

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE NATIONAL ATM COUNCIL, INC.)
9802-12 Baymeadows Road, No. 196)
Jacksonville, FL 32256,)

on behalf of itself and its membership,)
and,)

ATMs OF THE SOUTH, INC.)
3613 North Arnoult Rd.)
Metairie, LA 70002,)

BUSINESS RESOURCE GROUP, INC.)
14825 Spring Hill Drive)
Frenchtown, MT 59834,)

CABE & CATO, INC.)
8601 Dunwoody Place, Ste. 106)
Atlanta, GA 30350,)

JUST ATMS, INC.)
125 Ryan Industrial Ct, Ste, 101)
San Ramon, CA 94583,)

WASH WATER SOLUTIONS, INC.)
231 Fairfield Drive)
Brewster, NY 10509,)

ATM BANKCARD SERVICES, INC.)
31 Elmwood Loop)
Madisonville, LA 70447,)

MEINERS DEVELOPMENT COMPANY OF)
LEE'S SUMMIT, MISSOURI, LLC)
520 West 123rd Street)
Kansas City, MO 64145,)

MILLS-TEL, CORP. d/b/a First American)
ATM)
1800 West Broward Blvd.)
Ft. Lauderdale, FL 33312,)

Case: 1:11-cv-01803
Assigned To: Jackson, Amy Berman
Assign Date: 10/12/2011
Description: Antitrust

FIRST AMENDED CLASS ACTION
COMPLAINT (As of Right)

SELMAN TELECOMMUNICATIONS)
INVESTMENT GROUP, LLC)
5717 Clarendon Drive)
Piano, TX 75093,)

SCOT GARDNER d/b/a SJI)
2497 Horsham Drive)
Germantown, TN 38139,)

TURNKEY ATM SOLUTIONS, LLC)
8601 Dunwoody Place, Ste. 106)
Atlanta, GA 30350,)

TRINITY HOLDINGS LTD, INC.)
17369 Shirley Avenue)
Port Charlotte, FL 33948,)

T & T COMMUNICATIONS, INC. and)
RANDAL N. BRO d/b/a T & B Investments)
405 Witt Road)
Center Point, TX 78010,)

v.)

VISA INC., VISA U.S.A. INC., VISA)
INTERNATIONAL SERVICE)
ASSOCIATION, and PLUS SYSTEM, INC.,)
595 Market Street)
San Francisco, CA 94105-2802,)

and)

MASTERCARD INCORPORATED and)
MASTERCARD INTERNATIONAL)
INCORPORATED d/b/a MasterCard)
Worldwide)
2000 Purchase Street)
Purchase, NY 10577,)

Defendants.)

_____)

FIRST AMENDED CLASS ACTION COMPLAINT

I. INTRODUCTION AND SUMMARY

1. This case is brought to challenge illegal acts by the defendants, their subsidiaries and nonparty co-conspirators of overcharging ATM operators for network services, restraining competition among ATM networks, fixing the price of ATM services to consumers and enabling issuing and acquiring member banks to collect excessive ATM transaction fees. Visa and MasterCard are the largest providers of debit payment cards and independent ATM operators (*i.e.*, non-bank entities that own and operate ATM machines) need access to the Visa and MasterCard networks in order to accept Visa and MasterCard debit payment cards. Visa and MasterCard deliberately have suppressed competition by only permitting access to their card networks to independent ATM operators who agree not to provide lower prices (*i.e.*, ATM access fees) to consumers that use competing card networks and to adhere to other anticompetitive arrangements. By prohibiting independent ATM operators from offering more attractive terms to consumers who use lower cost, competing ATM networks, Visa and MasterCard are able to maintain their market position, restrict competition between ATM networks, impose supracompetitive network fees on independent ATM operators, and enable member banks to collect excessive fees for ATM transactions. These anticompetitive restraints injure consumers by fixing the prices at which ATM services are available to consumers and limiting the ability of independent ATM operators to exercise their business judgment and offer better choices and terms to consumers.

2. This case is brought by (a) a leading association of independent ATM operators, the NATIONAL ATM COUNCIL, INC. (hereafter “NAC” or the “Association Plaintiff”), on behalf of itself and its membership, and (b) the plaintiff independent ATM operators (hereafter

the “ATM Operator Plaintiffs”), who bring this action on their own behalf and as representatives for a putative class of independent ATM operators. The ATM Operator Plaintiffs are: ATMs OF THE SOUTH, INC., BUSINESS RESOURCE GROUP, INC., CABE & CATO, INC., JUST ATMS, INC., WASH WATER SOLUTIONS, INC., ATM BANKCARD SERVICES, INC., MEINERS DEVELOPMENT COMPANY OF LEE’S SUMMIT, MISSOURI, LLC, MILLS-TEL CORP., SCOT GARDNER d/b/a SJI, SELMAN TELECOMMUNICATIONS INVESTMENT GROUP, LLC., TURNKEY ATM SOLUTIONS, LLC, TRINITY HOLDINGS LTD., INC., and T & T COMMUNICATIONS, INC. and RANDAL N. BRO d/b/a T & B Investments. The defendants in this action are: VISA INC., VISA U.S.A. INC., VISA INTERNATIONAL SERVICE ASSOCIATION, and PLUS SYSTEM, INC. (collectively, “Visa”) and MASTERCARD INCORPORATED and MASTERCARD INTERNATIONAL INCORPORATED d/b/a MasterCard Worldwide (collectively, “MasterCard”).

II. JURISDICTION AND VENUE

3. The ATM Operator Plaintiffs bring this action under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, to recover treble damages resulting from overcharges imposed directly on them by reason of defendants’ violation of Section 1 of the Sherman Act. The ATM Operator Plaintiffs also seek injunctive and declaratory relief to remedy the unlawful conduct and attorney fees and other costs as permitted by law. The Association Plaintiff seeks injunctive and declaratory relief and attorney fees and costs to the extent permitted by law, but does not seek to recover damages for the Association or on behalf of its members.

4. This Court has subject-matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. § 4, and 28 U.S.C. §§ 1331, 1337, 2201, and 2202.

5. Venue in the District of the District of Columbia is proper under 28 U.S.C. § 1391 because each Defendant transacts business and/or is found within this District. A substantial part of the interstate trade and commerce involved and affected by the violations of the antitrust laws alleged herein was and is carried out within this District. The acts complained of have had, and will have, substantial anticompetitive effects in this District.

6. Jurisdiction over the defendants comports with the United States Constitution and with 15 U.S.C. §§ 15, 22, and 26.

III. THE PARTIES

A. The Plaintiffs

7. Plaintiff, THE NATIONAL ATM COUNCIL, INC. (the “NAC”), is a Florida corporation with its principal place of business in Jacksonville, FL operating as a trade association under Section 501(c)(6) of the Internal Revenue Code of 1986. The NAC is the successor by merger of two former trade associations known as the National Association of ATM ISOs and Operators (“NAAIO”) and the Alliance of Specialized Communications Providers (“ASCP”). NAC seeks declaratory and injunctive relief to prevent continuing and future competitive restraints that are being unlawfully imposed upon, and causing injury to, its members through the unlawful practices of the defendants alleged herein. NAC is not seeking damages in this action and does not seek to be appointed as a class representative (damages are separately sought in this action by the ATM Operator Plaintiffs on behalf of the putative class).

8. The interests the NAC seeks to protect in this action are germane to the association’s purposes, which include promoting the business interests and improving business conditions of independent ATM operators. These purposes are materially advanced by NAC’s efforts in this litigation to seek to stop unlawful conduct that restrains the ability of independent

ATM operators to make independent business decisions and to offer better terms, services and choices to their customers and allows the defendants to impose supracompetitive network fees on NAC's members. NAC has standing to bring these claims because many of its members are independent ATM operators who would have standing to sue in their own right because their ability to provide better terms, services and choices to their customers has been restrained by defendants' illegal conduct and they will continue to incur economic injury as a result of defendants' overcharges if the illegal conduct is not enjoined. Neither the claims asserted nor the declaratory and injunctive relief requested requires the participation of individual members of the NAC in this lawsuit.

9. Plaintiff, ATMs OF THE SOUTH, INC., is a Louisiana corporation with its principal place of business in Metairie, LA. The company operates ATMs as a registered "Independent Sales Organization" ("registered ISO").

10. Plaintiff, BUSINESS RESOURCE GROUP, INC., is a Montana corporation with its principal place of business in Frenchtown, MT. The company operates ATMs as a registered ISO.

11. Plaintiff, CABE & CATO, INC., is a Georgia corporation with its principal place of business in Atlanta, GA. The company operates ATMs as a registered ISO.

12. Plaintiff, JUST ATMS, INC., is a California corporation with its principal place of business in San Ramon, CA. The company operates ATMs as a registered ISO.

13. Plaintiff, WASH WATER SOLUTIONS, INC., is a New York corporation with its principal place of business in Brewster, NY. The company operates ATMs as a registered ISO.

14. Plaintiff, ATM BANKCARD SERVICES, INC., is a Louisiana corporation with its principal place of business in Madisonville, LA. The company operates ATMs as an affiliate of a registered ISO.

15. Plaintiff, MEINERS DEVELOPMENT COMPANY OF LEE'S SUMMIT, MISSOURI, LLC, is a Missouri limited liability company with its principal place of business in Kansas City, MO. The company operates ATMs as an affiliate of a registered ISO.

16. Plaintiff, MILLS-TEL, CORP. d/b/a FIRST AMERICAN ATM, is a Florida corporation with its principal place of business in Ft. Lauderdale, FL. The company operates ATMs as an affiliate of a registered ISO.

17. Plaintiff, SCOT GARDNER d/b/a SJI, is a sole-proprietor residing in Germantown, TN. The business operates ATMs as an affiliate of a registered ISO.

18. Plaintiff, SELMAN TELECOMMUNICATIONS INVESTMENT GROUP, LLC, is a Texas limited liability company with its principal place of business in Plano, TX. The company operates ATMs as an affiliate of a registered ISO.

19. Plaintiff, TURNKEY ATM SOLUTIONS, LLC, is a Georgia limited liability company with its principal place of business in Atlanta, GA. The company operates ATMs as an affiliate of a registered ISO.

20. Plaintiff, TRINITY HOLDINGS LTD., INC., is a Florida corporation with its principal place of business in Port Charlotte, FL. The company operates ATMs as an affiliate of a registered ISO.

21. Plaintiff, T & T COMMUNICATIONS, INC. and RANDAL N. BRO d/b/a T & B Investments, is a general partnership of an individual ("Bro") who resides in Bellville, TX and a

Texas corporation (“T & K”) with its principal place of business in Center Point, TX. The partnership operates ATMs as an affiliate of a registered ISO.

22. The putative plaintiff class in this lawsuit includes approximately 350 non-bank ISOs that are sponsored by one or more sponsoring financial institutions and are registered with Visa and MasterCard as registered ATM ISOs, together with the ISOs’ ATM-operating contractual affiliates (the putative plaintiff class, consisting of ISOs and their affiliates, are referred to herein as the “independent ATM operators”). These independent ATM operators deploy slightly more than half of the ATMs presently in service in the United States, or approximately 200,000 terminals.

B. The Defendants

23. Defendant, VISA INC., is a Delaware corporation with its principal place of business in San Francisco, California. VISA INC. has offices, transacts business, or is found in the District of Columbia.

24. Defendant, VISA U.S.A. INC., is a Delaware corporation with its principal place of business in San Francisco, CA owned and controlled by VISA INC.

25. Defendant, VISA INTERNATIONAL SERVICE ASSOCIATION, is a Delaware corporation with its principal place of business in San Francisco, CA, owned and controlled by VISA INC.

26. Defendant, PLUS SYSTEM, INC., is a Delaware corporation with its principal place of business in San Francisco, CA, owned and controlled by VISA INC.

27. Defendant, MASTERCARD INCORPORATED, is a Delaware corporation with its principal place of business in Purchase, New York. MASTERCARD INCORPORATED has offices, transacts business, or is found in the District of Columbia.

28. Defendant, MASTERCARD INTERNATIONAL INCORPORATED, is a Delaware non-stock (membership) corporation with its principal place of business in Purchase, New York, owned and controlled by MASTERCARD INCORPORATED.

29. The acts charged in this complaint as having been done by defendants and their co-conspirators were authorized, ordered, or done by their officers, agents, employees, or representatives while actively engaged in the management of defendants' business or affairs and the acts charged in this complaint continue to the present day.

C. Non-Party Co-Conspirators

30. Defendants are the successors of bankcard associations formerly jointly owned and operated by a majority of the retail banks in the United States. Visa Inc became a publicly held corporation after an initial public offering of its stock began trading on the New York Stock Exchange on March 18, 2008. MasterCard Inc became a publicly held corporation after an initial public offering of its stock began trading on the exchange on May 24, 2006. Nonetheless, banks continue to hold non-equity membership interests in defendants' subsidiaries and the largest among them also hold equity interests and seats on the defendants' boards of directors. The defendants continue to refer to their bank customers as "members" of Visa and MasterCard and continue to operate principally for the benefit of their member banks.

31. The unreasonable restraints of trade in this case include horizontal agreements among the issuers of Visa and MasterCard products to adhere to rules and operating regulations that require ATM access fees to be fixed at a certain level. These restraints originated in the rules of the former bankcard associations agreed to by the banks themselves. By perpetuating this arrangement, the banks collectively have ceded power and authority to Visa and MasterCard to design, implement, and enforce a horizontal price-fixing restraint in which they are knowing and

willing participants. In short, there is a horizontal agreement among every bank that issues Visa- or MasterCard-branded payment cards—practically every principal U.S. bank—organized and supervised by the defendants as ringleaders and enforcers and imposed on ATM operators for the purpose of fixing the access fees that consumers pay for ATM services. This agreement suppresses competition between and among networks and is central to the arrangements among defendants and their member banks that enable defendants to overcharge the putative class supracompetitive network transaction fees and to divert a large disproportion of the fees for ATM transactions paid by consumers to their member banks.

IV. TRADE AND INTERSTATE COMMERCE

32. The defendants' PIN debit payment cards, issued by the nation's banks and other depository institutions, are utilized in an enormous volume of ATM transactions involving a substantial dollar amount of commerce and are marketed, sold and used in the flow of interstate commerce. A "PIN debit" payment card is any card that requires entry of a "personal identification number," a cardholder's unique 4-digit code, to authenticate a debit transaction at the point of the transaction.

33. Visa provides ATM services for cards branded with the Visa, Visa Electron, Interlink, and PLUS service marks at ATMs and terminals connected to the Visa, PLUS, and Interlink networks. In 2007, U.S. cardholders used Visa's PIN-based platform to access \$395 billion in cash. To access the Visa network, independent ATM operators must agree to terms of access and pay network fees established by Visa's member banks and enforced by Visa.

34. MasterCard provides ATM services for cards branded with the MasterCard, Maestro, or Cirrus service marks at ATMs and terminals participating in the MasterCard Worldwide Network. Excluding Cirrus- and Maestro-branded cards, cardholders used

MasterCard-branded cards to access \$ 202 billion in cash in the U.S. in 2007. To access the MasterCard network, independent ATM operators must agree to terms of access and pay network fees established by MasterCard's member banks and enforced by MasterCard.

V. FACTUAL BACKGROUND

A. PIN-Debit Cards and ATM Transactions.

35. ATM transactions are initiated by use of a PIN-debit card. PIN-debit cards include "pay now" cards, which allow a cardholder to effect an automatic debit from a checking, demand deposit, or other financial account. PIN-debit cards also include "pay later" cards, such as credit, deferred debit, or charge cards, which require payment within an agreed upon period of time. Finally, PIN-debit cards may be "pay before" cards, which are pre-funded up to a certain monetary value. So defined, a PIN-debit card also may be capable of signature-debit or credit non-ATM transactions. Nonetheless, all ATM transactions are PIN-debit transactions and only cards with PIN-debit capability may be used in an ATM. For purposes of this complaint any payment card that can be used in an ATM is referred to as a "PIN-debit card."

36. A PIN debit cardholder can obtain cash, monitor account balances, or transfer balances at an ATM. Some ATMs also accept deposits or dispense items of value other than cash, such as stamps or travelers checks.

37. ATM services are available to PIN debit cardholders from both bank and nonbank ATMs. Typically, banks charge their customers for ATM services by levying a fee on the account associated with the card. Consumers pay for ATM services from banks of which they are not customers and from non-bank ATM operators by paying a surcharge levied at the point of the transaction (an "access fee"). A cardholder also may be charged a fee by the cardholder's bank for using an ATM not operated by that bank (a "foreign ATM fee"). The access fee is added to

the amount withdrawn from the cardholder's account at the time of the transaction; the foreign ATM fee is a separate fee charged by the cardholder's bank that appears on the cardholder's monthly statement.

38. An overwhelming majority of cards used for ATM transactions are Visa- or MasterCard-branded bank account-linked PIN-debit cards. As Visa states on page 17 of its Form 10-K filed with the U.S. Securities and Exchange Commission for the fiscal year ended September 30, 2010, "In the debit card market segment, Visa and MasterCard are the primary global brands." Some ATM transactions using Visa- and MasterCard-branded PIN-debit cards may be completed over alternative networks designed originally for electronic funds transfers ("ETFs"), such as the networks operated by STAR (First Data), Pulse (Discover Card), NYCE Payment Network LLC (FIS), ACCEL/Exchange Network, Credit Union 24, CO-OP Financial Services, Shazam Inc., Jeanie, and TransFund. When Visa- and MasterCard-branded cards offer access to one or more of these alternative PIN-debit networks the reverse side of the card bears a service mark belonging to the alternative network.

B. Sponsoring Financial Institutions

39. To accept Visa- or MasterCard-branded PIN debit cards the ATM operator must have access to the defendants' PIN-based networks. As members of Visa or MasterCard, card issuing U.S. banks are granted direct access to the defendants' PIN-based networks for bank operated ATMs. By contrast, "non-banks," such as independent ATM operators and firms that provide the equipment and physical infrastructure for the authentication, clearing, or settlement of transactions ("processors"), are not Visa or MasterCard members. Before being granted access to the networks, therefore, a non-bank first must be sponsored by a "sponsoring financial institution," or must affiliate itself with a sponsored entity. With respect to ATM operators,

sponsoring institutions are those Visa or MasterCard member banks that specialize in providing ISOs with access to the Visa and MasterCard PIN-based networks. The sponsoring financial institution is the acquiring bank in the transactions accepted by its sponsored ATM ISOs and earns an acquiring bank fee on each ATM transaction.

C. The Horizontal “ATM Restraints”

40. The member banks of Visa and MasterCard, and in particular the sponsoring institutions, have ceded broad power to Visa and MasterCard to determine (a) the conditions under which Visa- and MasterCard-branded PIN-debit cards may be used for ATM transactions, and (b) the terms under which ATM operators may access the Visa and MasterCard PIN-debit networks. Visa, MasterCard and their member banks have misused this power to fix the access fee for all transactions at a given ATM terminal to be no less than the amount charged at that ATM terminal for a Visa or MasterCard transaction, irrespective of whether the transaction is actually completed over Visa or MasterCard’s PIN-debit network and without regard to the lower economic costs imposed on ATM operators when they use alternative PIN-based networks.

41. The Visa Plus System, Inc. Operating Regulations set forth the following restraint on the exercise of discretion by ATM operators to charge an access fee they deem commercially appropriate:

4.10A Imposition of Access Fee

An ATM Acquirer may impose an Access Fee if:
It imposes an Access Fee on all other Financial Transactions through other shared networks at the same ATM;

The Access Fee is not greater than the Access Fee amount on all other Interchange Transactions through other shared networks at the same ATM

42. Similarly, MasterCard's Cirrus Worldwide Operating Rules (September 15, 2010) applicable to the United States Region (Chapter 20) sets forth the same restraint on the exercise of discretion by ATM operators to set access fees as they deem commercially appropriate:

7.13.1.2 Non-Discrimination Regarding ATM Access Fees

An Acquirer must not charge an ATM Access Fee in connection with a Transaction that is greater than the amount of any ATM Access Fee charged by that Acquirer in connection with the transactions of any other network accepted at that terminal.

VI. HARM TO COMPETITION

43. The foregoing provisions (hereinafter, the "ATM restraints") suppress competition from PIN-based payment networks that compete with Visa and MasterCard's networks by implementing and enforcing a uniform horizontal agreement among U.S. banks to fix ATM access fees. These agreements ensure that the access fee for a transaction carried over a competing network is not less than the access fee charged for a transaction carried over Visa or MasterCard's network. The ATM restraints, therefore, effectuate horizontal price fixing that is unlawful *per se*.

44. The ATM restraints harm competition in numerous ways. In a competitive market that did not include the illegal restraints described above networks would compete vigorously for the customers of ATM operators by offering network services at lower costs and banks would offer better terms for ATM transactions. The defendants' unlawful actions, however, significantly restrain such competition between PIN-based payment networks because ATM operators are prohibited from offering more favorable terms to customers that use a lower cost network.

45. In addition, the ATM restraints deprive separately owned and in other respects autonomous profit-making businesses that operate ATMs of the power to make decisions on output or price that deviate from the agreed upon rules. By eliminating or severely restricting independent decision-making by ATM operators, the restraints establish a non-competitive price-setting arrangement that prohibits discounting and prevents ATM operators from setting profit-maximizing prices and from other pricing behavior characteristic of a competitive market. ATM operators may not offer a discount or any other benefit to persuade consumers to complete their transactions over competing PIN-based networks that offer lower costs or better terms, nor may an ATM operator offer a rebate that might circumvent a fixed access fee that complies with the defendants' rules. By restricting their ability through lower prices to attract customers to networks with lower costs or better terms, the ATM restraints put a competitive straightjacket on ATM operators.

46. The ATM restraints, in conjunction with the broader set of agreements governing ATM transactions among the defendants and their member banks, enable both Visa and MasterCard to charge artificially high network fees for ATM transactions, to remit inadequate compensation to ATM operators, and to steer excessive and disproportionate compensation for ATM transactions to their member banks. The parties' broader arrangements vest authority in Visa and MasterCard to set supra-competitive network fees, to set transaction fees paid by issuing (cardholder) banks, to set compensation paid to acquiring (sponsoring) banks, and to establish terms that benefit the defendants and their co-conspirator banks and harm ATM operators. Over the past four years both Visa and MasterCard have substantially increased the fees captured by their networks and their member banks, reducing net revenues paid to the ATM Operator Plaintiffs and the putative class for providing ATM services to cardholders. Fees and

compensation are distributed and earned in amounts set at the discretion of the defendants and the defendants have exercised this discretion to increase the fees captured by their networks and banks, while independent ATM operators are restrained from offering customers more favorable price terms if they use cards from alternative, lower-priced networks. The overcharges for network services and excessive fees to defendants' member banks have reduced the ability of ISOs to deploy ATMs and harmed consumers by reducing economic output and increasing access fees above the competitive level.

47. By inflating the retail price of ATM services, the ATM restraints discourage consumers from consuming them, lower output and artificially constrain growth in ATM deployment. But for the ATM restraints, retail prices for ATM services would be lower, the quantity of ATM services demanded would be greater, and economic output would increase.

48. In a reasonably competitive market, ATM operators would set consumer access fees at a level reflecting the cost of obtaining the network services and other inputs necessary to complete the transaction. ATM operators would set fees lower for transactions routed through lower net cost ATM networks relative to access fees for transactions routed through higher net cost networks. However, because the ATM restraints fix and maintain consumer access fees at the same level irrespective of which network completes the transaction or what those services actually cost ATM operators may not charge consumers an access fee that reflects the lower cost or more favorable terms of the competing network. The ATM restraints thus shelter the defendants from the natural and beneficial effects of price competition that otherwise would be exerted by the other participants in the market. By preventing ATM operators from passing on cost savings to consumers in the form of lower prices to signal the availability of more efficient,

higher quality, or lower priced services, Visa and MasterCard escape the competitive discipline that would otherwise be brought to bear on them by competing PIN-based networks.

49. Because the ATM restraints break the essential economic link that would exist in a reasonably competitive market between the price a consumer is charged for a service and the cost to the retailer of providing it, they extinguish the incentive of cardholders to demand, and providers of ATM services to provide, lower-cost, more efficient services. By disrupting the ordinary give and take of the marketplace, the ATM restraints suppress competition with rival networks at the point of the transaction, where ATM operators interact directly with consumers, most of whom carry PIN-debit cards capable of initiating ATM transactions over more than one network. Alternative PIN-debit networks are less costly and the ATM restraints prevent ATM operators from offering their customers a discount or benefit for completing a transaction over such an alternative network, so consumers cannot be rewarded for using lower cost and more efficient services.

VII. THE RELEVANT MARKETS

A. The Relevant Product Market

50. The relevant product market is the market for ATM transaction services. No cost-effective alternative to ATM transaction services exists and there are few substitutes. Accordingly, a sufficient number of PIN debit cardholders would not switch away from ATMs to make a small but significant price increase in those services unprofitable.

51. The market for ATM transaction services is a “two-sided” market, in which a cardholder and a network are connected in a single transaction by an ATM operator.

52. The market for ATM transaction services is a separate and distinct relevant product market for the purposes of 15 U.S.C. § 1.

B. The Relevant Geographic Market

53. The 50 states of the United States and its districts and territories comprise the relevant geographic market.

VIII. DEFENDANTS' MARKET POWER

54. Through their contracts and agreements with U.S. banks, Visa and MasterCard directly wield market power in the relevant market. Visa and MasterCard implement and enforce the previously described ATM restraints with regard to access fees, and require compliance with them in their contracts, agreements, rules and undertakings with member banks, which, in turn, secure compliance by their customers and suppliers. Visa and MasterCard directly exercise their market power through these arrangements to suppress interbrand competition in the relevant market.

55. Defendants' direct exercise of market power constrains all of the participants in the ATM industry. Because such a large number of consumers use Visa and MasterCard PIN-debit payment cards and networks, defendants have been able to impose the anticompetitive restraints on access fees described above, to impose network services overcharges, and to enable their member banks to collect excessive compensation for ATM transactions in a manner that harms ATM operators. Defendants actively monitor and vigorously enforce the ATM restraints and participants in the ATM services market must accept and agree to the ATM restraints as a condition of transacting business over defendants' PIN-based networks. Parties that do not adhere to the ATM restraints are penalized or denied access to the network. By their nature, the ATM restraints are part of a scheme that vests substantial control in Visa and MasterCard over the costs and revenues of ATM operations.

56. Visa and MasterCard maintain their market power in light of the insurmountable

barriers to entry faced by a potential competitor that might seek to achieve comparable consumer acceptance of its PIN-debit card, while at the same time the ATM restraints effectively foreclose competitive ATM networks from competing to carry a larger share of ATM transactions.

IX. CLASS ALLEGATIONS

57. The ATM Operator Plaintiffs bring this action under Fed. R. Civ. P., 23(a), (b)(1)(A), (2) and (3), on behalf of themselves and the following class:

All non-bank operators of ATM terminals, including registered ISOs and their affiliates, that operate ATM terminals located in the relevant geographic market with the discretion to determine the price of the ATM access fee for the terminals they operate and that have adhered to the defendants' ATM restraints in transactions they have completed at any time on or after October 1, 2007 ("independent ATM operators").

58. The ATM Operator Plaintiffs estimate that approximately 350 ISOs are registered with Visa and MasterCard, more specific information about which is within the control of defendants. Moreover, most ISOs transact business with numerous ATM-operating affiliates, the precise number of which is not currently known by Plaintiffs, but specific information about which is within the control of the sponsoring financial institutions. Accordingly, the identity of the class members readily can be determined from records maintained by defendants, their agents, and the sponsoring financial institutions. The members of the class are so numerous that joinder of all members is impracticable.

59. Defendants' relationships with the members of the class and defendants' anticompetitive conduct at issue are substantially uniform and the antitrust violation alleged herein affects the ATM Operator Plaintiffs and the putative class in substantially the same manner. Consequently, common questions of law and fact will predominate over any individual questions of law and fact. Among the questions of law and fact common to the class are:

- a. Whether defendants have established rules precluding differential surcharging by plaintiffs and the class;
- b. Whether Visa and MasterCard possess and exercise market power in the relevant markets alleged in this complaint;
- c. Whether the ATM restraints prevent the ATM Operator plaintiffs and the putative class from exercising independent commercial discretion in setting ATM access fees in a manner that increases revenue and induces cardholders to utilize more efficient or lower cost payment networks other than Visa and MasterCard's, as would be the case in a competitive market;
- d. Whether defendants' ATM restraints are unlawful under Section 1 of the Sherman Act;
- e. Whether defendants' actions have adversely impacted the class as a result of network overcharges and related conduct;
- f. The proper measure of damages and the amount thereof sustained by the ATM Operator Plaintiffs and the putative class as a result of the violations alleged herein;
- g. Whether the ATM Operator Plaintiffs and the putative class are entitled to injunctive and declaratory relief.

60. The ATM Operator Plaintiffs have claims that are typical of the claims of the class and have no interests adverse to or in conflict with the class. Plaintiffs are represented by counsel competent and experienced in the ATM industry and in prosecution of class action and antitrust litigation and will fairly and adequately protect the interests of the class.

61. There is no foreseeable difficulty managing this action as a class action. Common questions of law and fact exist with respect to all members of the class and predominate over any questions solely affecting individual members. A class action is superior to any other method for the fair and efficient adjudication of this legal dispute because joinder of all members is impracticable, if not impossible. The damages suffered by most of the members of the class are small in relation to the expense and burden of individual litigation and therefore impractical for such members of the class to individually attempt to redress the antitrust violation alleged herein.

62. The anticompetitive conduct of defendants alleged herein has imposed a common antitrust injury on the members of the class.

63. Defendants have acted, continue to act, refused to act, and continue to refuse to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

X. CLAIM FOR RELIEF

Sherman Act, Section 1 15 U.S.C. §1

(Per Se or Rule of Reason Agreement to Fix Prices)

64. Through the ATM restraints, defendants have implemented and managed a horizontal agreement to fix prices for ATM services and to protect and shield the defendants' ATM networks from competition from competing networks. Each defendant's ATM restraint independently restrains competition among networks and violates Section 1 of the Sherman Act apart from the existence of the other defendant's ATM restraints.

65. Each defendant's ATM restraints constitutes an agreement that unreasonably restrains competition in the market for ATM services in the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The agreements have and will continue to restrain trade in interstate commerce by fixing the price of ATM access fees in a manner that prevents ATM customers from using lower-cost ATM network services and protecting defendants from competition from rivals. By unlawfully insulating defendants' ATM networks from competition, the agreements increase the costs of card acceptance to ATM operators by increasing consumer access fees and foreign ATM fees above reasonably competitive levels, reducing output and the number of ATM terminals deployed, harm the competitive process, raise barriers to entry and expansion, and retard innovation and investment. Also, the defendants have maintained and

imposed supra-competitive overcharges on ATM operators for defendants' ATM network services and fees to defendants' member banks.

66. The ATM restraints are not reasonably necessary to accomplish any procompetitive goal and no procompetitive benefits result from them. Any efficiency benefit is outweighed by anticompetitive harm and less restrictive alternatives exist by which defendants could reasonably achieve the same or greater efficiency.

67. As a result of these violations of Section 1 of the Sherman Act, the ATM Operator Plaintiffs and the putative class have been injured in their business and property in an amount not presently known. The ATM Operator Plaintiffs and the putative class have been injured by supracompetitive fees that greatly exceed the fees that would be paid by ATM operators for network and bank services in a competitive market. The ATM Operator Plaintiffs and the putative class seek to recover for overcharge damages that have been directly imposed upon them by the defendants.

68. As a result of these violations of Section 1 of the Sherman Act, the ATM Operator Plaintiffs, which are continuing in nature, the putative class, and the members of the Association Plaintiff face irreparable injury. The violations and the effects thereof are continuing and will continue unless the injunctive relief requested herein is granted. The ATM Operator Plaintiffs, the putative class, and the Association Plaintiff have no adequate remedy at law.

XI. REQUEST FOR RELIEF

WHEREFORE, plaintiffs pray that final judgment be entered against each Defendant granting the following relief:

A. A declaration that this action may be maintained as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure and that reasonable notice of this action, as

provided by Rule 23(c)(2) of the federal Rules of Civil Procedure be given to all members of the plaintiff class;

B. Such declaratory and injunctive relief as the Court determines to be appropriate to redress conduct found to be unlawful under the antitrust laws.

C. An award of treble damages to the ATM Operator Plaintiffs and members of the putative class, (but not the Association Plaintiff), based on the unlawful conduct of defendants.

D. An award of post-judgment interest and any other interest permitted by law.

E. An award of the costs of this suit, including reasonable attorneys' fees, as provided by law, and

F. Such other relief as the Court determines just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable as of right by a jury.

Dated: January 10, 2012

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CERTIFICATE OF SERVICE

I hereby certify that, on January 10, 2011, a copy of the foregoing

FIRST AMENDED CLASS ACTION COMPLAINT

was sent to all parties on record via e-mail to all counsel listed on the Court's electronic filing system in this action. Parties may access this filing through the Court's CM/ECF System.