

1 ROBBINS GELLER RUDMAN
 & DOWD LLP
 2 PATRICK J. COUGHLIN (111070)
 DAVID W. MITCHELL (199706)
 3 ALEXANDRA S. BERNAY (211068)
 CARMEN A. MEDICI (248417)
 4 655 West Broadway, Suite 1900
 San Diego, CA 92101-8498
 5 Telephone: 619/231-1058
 619/231-7423 (fax)
 6 patc@rgrdlaw.com
 davidm@rgrdlaw.com
 7 xanb@rgrdlaw.com
 cmedici@rgrdlaw.com

8
 9 DEVINE GOODMAN RASCO &
 WATTS-FITZGERALD, LLP
 JOHN W. DEVINE
 10 LAWRENCE D. GOODMAN
 ROBERT J. KUNTZ, JR.
 11 2800 Ponce De Leon Blvd., Suite 1400
 Coral Gables, FL 33134
 12 Telephone: 305/374-8200
 305/374-8208 (fax)
 13 jdevine@devinegoodman.com
 lgoodman@devinegoodman.com
 14 rkuntz@devinegoodman.com

15 Attorneys for Plaintiffs

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN FRANCISCO DIVISION

19	B & R SUPERMARKET, INC., d/b/a)	Case No.
	MILAM'S MARKET, a Florida corporation,)	
20	and GROVE LIQUORS LLC, a Florida limited)	<u>CLASS ACTION</u>
	liability company, Individually and on Behalf)	
21	of All Others Similarly Situated,)	COMPLAINT FOR VIOLATIONS OF THE
)	SHERMAN ANTITRUST ACT,
22	Plaintiffs,)	VIOLATIONS OF THE CLAYTON
)	ANTITRUST ACT, CALIFORNIA'S
23	vs.)	CARTWRIGHT ACT AND UNJUST
)	ENRICHMENT
24	VISA, INC., a Delaware corporation; VISA)	
	USA, INC., a Delaware corporation;)	
25	MASTERCARD INTERNATIONAL)	
	INCORPORATED; a Delaware corporation;)	
26	_____)	<u>DEMAND FOR JURY TRIAL</u>

27 [Caption continued on following page.]

28

1 AMERICAN EXPRESS COMPANY, a New)
2 York corporation; DISCOVER FINANCIAL)
3 SERVICES, an Illinois corporation; BANK OF)
4 AMERICA, N.A., a national banking)
5 association; BARCLAYS BANK)
6 DELAWARE, a Delaware corporation;)
7 CAPITAL ONE FINANCIAL)
8 CORPORATION, a Delaware corporation;)
9 CHASE BANK USA, NATIONAL)
10 ASSOCIATION, a national banking)
11 association; CITIBANK (SOUTH DAKOTA),)
12 N.A., a South Dakota bank; CITIBANK, N.A.,)
13 a national banking association; PNC BANK,)
14 NATIONAL ASSOCIATION, a national)
15 banking association; USAA SAVINGS BANK,)
16 a Nevada corporation; U.S. BANCORP)
17 NATIONAL ASSOCIATION, a national)
18 banking association; WELLS FARGO BANK,)
19 N.A., a national banking association; EMVCo,)
20 LLC, a Delaware limited liability company;)
21 JCB CO. LTD, a Japanese company; and)
22 UNIONPAY, a Chinese bank association,)
23)
24)
25)
26)
27)
28)

Defendants.

1 B & R Supermarket, Inc., d/b/a Milam’s Market, a Florida corporation (“Milam’s Market”),
2 and Grove Liquors LLC, a Florida limited liability company (“Grove Liquors”), individually and on
3 behalf of all others similarly situated (collectively, the “Class”), sue Visa, Inc. and Visa USA, Inc.
4 (collectively, “Visa”), MasterCard International Incorporated (“MasterCard”), American Express
5 Company (“American Express”) and Discover Financial Services (“Discover”) (collectively, the
6 “Networks”); Bank of America, N.A. (“BOA”), Barclays Bank Delaware (“Barclays”), Capital One
7 Financial Corporation (“Capital One”), Chase Bank USA, National Association (“Chase”), Citibank
8 (South Dakota), N.A., Citibank, N.A., PNC Bank, National Association (“PNC”), USAA Savings
9 Bank (“USAA”), U.S. Bancorp National Association (“US Bank”) and Wells Fargo Bank,
10 N.A. (“Wells Fargo”) (collectively, the “Issuing Banks”); EMVCo, LLC (“EMVCo”); JCB Co. Ltd
11 (“JCB”); and UnionPay (“UnionPay”) and state as follows:

12 **NATURE OF THE CLAIM**

13 1. This is a class action suit for violations of the Sherman Antitrust Act, California’s
14 Cartwright Act, unjust enrichment, and for other equitable and injunctive relief.

15 2. For their own benefit, the Networks, the Issuing Banks through EMVCo conspired to
16 shift billions of dollars in liability for fraudulent, faulty and otherwise rejected consumer credit card
17 transactions from themselves to the Class, without consideration to, or meaningful recourse by, those
18 merchants (the “Liability Shift”).

19 **THE PARTIES**

20 3. Plaintiff B & R Supermarket, Inc., d/b/a Milam’s Market, is a Florida corporation that
21 operates four retail grocery stores in Miami-Dade County.

22 4. Plaintiff Grove Liquors LLC is a Florida limited liability company operating a retail
23 liquor store in Miami-Dade County.

24 5. Class members, who bring this class action pursuant to Rules 23(a) and (b)(2) and
25 (b)(3) of the Federal Rules of Civil Procedure, comprise merchants who have been unlawfully
26 subjected to a Liability Shift for the assessment of MasterCard, Visa, Discover, UnionPay, JCB, and
27 American Express credit and charge card chargebacks, despite having purchased EMV-chip-
28 compliant point of sale (“POS”) card readers and having otherwise complied with the directives of

1 the Networks and Issuing Banks, during the period from October 1, 2015 until the anticompetitive
2 acts cease.

3 6. Defendant Visa is a California-based payments technology company, which operates
4 a retail electronic payments network in the United States. It administers Visa payment programs and
5 its product platform includes consumer credit, consumer debit and cash access, and prepaid and
6 commercial programs. It provides products and services over a secure payments network to support
7 payment programs offered by its member issuing banks to their customers, including tens of millions
8 of retail consumers. Visa conducts business throughout the United States, including extensively in
9 the Northern District of California and this Division, where it is headquartered. Visa is a founding
10 member of EMVCo and has two members, Christina Hulka and Marc Kekicheff, on the EMVCo
11 Board of Managers. Along with American Express, Discover, JCB, MasterCard and UnionPay, Visa
12 is a co-owner of defendant EMVCo.

13 7. Defendant MasterCard is a New York-based payments technology company, which
14 operates a retail electronic payments network in the United States. It administers MasterCard
15 payment programs and its product platform includes consumer credit, consumer debit and cash
16 access, and prepaid and commercial programs. It provides products and services over a secure
17 payments network to support payment programs offered by its member issuing banks to their
18 customers, including tens of millions of retail consumers. MasterCard conducts business throughout
19 the United States, including extensively in the Northern District of California. MasterCard is a co-
20 owner of defendant EMVCo. MasterCard has a representative, Jonathan Main, on the EMVCo
21 Board of Managers.

22 8. Defendant American Express is a New York-based payments technology company
23 which issues credit and charge cards and related services and conducts business throughout the
24 United States, including extensively in the Northern District of California, and is a co-owner of
25 defendant EMVCo. American Express has two representatives, Robert Burns and Sean Conroy, on
26 the EMVCo Board of Managers.

27 9. Defendant Discover is an Illinois-based financial services company, which issues the
28 Discover card and operates the Discover retail electronic payments network in the United States. It

1 administers Discover payment programs and its product platform includes consumer credit cards,
2 and other card services. It provides products and services over a secure payments network to support
3 payment programs offered by its own and some member issuing banks to their customers, including
4 tens of millions of retail consumers. Discover conducts business throughout the United States,
5 including extensively in the Northern District of California. Discover is a co-owner of defendant
6 EMVCo. Discover has two representatives, David Bibby and Cheryl Mish, on the EMVCo Board of
7 Managers.

8 10. Defendant BOA, a national banking association with its principal place of business in
9 Charlotte, North Carolina, issues credit cards throughout the United States, including extensively in
10 the Northern District of California. It is an issuing bank that, throughout this judicial district, issues
11 General Purpose Cards to individuals and businesses. As an issuing bank, BOA maintains the line of
12 credit associated with each Visa or MasterCard it issues. Cardholder transactions made with these
13 cards are processed by the Networks. BOA is a member of both MasterCard and Visa. Bank of
14 America Merchant Services is an EMVCo Business Associate. According to EMVCo's website,
15 "EMVCo Business Associates provide EMVCo with input on strategic business and implementation
16 issues related to the use of the EMV Specifications. Business Associates serve on the Board of
17 Advisors and, accordingly, advise the EMVCo Executive Committee." According to EMVCo, in
18 addition to receiving a seat on the EMVCo Board of Advisors, Business Associates also gain
19 "networking opportunities with EMVCo executives and other Business Associates" and "[a]dvance
20 access to EMV Specification revisions, draft documents and upcoming meeting materials."

21 11. Defendant Barclays is a Delaware corporation, which issues credit cards throughout
22 the United States, including extensively in the Northern District of California. It is an issuing bank
23 that, throughout this judicial district, issues General Purpose Cards to individuals and businesses. As
24 an issuing bank, Barclays maintains the line of credit associated with each Visa or MasterCard it
25 issues. Cardholder transactions made with these cards are processed by the Networks. Barclays is a
26 member of both MasterCard and Visa.

27 12. Defendant Capital One is a Delaware corporation, with its principal place of business
28 in McLean, Virginia, issues credit cards throughout the United States, including extensively in the

1 Northern District of California. It is an issuing bank that, throughout this judicial district, issues
2 General Purpose Cards to individuals and businesses. As an issuing bank, Capital One maintains the
3 line of credit associated with each Visa or MasterCard it issues. Cardholder transactions made with
4 these cards are processed by the Networks. Capital One is a member of both MasterCard and Visa.

5 13. Defendant Chase, a national banking association, issues credit cards throughout the
6 United States, including extensively in the Northern District of California. It is an issuing bank that,
7 throughout this judicial district, issues General Purpose Cards to individuals and businesses. As an
8 issuing bank, Chase maintains the line of credit associated with each Visa or MasterCard it issues.
9 Cardholder transactions made with these cards are processed by the Networks. Chase is a member
10 of both MasterCard and Visa. Chase is an EMVCo Business Associate. According to EMVCo's
11 website, "EMVCo Business Associates provide EMVCo with input on strategic business and
12 implementation issues related to the use of the EMV Specifications. Business Associates serve on
13 the Board of Advisors and, accordingly, advise the EMVCo Executive Committee." According to
14 EMVCo, in addition to receiving a seat on the EMVCo Board of Advisors, Business Associates also
15 gain "networking opportunities with EMVCo executives and other Business Associates" and
16 "[a]dvance access to EMV Specification revisions, draft documents and upcoming meeting
17 materials." Chase is also a Technical Associate of EMVCo. According to EMVCo's website,
18 EMVCo "Technical Associates have the opportunity to provide input and receive feedback on
19 detailed technical and operational issues connected to the EMV Specifications and related processes.
20 Open to any industry stakeholder with an interest in monitoring the EMV Specifications, this
21 participation type also gives organisations the opportunity to interact regularly with EMVCo's
22 technical Working Groups, offer input to meeting agendas, submit technical contributions to
23 EMVCo for consideration, and gain early access to draft specifications and other technical
24 documents. Up to five seats on the EMVCo Board of Advisors are reserved for Technical
25 Associates representing distinct market sectors. Technical Associate representation on the Board of
26 Advisors is determined through an annual election process."

27
28

1 14. Defendant Citibank (South Dakota), N.A. is a South Dakota bank with its principal
2 place of business in Sioux Falls, South Dakota. It is parent company Citigroup's primary banking
3 entity responsible for U.S. credit card activities.

4 15. Defendant Citibank, N.A. is a bank with its principal place of business in New York,
5 New York, and is a subsidiary of Citigroup, Inc., a Delaware corporation with its principal place of
6 business in New York, New York. Citigroup is a member of both Visa and MasterCard. It engages
7 in interstate commerce. It is an issuing bank that, throughout this judicial district, issues General
8 Purpose Cards to individuals and businesses. It also is an acquiring bank that, throughout this
9 judicial district, provides card-acceptance services to class members.

10 16. Defendant PNC is a Pennsylvania corporation which issues credit cards throughout
11 the United States, including in the Northern District of California. It is an issuing bank that,
12 throughout this judicial district, issues General Purpose Cards to individuals and businesses. As an
13 issuing bank, PNC maintains the line of credit associated with each Visa or MasterCard card it
14 issues. Cardholder transactions made with these cards are processed by the Networks. PNC is a
15 member of both Visa and MasterCard.

16 17. Defendant USAA is a Nevada corporation which issues credit cards throughout the
17 United States, including in the Northern District of California. It is an issuing bank that, throughout
18 this judicial district, issues General Purpose Cards to individuals and businesses. As an issuing
19 bank, PNC maintains the line of credit associated with each Visa or MasterCard card it issues.
20 Cardholder transactions made with these cards are processed by the Networks. USAA is a member
21 of both Visa and MasterCard.

22 18. Minneapolis-based U.S. Bancorp, with \$422 billion in assets, is the parent company
23 of defendant US Bank, the fifth largest commercial bank in the United States. US Bank issues credit
24 cards throughout the United States, including extensively in the Northern District of California. It is
25 an issuing bank that, throughout this judicial district, issues General Purpose Cards to individuals
26 and businesses. As an issuing bank, US Bank maintains the line of credit associated with each Visa
27 or MasterCard it issues. Cardholder transactions made with these cards are processed by the
28 Networks. US Bank is a member of both MasterCard and Visa. US Bank is also an EMVCo

1 Business Associate. According to EMVCo's website, "EMVCo Business Associates provide
2 EMVCo with input on strategic business and implementation issues related to the use of the EMV
3 Specifications. Business Associates serve on the Board of Advisors and, accordingly, advise the
4 EMVCo Executive Committee." According to EMVCo, in addition to receiving a seat on the
5 EMVCo Board of Advisors, Business Associates also gain "networking opportunities with EMVCo
6 executives and other Business Associates" and "[a]dvance access to EMV Specification revisions,
7 draft documents and upcoming meeting materials." US Bank is also a Technical Associate of
8 EMVCo. According to EMVCo's website, EMVCo "Technical Associates have the opportunity to
9 provide input and receive feedback on detailed technical and operational issues connected to the
10 EMV Specifications and related processes. Open to any industry stakeholder with an interest in
11 monitoring the EMV Specifications, this participation type also gives organisations the opportunity
12 to interact regularly with EMVCo's technical Working Groups, offer input to meeting agendas,
13 submit technical contributions to EMVCo for consideration, and gain early access to draft
14 specifications and other technical documents. Up to five seats on the EMVCo Board of Advisors are
15 reserved for Technical Associates representing distinct market sectors. Technical Associate
16 representation on the Board of Advisors is determined through an annual election process."

17 19. Defendant Wells Fargo is a San Francisco-based corporation which issues credit cards
18 throughout the United States, including extensively in the Northern District of California. It is an
19 issuing bank that, throughout this judicial district, issues General Purpose Cards to individuals and
20 businesses. As an issuing bank, Wells Fargo maintains the line of credit associated with each Visa
21 or MasterCard it issues. Cardholder transactions made with these cards are processed by the
22 Networks. Wells Fargo is a member of both MasterCard and Visa.

23 20. Defendant EMVCo is a Delaware limited liability company overseen by, *inter alia*,
24 the Networks, which, among other things, develops and manages the technical standards by which
25 EMC chip transactions (as defined herein) are processed and maintained. According to EMVCo's
26 website, American Express, Discover, JCB, UnionPay and Visa "own[s] an equal share of EMVCo
27 and has representatives in the organisation at the management and working group levels. All
28 decisions are made on a consensus basis among the member organisations." EMVCo is not simply a

1 standard-setting entity. Instead, the organization serves as a means through which defendants here
2 have been able to effectuate their conspiracy. Moreover, the anticompetitive conduct alleged herein
3 was not conducted as part of EMVCo's standard-setting functions. The U.S. Supreme Court has
4 long acknowledged that standard-setting organizations "can be rife with opportunities for
5 anticompetitive activity." *Am. Soc'y of Mech. Eng'rs v. Hydrolevel Corp.*, 456 U.S. 556, 571
6 (1982); *see also Radiant Burners, Inc. v. Peoples Gas Light & Coke Co.*, 364 U.S. 656, 659 (1961).

7 21. Defendant JCB is a Japanese company and a credit card issuer and acquirer. JCB
8 conducts business throughout the United States, including extensively in the Northern District of
9 California. As of March 2015, JCB had 89.6 million cardholders, including 20 million members
10 outside Japan. JCB is a co-owner of defendant EMVCo. JCB has two representatives, Masao Noda
11 and Junya Tanaka, on the EMVCo Board of Managers.

12 22. Defendant UnionPay is a Chinese bankcard association established under the
13 approval of the State Council and the People's Bank of China. At present, the Shanghai-
14 headquartered UnionPay has about 400 domestic and overseas associate members. UnionPay
15 conducts business throughout the United States, including in the Northern District of California.
16 UnionPay is a co-owner of defendant EMVCo. UnionPay has two representatives, Hongliang Xu
17 and Jack Pan, on the EMVCo Board of Managers.

18 23. Historically Visa and MasterCard were joint ventures between payment card issuing
19 banks. This member bank control over Visa and MasterCard allowed card issuers to jointly set rules
20 regarding the operation of the payment card networks.

21 24. Over time the joint agreements between the member banks implemented through Visa
22 and MasterCard began to be challenged as violative of the antitrust laws. *See* below ("Defendants
23 Have a History of Anticompetitive Conduct"). In order to avoid liability, the member banks divested
24 their ownership in Visa and MasterCard through an IPO. But, by creating clever shareholding
25 agreements, the member banks continue to exercise control over Visa and MasterCard. For example,
26 although the MasterCard IPO broadened stock ownership, it imposed clear restrictions that make it
27 impossible for the member banks to lose control of the business of MasterCard. MasterCard's
28 member banks have ensured that they will maintain effective collective control even now that the

1 IPO is completed by imposing limits on stock purchases and retaining certain veto powers over
2 major business decisions.

3 **INTRADISTRICT ASSIGNMENT**

4 25. A substantial part of the events or omissions which give rise to the claim occurred in
5 San Francisco County and defendant Visa, Inc., who was responsible for a substantial part of the
6 events or omissions, is headquartered in San Mateo County. As such this action is properly assigned
7 to the San Francisco division of this Court.

8 **JURISDICTION AND VENUE**

9 26. This Court has jurisdiction over this case pursuant to 28 U.S.C. §1332(d) and the
10 Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §1711 *et seq.*, which vests original
11 jurisdiction in the district courts of the United States for any multi-state class action where the
12 aggregate amount in controversy exceeds \$5 million and where the citizenship of any member of the
13 Class of plaintiffs is different from that of any defendant. The \$5 million amount in controversy and
14 diverse-citizenship requirements of CAFA are satisfied in this case.

15 27. Venue is proper in this District pursuant to §12 of the Clayton Act (15 U.S.C. §22),
16 and 28 U.S.C. §1391 (b), (c), and (d), because a substantial part of the events giving rise to
17 plaintiffs’ claims occurred in this District, a substantial portion of the affected interstate trade and
18 commerce discussed below has been carried out in this District, and one or more of the defendants
19 resides in, is licensed to do business in, is doing business in, had agents in, or is found or transacts
20 business in this District.

21 28. This Court has personal jurisdiction over each of the defendants because, *inter alia*,
22 each defendant: (a) transacted business throughout the United States, including in this District; (b)
23 provided services related to credit cards and/or charge cards throughout the United States, including
24 in this District; (c) had substantial contacts with the United States, including in this District; and/or
25 (d) was engaged in an illegal conspiracy that was directed at and had the intended effect of causing
26 injury to persons residing in, located in, or doing business throughout the United States, including in
27 this District.

1 out of the line of credit using the credit card, and typically have to pay a minimum payment – but are
2 not required to pay the full amount owed – each month. If the cardholder does not pay off the
3 statement balance, he or she pays interest each month on the unpaid balance of the expended line of
4 credit. A charge card, on the other hand, does not come with a line of credit and typically does not
5 allow the cardholder to carry a balance, instead charge cards typically require payment of the full
6 amount charged each month.

7 39. While many American consumers use credit and charge cards for the convenience
8 they offer, there are some transactions – for example, renting a car or a hotel room, or making an
9 online purchase – which are virtually impossible to make without such a card.

10 40. For American merchants, like those in the Class, accepting credit and charge cards is
11 a prerequisite and necessity for doing business. Customers expect to be able to use their plastic
12 when they make a purchase and will often choose simply not to do business with a merchant who
13 doesn't accept a card.

14 **Credit Card Mechanics**

15 41. Defendants Visa and MasterCard, while they operate the networks that make
16 transactions on Visa or MasterCard credit cards work, do not issue the cards themselves, or carry the
17 line of credit each card represents. Instead, banks and other financial institutions, including the
18 Issuing Banks, issue the credit cards.

19 42. In the past, defendant American Express only issued charge cards. In more recent
20 years, American Express began directly issuing credit cards as well.

21 43. Defendant Discover operates a network of its own. Its cards are mostly issued
22 directly by Discover, along with a few issuing banks.

23 44. There are numerous moving parts behind a credit or charge card transaction.

24 45. In the case of American Express charge cards, American Express is both the issuer
25 and provides the network. When a consumer uses the card in lieu of cash to make a purchase from a
26 merchant, the merchant is thereafter paid the purchase price (less a “swipe fee”) by American
27 Express. American Express makes its money by charging cardholders membership fees (which vary
28 depending upon the sort of services or perquisites associated with different card types), interest on

1 unpaid balances and by charging the swipe fee (which varies from around 2% to 5% of the cost of
2 the goods or services purchased) paid by the merchant.

3 46. Accordingly, a typical American Express charge card transaction involves three
4 parties: The customer, American Express and the merchant.

5 47. A Visa, MasterCard or Discover credit card transaction, on the other hand, involves
6 as many as five parties: (1) the card-holding customer; (2) the merchant; (3) the “acquiring bank”;
7 (4) the issuing bank (in the case of most Discover cards that is usually Discover Bank); and (5) the
8 Network itself, that is, Visa, MasterCard or Discover.

9 48. The acquiring bank is the link between the Network and the merchant that accepts the
10 card for payment. The issuing bank is the bank, like the Issuing Banks here, that issues the credit
11 card to the customer and which carries the line of credit represented by the card. The cardholder
12 owes the debt to the issuing bank in the amount of any unpaid balance carried on the card.

13 49. When the cardholding customer presents a credit card to pay for goods or services,
14 the accepting merchant relays the transaction information to the acquiring bank. The acquiring bank
15 processes the information and transmits it to the network. The network relays the information to the
16 issuing bank, which approves the transaction, presuming approval is warranted based on with the
17 cardholder’s account status or credit limit. The approval is conveyed to the acquiring bank, which in
18 turn relays it to the merchant.

19 50. The issuing bank then transmits to the acquiring bank the amount of the purchase
20 price minus an “interchange fee.” Before paying the merchant, the acquiring bank withholds an
21 additional fee – called the “merchant discount fee” – for its processing services. Thus, the total
22 amount the merchant receives for the transaction is the purchase price minus the sum of the
23 interchange fee and the merchant discount fee.

24 51. Interchange fees vary based on factors that include the type of card used and the type
25 of merchant. Many credit cards provide rewards or cash back to cardholder. Those rewards or cash
26 back cost money, and thus these cards, referred to in the industry as “premium cards,” are associated
27 with higher interchange fees.

28

1 52. In general, cardholders can dispute their payment card transactions for various
2 reasons, including claims of fraud. Cardholders are rarely responsible for these losses, called
3 “chargebacks,” which, historically, were born by the issuers, and only rarely by the merchants.

4 **Credit Card Technology**

5 53. Each credit or charge card bears a unique embossed number, an embossed expiration
6 date and a printed “CVV,” or “card verification value” number – often called the “security code.”

7 54. The embossed number identifies the card as a Visa, MasterCard, Discover, American
8 Express, JCB or UnionPay, identifies the type of card, the issuing bank (for Visa and MasterCard
9 payment cards), the account number and card number within an account, and contains one or more
10 “check digits,” random numbers added for security.

11 55. Cards also bear a magnetic stripe or magstrip on the back, similar to a piece of audio
12 or computer tape. The magstrip contains information about the card, including the card number,
13 expiration date and so forth. When swiped through the card reader at the merchant’s POS – in what
14 is called “card present” transaction – the card reader is able to obtain that information from the
15 magstrip and transmit it along the network.

16 56. This combination of features allows the various participants in a credit card
17 transaction to share information about the card, all with the aim of speeding the transaction while
18 avoiding fraud and unauthorized charges.

19 57. Beginning in the mid-1990s credit and charge cards began to be manufactured to
20 include, in addition to the magstrip, a so-called “EMV chip.” This electronic chip – actually a tiny
21 micro-processor – is a more advanced form of electronic data storage than a magstrip. While
22 magstrips are “static,” containing only the information with which they are initially coded, EMV
23 chips are “dynamic,” in that the data they contain can be interacted with, altered and updated. An
24 EMV chip creates a unique electronic signature for each transaction.

25 58. EMVCo is jointly owned by Visa, MasterCard, UnionPay, JCB, Discover and
26 American Express. The EMV standard encompasses specifications, test procedures and
27 compliance processes managed by EMVCo.

28

1 59. The EMV name comes from “Europay, MasterCard and Visa,” the companies that in
2 1994 initiated development of the EMV Specifications. Europay International SA became part of
3 MasterCard in 2002. JCB joined EMVCo in 2004, and American Express in 2009.

4 60. EMVCo is managed by the Board of Managers, which is comprised of representatives
5 from each of the member payment systems. Various Working Groups complete EMVCo’s work,
6 and “decisions are made on a consensus bases to ensure card infrastructure uniformity.” In 2010,
7 EMVCo launched the EMVCo Associates Programme (EAP), “for key industry stakeholders to
8 provide input to EMVCo’s Board of Managers, Executive Committee, and Working Groups.”

9 61. EMV is the trademark owned by all of the equity owners of EMVCo: American
10 Express, JCB, Discover, MasterCard, UnionPay and Visa. However, EMV also refers to the various
11 forms of electronic payments that are administered by EMVCo.

12 62. An EMV chip looks like this:



20 63. Financial institutions in Europe, Latin America, Asia/Pacific and Canada migrated to
21 EMV over the past decade. Those transitions took years to accomplish and ran into substantial
22 roadblocks along the way. For example, roll out in Canada began in 2008 and as of 2014, the
23 adoption rate was only at 59.5%, according to statistics provided by EMVCo itself.

24 64. The cost of the transition to EMV chip cards in the United States, as borne by
25 merchants who accept the cards (and who, for example, must purchase new POS equipment that can
26 process chip card transactions at a cost of \$100 to \$600 per machine) is expected to be between \$6
27
28

1 billion and \$8 billion. Of that amount, 75% is likely to be paid by merchants, making the transition
2 three times as expensive for them as for defendants.

3 65. EMV cards, because of their dynamic nature, are purported by the Networks to reduce
4 fraud significantly during card present transactions – those where the customer actually produces his
5 card to the merchant at the merchant’s POS. In addition, EMV chips are supposed to be less prone
6 to illicit copying than magstrips. (Although, an EMV-chip-equipped card does nothing to lessen the
7 likelihood of fraud or error in what are “card not present” transactions, such as those conducted
8 online or over the telephone.)

9 66. There are two kinds of EMV cards – “chip-and-PIN” (personal identification number)
10 cards, where the transaction is authorized by the merchant processing the chip card and the consumer
11 entering a PIN, and “chip-and-signature” cards, where merchant processes the chip and the consumer
12 signs an electronic signature pad.

13 67. The European Union’s version of the EMV system, unlike the standard deployed in
14 the United States, utilizes the chip-and-PIN system, rather than a chip-and-signature system. Chip-
15 and-PIN cards are considered more secure.

16 68. EMV cards have already been widely adopted outside the United States. Lack of
17 EMV-enabled cards – which are common elsewhere in the world – has been blamed in part for the
18 fact that more than half of the \$14 billion in global annual credit card fraud occurs within the United
19 States.

20 **The “Liability Shift” and “Certification”**

21 69. Despite all the security measures associated with credit cards, with any card
22 transaction, even with EMV chip-enabled cards, there is a possibility of fraud, error or complaint.
23 Cards may be stolen from their rightful owners and used by the thief to make charges. A merchant
24 might charge the wrong amount or deliver the wrong, or faulty, goods.

25 70. Typically, when a card-holding customer sees a fraudulent charge on his or her card
26 statement, or wishes to dispute a charge for another reason, the customer contacts his or her issuing
27 bank. (The telephone numbers and other contact information printed on the back of credit cards go
28 to card issuers, not to the Networks.)

1 71. In such cases, the card-holding customer is not usually liable for the fraudulent or
2 unauthorized charge. Instead, chargebacks are typically absorbed by the issuing banks – who
3 marketed such “fraud protection” to their credit card customers as a core service of their cards –
4 when fraudulent card present transactions occur.

5 72. Accordingly, the Class members were not typically liable for the cost of fraudulent
6 charges in card present transactions, except on those occasions where the merchant improperly
7 handled the transaction in some way, such as not obtaining a customer signature.

8 73. On the other hand, merchants who accept cards online or in other “card not present”
9 transactions have more frequently had to bear the cost of fraudulent charges.

10 74. But the Networks decided that on October 1, 2015 – by fiat of Visa, MasterCard,
11 American Express and the issuing banks, and without any opportunity for merchants like plaintiffs
12 and the Class members to object or to opt out – the system for handling chargebacks for card present
13 transactions would change dramatically.

14 75. In what defendants truthfully enough dubbed a “Liability Shift,” the issuing banks
15 and the Networks decreed that, as of that October 1, 2015, liability for billions of dollars of card
16 present chargebacks would shift from the issuing banks to the merchants, unless the merchants could
17 satisfy certain conditions – conditions, it would turn out, which were impossible for the Class
18 members to meet and which the Networks, the Issuing Banks and EMVCo *knew* were impossible to
19 meet.

20 76. Indeed, it is widely accepted within the electronic payments industry that defendants
21 knew that the conditions they had set for the Class members were impossible. Just some examples:

22 (a) In the first place, defendants had the example of *every other country that has*
23 *adopted the EMV chip*: “No country has [ever] achieved anywhere near 100 percent EMV readiness
24 at the time of the liability shift,” according to Erik Vlugt, vice president of global product
25 management at VeriFone, a company which actually makes chip-reading equipment and software.

26 (b) The Strawhecker Group, an electronic payments services provider estimated
27 as early as March 2015 that 34% of U.S. merchants could be ready for the Liability Shift deadline.

28

1 And as the deadline drew nearer, the company lowered its estimates. In September 2015, on the eve
2 of the Liability Shift, the company estimated that only 27% of merchants could be ready.

3 (c) Gilles Ubaghs, senior analyst of financial services technology at Ovum, an
4 independent analyst and consultancy firm headquartered in London, specializing in global coverage
5 of IT and the telecommunications industries, stated that “many merchants and retailers are totally
6 unprepared for the liability shift to EMV on October 1,” and that banks and payment providers had
7 not done enough to educate merchants.

8 (d) A top industry consultant, Allen Weinberg of Glenbrook – a “payments
9 industry strategy consulting and research firm,” *whose clients include card payment networks* –
10 warned that “[t]hese POS change projects usually span years, not months. Many pieces to the EMV
11 puzzle, particularly regarding debit, were not in place in time for the liability shift deadline.” In
12 addition, he said, “[m]any, many, many integrated POS systems (IPOS), especially the electronic
13 cash register software for these systems, were just not ready in time. Even if the software was ahead
14 of the game, they faced long certification queues at many acquirers.”

15 (e) Defendants also knew that even providing the software to support EMV cards
16 was a challenge, according to Terry Crowley, CEO of TranSend, a company that manufactures the
17 software to make merchants’ equipment work with EMV chip card. Crowley said that while
18 software code for card-accepting devices was historically simple enough to be written on the back of
19 a business card, “now with EMV, that same software wraps around the walls of a room three
20 times . . . hundreds of thousands of lines of code.” With the Liability Shift deadline having passed,
21 Crowley says, suddenly there is a “fire drill” to replace all of this simple software, compounded by
22 the facts that the EMV code is hard to write, harder to certify and that few EMV software developers
23 understand the U.S. market.

24 (f) In September 2015, Digital Transactions, a publication devoted to tracking the
25 industry, stated that “few are surprised that EMV certifications are taking longer than traditional
26 POS terminals.”

27 77. Despite these obstacles, defendants insisted that the October 1, 2015 Liability Shift
28 occur as to almost all merchants, with no grace period.

1 78. From the perspective of the relationship between cardholder and issuing bank,
2 nothing changed: The issuing banks continued to market and provide “fraud protection” to
3 cardholders, who were not held liable for fraudulent charges. But from the perspective of the
4 relationship between the issuing banks and merchants the difference was seismic: the issuing banks
5 would now, in many cases, be able to shift the liability for covering such charges from themselves to
6 Class members.

7 79. Merchants who accepted EMV chip cards, but failed to process them through
8 approved POS card readers (*i.e.*, “inserted” the EMV chips cards in the readers as opposed to
9 “swiping” the magnetic strip on the cards) would now be liable for any chargebacks resulting from
10 fraudulent or improper use of the EMV chip cards.

11 80. Merchants were not consulted about the change, were not permitted to opt out, were
12 not offered any reduction of the interchange fee, the merchant discount fee, the swipe fee – or any
13 other cost of accepting defendants’ credit and charge cards. This is in contrast to the United
14 Kingdom and Australian markets where merchants were given interchange concessions which
15 helped share the costs of fraud and purchasing and deploying new hardware and software.

16 81. Thus, what defendants knew, but Milam’s Market, Grove Liquors and the rest of the
17 Class did not and could not know, was that purchasing new POS equipment and training their staff
18 was not going to be enough. In addition, the equipment would have to “certified” after the fact in a
19 murky, nebulous process that was utterly outside of their control.

20 82. Instead, the “certification” process is controlled by the very entities that benefit from
21 the Liability Shift and it is the primary means through which defendants’ illegal conduct has been
22 able to flourish.

23 83. According to a report by the International Retail User Group: “Certifications are
24 mandatory and unique to each phase of the EMV payment system.” Each step of the certification
25 process involves numerous entities. “Brand certification involves the card brands and EMVCo”;
26 “PIN pad certification involves PIN pad manufacturers, EMVCo and Acquirers”; “Acquirer
27 certification involves PIN pads and Brands”; and “Retail certification involves PIN pad,
28 Middleware, Store Systems, Acquirer and Brands.” Within each of these steps, there are multiple

1 certifications within each basic process, the report notes. And none of it is within the Class
2 members' control.

3 84. A House of Representatives' Small Business Committee Staff Report pointed out that
4 "[t]here also is a concern that small businesses that have the new hardware installed may be slow to
5 receive certification." This concern is borne out by Class members' experience.

6 85. As a result, Class members such as the plaintiffs here, could not timely comply with
7 the standard, no matter what they did, because the Defendants refused to, or were unable to, "certify"
8 the new equipment by the deadline – or, indeed, ever.

9 86. Worse, the Networks, the Issuing Banks and EMVCo knew from the outset – and the
10 Class members are now learning – that the "certification" process would take years *after* the October
11 1, 2015 Liability Shift was imposed.

12 87. The result has been massively increased costs for chargebacks being laid at the feet of
13 the Class members, while the Issuing Banks have been spared those same costs and the Networks
14 have continued profit – just as defendants knew would happen.

15 88. According to statistics from the EMV Migration Forum, as of the end of 2015,
16 approximately 400 million EMV chip cards have been issued in the United States, with 675,000
17 merchant locations accepting EMV chip transactions. But this does not detail how many of these
18 merchants, like the named plaintiffs, tried to become compliant but, because of defendants' actions,
19 are now liable for charges they would not have incurred prior to the Liability Shift.

20 89. Moreover, there is agreement among some industry analysts that EMV technology
21 may not strengthen a merchant's security, and general reluctance by retailers to switch indicates
22 widespread adoption of EMV in the United States may not occur until 2020. Defendants knew this
23 information well in advance of the Liability Shift deadline, yet they plowed forward.

24 **An Example: Milam's Markets and Grove Liquors**

25 90. Taking heed of the representations made by the industry and Visa, MasterCard,
26 Discover and American Express, Milam's Market and Grove Liquors management diligently
27 prepared for the October 1, 2015 Liability Shift.

28

1 91. Working with their acquirer, Worldpay, and their equipment vendor, NCR
2 Corporation, Milam’s Market and Grove Liquors expended management effort, training time and
3 considerable costs to update and acquire new POS equipment so that their stores would be able to
4 process the EMV chip cards.

5 92. That equipment, NCR’s Equinox L5300 card readers, were purchased and installed
6 well prior to the Liability Shift. These state-of-the-art POS card readers are designed to process
7 EMV chip card transactions.

8 93. However, merely having the right equipment in place is not enough for Milam’s
9 Market and Grove Liquors to avoid the Liability Shift – without the completion of the so-called
10 “certification,” they are still caught by the Liability Shift.

11 94. But while very large retailers such as Target, Walmart and others quickly had their
12 EMV-processing systems “certified” – thus sparing them the Liability Shift – the members of the
13 Class are at the mercy of defendants.¹

14 95. Merchants like Milam’s Market and Grove Liquors have no control over the
15 “certification” process. All they can do is request “certification” and wait for it to occur. And no
16 one can say when that will be.

17 96. NCR Corporation has advised that “certification” of the Equinox L5300 was “TBD” –
18 to be determined. A copy of that notice is attached as Ex. A.

19 97. These extended delays for smaller merchants are also no surprise to defendants. The
20 Congressional Small Business Committee Staff Memo noted that there was from the start “a concern
21 that small businesses that have the new hardware installed may be slow to receive certification.”
22 “Most of the Tier I retailers [giants like Target and Walmart] may be able to roll out by October, but
23 across the board, the readiness is not high.”

24 98. Officials of the National Retail Federation – the world’s largest retail trade
25 association – have summed up the situation perfectly: “So the same guys who mandated this for
26 retailers have not resourced it to where they can get retailers certified.”

27 ¹ Notably Target and Walmart are both EMVCo Business Associates and Walmart is an EMVCo
28 Technical Associate as well.

1 99. Meanwhile, defendants have downplayed these obvious troubles. One representative
2 for MasterCard claimed that all a merchant needs to do to activate an EMV terminal was to “contact
3 their acquirer or payment services provider or terminal manufacturer to find out how to do so.”
4 American Express likewise downplayed issues telling merchants that “to help avoid the liability
5 [shift],” all they would need to do is “work with your processor or terminal provider today to
6 upgrade to chip card technology.” American Express further told merchants “[t]o upgrade, contact
7 your payment processor or terminal provider and tell them you’d like to start accepting chip cards.
8 They’ll provide you with a chip-enabled system and guide you through each step. Before you know
9 it, your upgraded system will be up and running.”

10 100. Of course, plaintiff Milam’s Market did just that and to this day, despite following
11 every requirement to become EMV compliant, Milam’s Market is suffering damages as a result of
12 defendants’ delays and refusals to properly certify the technology plaintiff was assured would be
13 compliant.

14 101. The damages are substantial. Milam’s Market and Grove Liquors are being “charged-
15 back” for supposedly fraudulent transactions that, in the past, would have been borne by the Issuing
16 Banks.

17 102. Illustrative is a “Notification of Chargeback” dated January 4, 2016. The chargeback
18 concerns a \$17.99 Visa transaction that occurred on December 13, 2015, which Milam’s Market
19 requested be reversed, and the related Denial of Chargeback Reversal dated January 26, 2016.
20 Copies of the documents are attached as Ex. B.

21 103. As stated on the Denial of Chargeback Reversal, the reason for this cost to be
22 assessed to Milam’s Market for a “Counterfeit Transaction” was that “[t]he bank [*i.e.*, the issuing
23 bank] stated the EMV chip card was processed. The transaction was not processed through a chip
24 reader terminal, therefore the chargeback will stand.” Ex. B.

25 104. In other words, Milam’s Market has to bear this cost thanks to the “Liability Shift,”
26 despite everything it has done to comply with defendants’ edicts.

27 105. Worse, besides the base value of the transaction, Milam’s Market and Grove Liquors
28 must also pay a “chargeback fee” of five dollars, a fee assessed against the merchant each time it is

1 made liable for a chargeback by MasterCard and Visa. For some merchants, these fees are as high as
2 \$30 per incident.

3 106. Accordingly, in this single, illustrative instance, Milam’s Market was assessed a total
4 of \$22.99 which, before the “Liability Shift,” it would not have had to pay. Instead, before the
5 “Liability Shift,” the issuing bank would have born the \$17.99 chargeback – a cost the issuing bank
6 is now spared.

7 107. Tellingly, nothing Milam’s Market could have done – short of making the business-
8 crippling decision to stop accepting Visa cards – could have prevented this outcome. Indeed, the
9 expenditures it made in an effort to comply with defendants’ new EMV chip regime have all been
10 for naught, as defendants have failed to conduct the very “certification” required.

11 108. Milam’s Market and Grove Liquors has been made liable for chargebacks under the
12 Liability Shift for Discover and American Express charges as well. *See, e.g.*, Ex. C, evidencing two
13 Discover chargebacks of \$140.47 and \$44.98, respectively; *see also* Ex. D, evidencing an American
14 Express chargeback for \$155.12 – all attributable to processing EMV chip cards.

15 109. The two exemplar Discover chargebacks both are expressly denominated as follows
16 in each relevant “Notification of Chargeback”:

17 UA05 Fraud – Chip Card Counterfeit Transaction

18 Definition: The UA05 reason code is valid for a chargeback on a card present
19 card sale or cash advance involving a chip card and the issuer or cardholder alleges
20 that a counterfeit card was used to conduct a card sale or cash advance and ***the***
merchant’s POS device did not support and use EMV technology.

21 Ex. C.

22 110. The truth is, however, that Milam’s Market’s POS equipment ***did*** support and use
23 EMV chip technology when the two charged-back fraudulent purchases were made. The store was
24 only subject to this “liability” shift because defendants had failed to “certify” that equipment.

25 111. Likewise, the American Express chargebacks are attributed to cause code “Fraud
26 F30.” This is the fraud code reserved for fraud on an EMV chip card. Ex. D.

27 112. The increase in such losses since the Liability Shift has been substantial. For
28 example, according to Worldpay, during the time period of October 1, 2015 to February 15, 2016,

1 Milam’s Market and Grove Liquors have been assessed final responsibility by MasterCard and Visa
2 for 88 chargebacks totaling \$9,196.22 (plus chargeback \$5 fees for each item, for an additional cost
3 to Milam’s Market and Grove Liquors of \$440 – for a total loss of \$9,636.22). During the same
4 period the prior year, between October 1, 2014 and February 15, 2015 – before the Liability Shift –
5 Milam’s Market and Grove Liquors were assessed final responsibility by MasterCard and Visa for
6 only four chargebacks.

7 113. Add to that the more than \$700 in American Express chargebacks in February alone
8 and the nearly \$200 in Discover chargebacks and the result is that, because of the Liability Shift that
9 they could not avoid despite their diligence and expenditure, Milam’s Market and Grove Liquors
10 have lost – and Issuing Banks have unjustly gained – some ten thousand dollars in four and a half
11 months.

12 114. The amount of similar chargebacks for which the Class members have been made to
13 pay as a result of the Liability Shift is enormous, and certainly runs into billions of dollars – with the
14 Issuing Banks having been enriched by the same amount.

15 115. In exchange for this newly bestowed, unavoidable liability, Milam’s Market, Grove
16 Liquors and the Class members have received . . . **nothing**. Interchange fees, which defendants have
17 said exist in part to pay for fraud, are still paid for by the merchant, and have not decreased. The
18 Liability Shift was unilaterally imposed to the benefit of defendants, with no compensation,
19 consultation or consideration of any kind made to the Class members.

20 **RELEVANT MARKET**

21 116. There exists a relevant market, the product dimension of which is no broader than
22 General Purpose Cards (both credit and charge cards). *United States v. Visa U.S.A., Inc.*, 163 F.
23 Supp. 2d 322, 335 (S.D.N.Y. 2001). The geographic dimension of this market is the United States
24 (“General Purpose Card Market”). *Id.* at 339-40. Cash and checks are not substitutes for payment
25 cards, and the rules shifting liability to merchants from the Issuing Banks apply in the United States
26 and its territories.

1 117. Together, the card-issuing defendants possess market power over the market for
2 General Purpose Cards, collectively accounting for roughly 75% of the transactions in the General
3 Purpose Card Market.

4 118. There exists a relevant market, the product dimension of which is no broader than
5 General Purpose Card Network Services. *Visa*, 163 F. Supp. 2d at 338. The geographic dimension
6 of this market is the United States (“General Purpose Card Network Services Market”). General
7 Purpose Card networks provide the infrastructure and mechanisms through which general purpose
8 card transactions are conducted, including the authorization, settlement and clearance of
9 transactions.

10 119. Visa, MasterCard and American Express separately, and the owners of EMVCo
11 collectively, possess market power over the market for General Purpose Card Network Services,
12 collectively having nearly 100% of the General Purpose Card Network Services Market.

13 120. The shift in liability from the card issuers to the merchants is not attributable to
14 increases in the level of costs associated with the operations of the networks.

15 121. There is virtually no elasticity of demand. Merchants have no choice but to continue
16 to accept General Purpose Cards. *See Visa*, 163 F. Supp. 2d at 340 (noting that merchants must
17 accept Visa and MasterCard or else risk losing business to merchants who do accept them). Because
18 of defendants’ collusion and market power, a small but significant increase in the costs of providing
19 General Purpose Card Network Services would not result in the loss of business.

20 122. There are significant barriers to entry in the General Purpose Card Network Services
21 Market. Because of these barriers, the only successful market entrant since the 1960’s has been
22 Discover, which was introduced by Sears and benefited from its extensive network of stores, its
23 extensive base of customers who carried Sears’ store card, and its relationship with Dean Witter.
24 New entry into the General Purpose Card Network Services Market would cost more than 1 billion
25 dollars and would involve a “‘chicken-and-egg’ problem of developing a merchant acceptance
26 network without an initial network of cardholders who, in turn, are needed to induce merchants to
27 accept the system’s cards in the first place.” *Visa*, 163 F. Supp. 2d at 342.

28

CLASS ACTION ALLEGATIONS

1
2 123. Plaintiffs bring this action as a class action pursuant to Rules 23(a) and (b)(2) and
3 (b)(3) of the Federal Rules of Civil Procedure on behalf of all Class members, defined as those
4 merchants who have been unlawfully subjected to the so-called Liability Shift for the assessment of
5 MasterCard, Visa, Discover and American Express credit and charge card chargebacks, despite
6 having purchased EMV-chip-compliant POS card readers and having otherwise complied with the
7 directives of the Networks and Issuing Banks, for the period from October 1, 2015 until the present
8 (the “Class”).

9 124. The Class consists of merchants located throughout the United States. While
10 plaintiffs do not know the exact number of the members of the Class, plaintiffs believe there are (at
11 least) hundreds of thousands of members in the Class, thus the members of the Class are so
12 numerous that joinder of all Class members is completely impracticable, if not impossible. The
13 exact number of the Class members is not presently known, but can be determined through
14 appropriate discovery.

15 125. Plaintiffs will fairly and adequately protect the interests of the members of the Class
16 and have retained counsel competent and experienced in class actions, antitrust and financial
17 services litigation.

18 126. Plaintiffs’ claims arise out of the same common course of conduct giving rise to the
19 claims of the other members of the Class. Plaintiffs’ interests are coincident with, and not
20 antagonistic to, those of the other members of the Class.

21 127. Plaintiffs have no interests that are adverse or antagonistic to those of the Class.

22 128. A class action is superior to other available methods for the fair and efficient
23 adjudication of this controversy. Because the damages suffered by many individual Class members
24 may be relatively small, the expense and burden of individual litigation make it virtually impossible
25 for the Class members to individually seek redress for the wrongful conduct alleged in this
26 Complaint.

1 129. The prosecution of separate actions by individual members of the Class would create
2 a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for
3 defendants.

4 130. Common questions of law and fact exist as to all members of the Class and
5 predominate over any questions solely affecting any individual members of the Class. This is
6 particularly true given the nature of defendants' conspiracy, which was generally applicable to all the
7 Class members, thereby making appropriate relief with respect to the Class as a whole. Such
8 questions of law and fact common to the Class include, but are not limited to:

9 (a) whether defendants and their co-conspirators engaged in a combination and
10 conspiracy among themselves to institute the October 1, 2015 Liability Shift while knowing that, for
11 millions of merchants, compliance with the nebulous and uncertain certification requirements would
12 be impossible, thus subjecting the Class to charges which would not have been borne by the Class
13 without the Liability Shift;

14 (b) the identity of the participants of the alleged conspiracy;

15 (c) the duration of the alleged conspiracy and the acts carried out by defendants
16 and their co-conspirators in furtherance of the conspiracy;

17 (d) whether the alleged conspiracy violated the Sherman Antitrust Act or
18 California's Cartwright Act;

19 (e) whether defendants and their co-conspirators fraudulently concealed the
20 conspiracy's existence from plaintiffs and the members of the Class;

21 (f) the appropriate injunctive and related equitable relief for the Class; and

22 (g) the appropriate Class-wide measure of damages for the Class.

23 **PLAINTIFFS AND THE CLASS SUFFERED ANTITRUST INJURY**

24 131. By reason of the alleged violations of the antitrust laws, plaintiffs and the members of
25 the Class have sustained injury to their businesses or property, having paid certain chargebacks that
26 they would not have paid in the absence of defendants' illegal contract, combination or conspiracy,
27 and, as a result, have suffered damages in an amount presently undetermined. This is an antitrust
28 injury of the type that the antitrust laws were meant to punish and prevent.

DEFENDANTS HAVE A HISTORY OF ANTICOMPETITIVE CONDUCT

132. In 1998, the Antitrust Division of the U.S. Department of Justice (“DOJ”) sued Visa and MasterCard, alleging that the joint governance of the two networks and certain rules that prevented banks from issuing cards on competitive networks (the “exclusionary rules”) violated §1 of the Sherman Act. After a 34-day trial the court found the exclusionary rules violated the antitrust laws, and that decision was affirmed by the Second Circuit. *Visa*, 163 F. Supp. 2d 322. The court found that the Visa and MasterCard Networks, together with their Member Banks, implemented and enforced 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. *Id.* at 405-06.

133. 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,” 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.*

134. In affirming the court’s “comprehensive and careful opinion,” *United States v. Visa U.S.A., Inc.*, 344 F.3d 229, 234 (2d Cir. 2003), the United States Court of Appeals for 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 compete with one another in the issuance of payment cards and the acquiring of merchants’ 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.”

Id. at 242. Thus, “the restraint imposed by the consortium members [the member banks] is on themselves. Each has agreed not to compete with the others in a manner which the consortium considers harmful to its combined interests.” *Id.*

1 135. That same year, this Court granted partial summary judgment in a class action
2 brought by merchants against Visa and MasterCard, challenging the networks' "Honor-All- Cards"
3 rules that required all merchants that accepted Visa and MasterCard-branded credit cards to also
4 accept the networks' offline-debit cards. In that decision, the Court concluded that Visa possessed
5 market power in the credit-card and debit-card markets as a matter of law. And while the Court did
6 not make the same conclusion as a matter of law with respect to MasterCard, it did note the existence
7 of evidence that would support a finding of market power for MasterCard, such as its high market
8 shares in the credit-card and debit-card markets, evidence of collusion between it and Visa, and the
9 fact that merchants had not switched to other forms of payment even in the face of frequent and
10 significant increases in interchange fees. *In re Visa Check/MasterMoney Antitrust Litig.*, No. 96-cv-
11 5238, 2003 WL 1712568, at *3-*4 (E.D.N.Y. Apr. 1, 2003). On the eve of trial in *Visa Check*, Visa
12 and MasterCard settled with the merchant class, agreeing to abolish the challenged portion of the
13 "Honor-All-Cards" rule, to reduce interchange fees for offline-debit cards and to pay the merchant
14 class approximately \$3 billion over ten years.

15 136. Beyond the domestic threats to MasterCard's anticompetitive collaboration with its
16 member banks, competition and regulatory authorities in many jurisdictions around the globe have
17 concluded that Visa and MasterCard's collectively fixed uniform schedule of fees and other
18 restraints are anticompetitive and illegal.

19 137. For example, the European Commission ("E.C.") ruled on December 19, 2007 that
20 MasterCard's cross-border interchange fee violates Article 81(1) of the E.C. Treaty, its counterpart
21 to §1 of the Sherman Antitrust Act.

22 138. In its 241-page decision, the E.C. rejected the arguments that MasterCard's
23 restructuring absolved them of continuing antitrust liability² and that the relevant product market is
24 broader than payment cards.³

25 _____
26 ² European Commission, Commission Decision of December 19, 2007 Relating to a Proceeding
27 Under Article 81 of the EC Treaty and Article 53 of the EEA Agreement COMP/34.579; COMP
36.518; COMP 58.580, http://ec.europa.eu/competition/antitrust/cases/dec_docs/34579/34579_1889_2.pdf ("E.C. Decision") at 102-106.

28 ³ *Id.* at 77-90.

1 139. Similarly, in 2005 the antitrust-enforcement body in the United Kingdom, the Office
 2 of Fair Trading (“OFT”), concluded after a four-year investigation that MasterCard’s domestic
 3 interchange fees violated the U.K. equivalent to §1 of the Sherman Antitrust Act.⁴ In reaching that
 4 conclusion, the OFT found that MasterCard had market power in the relevant markets for payment-
 5 card issuance, acquiring and a “wholesale” market.⁵

6 140. As to American Express, the DOJ and 17 state attorneys general went to trial against
 7 American Express during the summer of 2014. That trial focused on credit card “swipe fees” which
 8 generate over \$50 billion annually for credit card networks. In 2015, the court overseeing the action
 9 in the U.S. District Court for the Eastern District of New York found in favor of the DOJ’s lawsuit
 10 claiming that American Express’ rules for merchants violate antitrust laws.

11 141. Many of the defendants have also been the subject of civil antitrust actions related to
 12 payment cards, including *In re Payment Card Interchange Fee and Merchant Discount Antitrust*
 13 *Litigation*, No. 05-md-1720, pending in the Eastern District of New York, where Defendants were
 14 charged by a nationwide class of merchants with a massive conspiracy between the Member Banks
 15 and Visa and MasterCard related to interchange fees and acceptance rules. Defendants in that action
 16 agreed to a settlement of more than \$5 billion as well as to agreement requiring significant changes
 17 to rules affecting merchants.

18 **COUNT I**

19 **Violation of §§1 and 3 of the Sherman Antitrust Act, 15 U.S.C. §§1 and 3** 20 **Agreement Restraining Trade**

21 142. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though
 22 fully set forth herein.

23 143. Defendants, and their co-conspirators, entered into and engaged in a conspiracy in
 24 unreasonable restraint of trade in violation of §§1 and 3 of the Sherman Antitrust Act, 15 U.S.C. §§1

25 ⁴ See Decision of the Office of Fair Trading of September 6, 2008: Investigation of the multilateral
 26 interchange fees provided for in the UK domestic rules of MasterCard UK Members Forum Limited
 27 (formerly known as MasterCard/Europay UK Limited) (No. CA98/05/05), http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared_offt/ca98_public_register/decisions/mastercard.pdf (“U.K. OFT Decision”).

28 ⁵ U.K. OFT Decision at 50-52.

1 and 3. The conspiracy consisted of a continuing agreement, understanding, or concerted action
2 between and among defendants and their co-conspirators in furtherance of which defendants agreed
3 to shift the liability of fraudulent payment card transactions from the card-issuing banks to
4 merchants.

5 144. Defendants' unlawful conduct was through mutual understandings, combinations or
6 agreements by, between, and among defendants and other unnamed co-conspirators. Defendants'
7 conspiracy is a per se violation of the Sherman Antitrust Act and is, in any event, an unreasonable
8 and unlawful restraint of trade.

9 145. There is no legitimate business justification for, or procompetitive benefits caused by,
10 defendants' unreasonable restraint of trade. Any ostensible procompetitive benefit was pretextual or
11 could have been achieved by less restrictive means.

12 146. Defendants' conspiracy, and the resulting impact on the prices of credit card
13 acceptance occurred in and affected interstate commerce and commerce in and between the
14 Territories of the United States.

15 147. As a direct, intended, foreseeable, and proximate result of defendants' conspiracy and
16 overt acts taken in furtherance thereof, plaintiffs and each member of the Class have suffered injury
17 to their business or property. Plaintiffs' and each Class member's damages are directly attributable
18 to defendants' conduct, which resulted in all Class members paying for fraudulent payment card
19 transactions and associated fees during the class period they would not have otherwise paid for but-
20 for defendants' agreement.

21 148. Plaintiffs' and the Class's injuries are of the type the antitrust laws were designed to
22 prevent, and flow from that which makes defendants' conduct unlawful.

23 149. Plaintiffs and the Class are entitled to treble damages, attorneys' fees, reasonable
24 expenses, and cost of suit for the violations of the Sherman Antitrust Act.

25 **COUNT II**

26 **Violations of the Cartwright Act**

27 150. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though
28 fully set forth herein.

1 151. The acts and practices detailed above violate the Cartwright Act, Cal. Bus. & Prof.
2 Code §16700 *et seq.*

3 152. The conspiracy consisted of a continuing agreement, understanding, or concerted
4 action between and among defendants and their co-conspirators in furtherance of which defendants
5 agreed to shift the liability of fraudulent payment card transactions from the card-issuing banks to
6 merchants.

7 153. It is appropriate to bring this action under the Cartwright Act because many of the
8 illegal agreements were made in California, the purchasers reside in California, some defendants
9 have their principal place of business in California, and because overt acts in furtherance of the
10 conspiracy and wrongful charges flowing from those acts occurred in California.

11 154. Defendants' unlawful conduct was through mutual understandings, combinations or
12 agreements by, between, and among defendants and other unnamed co-conspirators. Defendants'
13 conspiracy is a *per se* violation of the Cartwright Act and is, in any event, an unreasonable and
14 unlawful restraint of trade.

15 155. There is no legitimate business justification for, or procompetitive benefits caused by,
16 defendants' unreasonable restraint of trade. Any ostensible procompetitive benefit was pretextual or
17 could have been achieved by less restrictive means.

18 156. As a direct, intended, foreseeable, and proximate result of defendants' conspiracy and
19 overt acts taken in furtherance thereof, plaintiffs and each member of the Class have suffered injury
20 to their business or property. Plaintiffs' and each Class member's damages are directly attributable
21 to defendants' conduct, which resulted in all Class members paying for fraudulent payment card
22 transactions and associated fees during the class period they would not have otherwise paid for but-
23 for defendants' agreement.

24 157. Plaintiffs' and the Class's injuries are of the type the antitrust laws were designed to
25 prevent, and flow from that which makes defendants' conduct unlawful.

26 158. Plaintiffs and the Class are entitled to treble damages, attorneys' fees, reasonable
27 expenses, and cost of suit for the violations of the Cartwright Act.

28

COUNT III

Unjust Enrichment

1
2
3 159. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though
4 fully set forth herein.

5 160. In an effort to recoup the billions of dollars required to issue new chip-enabled cards,
6 defendants, through the Networks EMVCo, conspired and agreed to shift the burden for fraudulent
7 transactions from the defendant Issuing Banks to the Class members for transactions involving chip-
8 enabled cards – even in cases where the merchants, such as plaintiffs here, purchased and installed
9 chip-enabled readers before October 1, 2015.

10 161. To deal with the substantial costs to implement chip cards, defendants conspired to
11 and changed the benefit/liability scheme of the card payment system by shifting the liability to the
12 Class members for fraudulent transactions knowing that the EMV system would not be fully
13 operational on October 1, 2015.

14 162. Defendants knew that the verification process would not be fully operational by
15 October 1, 2015, but implemented the Liability Shift knowing that merchants who purchased and
16 installed equipment would be bearing the cost of the Liability Shift for fraudulent transactions even
17 after they purchased and timely installed approved EMV chip-reading equipment.

18 163. Nevertheless, defendants set October 1, 2015 as the Liability Shift Date, without any
19 consideration or benefit to the plaintiffs. Instead, since October 1, 2015, defendants have received a
20 direct benefit from the Class members as a result of the detrimental liability shift to the Class.

21 164. The defendant Issuing Banks market to their customers fraud protection, namely that
22 the cardholders will not be financially responsible if their cards are lost, stolen or used fraudulently.

23 165. As a result of their inequitable conduct, the defendant Issuing Banks have been
24 unjustly enriched by the Class members, who are now assuming fraud-related losses; losses that
25 were previously incurred by the defendant Issuing Banks.

26 166. Defendant Issuing Banks have accepted and retained the benefit conferred on them by
27 plaintiffs and the Class members as a result of the liability shift.

28

1 167. In light of defendants' conduct, it is inequitable for the defendant Issuing Banks to
2 retain the benefit of the Liability Shift – the shifting of fraud-related losses to the Class members –
3 without paying the value to the plaintiffs and Class members.

4 168. Because of the acts of defendants and their co-conspirators as alleged herein,
5 defendants have been unjustly enriched at the expense of plaintiffs and the Class.

6 169. Plaintiffs and the Class seek restitution of the direct benefit they have provided to
7 defendants and all monies of which they were unfairly and improperly deprived, as described herein.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, plaintiffs, on behalf of themselves and the Class, pray that the Court:

10 A. Determine that this action may be maintained as a class action pursuant to Fed. R.
11 Civ. P. 23(a) and (b)(3), and direct that reasonable notice of this action, as provided by Fed. R. Civ.
12 P. 23(c)(2), be given to the Class, and declare plaintiffs B & R Supermarket, Inc. d/b/a Milam's
13 Market and Grove Liquors LLC, as named representatives of the Class;

14 B. Conduct expedited discovery proceedings leading to a prompt trial on the merits
15 before a jury on all claims and defenses;

16 C. Enter joint and several judgments against defendants and in favor of plaintiffs and the
17 Class;

18 D. Award the Class damages (*i.e.*, three times overcharges) in an amount to be
19 determined at trial, plus interest in accordance with law;

20 E. Award plaintiffs and the Class their costs of suit, including reasonable attorneys' fees
21 as provided by law;

22 F. Order that defendants, their directors, officers, employees, agents, successors,
23 members, and all persons in active concert and participation with them be enjoined and restrained
24 from, in any manner, directly or indirectly, committing any additional violations of the law as
25 alleged herein; and

26 G. Award such further and additional relief as is necessary to correct for the
27 anticompetitive market effects caused by defendants' unlawful conduct, as the Court may deem just
28 and proper under the circumstances.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY DEMAND

Plaintiffs seek trial by jury of all matters so triable.

DATED: March 8, 2016

ROBBINS GELLER RUDMAN
& DOWD LLP
PATRICK J. COUGHLIN
DAVID W. MITCHELL
ALEXANDRA S. BERNAY
CARMEN A. MEDICI

s/ Patrick J. Coughlin

PATRICK J. COUGHLIN

655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

DEVINE GOODMAN RASCO &
WATTS-FITZGERALD, LLP
JOHN W. DEVINE
LAWRENCE D. GOODMAN
ROBERT J. KUNTZ, JR.
2800 Ponce De Leon Blvd., Suite 1400
Coral Gables, FL 33134
Telephone: 305/374-8200
305/374-8208 (fax)

Attorneys for Plaintiffs

I:\Admin\CptDraft\Antitrust\Operative - Cpt Chip Card Antitrust.docx

EXHIBIT A

CONNECTED PAYMENTS

EMV Certification Update: January 14, 2016

Dear Valued Connected Payments Customer:

The NCR Connected Payments and EMV® (Europay, MasterCard, and Visa) Liability Shift teams continue to work with all necessary third parties to certify solutions for use in the field with the NCR Connected Payments solution.

The chart below details the updated targeted certification dates for EMV solutions.

For more information regarding EMV, including a NCR whitepaper detailing implementation procedures and other FAQs, please click [here](#) to be directed to the Connected Payments Portal.

EMV Certifications	First Data Concord H&C	First Data Rapid Connect	First Data ATL-105	Vantiv Tandem	WorldPay	Chase	Elavon
VeriFone Mx915, Mx925	Certified	Certified	Jan 22, 2016	Certified	Certified	Certified	Certified
VeriFone TAVE/VSP Mx915, Mx925	Certified	n/a	n/a	n/a	TBD	n/a	n/a
VeriFone Mx850, 860, 870, 880	Certified	Certified	Jan 22, 2016	Certified	Jan 29, 2016	Certified	Certified
VeriFone TAVE/VSP Mx850, 860, 870, 880	TBD	n/a	n/a	n/a	TBD	n/a	n/a
VeriFone e335 (for Mobile)	Mar 11, 2016	Mar 11, 2016	n/a	n/a	n/a	n/a	n/a
Equinox L5200, L5300	Jan 29, 2015	Roadmap 2016	Feb 5, 2016	Jan 29, 2016	TBD	Jan 29, 2016	Feb 5, 2016
Ingenico ISC250, ISC480	Jan 29, 2015	Roadmap 2016	TBD	Certified	Mar 4, 2016	TBD	TBD



© 2015 NCR Corporation - All rights reserved. NCR Corporation 3097 Satellite Blvd. Duluth, GA 30096.
NCR respects your privacy.

To unsubscribe, [click here](#).



EXHIBIT B



January 04, 2016

0003428213

3027

Respond By: 01/14/2016

MARIE DIXON
B & R SUPERMARKET, INC
11 N ROYAL POINCIANA BLVD STE 100
MIAMI SPRINGS FL 33166-4423

NOTIFICATION OF CHARGEBACK

A chargeback debt has been processed to your account via ACII for the below transaction under the following Visa regulation:

Counterfeit Transaction

Definition: The card issuer received a complaint from the cardholder claiming that he or she did not authorize or participate in the transaction.

Cardholder Account Nbr: 478200*****2425	Terminal ID: LK453985
Reference Number: 24224435348101032302346	[REDACTED]
Transaction Date: 12/13/2015	Batch Nbr: 213315
Transaction Amount: \$17.99	Batch Amount: [REDACTED]
Chargeback Amount: \$17.99	Sequence Nbr: 1077
Invoice Number: 03534692	POS Entry Mode: Swipad
Device ID: 3-0003	CVM Code:

MOST COMMON CAUSES FOR CHARGEBACK:

- ❖ The merchant failed to compare the first four digits of the embossed account number on the card with the preprinted digits below the embossed number for a card present transaction.
- ❖ The merchant received an authorization without transmission of the the required data.

POSSIBLE REMEDIES TO REFUTE THE CHARGEBACK:

- ❖ If the POS entry mode stated above is a "90" provide a copy of the signed sales receipt.

Please fax your supporting documentation along with a copy of this notification to the fax number provided below before 01/14/2016.

WorldPay Chargeback Department
TOLL FREE FAX NUMBER: 1-866-834-5965

If you have any questions regarding this chargeback notification, please call the Chargeback Department at 1-800-859-5965 option 8.



January 26, 2016



788



MARIE DIXON
B & R SUPERMARKET, INC
11 N ROYAL POINCIANA BLVD STE 100
MIAMI SPRINGS FL 33166-4423

DENIAL OF CHARGEBACK REVERSAL

The request to reverse the chargeback for the transaction detailed below has been denied.

Cardholder Account Nbr: 478200*****2425	Terminal ID: LK453995
Reference Number: 24224435348101032302346	[REDACTED]
Transaction Date: 12/13/2015	Batch Nbr: 213315
Transaction Amount: \$17.99	Batch Amount: [REDACTED]
Chargeback Amount: \$17.99	Sequence Nbr: 1077
Invoice Number: 03534692	POS Entry Made: Swiped
Device ID: 3-0003	CVM Code:
Chargeback Reason: Counterfeit Transaction	

WorldPay as your processor is obligated to follow the rules and regulations of the Mastercard and Visa Association. The denial for the request was based on the following information:

The bank stated the EMV chip card was processed. The transaction was not processed through a chip reader terminal, therefore the chargeback will stand.

If you have any questions regarding this chargeback notification, please call the Chargeback Department at 1-800-859-5965 option 8.

EXHIBIT C



February 25, 2016

Marie Dixon
B & R Supermarket, Inc
11 N Royal Poinciana Blvd Ste100
Miami Springs FL 33166

Respond By: 03/07/2016

NOTIFICATION OF CHARGEBACK

A chargeback debit has been processed to your account via ACH for the below transaction under the following Discover regulation:

UA05 Fraud-Chip Card Counterfeit Transaction

Definition: The UA05 reason code is valid for a chargeback on a card present card sale or cash advance involving a chip card and the issuer or cardholder alleges that a counterfeit card was used to conduct a card sale or cash advance and the merchant's POS device did not support and use EMV technology.

Cardholder Name:	Exception Ref #:	3612831
Cardholder Account Nbr:	Terminal ID:	LK453985
Reference Number:	Batch Nbr:	111344
Transaction Date:	Batch Amount:	[REDACTED]
Transaction Amount:	Sequence Nbr:	1180
Chargeback Amount:	POS Entry Mode:	Swiped
Invoice Number:	Device ID:	B-0008

In order for WorldPay to assist you in refuting this case, please provide all requested information:

Please fax your supporting documentation along with a copy of this notification to the fax number provided below before 03/07/2016.

WorldPay Chargeback Department
TOLL FREE FAX NUMBER: 1-866-562-8672

If you have any questions regarding this chargeback notification, please call the Chargeback Department at 1-800-859-5965 option 8.



February 25, 2016

Marie Dixon
B & R Supermarket, Inc
11 N Royal Poinciana Blvd Ste100
Miami Springs FL 33166

Respond By: 03/07/2016

NOTIFICATION OF CHARGEBACK

A chargeback debit has been processed to your account via ACH for the below transaction under the following Discover regulation:

UA05 Fraud-Chip Card Counterfeit Transaction

Definition: The UA05 reason code is valid for a chargeback on a card present card sale or cash advance involving a chip card and the issuer or cardholder alleges that a counterfeit card was used to conduct a card sale or cash advance and the merchant's POS device did not support and use EMV technology.

Cardholder Name:	Exception Ref #: 3812854
Cardholder Account Nbr: 601149****2814	Terminal ID: LK453885
Reference Number: 28100186008102010832557	
Transaction Date: 01/05/2016	Batch Nbr: 105338
Transaction Amount: \$44.98	Batch Amount: [REDACTED]
Chargeback Amount: \$44.98	Sequence Nbr: 357
Invoice Number: 08287251	POS Entry Mode: Swiped
Device ID: 8-0008	

In order for WorldPay to assist you in refuting this case, please provide all requested information:

Please fax your supporting documentation along with a copy of this notification to the fax number provided below before 03/07/2016.

WorldPay Chargeback Department
TOLL FREE FAX NUMBER: 1-866-562-8672

If you have any questions regarding this chargeback notification, please call the Chargeback Department at 1-800-859-5965 option 8.

EXHIBIT D

American Express: Disputes

<https://www.209.americanexpress.com/merchant/services/disputes?lo...>

milan's market # 4
Phone number: 305-884-4870
Fax number: 305-884-5590
Pages including cover:

Subject: Respond for PP91642

Reason:

Additional comments:

support is being fax

Fax to: 623-444-3003

Mail to: PO BOX 981541 EL PASO, TX 79998

American Express Disputes

https://www209.americanexpress.com/merchant/services/disputes?lo...

Chargeback details

Fraud Liability Shift - Counterfeit

Additional information: MILAM'S MARKETS 208310891 3099451890

Disputed amount
Chargeback amount
Charge amount

0.00
-155.12
155.12

Case number	PP91842	Status	Please respond
Date received	1/2/2016	Reply by	1/22/2016
Days Left	19	Reply By - Days Left	01/22/2016-19
Responded on	N/A	Case type	Fraud
Reason	Fraud	Reason Code	F30
Card Number at transaction	[REDACTED]	Charge amount	155.12
Dispute Amount	0.00	Resolution	NA
[REDACTED]	[REDACTED]	Submitting location ID	NA
[REDACTED]	[REDACTED]	Payee location ID	NA
Charge reference number	208310891	Airline ticket number	NA
Adjustment number	778671	Adjustment date	1/1/2016
Chargeback amount	-155.12	Settlement date	1/4/2016
Settlement amount	[REDACTED]	Response code	NA
Reason and Code	Fraud-F30	Amount	-155.12
Dispute Type	CB	Industry location number	54292960382238
Terminal ID	N/A	SE Tracking number	NA
SE Reference number	N/A	SOC Amount	0.00
SOC Date	N/A	First Presentation Amount	0.00
Acquirer Reference number	N/A	Microfilm Sequence Code	NA
Internal Chargeback Code	N/A	Case Update date	NA
Resolution Code	N/A	Inquiry Initials	NA
Chargeback Initials	N/A		

Card Member	[REDACTED]	Tracking number	NA
Card Number	[REDACTED]	Case type	FRAUD
Card Number at transaction	[REDACTED]	Charge date	12/8/2015
Assured Reservation	N/A	Merchandise type	NA
Reservation cancellation	N/A	Return location	NA
Reservation cancellation date	N/A	Return name	NA
Cancellation zone	N/A	Return date	NA
Reservation name	N/A	Type of return	NA
Reservation location	N/A	Return reason	NA
Reservation date	N/A	Credit received	NA
Cancellation date	N/A	Card deposit	NA
Cancellation number	N/A	Reference number	208310891
ROC level number	N/A	Dept code	XXXX48A
Transaction number	N/A	Passenger name	NA
Passenger first name	N/A	Passenger middle name	NA
Passenger last name	N/A	BE process	342

01/04/2016 13:03 3859458223

MILANS #4

PP91642

PAGE 01/02

Printed on 01-04-2016

MILANS Market # 4 - Electronic Journal Transaction Report

Page 1

Transaction: 07716269 *** ONLINE ***
Cashier: Sid Marges N
Date: 12-08-15 Time: 20:27:06
Lane: 07

000000000007616149	MONEY NECTAR ROSE	1	989.99	TI	Scanned Unit
000000000007616150	MONEY NECTAR ROSE	1	989.99	TI	Scanned Unit
000000000000000071	VERSANO MOCHER	1	81.99	07 TI	Scanned Unit
Item Sub Total			2144.97		
Total Time Disc. Taken			90.00		
Sub Total			2144.97		
Tax One			810.15		
Tax Two			20.00		
Tax Three			00.00		
Transaction Total			3155.12		

Item Count: 3

American Express

3155.12

Acct # 0000037316000001003

Additional Receipt Data

Customer Number # 000000000000
Customer Verification Approved - Compared to Mchhdats: 12-08-14
Original ScanMaster
Verification ID: 0000000000000000

Statistical Data

Transaction Started at: 12-08-2015 20:27:06	Total Ringing Time	: 00:00:10
Transaction Finished at: 12-08-2015 20:27:35	Total Tender Time	: 00:00:15
Total Transaction Time: 00:00:37	Effective Scan Rate	: 290.00 items per minute
Idle Time between Sales: 00:00:10	Scanned entries	: 3
	Mayed entries	: 0
	Open department entries	: 0

01/04/2016 13:03 3859458223

MILANS #4

PAGE 02/02

Milans Market #4
17100 Collins Avenue
Sunny Isle, FL 33160

ScanMaster Electronic Journal Signature Image
01/04/2016 08:29 AM

Store	Reg	Cashier	Transaction	Date	Time	Customer	Sale Total
0004	07	414	07716269	12-08-15	20:27:06	000000000000	\$155.12

Tender	Account #	Exp	Transit	Check #	Amount
American Express	[REDACTED]				\$155.12

Service Description	Authorization #
Groceries	568851

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 B & R SUPERMARKET, INC., d/b/a MILAM'S MARKET, a Florida corporation, and GROVE LIQUORS LLC, a Florida limited liability company, Individually and on Behalf of All Others Similarly Situated,
 (b) County of Residence of First Listed Plaintiff Florida
 (EXCEPT IN U.S. PLAINTIFF CASES)
 (c) Attorneys (Firm Name, Address, and Telephone Number)
 Patrick J. Coughlin 619/231-1058
 Robbins Geller Rudman & Dowd LLP
 655 West Broadway, Suite 1900, San Diego, CA 92101

DEFENDANTS
 VISA, INC., a Delaware corporation; VISA USA, INC., a Delaware corporation;
 (See ATTACHMENT A)
 County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
 Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
 1 U.S. Government Plaintiff
 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
 (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District (specify)
 6 Multidistrict Litigation

VI. CAUSE OF ACTION
 Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. §§ 1 and 3, Cal. Bus. & Prof. Code §16700 et seq.
 Brief description of cause:
Complaint for Violations of the Sherman Antitrust Act, Violations of the Clayton Antitrust Act, et al.

VII. REQUESTED IN COMPLAINT:
 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 03/08/2015 SIGNATURE OF ATTORNEY OF RECORD: s/ Patrick J. Coughlin

FOR OFFICE USE ONLY
 RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ATTACHMENT A

Defendants (cont.)

MASTERCARD INTERNATIONAL INCORPORATED; a Delaware corporation; AMERICAN EXPRESS COMPANY, a New York corporation; DISCOVER FINANCIAL SERVICES, an Illinois corporation; BANK OF AMERICA, N.A., a national banking association; BARCLAYS BANK DELAWARE, a Delaware corporation; CAPITAL ONE FINANCIAL CORPORATION, a Delaware corporation; CHASE BANK USA, NATIONAL ASSOCIATION, a national banking association; CITIBANK (SOUTH DAKOTA), N.A., a South Dakota bank; CITIBANK, N.A., a national banking association; PNC BANK, NATIONAL ASSOCIATION, a national banking association; USAA SAVINGS BANK, a Nevada corporation; U.S. BANCORP NATIONAL ASSOCIATION, a national banking association; WELLS FARGO BANK, N.A., a national banking association; EMVCo, LLC, a Delaware limited liability company; JCB CO. LTD, a Japanese company; and UNIONPAY, a Chinese bank association,