, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

24. Amex denies the allegations of paragraph 24, except states that Amex is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding entities other than Amex, and states that: (a) Safeway has accepted and accepts American Express cards in payment for purchases by consumers; and (b) Safeway and Amex entered into certain agreements, including a July 23, 2004 agreement, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.



25. Amex denies the allegations of paragraph 25, except states that Amex is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding entities other than Amex, and states that: (a) Supervalu has accepted and accepts American Express cards in payment for purchases by consumers; (b) Supervalu and Amex entered into certain agreements, including an October 29, 1999 agreement, and refers to such agreements for their contents; and (c) Albertson's and Amex entered into certain agreements, including a July 9, 1996 agreement, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

26. Amex denies the allegations of paragraph 26, except states that Amex is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding entities other than Amex, and states that: (a) Walgreen has accepted and accepts American Express cards in payment for purchases by consumers; and (b) Walgreen and Amex entered into certain agreements, including a November 29, 1993 agreement, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

27. The allegations contained in paragraph 27 purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

28. Amex admits that American Express Company is a New York Corporation with its principal place of business in New York, New York.

29. Amex admits that: (a) American Express Travel Related Services Company, Inc. is a New York Corporation with its principal place of business in New York, New York; and (b) American Express Travel Related Services Company, Inc. is a wholly owned subsidiary of American Express Company.

30. Amex denies the allegations of paragraph 30. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

31. Amex denies the allegations of paragraph 31, except admits that: (a) Plaintiffs purport to assert claims under Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2); (b) Plaintiffs purport to seek treble damages pursuant to Section 4 of the Clayton Act (15 U.S.C. § 15(a)); and (c) Plaintiffs purport to seek injunctive relief pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26). Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

32. Amex denies the allegations of paragraph 32, except admits that American Express Company and American Express Travel Related Services Company, Inc. have principal places of business in New York, New York. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which

no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

33. Amex denies the allegations of paragraph 33, except states that: (a) Amex provides financial services in interstate commerce throughout the United States; (b) Amex provides a variety of products and services throughout the United States, including, among others, charge cards and credit cards for consumers and businesses throughout the United States, global card network services, and merchant acquisition and merchant processing for Amex's network partners and proprietary payments business; and (c) Amex has granted certain third-party financial institutions a license to issue American Express-branded cards.

34. Amex denies the allegations of paragraph 34, except states that a credit card can be a plastic card or electronic device and, in certain circumstances, a cardholder can present a credit card to a merchant to facilitate a transaction.

35. Amex denies the allegations of paragraph 35, except states that Amex has issued a variety of charge cards and credit cards to millions of individuals and businesses, among other services, and Amex has entered into agreements with its Cardmembers, and refers to such agreements for their contents.

36. Amex denies the allegations of paragraph 36, except states that Amex has entered into a variety of agreements with different merchants, and refers to such agreements for their contents.

37. Amex denies the allegations of paragraph 37, except states that: (a) Amex occasionally refers to a "3-Party Model" to describe closed-loop network transactions where Amex or its wholly owned subsidiaries act as both the card issuer and

the merchant acquirer; and (b) in the 3-Party Model, the three parties are Amex, the Amex Cardmember and the Amex merchant.

38. Amex denies the allegations of paragraph 38, except states that: (a) Amex Global Network Services, through its Network Card License (“NCL”) Model, enters into network card license agreements with third-party financial institutions in the United States to issue American Express-branded cards, and refers to such agreements for their contents; and (b) Amex has entered into different agreements with different merchants, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

39. Amex denies the allegations of paragraph 39, except states that: (a) Amex has granted certain third-party financial institutions a license to issue American Express-branded cards; (b) the NCL issuer owns the customer relationship for all cards it issues, provides customer service to its Cardmembers, transaction authorization, billing and credit management, is responsible for the marketing of the cards and designs the card product features (including rewards and other incentives for Cardmembers), subject to meeting certain standards established by or in conjunction with Amex; and (c) in the NCL model, Amex operates the merchant network, routes and processes card transactions from the merchant’s point-of-sale through submission to the issuer and settles with the issuers.

40. Amex denies the allegations of paragraph 40 as to itself, and states that it is without knowledge or information sufficient to form a belief as to the truth of the

allegations regarding entities other than Amex. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

41. Amex denies the allegations of paragraph 41 and subparts (a) through (e). Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

42. Amex denies the allegations of paragraph 42, except states that Amex has entered into different agreements with different merchants, including certain agreements with Plaintiffs, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

43. Amex denies the allegations of paragraph 43, except states that Amex has entered into different agreements with different merchants, including certain agreements with Plaintiffs, and refers to such agreements for their contents.

44. Amex denies the allegations of paragraph 44, except states that: (a) a number of merchants that accept American Express cards on occasion have suppressed use of American Express cards; and (b) Amex seeks to ensure that American Express Cardmembers are able to use their American Express cards at merchants that have agreed to accept American Express cards. Amex further states that the allegations contained in

the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

45. Amex denies the allegations of paragraph 45, except states that Amex has entered into different agreements with different merchants, and refers to such agreements for their contents.

46. Amex denies the allegations of paragraph 46, except states that Amex has entered into different agreements with different merchants, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

47. Amex denies the allegations of paragraph 47. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

48. Amex denies the allegations of paragraph 48. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

49. Amex denies the allegations of paragraph 49.

50. Amex denies the allegations of paragraph 50.

51. Amex denies the allegations of paragraph 51. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to

which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

52. Amex denies the allegations of paragraph 52. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

53. Amex denies the allegations of paragraph 53. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

54. Amex denies the allegations of paragraph 54. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

55. Amex admits that there is a relevant geographic market in the United States for an appropriately defined product market.

56. Amex denies the allegations of paragraph 56, except states that the relevant product market is two-sided and includes services to both merchants and cardholders. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

57. Amex denies the allegations of paragraph 57. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to

which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

58. Amex denies the allegations of paragraph 58, except admits that: (a) Amex began offering payment cards in 1958; (b) Amex has issued charge cards and credit cards to millions of individuals and has been accepted at millions of merchant locations; and (c) Amex has entered into different agreements with different merchants, and refers to such agreements for their contents. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

59. Amex denies the allegations of paragraph 59. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

60. Amex denies the allegations of paragraph 60.

61. Amex denies the allegations of paragraph 61.

62. Amex denies the allegations of paragraph 62. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

63. Amex denies the allegations of paragraph 63, except states that the relevant product market is two-sided and includes services to both merchants and cardholders. Amex further states that the allegations contained in the paragraph purport



to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

64. Amex denies the allegations of paragraph 64. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

65. Amex denies the allegations of paragraph 65. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

66. Amex denies the allegations of paragraph 66. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

67. Amex denies the allegations of paragraph 67, except states that the relevant product market is two-sided and includes services to both merchants and cardholders. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

68. Amex incorporates its responses to paragraphs 1 through 67 as though fully stated herein.

69. Amex denies the allegations of paragraph 69. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to

which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

70. Amex denies the allegations of paragraph 70. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

71. Amex denies the allegations of paragraph 71. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

72. Amex denies the allegations of paragraph 72. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

73. Amex denies the allegations of paragraph 73. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

74. Amex incorporates its responses to paragraphs 1 through 73 as though fully stated herein.

75. Amex denies the allegations of paragraph 75. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to

which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

76. Amex denies the allegations of paragraph 76. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

77. Amex denies the allegations of paragraph 77. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

78. Amex denies the allegations of paragraph 78. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

79. Amex incorporates its responses to paragraphs 1 through 78 as though fully stated herein.

80. Amex denies the allegations of paragraph 80. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

81. Amex denies the allegations of paragraph 81. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to

which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

82. Amex denies the allegations of paragraph 82. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

83. Amex denies the allegations of paragraph 83. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

84. Amex denies the allegations of paragraph 84. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

85. Amex denies the allegations of paragraph 85. Amex further states that the allegations contained in the paragraph purport to state a legal conclusion as to which no response is required. To the extent a further response is required, Amex denies the allegations in the paragraph.

86. Amex denies each and every allegation of the First Amended and Consolidated Complaint not otherwise responded to above, including but not limited to allegations appearing in headings. Amex further states that certain allegations contained in the First Amended and Consolidated Complaint purport to state a legal conclusion as

to which no response is required. To the extent a further response is required, Amex denies the allegations in the complaint.

### **AFFIRMATIVE DEFENSES**

Amex asserts the following affirmative defenses and reserves the right to assert further defenses as discovery proceeds:

#### **First Affirmative Defense**

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

#### **Second Affirmative Defense**

Plaintiffs' claims against Amex are barred by the applicable statutes of limitation, or the doctrine of laches.

#### **Third Affirmative Defense**

Plaintiffs' claims against Amex have been released, or are barred by the doctrines of waiver and/or estoppel.

#### **Fourth Affirmative Defense**

Any and all damage to Plaintiffs was caused by Plaintiffs' own actions.

#### **Fifth Affirmative Defense**

Plaintiffs' claims against Amex are barred in whole or in part by the doctrines of unclean hands, equal involvement and/or *in pari delicto*.

#### **Sixth Affirmative Defense**

If Plaintiffs suffered any damage or losses, such damage or losses are not cognizable for the claims asserted by Plaintiffs against Amex.

#### **Seventh Affirmative Defense**

Plaintiffs' alleged damages, if any, were not proximately caused by Amex.

**Eighth Affirmative Defense**

Plaintiffs failed to mitigate any damages that they may have suffered.

**Ninth Affirmative Defense**

All actions taken by Amex were taken with the knowledge and agreement of Plaintiffs.

**Tenth Affirmative Defense**

Plaintiffs' claims against Amex for equitable relief are barred by the doctrine of unclean hands and the absence of irreparable harm.

**Eleventh Affirmative Defense**

Plaintiffs' claims against Amex are barred because Plaintiffs lack standing to assert them.

**Twelfth Affirmative Defense**

Plaintiffs' claims against Amex are barred because Plaintiffs have failed to allege, and have not suffered, antitrust injury.

**Thirteenth Affirmative Defense**

Plaintiffs' claims against Amex are barred because Amex had legitimate business justifications for the conduct at issue, Amex's conduct was pro-competitive, and Amex's practices were and are reasonably justified.

**Fourteenth Affirmative Defense**

Plaintiffs' claims against Amex may be subject to mandatory arbitration and other alternative dispute resolution agreements and thus may not properly be before this Court.

**Fifteenth Affirmative Defense**

Plaintiffs' claims against Amex are barred by the doctrine of accord and satisfaction.

**Sixteenth Affirmative Defense**

Plaintiffs' claims against Amex are barred because of ratification, agreement, acquiescence or consent to Amex's alleged conduct.

**Seventeenth Affirmative Defense**

To the extent that the claims against Amex are subject to mandatory arbitration agreements, the Court lacks subject matter jurisdiction over this matter.

**PRAYER FOR RELIEF**

WHEREFORE, Defendant Amex respectfully requests that this Court enter Judgment and Order:

(1) dismissing Plaintiffs' First Amended and Consolidated Complaint in its entirety with prejudice and denying Plaintiffs any relief whatsoever;

(2) awarding Amex its costs, disbursements and reasonable attorneys' fees incurred by Amex in defending this action against Plaintiffs, jointly and severally, to the extent authorized by law; and

(3) awarding Amex any such other costs and further relief as the Court may deem just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Defendant Amex hereby demands a trial by jury in this action of all issues so triable.

October 10, 2018

CRAVATH, SWAINE & MOORE LLP,

by

/s/ Peter T. Barbur

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