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,	Civil Action No. 1:11-cv-01803 Assigned To: Jackson, Amy Berman Assign Date: 10/12/2011 Description: Antitrust **SECOND AMENDED CLASS ACTION COMPLAINT**

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.

SECOND AMENDED CLASS ACTION COMPLAINT

I. INTRODUCTION AND SUMMARY

1. This case challenges certain so-called "non-discrimination" rules (the "ATM Restraints") adopted by defendants, Visa and MasterCard, which reduce interbrand competition, restrain output, and maintain high ATM access fees to consumers and high network services fees to ATM operators. The rules prohibit ATM operators, both banks and non-banks, from offering a discount or other incentive to consumers depending on whether they use debit cards programmed to transact over Visa, MasterCard, or any competing non-Visa or non-MasterCard Electronic Funds Transfer ("EFT") network (collectively, the "ATM networks"). The rules expressly prohibit an ATM operator, both bank and non-bank, from charging consumers a different access fee at a particular ATM terminal for transactions carried over different networks, even where the cost of using those different networks may vary markedly. As such, the rule is an "anti-steering" rule that prevents ATM operators from steering consumers by way of lower access fees toward using ATM cards attached to one network or another or to unaffiliated networks that are more efficient and less costly than either Visa or MasterCard's.

2. The ATM Restraints were adopted initially by the nation's banks when the banks owned and controlled Visa and MasterCard and owned and controlled virtually all ATMs. By eliminating the discretion of bank and non-bank ATM operators to set access fees according to the ATM network(s) associated with the card presented to the terminal, the ATM Restraints ensured that the advent of ATM surcharging in the mid-1990s and the entry into the market of new, independent, non-bank ATM operators would not result in ATM access fee price

competition at the terminal between banks on the basis of the cards they issue or the costs or efficiency of the ATM networks they had chosen to associate with those cards. Instead, the members banks agreed to restrain price competition in ATM access fees at the terminal between cards bearing different ATM network associations. In this way MasterCard-issuing banks that may have had to pay more to their network for each ATM transaction would not be exposing their customers to the threat of having to pay a higher access fee than customers of a Visa-issuing bank that may have had to pay less to their network for each ATM transactions. Fixing the price at the same level for all transaction at a given terminal regardless of the network used, as the ATM Restraints do, insulates banks against the competitive market consequences of choosing to issue cards associated with inefficient, more costly ATM networks and insulates the networks themselves from the competitive market consequences of being inefficient and more costly.

3. The ATM Restraints, implemented well before the banks "spun-off" Visa and MasterCard into legally distinct entities, have been perpetuated to the present day because the member banks as well as Visa and MasterCard themselves all have strong incentives to continue them and because Visa and MasterCard have the market power to prevent their member banks from repudiating them, even if, *arguendo*, the banks were willing to operate their ATMs free of the ATM Restraints. The interbrand anticompetitive effects of the ATM Restraints continue unabated: the rules continue to insulate banks from competition on the basis of the ATM access fee generated by their customers' cards, they continue to insulate Visa and MasterCard's ATM networks from competition from one another and from unaffiliated ATM networks on the basis of cost or efficiency, they continue to empower defendants to charge supracompetitive fees to

ATM operators, and they continue to extinguish the discretion of ATM operators to price their services according to the cost of providing them over the various different ETF networks available on customers' cards.

4. The ATM Restraints have resulted in anticompetitive effects that include i) systematic supracompetitive overcharging of ATM operators by Visa and MasterCard for ATM network services, ii) an artificial constraint on the ability of unaffiliated EFT networks to attract ATM transactions, iii) the suppression of economic output in the form of fewer ATMs deployed and fewer transactions than would be the case in the absence of the ATM Restraints, and iv) supracompetitive access fees for consumers of ATM services. This action seeks damages for injury that flows directly from the first anticompetitive effect, *to-wit*: class-wide compensatory damages for supracompetitive overcharging of independent ATM operators by Visa and MasterCard for ATM network services, plus compensatory damages for costs incurred in completing Visa and MasterCard international transactions that generate negative revenue for independent ATM operators and for which higher access fees may not be charged as a consequence of the ATM Restraints.

5. Visa and MasterCard are the largest providers of debit payment cards and to be commercially viable independent ATM operators (*i.e.*, non-bank entities that own and operate ATM machines) must have access to the Visa and MasterCard networks which will allow them 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 to abide by the ATM Restraints.

6. This case is brought by (i) 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 (ii) 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 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

6. 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 Sections 1 and 2 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.

7. 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.

8. 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.

9. 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

10. 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).

11. 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. 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 and/or undercharges 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.

12. 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").

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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 a larger but unknown number of 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" or "ISOs"). 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. <u>The Defendants</u>

26. 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.

27. VISA INC. is the successor to a membership association that was owned and operated by retail banks. 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.

28. 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.

29. 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.

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

31. 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.

32. MASTERCARD INCORPORATED is the successor to a membership association that was owned and operated by retail banks. MASTERCARD INCORPORATED became a publicly held corporation after an initial public offering of its stock began trading on the New York Stock Exchange on May 24, 2006.

33. 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.

34. 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

35. Unnamed as parties, but equally culpable, co-conspirators with defendants include all U.S. banking and depository institutions that act as issuers or acquirers of Visa- and MasterCard-branded PIN-debit cards.

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

IV. FACTUAL BACKGROUND

A. PIN-Debit Cards and ATM Services

37. ATM transactions are initiated by use of a PIN-debit card. 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. PIN-debit cards include "pay now" cards, which allow a cardholder to effect a remote electronic 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."

38. A PIN-debit cardholder can obtain cash, monitor account balances, or transfer balances at both bank and nonbank ATMs. Some ATMs also accept deposits or dispense items of value other than cash, such as stamps or travelers checks. Collectively, these services are referred to as "ATM Services."

39. An overwhelming majority of cards used for ATM transactions are Visa- or MasterCard-branded PIN-debit cards linked to bank accounts.

40. Some ATM transactions using Visa- and MasterCard-branded PIN-debit cards may be completed over non-Visa and non-MasterCard EFT networks, 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 usually bears a service mark belonging to the alternative network. These service marks are referred to as "bugs."

41. ATM transactions using non-Visa or -MasterCard Networks, such as those named above, can be conducted with Visa- or MasterCard-branded cards that bear the bug of unaffiliated network. When an ATM has access to multiple networks that match the bug(s) on the customer's card, the ATM operator's processor can choose which network over which to route the transaction and customarily routes the transaction through the "least costly" network, that is, the network that deducts the lowest network services fee and remits the greatest net interchange.

B. <u>ATM ISOs</u>

42. ATM independent sales organizations ("ISOs") are nonbank entities that provide ATM Services to consumers.

43. Beginning in about 1996, state laws and network rules prohibiting ATM operators from charging a fee directly to cardholder for use of the ATM (an "access fee," also referred to as a "surcharge" or "surcharge fee") were abolished, creating an opportunity for nonbanks to enter the market to operate ATMs. Prior to 1996, ATM ISOs did not exist and all ATMs were operated by banks.

44. ATM ISOs fill consumer demand for conveniently located ATMs, for example, at nonbank locations where cash is handled, remote locations, or locations that are more expensive than typical bank ATM locations or may be unattractive to a bank for other reasons.

C. Issuing, Acquiring and Sponsoring Banks

45. Retail banks are publicly chartered companies that provide and sell banking services to consumers and may be "issuing banks" or "acquiring banks" for any given ATM transaction. Issuing banks provide PIN-debit cards to their own customers to access their accounts via PIN-debit networks, including via ATMs. Acquiring banks operate their own ATMs at bank branches and at offsite locations. These ATMs can be used by the bank's customers and by customers of other financial institutions to conduct transactions using PIN-debit cards. As used herein, "issuing bank" and "acquiring bank" include credit unions.

46. Where a cardholder uses a PIN-debit card at an ATM operated by his own bank, the bank acts as both the issuing bank (because it issued the card) and the acquiring bank (because it has acquired the ATM transaction). Such a transaction is referred to as "on us," in contrast to a "foreign ATM transaction," which occurs anytime the acquiring bank and the issuing bank are different. All transactions conducted by ATM ISOs are by definition foreign ATM transactions.

47. All U.S. banks that issue Visa- or MasterCard-branded PIN-debit cards are members of Visa and/or MasterCard and enjoy direct access to defendants' PIN-based networks

for the ATMs that they operate. Only Visa or MasterCard member banks may transact over Visa or MasterCard's networks and only banks may be members of Visa or MasterCard.

48. ATM ISOs and "processors," firms that provide communications infrastructure and other services for ATM transactions, such as authentication, clearing, and settlement of transactions, are nonbanks and may not be members of Visa or MasterCard. To gain access to Visa or MasterCard's networks, therefore, an ATM ISO must be sponsored by a member bank acting as a "sponsoring financial institution," or must affiliate itself with such a sponsored ISO. Sponsoring financial institutions act as the acquiring bank for their ISOs' ATM transactions and specialize in providing ISOs with access to all PIN-based ATM networks, those that are owned and operated by Visa (principally, Plus, Interlink, and VisaNet) and MasterCard (Maestro and Cirrus) as well as those that are unaffiliated with defendants, such as Pulse (Discover), NYCE, Star, Armed Forces Financial Network, Exchange, Credit Union 24, and others, as more fully alleged in the following section. The sponsoring bank ensures that the ISO is registered with the network and that it has executed and is fulfilling an agreement with the sponsoring bank that obligates the ISO to abide by all of the network's rules and operating regulations as well as the sponsor's obligations to the networks. Only a handful of member banks nationwide serve as sponsoring financial institutions and acquiring banks for ATM ISOs, for example, Meta Bank, American State Bank, and First Scottsdale Bank.

D. <u>ATM Networks and ATM Network Services</u>

49. The debit card industry is shrouded in secrecy and obtaining even ordinarily public market information about ATM networks that provide transaction services to ATMs ("ATM network services market") is difficult. The latest available public data for the number of ATMs online at the various ATM networks was published in 2008, which showed the following:

Network	Number ATMs Online - 2008
Maestro/Cirrus (MasterCard)	*
Interlink (Visa)	409,044
Star	325,500
NYCE	280,000
Pulse	265,000
Exchange	200,000
Credit Union 24	105,200
Allpoint Network	34,509
Co-Op Financial Services	26,528
MoneyMaker	20,957
MoneyPass	13,540
Shazam	11,958
Fastbank	10,215
Instant Cash	8,480
Jeanie	7,680
InterCept EFT Network	3,025

Source: ATM&Debit News estimates, ATM&Debit News and Prepaid Trends, October 23, 2008. *No published data reported; estimated 300,000-400,000.

50. The 2008 estimate for MasterCard's Maestro network was 1,000,000 ATMs online worldwide, but no estimate of U.S.-installed ATMs on either Maestro or Cirrus was published. It is reasonable to estimate, however, that the number of ATMs that were on MasterCard's networks in 2008 was at least as many as Star, the largest unaffiliated network, and comparable to the estimate given for the number of ATMs online on Visa/Interlink or more, perhaps in the range of 300,000-400,000. The 2008 estimate for Visa/Interlink worldwide was 1,249,181 ATMs online.

51. The 2008 data fails to reflect an industry consolidation that occurred over the past five years. A more current picture of the participants in the ATM network services market is given by the list of networks carrying transactions for a representative ATM ISO, a member of the putative class, in January 2013:

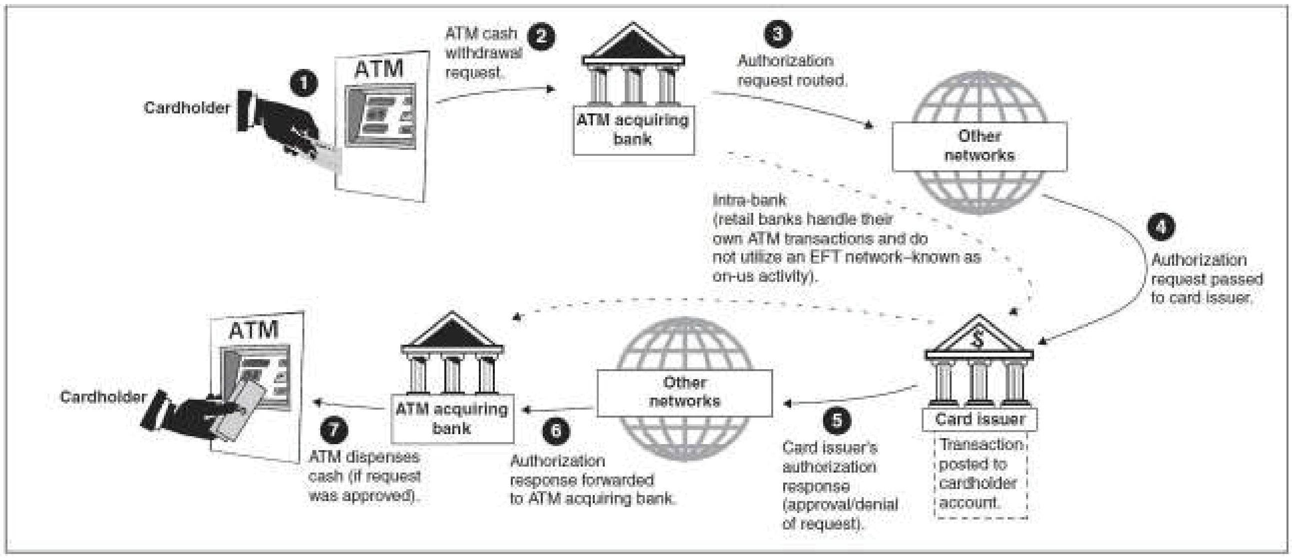
Armed Forces Financial Network	Maestro (MasterCard)
Cirrus (MasterCard)	NYCE Network
Cirrus International (MasterCard)	Plus International (Canada) (Visa)
China Union Pay	Plus International (Visa)
CU 24	Plus (Visa)
Discover	Pulse
Exchange	Star North East
Fiserv	Star
Maestro USA (MasterCard)	Visa International (Canada)
MasterCard	Visa International
MasterCard International	VisaNet

Most states operate electronic benefit transfer ("EBT") networks for distribution of government benefits , which have been excluded from the ISO's list.

E. <u>A Typical ATM Transaction</u>

52. A typical ATM transaction to withdraw cash is described in the diagram below (reproduced from GAO study GAO-08-281, "Consumer Access to Bank Fee Disclosures," Figure 9, at 60),which illustrates a bank-owned ATM transaction. A consumer inserts his PIN-debit card into an ATM terminal. If the terminal has access to a network that matches a network accessible by the consumer's card, the transaction proceeds. ATM ISOs are not connected directly to the acquiring bank as shown in the figure. Rather, ATM ISOs connect to various networks via the ISO's processor. The processor is connected to the ATM ISO's sponsoring bank. The processor determines which network or networks the cardholders issuing bank has authorized ATMs to use, ordinarily corresponding to network logos, or bugs, on the reverse side of the card.

Figure 9: Path of a Typical Debit Card Transaction at an ATM



Sources: GAO and VISA; Art Explosion (clip art).

53. In transactions involving ATM ISOs and other foreign ATM transactions, the consumer is informed that he will be charged an access fee by the ATM operator and the amount of the fee. If the consumer consents to the fee, the transaction proceeds. Otherwise, the consumer's card is returned and the transaction ended. In some cases, the issuing bank may reimburse the consumer for the access fee. In other cases the issuing bank and the ISO may have entered into an arrangement to provide no-access fee, or surcharge-free ATM services to certain cardholders.

54. The ATM acquiring bank or processor then sends a request, via an ATM network, to the consumer's issuing bank, which confirms that the consumer has sufficient funds in his account to cover the withdrawal plus the access fee, and sends an authorization back to the ATM operator via the ATM network. Once the ATM operator receives approval, it dispenses the withdrawal to the consumer and returns his card. If the consumer does not have sufficient funds, the transaction is denied and the consumer's card is returned.

55. The issuing bank debits the customer's account by the amount of the withdrawal plus the ATM operator's access fee. Unless the ATM is operated by the issuing bank (an "on us" transaction), the issuing bank may also assess a "foreign ATM fee" on the customer's monthly account statement, which the issuing bank retains.

56. In connection with a foreign transaction, the issuing bank may also be required to pay a fee set by the ATM network known as "interchange." The interchange fee originally served to compensate foreign banks for granting an issuing bank's customer access to the foreign bank's ATM services. After the advent of nonbank ATM operators, however, interchange became an important source of income for ISOs and allows ISOs keep access fees low while still making a profit. Each ATM network sets its own ATM interchange rate to issuing banks, ranging from zero to as much as $0.60 per transaction.

57. The following table (reproduced from GAO study GAO-13-266, "Automated Teller Machines," Figure 1, at 8), summarizes some of the fees generated by an ATM transaction:

Table: Fees Paid by Consumers, Financial Institutions, and ATM Owners to Process ATM Transactions

Fee	Who pays	Who receives	Description
Surcharge fee	Consumer	ATM owner	Paid to the ATM owner by the consumer when using an ATM not owned by his or her financial institution.
Foreign fee	Consumer	Consumer's financial institution	Paid to the consumer's financial institution by the consumer when using an ATM not owned by the card-issuing financial institution.
Interchange fee	Consumer's financial institution	ATM owner	Paid to the ATM owner for the costs of operating and maintaining the ATM.
Switch fee	Consumer's financial institution	EFT networks	Paid to the EFT networks for routing transaction information over the network.
Acquiring fee	ATM owner	EFT networks	Paid to the EFT networks for the use of the network by the ATM owner.

58. Contrary to the possible suggestion in the table, ATM owners are not paid interchange directly. Instead, interchange is paid to the ATM network, and most ATM ISOs are unsure of the interchange charged by a particular network or the precise amount of the network fee. ATM ISOs have no control over the level of interchange the networks charge issuing banks or the amount of fees the networks charge ATM operators. Some networks, most egregiously those operated by Visa and MasterCard, and a few others, retain a portion of the interchange as a fee for its own services (the "network services fee" referred to as the "acquiring fee" in the table above), and send the remainder to the ATM operator. As a consequence of the high network services fees charged by Visa and MasterCard, ATM transactions processed over Visa and MasterCard's networks are more costly for ATM operators than transactions processed over rival networks.

59. Data demonstrating the relative costs of ATM transactions over the various networks is not disclosed by the networks, so authoritative and consistent data can only be obtained from the defendants themselves. However, plaintiffs have a good faith basis to believe that the following table, which summarizes three disparate sets of data, covering the year 2012, the month October, 2012 and the month February, 2013, respectively, and based on an aggregate number of 19,430,413 transactions for those periods, provide a reasonably representative sample of the variation in revenue received by a typical ATM ISO after deduction for network services fees:

	Data Set #1 - 2012			Data Set #2 – October 2012			Data Set #3 - February 2013		
	tl # txns	network fee $	net intchg $	tl # txns	network fee $	net intchg $	tl # txns	network fee $	net intchg $
MC*	28.0%	0.34	0.06	15.7%	0.18	0.29	27.0%	0.41	0.05
VISA**	31.5%	0.22	0.21	25.4%	0.18	0.29	27.0%	0.33	0.17
PULSE	9.2%	0.00	0.28	2.4%	0.04	0.46	11.2%	0.00	0.28
NYCE	6.6%	0.00	0.36	3.3%	0.03	0.48	8.4%	0.00	0.38
STAR	12.1%	0.05	0.39	30.9%	0.04	0.51	15.1%	0.07	0.38
EXCHANGE Network	4.4%	0.00	0.41	20.1%	0.00	0.52	6.8%	0.00	0.42
Armed Forces Fin Network	6.6%	0.00	0.44	2.1%	0.02	0.52	3.2%	0.00	0.44
Credit Union 24	1.7%	0.00	0.54	0.04%	0.00	0.67	1.3%	0.00	0.54

In the table, “MC” reflects the average of ATM data for the principal MasterCard networks, including: Maestro International, MasterCard International, Cirrus International, Cirrus, Maestro, and Cirrus MasterCard. “Visa” reflects the average of ATM data for the principal Visa networks, including: Plus, Plus International, Plus International (Canada), VisaNet, Visa International, Visa International (Canada). The figures are averages. Transactions over Visa and MasterCard’s international networks can bear a negative net interchange, resulting in an additional net cost to ATM ISOs. Visa and MasterCard’s rules, prohibit registered ISO from refusing international transactions, so they are included in the averages. High network fees by Visa and MasterCard result in significantly lower revenue from those networks. ATM ISO have no bargaining power with respect to network services fees, which have been growing steadily for the past decade.

60. In summary, ATM ISOs may be paid for providing ATM services in two ways. First, ATM ISOs receive the per-transaction fee at the ATM, the access fee (or surcharge fee). Second, a network may collect interchange from an issuing bank, which is passed on by the Network to the ATM ISO after deduction for network services fees, resulting in the net interchange. The total amount of revenue an ATM ISOs receives for its services with respect to each transaction is the sum of the net interchange it receives from the network and the access fee

that it charges consumers.

61. Visa and MasterCard remit the lowest net interchange of any of the networks. All other things being equal, ATM ISOs prefer networks that pay a higher net interchange, as this gives them the best price for their ATM services and allows them to charge a lower access fee to maximize the quantity of ATM services demanded.

62. Two other per-transaction fees are paid by ATM ISO's in addition to the fees noted above. Each transaction bears a fee payable to the sponsoring bank and to the ISO's processor. Sponsoring bank fees are about a penny per transaction and processor fees are around $0.10 per transaction. These fees are customarily paid by the ISO to its processor and to the sponsoring bank directly and periodically.

F. The Anticompetitive Restraints

63. The Visa and MasterCard Network Agreements and Operating Rules include a provision referred to by the networks as the "Non-Discrimination Rule" and herein as the ATM Restraints. The ATM Restraints prohibit ATM Operators from charging lower access fees to customers whose transactions are completed over other networks than they charge to customers whose transactions are completed over Visa and MasterCard's networks.

64. MasterCard's Cirrus Worldwide Operating Rules (December 21, 2012) 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:

> **7.14.1.2 Non-Discrimination Regarding ATM surcharge 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.**

65. The Visa International Operating Regulations (October 15, 2012) set forth the following restraint on the exercise of discretion by ATM operators to charge a access fee they

deem commercially appropriate:

> **An ATM Acquirer may impose an Access Fee on an international ATM Cash Disbursement if:**
> **It imposes an Access Fee on all other international ATM Cash Disbursements through any other networks at the same ATM;**
> **The Access Fee is not greater than the Access Fee amount on all other international transactions; and**
> **The Access Fee is a fixed and flat fee.**

66. Another provision of those same rules applies this same restraint to domestic transactions:

> **An ATM Acquirer in a country where an Access Fee for domestic ATM Cash Disbursements is permitted by Visa must comply with the requirements specified for International ATM Cash Disbursement surcharge fees.**

67. A third provision provides that access fees may be charged on domestic transactions in the United States.

68. 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 ....**

69. Defendants' rules and practices described above constitute the anticompetitive restraint challenged in this action. By agreeing with their members to the ATM Restraints, defendants have placed a competitive straightjacket on bank and non-bank ATM operators, restricting decisions by them to offer discounts, benefits, and information to customers that they would otherwise be free to offer, for the purpose of avoiding competition on the basis of the cost

or efficiency of the various ATM networks affiliated with various cards issued to consumers.

70. Visa and MasterCard impose these rules in their agreements with sponsoring banks, which in turn are required to obtain agreement from their ATM ISOs in connection with the ISOs' registration with the network to submit to Visa and MasterCard's rules, including the ATM Restraints. Visa and MasterCard require sponsoring banks to penalize ATM ISOs that do not adhere to the Restraints.

71. All ATM operators must accept the ATM Restraints in order to accept defendants' cards. Bank and non-bank ATM operators clearly understand and expressly agree that they must comply with the ATM Restraints. Defendants actively monitor and vigorously enforce their Operating Rules.

V. TRADE AND INTERSTATE COMMERCE

72. The defendants' PIN-debit 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.

73. 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.

74. 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. Under MasterCard's Worldwide Operating Rules ("MasterCard's Rules" or "Operating Rules"), in order to access the MasterCard network, independent ATM operators must agree to abide by

those Operating Rules and to pay or accept various per-transaction fees and prices set by MasterCard and/or its member banks.

VI. THE RELEVANT MARKET

75. The relevant product market affected by the ATM Restraints is the market for ATM network services, in which the above-described ATM networks sell network services to bank and nonbank operators of ATMs. Plaintiffs and the members of the putative class are direct purchasers in this market. No cost-effective alternative to ATM network services exists and there are no substitutes. Accordingly, a sufficient number of ATM operators would not switch away from the ATM network services offered by these networks to make a small but significant price increase in those services unprofitable.

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

VII. THE ANTICOMPETITIVE EFFECTS OF THE ATM RESTRAINTS

77. The ATM Restraints have harmed and diminished competition in the relevant ATM network services market. The Restraints have resulted in systematic supracompetitive overcharging of ATM operators by Visa and MasterCard for network services and an artificial constraint on the ability of unaffiliated EFT networks to attract ATM transactions. This has resulted in the suppression of economic output in the form of fewer ATMs deployed and fewer transactions than would be the case in the absence of the ATM Restraints and in higher access fees for consumers of ATM services, in particular for transactions carried over non-Visa and non-MasterCard networks, which must bear the same access fee despite being less costly for the ATM operator.

78. Since the advent of access fees (or “surcharging”) in the mid-1990s, the ATM Restraints have served to insulate the member banks of Visa and MasterCard from competition

against one another in the acquisition of access fee-generating foreign ATM customers. This is achieved by expressly fixing the ATM access fee at any given ATM terminal regardless of the issuer's network. Thus, for banks that issue Visa cards, an ATM network to which issuing banks pay one level of interchange to complete an ATM transaction would be at neither a competitive advantage nor a competitive disadvantage with respect to banks that issue MasterCard cards, whose network to which issuing banks may pay a different level of interchange. By prohibiting acquiring banks—as well as the industry's new entrants, the ATM ISOs—from varying the access fee to consumers according to the network associated with the card used, the ATM Restraints eliminated the possibility that Visa-issuing banks and MasterCard-issuing banks would face price competition at the terminal for access fee-generating ATM customers, or that either would face price competition at the terminal from any number of the non-Visa or non-MasterCard networks that were then serving bank ATMs.

79. For ATM operators, the ATM Restraints have the perverse effect of forcing the ATM operator to partially subsidize Visa and MasterCard transactions with interchange revenue from non-Visa and non-MasterCard networks. For each terminal, the ATM operator must choose one and only one access fee, which serves as its retail price for all ATM transactions at that terminal. The operators' per transaction costs will vary widely, however, depending on the network borne on the card, so the chosen access fee will yield a smaller gross profit on networks that pay less net interchange and a larger profit on networks that pay more net interchange. Because an overwhelming volume of an ATM ISO's transactions are carried by the "higher cost" Visa and MasterCard networks and a much smaller volume on all the other networks, the ATM operator cannot raise its access fee high enough to completely recoup on revenue generated by unaffiliated networks its overcharge by Visa and MasterCard for ATM network services. In a competitive market this imbalance would be corrected by a price differential for the final service, and consumers would respond to lower prices for a fungible service by switching. But the ATM

Restraints prevent such "steering" of volume from the Visa and MasterCard networks to alternative networks because ATM operators are prohibited from setting the price differential needed to encourage consumers to switch.

80. Because ATM operators have no opportunity to price ATM access fees according to the economic costs of each network, the ATM networks are not subject to competitive pressure when they operate inefficient, more costly operations. A strong indicator of the anticompetitive nature of the ATM Restraints, moreover, is their requirement for both bank and independent ATM operators to relinquish their independent discretion over their own pricing of ATM services according to the network used to carry the transaction.

81. The ATM Restraints, therefore, restrain horizontal, interbrand competition between networks in the relevant market for ATM network services by restraining price competition at the ATM terminal for access-fee generating ATM customers on the basis of the transacting network presented on the card.

82. By insulating the Visa and MasterCard debit cards issued by banks from price competition in the consumer ATM services market, the ATM Restraints enable Visa and MasterCard to impose artificially high network fees in the relevant ATM network services market without fear that it will result in ATM ISOs charging lower access fees to users of the non-Visa and non-MasterCard networks than they charge to users of the Visa and MasterCard networks. But for the ATM Restraints, ATM ISOs would charge different access fees depending on the level of network services fees deducted by the different networks and the cost of carrying those networks international transactions.

83. Even the threat of differential pricing would drive competition among networks to charge lower and more competitive network fees. In turn, this would increase the net interchange flowing to ATM operators and allow ATM operators to offer lower access fees to consumers and deploy additional ATM terminals.

84. By preventing competition between networks, the ATM Restraints result in higher access fees at the consumer level, directly harming consumers.

85. Of a closely related restraint applied by Visa and MasterCard on merchants accepting their general purpose credit and charge cards, the United States Department of Justice ("DOJ") asserted that without the restraint, "merchants would be free to use various methods, such as discounts or non-price benefits, to encourage customers to use the brands of General Purpose Cards that impose lower costs on the merchants. In order to retain merchant business, the networks would need to respond to merchant preferences by competing more vigorously on price and service to merchants. The increased competition among networks would lead to lower merchant fees and better service terms." Likewise here, the ATM Restraints imposed on ATM operators by the network defendants prevent them from encouraging customers to use cards affiliated with networks paying higher net interchange. This anti-steering restraint, in turn, prevents the network defendants from having to compete more vigorously on price and service to ATM Operators.

86. DOJ further asserted: "Because the Merchant Restraints result in higher merchant costs, and the merchants pass these costs on to consumers, retail prices are higher generally for consumers. Moreover, a customer who pays with lower-cost methods of payment pays more than he or she would if defendants did not prevent merchants from encouraging network competition at the point of sale." Likewise here, the ATM Restraints prevent customers from switching to cards that use networks that do not deduct high network fees to be rewarded with lower prices in the form of lower access fees.

87. Finally, DOJ asserted: "Merchant Restraints have had a number of other anticompetitive effects, including reducing output of lower-cost payment methods, stifling innovation in network services and card offerings, and denying information to customers about the relative costs of General Purpose Cards that would cause more customers to choose lower-

cost payment methods. Defendants' Merchant Restraints also have heightened the already high barriers to entry and expansion in the network services market. Merchants' inability to encourage their customers to use less-costly General Purpose Card networks makes it more difficult for existing or potential competitors to threaten Defendants' market power." Likewise here, beyond the direct monetary harm to ATM operators and consumers, the ATM Restraints stifle innovation and heighten barriers to entry by reducing the ability of lower-cost networks to attract volume by prohibiting competition on access fee prices at the ATM terminal.

88. The DOJ entered into a consent decree with Visa and MasterCard that prohibited them from imposing this kind of anti-steering restraint or any comparable restraint in the general purpose credit and charge card market.

VIII. <u>THE ELEMENT OF AGREEMENT</u>

89. The defendants are descendants 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 ("IPO") of its stock began trading on the New York Stock Exchange on March 18, 2008. MasterCard, Inc. became a publicly held corporation after an IPO of its stock began trading on the exchange on May 24, 2006.

90. From the beginning of their existence until their IPOs, Visa and MasterCard's member banks elected a Board of Directors composed exclusively or almost exclusively of competing member banks. That Board of Directors, with the cooperation and assent of the member banks, in turn established, approved, and agreed to adhere to rules and operating regulations, including the ATM Restraints that eliminated horizontal, interbrand competition between the member banks as described above.

91. Prior to the defendants' IPOs, each bank that was a member of the Visa or MasterCard networks knew and understood that the ATM Restraints would continue after the IPOs.

92. In 1998, the Antitrust Division of the Department of Justice sued Visa and MasterCard alleging that the joint governance of the two networks and certain exclusionary rules that prevented banks from issuing cards on competitive networks violated Section 1 of the Sherman Act. After a 34-day trial the court found the exclusionary rules violated Section 1, which was affirmed by the United States Court of Appeals for the Second Circuit. *United States v. Visa USA*, 163 Supp.2d 322 (S.D.N.Y. 2001), aff'd, 344 F.3d 229 (2d Cir. 2003). The court condemned Visa and MasterCard networks, together with their member banks, for implementing and enforcing illegal exclusionary agreements requiring any U.S. bank that issued Visa or MasterCard general purpose cards to refuse to issue American Express and Discover cards. 163 F. Supp. 2d at 405-406.

93. The court concluded that the "exclusionary rules undeniably reduce output and harm consumer welfare," that Visa and MasterCard had "offered no persuasive procompetitive justification for them," and that "the Member Banks agreed not to compete by means of offering American Express and Discover branded cards," that "[s]uch an agreement constitutes an unreasonable horizontal restraint [that] cannot be permitted," and that "these rules constitute agreements that unreasonably restrain interstate commerce in violation of Section 1 of the Sherman Act." Id. at 405-406.

94. In affirming the court's "comprehensive and careful opinion," 344 F.3d at 234, the Second Circuit underscored the crucial role played by the member banks in agreeing to, and abiding by, the Visa and MasterCard versions of the exclusionary rules:

> Visa U.S.A. and MasterCard, however, are not single entities; they are consortiums of competitors. They are owned and effectively operated by some 20,000 banks, which cooperate with one another in the issuance of Payment Cards and the acquiring of Merchant's transactions. These 20,000 banks set the policies of Visa U.S.A.

> and MasterCard. These competitors have agreed to abide by a restrictive exclusivity provision to the effect that in order to share the benefits of their association by having the right to issue Visa or MasterCard cards, they must agree not to compete by issuing cards of American Express or Discover. The restrictive provision is a horizontal restraint adopted by 20,000 competitors.

95. Similar to the exclusionary rules at issue in *United States v. Visa, U.S.A.*, the ATM Restraints at issue in this case are agreements among horizontal competitors to adhere to rules and operating regulations that require ATM access fees to be fixed at a certain level regardless of the costs of the underlying ATM networks. The restraint is tantamount to the banks having agreed not to compete against one another on the price of the ATM services that can be obtained with their customers' cards.

96. After being adjudicated "structural conspiracies" in the United States, the European Union, the United Kingdom, and several other jurisdictions, defendants took steps to restructure themselves in an attempt to remove their conspiratorial conduct from Section 1 of the Sherman Act and equivalent laws in foreign jurisdictions that prohibit agreements among competitors.

97. For example, in May 2005, MasterCard's then-CEO Robert Selander noted in a presentation to the European banks that were then represented on MasterCard's Board of Directors that through an IPO, MasterCard wished to terminate the "structural conspiracy previously found to exist by courts in the United States."

98. Similarly, in January 2005, Christopher Rodrigues, the President and CEO of Visa International, acknowledged: "[T]he Regions now understand that: Old Visa's days are numbered. No one can stay as they are."

99. On May 22, 2006, MasterCard completed its IPO, which sold a partial interest in

MasterCard to public investors. Through this IPO and related agreements, the surviving entity acquired certain of its member banks' ownership and control rights in MasterCard through the redemption and reclassification of stock that was previously held by the member banks. To date, member banks retain a significant financial and equity interest in MasterCard.

100. Similarly, on March 19, 2008, Visa completed its own IPO. Under a series of transactions, Visa redeemed and reclassified approximately 270 million shares of Visa stock previously held by the member banks. To date, member banks retain a significant financial and equity interest in Visa.

101. Following the IPOs, the defendants continue to refer to their bank customers as "members" of Visa and MasterCard. By perpetuating the ATM Restraints, member banks have relinquished their independent authority over the setting of access fees at their ATM terminals to the network defendants, in whom they have a significant financial interest, authorizing and agreeing with them to design, implement, and enforce a horizontal price-fixing restraint in which the banks are knowing and willing participants and beneficiaries.

102. Both prior to, and after the IPOs, each bank which was a member of Visa, MasterCard or both, and each member bank knew and understood that it and each and every other member of the applicable network would agree or continue to agree to be bound by the ATM Restraints.

103. The member banks' have agreed to continue to be bound by the ATM Restraints even after the IPOs. Solely as the result of the IPO, therefore, did the agreement embodied in the ATM Restraints between horizontal competitors to refrain from competition on the basis of the ATM network borne by the banks issued debit cards become a mandatory agreement between every member bank and the Visa and MasterCard stand-alone entities. Yet, the IPOs notwithstanding, these agreements have precisely the same horizontal, pre-IPO interbrand effects on competition in the market of i) shielding banks (as issuers of cards) from facing interbrand

competition (from other banks using more efficient ATM networks) on the basis of the kind of debit card each bank has chosen to issue, and ii) shielding Visa and MasterCard ATM networks (now that they are parts of free-standing entities) from competition from each other and from unaffiliated ATM networks in the provision of ATM network services. The only "vertical" element in this arrangement, therefore, is an artifice of the formation of separate entities to manage the Visa and MasterCard bank members' relationships, which creates the appearance of a "vertical" agreement between the banks and the network defendants. But, every effect of the restraint, just as before the IPOs, is "horizontal," that is, it is a direct restraint on interbrand competition both between banks and between providers of ATM network services.

IX. VISA AND MASTERCARD'S MARKET POWER

104. Visa states on page 17 of its Form10-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." This is beyond debate. Virtually all U.S. retail banks issue Visa- or MasterCard-branded debit cards, or both, and all ATM ISOs must accept Visa- and MasterCard-branded ATM cards to operate a viable business.

105. As a consequence, even were the member banks of Visa and MasterCard to conclude, counterfactually, that it was no longer in their interest as banks to abide by the ATM Restraints to avoid competitive ATM access fees, Visa and MasterCard would each possess sufficient market power to force their member banks to agree to continue to observe and enforce the ATM Restraints. In fact, however, Visa and MasterCard do not need to exercise their market power in such a manner, because their member banks willingly perpetuate the ATM Restraints to continue to reap the illicit benefit of the collusive agreement not to compete on the basis of the efficiency of each bank's ATM services. Visa and MasterCard do, however, exercise their market power with respect to ATM ISOs, who are forced unwillingly to accept the ATM Restraints or exit the market.

106. The ubiquity of Visa- and MasterCard-branded debit cards (and particularly since the rise over the past five years in the proportion of "single bug" debit cards authorized to transact over only a MasterCard or Visa network) means that ATM operators must transact over Visa and MasterCard's ATM networks to survive. Only ATM ISOs that are registered with Visa may display a Visa logo on its ATM terminals, and only an ATM ISO registered with MasterCard may display a MasterCard logo.

107. Because of this "must carry" status for ATM ISOs, the defendants continue to impose the ATM Restraints to ensure that plaintiffs are price-takers with respect to the price of ATM network services. Despite technological advances that have lowered the costs of ATM infrastructure and transactions over recent years, Visa and MasterCard have increased the costs they impose on ATM ISOs without losing sufficient market share to make the price increases unprofitable. Notwithstanding these elevated costs, nearly all ATM ISOs continue to accept defendants' high fees for network services. The ATM ISOs inability to resist the elevation of costs imposed by each defendant, far in excess of the fees charged by other comparable ATM networks, if any, as alleged in Paragraph 59, *infra*, is strong evidence of each defendant's market power.

X. ANTITRUST INJURY

108. In a reasonably competitive market absent the ATM Restraints, ATM operators could set ATM access fees at a level reflecting the cost of providing the network services and other inputs necessary to complete the transaction using the card presented. In the absence of the ATM Restraints, defendants, as the dominant providers of ATM network services, would bear the consequences of charging ATM operators excessive network fees, because ATM operators could charge different access fees for different cards or network use at the same terminal. To retain volume, defendants would respond to threatened or actual increases in access fees for transactions carried over their networks by adjusting their network fees down to a competitive

level. In the presence of the ATM Restraints, however, as the dominant ATM networks service providers, defendants feel no such competitive pressure and set the price of network services with impunity, because ATM operators have no way to respond. Although bank-operators of ATMs welcome an industry structure that allows them to escape competitive ATM access fees that could pressure the card issuers' network for high cost or inefficiency, the ATM operators do not, because providing consumers with ATM services is their only business. Unlike banks, plaintiffs and the putative class of ATM operators are not content to trade away higher output in their ATM operations in exchange for less rigorous competition between the ATM networks chosen by issuers and the issuers that choose them.

109. As a direct, proximate and foreseeable result of the ATM Restraints, as originally agreed by the banks and as perpetuated post-IPO in Visa and MasterCard's agreements with their banks, defendants have been able to levy supracompetitive network fees, membership fees, and other fees on ATM operators, and requiring them to transact costly international transactions that drain revenue, with no competitive consequence or threat of loss of network volume.

110. Plaintiffs have been injured by defendants' systematic deduction for fees for ATM network services by defendant's requirement that ATM ISOs bear negative interchange generated by international cardholders transacting on Visa and MasterCard's ATM networks, and imposing other supracompetitive charges and fees for ATM network services that exceed what those fees would be in a reasonably competitive market without the ATM Restraints.

111. Plaintiffs have suffered antitrust injury because the injury caused by the ATM Restraints is the type of injury that flows directly from the anticompetitive effects of the violation and is the type of injury the antitrust laws were intended to prevent.

XI. CLASS ALLEGATIONS

112. The ATM Operator Plaintiffs bring this action under Fed. R. Civ. P., 23(a), (b)(I)(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").

113. 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. .

114. 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 access fees (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.

115. 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.

116. 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.

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

118. 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.

XII. VIOLATIONS ALLEGED

Claim 1: Sherman Act, Section 1, 15 U.S.C. §1

(Against Visa and MasterCard for Unlawful Agreement Among and Between Competing Banks)

119. The ATM Restraints constitute an agreement between horizontally competing banks unreasonably to restrain trade to fix prices for ATM services, to avoid competition beween issued cards at the ATM terminal, and to protect and shield defendants from competition from competing ATM networks. Each defendant's ATM restraint independently restrains interbrand competition among banks and violates Section 1 of the Sherman Act apart from the existence of the other defendant's ATM restraint. The ATM Restraints were collectively and directly agreed by the competing member banks prior to the defendants' IPOs and after the IPOs the defendants have continued to implement, manage and enforce the collusive arrangement for the illicit benefit of their member banks and to shield themselves from competition on the basis of the costs and efficiencies of the ATM networks that they operate.

120. The inter-bank agreements codified in defendants' rules 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 choosing to use lower-cost ATM network services, protecting rival banks from competition on the basis of the kind of ATM cards issued by each bank, and protecting defendants ATM networks from competition from one another and from rivals. By unlawfully insulating defendants' bank members and ATM networks from competition, the agreements increase the costs of card acceptance to ATM operators, increase consumer access fees and foreign ATM fees above reasonably competitive levels, reduce output and the number of ATM terminals deployed, harm the competitive process, and raise barriers to entry and expansion and retard innovation and investment in the ATM industry.

121. 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.

122. By also shielding the networks from competition against one another and from unaffiliated networks, these collusive agreements have enabled defendants to maintain and impose supra-competitive overcharges on ATM operators for ATM network services and to impose other fees and costs injuring plaintiffs and the members of the putative class. Network fee overcharges disproportionately harm independent ATM operators compared to banks, because ATM ISOs have lower volume and no "on us" customer transactions with which to amortize their investment in ATM their operations.

123. As a result of these anticompetitive effects of the ATM Restraints, 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 services in a competitive market not governed by the ATM Restraints. The ATM operator plaintiffs and the putative class seek to recover for overcharge damages that have

been directly imposed upon them by the defendants.

124. As a further result of the ATM Restraints, 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.

Claim 2: Sherman Act, Section 1, , 15 U.S.C. §1

(Against Visa for Unreasonable Vertical Agreements

Between Visa and Its Member Banks)

125. After Visa's IPOs, the ATM Restraints, formerly agreed by and among the banks, took on the form of a series of agreements between Visa and its member banks that bind the latter to observe the ATM Restraints. These agreements unreasonably restrain trade by prohibiting and preventing price competition between banks in access fees for ATM services and inhibiting competition between Visa, MasterCard and other providers of ATM network services in violation of Section 1 of the Sherman Act.

126. Visa has market power in the market for ATM network services. Visa uses its market power to force plaintiffs and the members of the putative class to accept its Operating Rules, including the ATM Restraints, which restraints enable defendants to overcharge ATM ISOs supra-competitive network fees and to compel them to accept international transactions at a per-transaction loss.

127. There is no procompetitive justification for requiring the member banks to abide by the ATM Restraints or for the member banks to agree to them.

128. As a direct and proximate result of the unreasonable agreements between Visa and its member banks, plaintiffs and the members of the putative class have been injured as herein alleged.

129. As a further result of the ATM Restraints, the ATM operator plaintiffs, 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.

Claim 3: Sherman Act, Section 1, , 15 U.S.C. §1

(Against MasterCard for Unreasonable Vertical Agreements

Between MasterCard and Its Member Banks)

130. After MasterCard's IPO, the ATM Restraints, formerly agreed by and among the banks, took on the form of a series of agreements between MasterCard and its member banks that bind the latter to observe the ATM Restraints. These agreements unreasonably restrain trade by prohibiting and preventing price competition between banks in access fees for ATM services and inhibiting competition between Visa, MasterCard and other providers of ATM network services in violation of Section 1 of the Sherman Act.

131. MasterCard has market power in the market for ATM network services. MasterCard uses its market power to force plaintiffs and the members of the putative class to accept its Operating Rules, including the ATM Restraints and their concomitant supra-competitive network fees, and to accept international transactions at per-transaction loss.

132. There is no procompetitive justification for requiring the member banks to abide by the ATM Restraints or for the member banks to agree to them.

133. As a direct and proximate result of the unreasonable agreements between MasterCard and its member banks with regard to the ATM Restraints, plaintiffs and the members of the putative class have been injured as herein alleged.

134. As a further result, the ATM operator plaintiffs, 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.

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.

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