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STEPHEN T. PACHECO
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STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

State of New Mexico,
by Its Attorney General Gary K. King,

Plaintiff,

v. Case No. D-101-CV-2014-02645

Visa, Inc., Visa USA, Inc., Visa International Service Association, MasterCard Incorporated, and MasterCard International Incorporated,

Defendants.

COMPLAINT FOR VIOLATION OF THE NEW MEXICO ANTITRUST ACT, NEW MEXICO UNFAIR PRACTICES ACT, UNFAIR COMPETITION, CIVIL CONSPIRACY, UNJUST ENRICHMENT AND DEMAND FOR JURY TRIAL

PRELIMINARY STATEMENT

Credit and debit cards are highly visible, pervasive payment methods for most consumers. Less visible, however, are the fees imposed each time a cardholder swipes a Visa or MasterCard. Merchants who accept credit or debit cards must pay an "interchange fee," averaging almost 2% of the purchase amount. This means that a merchant who accepts a card for a $100 item receives approximately $98 in payment.

Merchants have no ability to bargain as to the interchange fee amount. Instead, Visa and MasterCard have colluded to price-fix the interchange fee. This has been facilitated by Visa and MasterCard's unchecked market power—in 2010, they accounted for 85% of global payment volume. In fact, interchange fees have consistently risen even

as the costs to Visa and MasterCard have fallen. Visa and MasterCard also leverage their dominance by imposing restrictive rules that prevent merchants from promoting or encouraging the use of competing credit or debit cards with lower fees at the point of sale.

The economic effect of the inflated interchange fees is substantial. Merchants now collectively pay $48 billion a year in interchange fees, with these fees often representing the second largest expense after payroll. These fees are passed on in the form of higher prices for goods and services across the board, even for cash- and check-paying consumers.

Visa and MasterCard's anticompetitive conduct has been challenged by both private merchants and enforcement authorities. The plaintiffs in one case reached a $7.25 billion settlement with Visa and MasterCard which, despite its large dollar amount, was criticized for its lack of injunctive relief and potentially illusory compensation to merchants. It is now on appeal before the United States Court of Appeals for the Second Circuit. The State of New Mexico was not part of that case and affirmatively excluded itself, including all of its agencies and entities, from that settlement. But the conduct challenged in that case has injured and continues to injure the State and the State's economy.

Now, the State of New Mexico brings this action against Visa and MasterCard for their illegal setting and charging of inflated interchange fees, as well as their implementation of other restrictive rules having anticompetitive effects. Visa and MasterCard's unlawful conduct has injured the State, including injury to the State from

its activities as a merchant. The State also seeks to restrain, redress, and prevent injury to the State's economy due to, among other things, higher prices for goods and services, decreased revenues, the suppression of competition, and reduced economic activity. It also seeks to restrain, redress, and prevent further injury to the economic well-being of the citizens of New Mexico. As such, the State brings this enforcement action in its proprietary, sovereign, and quasi-sovereign capacity for violations of state law, seeking injunctive and declaratory relief, compensatory and treble damages, civil penalties, and equitable relief, including disgorgement of profits, to be paid to the State.

THE PARTIES

A. Plaintiff

1. The State of New Mexico, through its Attorney General, brings this enforcement action as *parens patriae* and in its proprietary, sovereign, and quasi-sovereign capacity on behalf of the State and State Agencies (collectively, the "State"), to recover damages to the State and all such other relief as may be authorized by statute or common law.

2. The State has purchased services from Defendants Visa and MasterCard, has paid inflated interchange fees, and has been subject to the competitive restraints, as alleged in this Complaint.

3. The Attorney General is authorized to initiate and maintain this action pursuant to statute, including NMSA § 8-5-2, and common law.

B. Defendants

4. Prior to a March 19, 2008 corporate restructuring and initial public offering ("IPO") described in paragraphs 53-63 below, Defendant **Visa International Service Association** was a non-stock Delaware corporation with its principal place of business in Foster City, California.

5. Prior to March 19, 2008, Defendant **Visa U.S.A., Inc.**, was a member of Defendant Visa International Service Association and was a non-stock Delaware membership corporation with its principal place of business in San Francisco, California. It was a national bank-card association whose members included approximately 14,000 banks. Prior to March 19, 2008, Visa U.S.A., Inc. was governed by a board of directors composed of bank executives selected from its member banks.

6. Defendant **Visa, Inc.** is a Delaware corporation with its principal place of business in San Francisco, California. Defendant Visa Inc. was created through a corporate reorganization in or around October 2007. Visa U.S.A. Inc.'s member banks were the initial shareholders of Visa, Inc.

7. Defendants Visa Inc., Visa U.S.A., Inc., and Visa International Service Association are referred to collectively as **"Visa"** in this Complaint.

8. Defendant **MasterCard Incorporated** was incorporated as a Delaware stock corporation in May 2001. Its principal place of business is in Purchase, New York.

9. Defendant **MasterCard International Incorporated** was formed in November 1966 as a Delaware membership corporation whose principal or affiliate

members were its financial institution issuing banks and acquiring banks.[1] Prior to the May 22, 2006 IPO described in paragraphs 53-63, below, Defendant MasterCard International Incorporated was the principal operating subsidiary of MasterCard Incorporated.

10. Defendants MasterCard International Incorporated and MasterCard Incorporated are referred to collectively as **"MasterCard"** in this Complaint.

C. Co-Conspirators

11. Various persons, firms, corporations, and other business entities, some known and unknown, have participated as co-conspirators in the violations alleged herein and have performed acts in furtherance of the conspiracies. The co-conspirators include, but are not limited to the following: (a) thousands of issuing banks that have issued Visa or MasterCard payment cards and have agreed to set, fix, and enforce through anticompetitive rules and restraints Visa or MasterCard interchange fees; (b) banks that are or were members of the Boards of Directors of Visa or MasterCard and specifically adopted or agreed to impose the challenged rules and restraints upon retailers; and (c) thousands of acquiring banks who acquire Visa and MasterCard transactions from merchants and who agreed to and have imposed the anticompetitive rules and restraints upon the merchants.

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[1] "Acquiring bank" or "acquirer" means a member of Visa or MasterCard that acquires payment transactions from merchants and acts as a liaison between the merchant, issuing bank, and the payment-card network to assist in processing the payment transaction. An "issuing bank" or "issuer" means a member of Visa or MasterCard that issues Visa- or MasterCard-branded General Purpose Payment Cards (defined in paragraph 25) to consumers for their use as payment systems. Visa and MasterCard rules require that all member banks issue, respectively, Visa and MasterCard Payment Cards.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over the State's claims and venue is proper in this Court.

13. Jurisdiction over Defendants comports with the New Mexico Constitution, the United States Constitution, and the long-arm provisions of New Mexico statutes.

14. Defendants have transacted and continue to transact business within New Mexico, and the State's claims arise out of the transaction of such business. The torts and wrongs alleged herein were committed within the jurisdiction of this Court; the damages and losses alleged herein were suffered in this jurisdiction; and the rights of the State were impaired in this jurisdiction, all as more particularly described herein.

15. The State of New Mexico's claims are brought pursuant to the New Mexico Antitrust Act, NMSA § 57-1-1 to -19, the New Mexico Unfair Practices Act, NMSA § 57-12-1 to -22, and New Mexico common law.

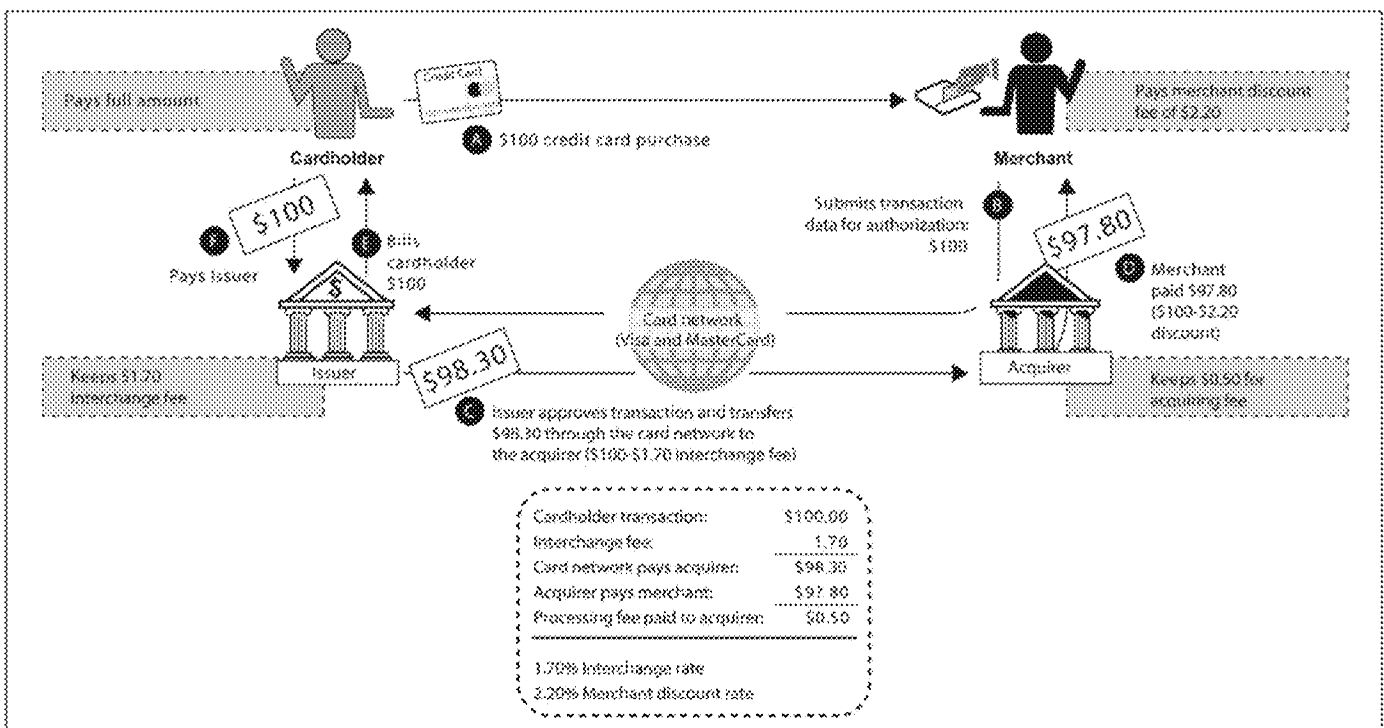
16. Venue in this Court is proper pursuant to NMSA § 38-3-1. The Attorney General resides in Santa Fe County.

FACTUAL ALLEGATIONS

17. Visa and MasterCard operate the two largest payment card networks in the United States, through which trillions of dollars flow each year. Payments are transmitted over the networks every time an individual, business, or other entity makes a purchase with a Visa or MasterCard.

18. When such a purchase is made, the cardholder's bank charges a transaction fee to the merchant, variously referred to as a "swipe fee," "merchant

discount fee," or "card acceptance fee." As a result of the merchant discount fee, the merchant is not reimbursed by its bank for the full amount of the purchase price, so the merchant receives less than the price it charged to the consumer. Five parties are thus involved in a Visa/MasterCard transaction: the cardholder, the cardholder's bank (the issuer or issuing bank), the merchant, the merchant's bank (the acquirer or acquiring bank), and finally the Visa or MasterCard card network that processed the transaction. A typical transaction is depicted below:



Sources: GAO (analysis); Art Explosion (images).

19. The largest portion of the merchant discount fee is the "interchange fee." Interchange fees are a vestige of the early days of credit cards, when paper drafts were used to record credit transactions. Interchange fees are set by Visa and MasterCard and

their member banks, not by the issuer or acquirer, and have risen significantly over time.

20. The interchange fees have been set, maintained, and enforced through two separate combinations established by Visa and MasterCard. One illegal combination, conspiracy, or agreement has been entered into by MasterCard and its co-conspirator member banks. A second illegal combination, conspiracy, or agreement has been entered into by Visa and its co-conspirator member banks. In both cases, Visa and MasterCard have each agreed with their respective bank members—many of whom overlap—and alternatively with each other through parallel conduct, to 1) fix, set, and enforce interchange fees associated with credit or debit payment cards and paid by merchants such as the State, and 2) eliminate the merchant's ability to negotiate lower interchange fees through a set of "all or nothing" network rules known as the no surcharge rule, the no discount rule, the honor all cards rule, and the all outlets rule (collectively, "merchant restraints"). In addition, Visa and MasterCard have each monopolized, or attempted to monopolize, the market for credit and debit network services. This conduct is directly aimed at restraining competition, has greatly restricted interbrand competition, and suppressed innovation in the payment card market.

21. This case is not the first time that Visa and MasterCard's anticompetitive conduct has been challenged. For example, in 2003, a court found that the exclusivity rules of both the Visa and MasterCard combinations, which prohibited member banks from issuing cards competing on American Express or Discover networks, were illegal. *United States v. Visa USA, Inc.*, 163 F. Supp. 2d 322, 341 (S.D.N.Y. 2001), *aff'd*, 344 F.3d

229 (2d Cir. 2003). In that same year, in a class action settlement, Visa and MasterCard agreed to cease using rules to tie credit card acceptance and debit card acceptance.

22. Similarly, Visa, MasterCard, and their respective issuing banks had joint venture arrangements, which allowed them to gain market power. These joint venture arrangements ultimately led courts in the United States as well as Europe and the United Kingdom to adjudicate them as "structural conspiracies." In 2006 and 2008, MasterCard and Visa attempted to avoid additional antitrust liability by re-structuring the Visa and MasterCard corporate entities.

23. But to date, Visa and MasterCard's power to dictate price and prevent competition has not diminished. Immediately after the 2003 class action settlement, both Visa and MasterCard increased the credit card interchange fees extracted from merchants. The debit card interchange fees Visa and MasterCard continued to impose were subsequently found by the Federal Reserve Board to be significantly above cost. Visa and MasterCard's actions with respect to the interchange fee later led to both additional regulation, which set the maximum interchange fee that could be charged for debit cards, as well as additional litigation by merchants who challenged Visa and MasterCard's continued dominance and ability to set interchange fees.

24. The parties in that litigation reached a $7.25 billion class action settlement, which is now on appeal before the United States Court of Appeals for the Second Circuit. *In re Payment Interchange Fee and Merchant Discount Antitrust Litigation*, No. 05-MDL-1720 (E.D.N.Y). Despite being touted as the largest antitrust settlement in history, the settlement has been widely criticized. *See, e.g.,* Adam J. Levitin, *An Analysis of the*

Proposed Interchange Fee Litigation Settlement, Georgetown Law and Economics Research Paper No. 12-033, *available at* http://ssrn.com/abstract=2133361 (last checked Dec. 23, 2014). Significantly, the State of New Mexico was not a member of the merchant class in that case and, in any event, provided notice of its decision to exclude the State, including all of its agencies and entities, from that settlement. Many individuals, businesses, and other entities have also opted-out and have brought their own individual actions.

A. The Payment Card Industry

25. The payment card industry involves two categories of payment cards: 1) General Purpose Credit Cards and 2) General Purpose Debit Cards (collectively, "General Purpose Payment Cards"). Visa and MasterCard are providers of network services for these cards, operating the infrastructure necessary to authorize, settle, and clear payments ("Network services"). "Network services" are sometimes referred to as "card acceptance services."

26. General Purpose Credit Cards permit consumers to borrow the money for goods, services, or cash from the card issuer and to repay that debt over time, according to the provisions of a revolving-credit agreement between the cardholder and the issuing bank. They include charge cards, which provide an interest-free loan during a grace period, except that the contract between the issuer and the cardholder requires full payment of the outstanding balance on a monthly basis. "Charge Cards" are also referred to as "Travel and Entertainment Cards" or "T&E Cards."

27. General Purpose Debit Cards are one means for demand deposit account holders to access the money in their accounts. Pre-paid debit cards allow cardholders to access the funds deposited on the card when it was purchased. There are two primary forms of authentication in use for debit cards in the United States. One is a signature-based, so-called "offline debit card," in which the cardholder's signature is usually (but not always) obtained at the time of the transaction. The other is based on a personal identification number ("PIN"), in which the cardholder enters a usually four-digit PIN to authenticate the cardholder. Both forms of verification cause merchants to incur interchange fee costs, though the amounts vary slightly depending on the form of verification.

28. Issuing banks earn income when cardholders select and use their cards and when merchants accept their cards. Accordingly, issuing banks compete to have cardholders carry and use cards they issue. They do this by offering numerous credit card products, some of which offer features such as cash back rebates, low interest rates, low or no annual fees, and rewards programs tied to usage. Cards that offer cash-back, airline miles, or other usage benefits are often referred to as "rewards cards." Those rewards cards that offer the highest levels of rewards are referred to as "premium cards" and include cards such as Visa Signature Preferred and MasterCard World Elite. Standard or "traditional" credit cards, which do not offer the same array of features to cardholders, include products such as Visa Traditional and the MasterCard Core Value card. In 2002, approximately 15% of Visa credit cards issued in the United States were

premium cards. By 2010, more than 40% of the Visa and MasterCard branded payment cards in the United States were premium cards.

29. Acquiring banks earn income from payment card transactions through the merchant discount fee, less the interchange fee. Acquiring banks compete with each other for the right to acquire payment transactions from merchants, but do not compete with each other on the basis of the interchange fee.

B. The Development of Visa and MasterCard's Competitive Restraints

30. MasterCard and Visa (collectively, the "Networks") are international bank-card networks. Prior to their IPOs in 2006 and 2008, respectively, they were organized as joint ventures of their member issuing banks and acquiring banks and included regional-banking associations, and other financial institutions.

31. The Networks were established by their bank members to develop, promote, and operate credit card networks nationally and internationally. The Networks were essentially controlled by a small number of member banks—those with the largest share of card issuance and sales-transaction volume—that established their control by serving on the boards of directors or important committees of either or, in many cases, both Visa and MasterCard.

32. As members of the joint ventures, the member banks agreed to the following competitive restraints—supracompetitive interchange fees, merchant restraints and anti-steering rules, and tying and bundling of services—and to impose those competitive restraints on merchants that accept Visa-branded and MasterCard-branded cards.

1. *Supracompetitive Interchange Fees Continue to Restrain Competition.*

33. Among the competitive restraints are "default" interchange fees that merchants are required to pay for the privilege of accepting Visa-branded and MasterCard-branded cards. So-called default interchange fee rates are set by Visa and MasterCard for the benefit of their member issuing banks. As a result of the other merchant restraints, including anti-steering rules, described below, the default interchange fees are made binding.

34. Interchange fees were devised in the early days of the Networks, to pay for the costs of initial card issuance, marketing, transferring transactional paper (called "drafts") between acquiring and issuing banks, and purportedly balanced Network costs between issuers and acquirers. These early interchange fees were cost-based and, in the case of Visa, set with the help of independent auditing firms. Interchange fees were allegedly necessary in the early days of the Networks to induce banks to issue cards to cardholders, and to "acquire" merchants.

35. Interchange fees are no longer cost-based, and the Networks no longer need to incent card issuance to establish their Networks. Interchange fees are not set to recover Visa and MasterCard's costs of providing network services; rather they are fees that Visa and MasterCard, in combination with the issuing banks, require merchants to pay to the issuing banks.

36. Since the mid-1980s, when many payment card transactions began to be processed electronically, the costs to Visa and MasterCard of the various credit card transaction components (e.g., hardware, telephone service, network service, and data-

processing services) have decreased significantly. As a result, there have been significant reductions in the total costs for Visa and MasterCard to process payment card transactions.

37. Counterintuitively, rather than decreasing with increased technological efficiencies and sophistication, interchange fees have only increased. In addition, interchange fees for premium credit cards are higher than the interchange fees merchants are charged on other rewards cards, which in turn are higher than those charged on standard credit card transactions. Visa/MasterCard encourage issuing banks, via higher interchange fees, to issue rewards cards; these issuing banks have no incentive to challenge Visa and MasterCard's competitive restraints, including the merchant restraints and anti-steering rules described below.

38. The Networks monitor and enforce their member banks' compliance with the Networks' uniform schedule of default interchange fees. The Networks' IT-systems monitor each transaction to ensure that the "correct" default interchange rate is being applied. Thus, if the acquiring bank attempted to "cheat" on a particular transaction by applying an interchange rate lower than the default rate, the Networks' systems would intervene and increase the interchange rate to the default rate.

39. Visa and MasterCard rules also require that a Visa- or MasterCard-member bank be a party to every merchant contract for the acceptance of Visa and MasterCard Payment Cards. This rule applies even to merchants and banks that use third-party processors or independent sales organizations.

40. Unlike in the early days of the Networks, Visa and MasterCard now, jointly and separately, have market power in the market for General Purpose Card Network Services. Even in the face of frequent and significant increases in interchange fees, merchants have no choice but to continue to accept Visa and MasterCard's dominant credit and debit cards. *United States v. Visa USA, Inc.*, 163 F. Supp. 2d 322, 340 (S.D.N.Y. 2001), *aff'd*, 344 F.3d 229 (2d Cir. 2003). Issuers, for their part, have the technological capability to enter into separate agreements with merchants, but have no incentive to do so in light of the high interchange fees, particularly for rewards cards.

2. ***Merchant Restraints***

41. In addition to the collective setting of interchange fees, Defendants have imposed the following merchant restraints, including anti-steering rules, which eliminate a merchant's ability to negotiate lower interchange fees or otherwise accept lower-cost cards:

42. **Honor All Cards**: This rule requires that a merchant who accepts any Visa-branded or MasterCard-branded credit card to accept all Visa-branded or MasterCard-branded credit cards, no matter which bank issued the card or the card type. Similarly, a merchant that accepts Visa-branded or MasterCard-branded debit cards, must accept all Visa-branded or MasterCard-branded debit cards, no matter the issuing bank. Because of the Honor All Cards Rule, merchants such as the State cannot reject any or all of the types of cards issued by any particular issuing bank. Thus, merchants are precluded from gaining the benefits of competition as to the terms upon which they will accept or reject the cards of any issuing bank that is a member of Visa or

MasterCard. As a result, the default interchange fees become binding on the State and other merchants.

43. **All Outlets**: The All Outlets Rule requires merchants who accept Visa-branded or MasterCard-branded payment cards to accept those cards at all of their merchant locations. A merchant is not permitted to accept the cards at some stores but not others. This rule precludes merchants from gaining the benefits of competition as to the terms of acceptance by location (for example, by region of the country or location within a state).

44. Prior to January 27, 2013, the All Outlets Rule required merchants that operated under multiple banners (e.g., trade names or name plates) and that accepted Visa-branded or MasterCard-branded payment cards to accept those cards at all of their banners. This rule precluded merchants from gaining the benefits of competition as to the terms of acceptance with issuing banks by banner or by locations within a banner. As a result, merchants could not indicate they would terminate acceptance of the cards of a particular issuing bank at some of their banners in order to promote competition as to fees.

45. But changes that Visa and MasterCard made to their All Outlets Rule(s) and implemented after January 27, 2013, did not diminish the anticompetitive effects or the injuries. The All Outlets Rule(s) still require that if a merchant elects to accept Visa-branded or MasterCard-branded cards at one of its banners, it must accept all such cards at all locations of that banner, and it must accept all such cards no matter the card

issuer. Merchants also cannot accept the cards of some issuers but not others at a particular location.

46. **No Discount**: Under the No Discount Rule, merchants were only allowed to offer discounts to customers who paid in cash, rather than using a payment card. However, pursuant to a settlement with the United States Department of Justice, as of July 20, 2011, Visa and MasterCard changed their rules to allow merchants to offer other discounts to consumers in some limited circumstances. These changes to the No Discount Rule have not significantly diminished the anticompetitive effects of the competitive restraints. While Visa and MasterCard now allow merchants more discounting options, merchants still are prohibited from offering discounts to consumers for using the cards issued by particular issuing banks. A merchant's ability to utilize issuer-specific discounts would be an important tool for gaining the benefits of competition as to the terms of acceptance with an issuing bank.

47. **No Surcharge**: The No Surcharge Rule prohibits merchants from surcharging transactions in which a consumer used a Visa-branded card or a MasterCard-branded card. This eliminates a merchant's ability to utilize surcharging as a tool in gaining the benefits of competition as to the terms of acceptance with an issuing bank. Absent the rules, a merchant could surcharge a transaction in which the consumer uses the card of a particular issuing bank, such as one that demanded a high interchange fee.

48. As of January 27, 2013, Visa and MasterCard altered their respective No Surcharge Rules to permit merchants to surcharge credit card customers under limited

circumstances. Nevertheless, these changes to the No Surcharge Rule(s) for credit cards implemented after January 27, 2013 did not eliminate their anticompetitive effects or the injuries the State continues to suffer. Debit card transactions still may not be surcharged under the rule modification. And even as modified, the No Surcharge Rules prohibit a merchant from surcharging based on the identity of the card issuer.

49. The Honor All Cards, No Discount, No Surcharge, and All Outlets Rules, individually and in combination, eliminated the incentives for Visa and MasterCard to compete for merchant acceptance through setting lower "default" interchange fees.

3. *Tying and Bundling of Services*

50. In addition to fixing interchange fees and insulating those fees from competitive forces through merchant restraints, Defendants also illegally tie and bundle together separate and distinct services and charge merchants a single price—the interchange fee—for those services.

51. For example, interchange fees purportedly pay for the limited "payment guarantee service." The separate and distinct services also include but are not limited to Payment-Card-System Services, but also include the "float" of funds from the issuing bank to the consumer during any grace period, the promotional costs of the issuing banks, and Network-Processing Services.

52. If Visa, MasterCard, or their co-conspirator member banks did not tie and bundle together these services, many Merchants could, and would choose to purchase these services from other vendors, third-party processors, or would choose to self-insure. All merchants would benefit from the untying of these services, either in the

form of lowered prices from Visa and MasterCard (which would have to lower prices due to competition from other providers) or from competitors, including third-party processors, who could offer cheaper and more efficient Network Processing Services.

C. Changes in MasterCard and Visa's Ownership Structures Have Not Altered or Ended the Competitive Restraints.

53. In 2006 and 2008, respectively, MasterCard and Visa each changed their ownership structures through IPOs wherein the member banks partially divested their ownership of Visa and MasterCard. But the IPOs did not change the essential character of their combinations or the competitive restraints.

54. According to the prospectus for MasterCard's 2006 IPO, "heightened regulatory scrutiny and legal challenges" underlay the decision to make changes in the ownership structure of MasterCard. In particular, MasterCard stated that "many of the legal and regulatory challenges we face are in part directed at our current ownership and governance structure in which our customers—or member financial institutions—own all of our common stock and are involved in our governance by having representatives serve on our global and regional boards of directors."

55. Prior to its IPO in May 2006, MasterCard and its co-conspirator member banks collectively and in combination with each other agreed to impose the merchant restraints on all merchants, enforce those restraints against the merchants, and require each merchant to agree in writing to adhere to the merchant restraints. Prior to May 2006, MasterCard and its co-conspirator member banks also collectively and in

combination with each other agreed to and determined the interchange fees that would be paid by the merchants.

56. Since May 2006, MasterCard and its member banks undertook no acts that were inconsistent with the purposes and goals of their prior collective action and undertook no conduct that would tend to defeat those purposes and goals or the effects of their prior conduct. To the contrary, subsequent to May 2006, MasterCard continued to promulgate and enforce the merchant restraints and each member bank agreed in writing, and knew that every other member bank agreed in writing, to continue to adhere to and impose the merchant restraints on every merchant. Subsequent to May 2006 each member bank and MasterCard knowingly and intentionally continued to receive the anticompetitive benefits, including excessively high interchange fees, of their prior conduct and continued to commit acts, including the setting and enforcement of excessively high interchange fees, which promote the purpose and effect of their conspiracy.

57. To the contrary, after May 2006, MasterCard's member banks, through MasterCard, collectively agreed that MasterCard would continue to set the interchange fee rates and that the member banks would continue to enforce and defend those rates by imposing the merchant restraints on the State and other merchants. It would be contrary to the independent self-interest of each of MasterCard's bank members to prevent merchants from discounting credit cards which it issues, surcharging credit cards issued by its competitors, or refusing to accept its competitors' credit cards. However, if each member bank knew and understood and tacitly agreed that the other

member banks would reciprocate by preventing merchants from surcharging that member's credit cards, refusing to accept that member's credit cards or discounting their own credit card, then it would be in the collective economic interest of all the MasterCard member banks to have MasterCard set the interchange fees at excessively high supracompetitive levels and to then defend those rates against the forces of competition by agreeing to and actually imposing the merchant restraints on every merchant who accepted MasterCard.

58. Subsequent to May 2006, MasterCard and each of its member banks consciously ascribed to and knowingly participated in a common scheme and understanding that MasterCard interchange fees would be set at supracompetitive levels and that those excessive price levels would be enforced and defended by the member banks through the continued promulgation and enforcement of the merchant restraints.

59. Prior to its IPO on March 19, 2008, Visa and its co-conspirator member banks collectively and in combination with each other agreed to impose the merchant restraints on all merchants, enforce those restraints against the merchants, and require each merchant to agree in writing to adhere to the merchant restraints. Prior to that date, Visa and its co-conspirator member banks also collectively and in combination with each other agreed to and determined the interchange fees that would be paid by the merchants.

60. Since March 19, 2008, Visa and its member banks have taken no actions that are inconsistent with the purposes and goals of their prior collective action and

engaged in no conduct that would tend to defeat those purposes and goals or the effects of their prior conduct.

61. To the contrary, after March 19, 2008, Visa continued to promulgate and enforce the merchant restraints and each member bank agreed in writing, and knew that every other member bank agreed in writing, to continue to adhere to and impose the merchant restraints on every merchant. After March 19, 2008, each member bank and Visa knowingly and intentionally continued to receive the anticompetitive benefits, including excessively high interchange fees, of their prior conduct and continued to commit acts, including the setting and enforcement of excessively high interchange fees, which promote the purpose and effect of their conspiracy.

62. After March 19, 2008, Visa's member banks, through Visa, collectively agreed that Visa would continue to set the interchange fee rates and that the member banks would continue to enforce and defend those rates by imposing the merchant restraints on the State and other merchants. It would be contrary to the independent self-interest of each of Visa's bank members to prevent merchants from discounting credit cards which it issues, surcharging credit cards issued by its competitors, or refusing to accept its competitors' credit cards. However, if each member bank knew and understood and tacitly agreed that the other member banks would reciprocate by preventing merchants from surcharging that member's credit cards, refusing to accept that member's credit cards or discounting their own credit cards, then it would be in the collective economic interest of all the Visa member banks to have Visa set the interchange fees at excessively high supracompetitive levels and to then defend those

rates against the forces of competition by agreeing to and actually imposing the merchant restraints on every merchant who accepted Visa.

63. After March 19, 2008, Visa and each of its member banks consciously ascribed to and knowingly participated in a common scheme and understanding that Visa interchange fees would be set at supracompetitive levels and that those excessive price levels would be enforced and defended by the member banks through the continued promulgation and enforcement of the merchant restraints.

D. Merchants Have No Ability to Negotiate a Lower Interchange Fee

64. As a result of the merchant restraints and anti-steering rules, merchants, including government entities like the State, have no practical ability to negotiate a lower interchange fee because they are required to accept a Visa or MasterCard issued by the bank in question, provided they accept any Visa or MasterCard card issued by other banks.

65. Similarly, merchants such as the State receive no additional benefits from the higher interchange fees they must pay on transactions in which rewards cards are used. Nevertheless, merchants do not have the ability to refuse to accept rewards cards.

66. Thus, faced with an increase in interchange fees by either Visa or MasterCard, a merchant's only option is to decline Visa or MasterCard products entirely—an option that is not economically feasible or realistically available.

THE RELEVANT MARKETS

67. At least two relevant product markets exist: 1) Networks Services for General Purpose Credit Cards, and 2) Network Services for General Purpose Debit

Cards. *See United States v. Visa and MasterCard*, 344 F.3d 229, 239 (2d Cir. 2003). Visa and MasterCard, and their largest issuing banks, advertise and pursue promotional strategies aimed at New Mexico regarding these two relevant product markets.

68. From the consumer perspective, no close substitutes for General Purpose Credit Cards exist because other forms of payment (such as cash or checks) do not offer comparable credit facilities. For this reason, the State and other merchants cannot discontinue acceptance of credit cards, even in the face of high or increasing interchange fees, without losing opportunity for revenue generation.

69. Credit cards and debit cards are not reasonably interchangeable with each other or with other forms of tender.

70. General Purpose Debit Cards differ from General Purpose Credit Cards in significant ways and are also regulated differently and separately from credit cards. Nonetheless, the State and other merchants cannot discontinue acceptance of debit cards. Visa, MasterCard and their debit card issuers are not constrained in the fees they impose on debit cards, either by the availability of credit cards or other forms of tender.

71. The relevant geographic market is secondary to the relevant product markets and defined based upon the conduct and corresponding effects of the antitrust violations alleged herein. The relevant anticompetitive conduct may occur outside or within the State of New Mexico, but regardless of where it occurs, it creates anticompetitive effects and harms the State and the State of New Mexico's economy.

MARKET POWER

72. Visa and MasterCard, together with their respective issuing banks, separately and jointly have market power in the relevant market for Network Services for General Purpose Credit Cards. In 2001, a federal court found that Visa had market power in the market for credit card network services with a 47% share of the dollar volume of credit card transactions in the United States. *United States v. Visa USA, Inc.*, 163 F. Supp. 2d 322, 341 (S.D.N.Y. 2001), *aff'd*, 344 F.3d 229 (2d Cir. 2003). The same court held that MasterCard's 26% share of dollar volume of credit and charge card transactions was sufficient to demonstrate that it had market power in the market for credit card network services. 344 F.3d at 240. In 2003, a court reaffirmed that Visa had market power in the credit card market based on a finding that its market share fluctuated between 43% and 47%, and that barriers to entering the relevant product market existed. The court also held that MasterCard's 26% to 28% share of the credit card market was sufficiently high to go to a jury on the question of MasterCard's market power. *In re Visa Check/MasterMoney Antitrust Litigation*, 2003 U.S. Dist. LEXIS 4965 (E.D.N.Y. Apr. 1, 2003). Neither Visa nor MasterCard's respective shares of the credit card market have changed significantly since these two holdings.

73. There are significant barriers to entry into the market for General Purpose Credit Cards. *United States v. Visa USA, Inc.*, 163 F. Supp. 2d 322, 341 (S.D.N.Y. 2001), *aff'd*, 344 F.3d 229 (2d Cir. 2003). Visa's former CEO described starting a new card network as a "monumental" task involving expenditures and investment of over $1

billion. Both AT&T and Citibank conducted entry analyses, but decided it would be unprofitable to attempt to start a competing general purpose credit card business.

74. The difficulties associated with entering the network market are exemplified by the fact that no company has entered since Discover in 1985. Discover has never achieved more than a 7% share of the General Purpose Credit Card market nationally.

75. Visa's conduct is direct evidence of its market power and that of its issuing banks. Interchange fees are set by Visa on behalf of its issuing banks. Visa promulgates and enforces the competitive restraints, which prevent competition among its issuing banks for merchant acceptance. Absent the competitive restraints, Visa's credit card issuing banks would gain the benefits of competition as to the terms of merchant acceptance, including interchange fees, and merchants would benefit through lower interchange fees and other benefits from competition.

76. Visa's default credit card interchange fees demonstrate Visa's market power. Effective credit card interchange fees have risen over time, even as the costs of issuing credit cards have fallen for its member banks and even as interchange fees for debit cards have fallen. Despite these increases, merchants have not stopped accepting Visa credit cards.

77. Further, Visa's market power is demonstrated by its ability to discriminate in price among types of merchants, by distinguishing merchants by size, transactions by size, cards by type, and merchants by retail category.

78. Visa's market power in credit cards is also demonstrated by the fact that when the Federal Reserve Board significantly reduced the interchange fees on debit transactions, few if any merchants chose to stop accepting Visa credit cards, and Visa did not reduce its credit card interchange fees. In 2012, the first full year after implementation of reduced interchange fees on debit transactions, Visa credit card transactions and purchase volume increased.

79. Competition with MasterCard does not eliminate Visa's exercise of market power in the market for Network Services for General Purpose Credit cards. During the period that Visa and MasterCard were both joint ventures consisting of their member banks, they adopted parallel rules that limited competition for merchant acceptance. After their respective IPOs, Visa's and MasterCard's membership, rules, and their power to obtain high interchange fees from merchants have not changed and continue to constrain competition between Visa and MasterCard and among the members of both combinations.

80. MasterCard's conduct is direct evidence of its market power and that of its issuing banks. Interchange fees are set by MasterCard on behalf of its issuing banks. MasterCard also promulgates and enforces the competitive restraints, which prevent competition among its issuing banks for merchant acceptance. Absent the competitive restraints, MasterCard's credit card issuing banks would gain the benefits of competition as to the terms of merchant acceptance, including interchange fees, and merchants would benefit through lower interchange fees and other benefits from competition.

81. MasterCard's default credit interchange fees demonstrate MasterCard's market power. Effective credit card interchange fees have risen over time, even as the costs of issuing credit cards have fallen for its member banks and even as interchange fees for debit cards have fallen. Despite these increases, merchants have not stopped accepting MasterCard credit cards.

82. Further, MasterCard's market power is demonstrated by its ability to discriminate in price among types of merchants, by distinguishing merchants by size, transactions by size, cards by type, and merchants by retail category.

83. Competition with Visa does not eliminate MasterCard's exercise of market power in the market for merchant acceptance of general purpose credit cards either. During the period that Visa and MasterCard were joint ventures consisting of their member banks, they adopted rules that limited competition for merchant acceptance. After their respective IPOs, Visa's and MasterCard's membership, rules, and most importantly power to obtain high interchange fees from merchants did not change and continue to constrain competition between Visa and MasterCard and among the members of both combinations.

84. The debit card market is dominated by Visa and MasterCard. Combined, Visa and MasterCard comprised about 75% of all debit purchase volume in 2004 and comprise over 80% today. Only Visa, MasterCard, and Discover allow signature authorization of debit transactions.

85. Visa, jointly with its issuing banks, and MasterCard, jointly with its issuing banks, each exercise market power in the market for merchant acceptance of, and Network services for, debit cards.

86. Visa and its issuing banks jointly have market power in the market for acceptance of debit cards. Visa participates in and manages a combination comprised of the vast majority of issuing banks of debit cards, such that merchants are unable to refuse to accept Visa-branded debit cards. This combination of issuing banks combined with the competitive restraints gives Visa market power. Visa has exercised and continues to exercise market power by requiring merchants such as the State to pay supracompetitive interchange fees and by imposing the competitive restraints.

87. Visa's market power over merchants is demonstrated by the fact that, when, in 2003, Visa dropped its requirement forcing merchants to accept Visa debit cards as a condition of accepting Visa credit cards, merchants were not able to and did not stop accepting Visa debit cards—despite the availability of lower cost PIN debit networks. In addition, in 2011 the Federal Reserve Board found that Visa's debit interchange rates were significantly above cost. Because of Visa's competitive restraints, merchants cannot gain the benefits of competition among issuing banks for terms of debit card acceptance.

88. MasterCard and its issuing banks jointly have market power in the market for acceptance of debit cards. MasterCard participates in and manages a combination comprised of a significant fraction of all issuers of debit cards, such that merchants are unable to refuse to accept MasterCard-branded debit cards. This combination of issuing

banks combined with the competitive restraints gives MasterCard market power. MasterCard has exercised and continues to exercise market power by requiring merchants such as the State to pay supracompetitive interchange fees and by imposing the competitive restraints.

89. MasterCard's market power over merchants is demonstrated by the fact that, when, in 2003, MasterCard dropped its requirement forcing merchants to accept Visa debit cards as a condition of accepting MasterCard credit cards, merchants were not able to and did not stop accepting MasterCard debit cards—despite the availability of lower cost PIN debit networks. In addition, in 2011 the Federal Reserve Board found that MasterCard's debit interchange rates were significantly above cost. Because of MasterCard's competitive restraints, merchants cannot gain the benefits of competition among issuing banks for terms of debit card acceptance.

INJURY TO CONSUMER WELFARE, COMPETITION, AND THE STATE'S ECONOMY

90. The State of New Mexico accepts Visa-branded and MasterCard-branded credit and debit cards as a form of payment for State businesses and residents to purchase, among other services, Department of Motor Vehicle licenses and tabs, fishing licenses from the Department of Game and Fish, and so on. Accordingly, the State has been forced to abide by Visa's and MasterCard's unlawful competitive restraints and has been forced to pay supracompetitive interchange fees, all to its detriment. In addition, merchants within the state have been subject to the competitive restraints and thus damage has occurred to the State's economy.

91. Each combination, agreement and conspiracy alleged herein has had an anticompetitive impact on the market and injures economic efficiency and consumer welfare in at least the following ways:

a) Supracompetitive interchange fees can lead to higher service or retail prices charged to consumers within the state of New Mexico. Higher service or retail prices lead to a reduction in output and economic welfare. The higher service or retail prices paid by all consumers means that customers who pay with cash, including low-income customers who do not use credit cards and other customers who use lower-cost payment methods, subsidize MasterCard and Visa Premium Card users who receive free reward points that, in effect, are paid for by the higher retail prices that merchants must charge all consumers;

b) Supracompetitive interchange fees create incentives for issuing banks to encourage the use of high-cost payment cards rather than low-cost payment cards and thereby encourage inefficiency and misallocation of resources; and

c) Supracompetitive interchange fees distort competition between different credit cards in favor of products with the higher interchange fees and dissuade either new entrants or existing competitors from trying to increase their transactional volume by offering lower prices because the merchant restraints preclude offers of lower prices to the merchant from being translated into a lower price to the consumer, which would then result in higher usage of the lower-cost credit card by consumers. In other words, the merchant restraints accomplish their specifically intended anticompetitive purpose, which is to eliminate horizontal price competition among

credit cards and the payment card networks for consumer utilization of their payment products at the point of sale.

92. The competitive restraints, including the collective setting of "default" interchange fees, are not reasonably necessary to accomplish any legitimate efficiency-generating or other business objectives of the Visa and MasterCard combinations. Furthermore, there exist numerous alternative means that are less harmful to competition by which any such objectives could be accomplished.

93. The collective setting of interchange fees and the imposition of the merchant restraints by Visa and its member banks and by MasterCard and its member banks also restricts competition among the member banks of each respective network for the provision of card Network Services to merchants. Absent the conspiracies alleged herein, the issuing bank members of both networks could and would negotiate individually with merchants, and merchants would be free to accept or reject the cards issued by particular issuing banks or to surcharge their customers for using credit cards issued by a particular bank.

COUNT I

Unlawful Restraints of Trade and Price-Fixing through Visa's Competitive Restraints Governing Credit and Debit Cards

94. The State re-alleges and incorporates by reference paragraphs 1-93.

95. The collective adoption of competitive restraints by Visa and its member banks constitutes one contract, agreement, combination or conspiracy in an unreasonable restraint of trade, thus violating the New Mexico Antitrust Act, NMSA § 57-1-1.

96. These arrangements also had the effect of unreasonably tying together the de-facto purchase of distinct services as set forth above. As one example, they had the effect of requiring merchants to pay for certain services – such as payment processing for Premium Cards – in order for merchants to purchase payment processing for General Purpose Cards.

97. Visa possesses sufficient market share and economic power to appreciably restrain competition in the credit and debit card markets.

98. These arrangements affect a substantial amount of commerce subject to this Court's jurisdiction.

99. These arrangements lack any clear, legitimate business or procompetitive justification. These arrangements have resulted and continue to result in the imposition of supracompetitive interchange fees as set forth above. Defendants and their co-conspirators have had actual knowledge of, and have knowingly participated in, the conspiracy alleged above.

100. These supracompetitive interchange fees have imposed significant damages on the State in its merchant-like payment processing capacity. These supracompetitive interchange fees have also imposed significant damages on the economy of New Mexico.

COUNT II

Unlawful Restraints and Price-Fixing through MasterCard's Competitive Restraints Governing Credit and Debit Cards

101. The State re-alleges and incorporates by reference paragraphs 1-93.

102. The collective adoption of competitive restraints by MasterCard and its member banks constitutes one contract, agreement, combination or conspiracy in an unreasonable restraint of trade, thus violating the New Mexico Antitrust Act, NMSA § 57-1-1.

103. These arrangements also had the effect of unreasonably tying together the de-facto purchase of distinct services as set forth above. As one example, they had the effect of requiring merchants to pay for certain services – such as payment processing for Premium Cards – in order for merchants to purchase payment processing for General Purpose Cards.

104. MasterCard possesses sufficient market share and economic power to appreciably restrain competition in the credit and debit card markets.

105. These arrangements affect a substantial amount of commerce subject to this Court's jurisdiction.

106. These arrangements lack any clear, legitimate business or procompetitive justification. These arrangements have resulted and continue to result in the imposition of supracompetitive interchange fees as set forth above. Defendants and their co-conspirators have had actual knowledge of, and have knowingly participated in, the conspiracy alleged above.

107. These supracompetitive interchange fees have imposed significant damages on the State in its merchant-like payment processing capacity. These supracompetitive interchange fees have also imposed significant damages on the economy of New Mexico.

COUNT III

Unlawful Price Fixing of Credit Card Interchange Fees Between and Among Defendants Visa and MasterCard and Their Member Banks

108. The State re-alleges and incorporates by reference paragraphs 1-93.

109. Visa and MasterCard, together with their member banks, have colluded with the purpose to, and the effect of, fixing, raising, maintaining, or stabilizing interchange fees in the relevant markets at supracompetitive levels, and have agreed not to reduce interchange fees.

110. Visa and MasterCard consciously engaged in parallel conduct at the direction of their member banks with respect to interchange fees and merchant restraints. Visa and MasterCard and their co-conspirators achieved anticompetitive objectives by agreeing, separately and together, to establish, implement, and maintain a price-fixing scheme whereby they fixed supracompetitive interchange fees in the relevant markets. Such conduct is prohibited by the Antitrust Act, NMSA § 57-1-1 *et seq*.

111. These supracompetitive interchange fees have imposed significant damages on the State in its merchant-like payment processing capacity. These supracompetitive interchange fees have also imposed significant damages, in an amount to be determined, on the economy of New Mexico.

COUNT IV

Monopolization (Visa and Co-Conspirators)

112. The State re-alleges and incorporates by reference paragraphs 1-93.

113. Visa has monopoly power in the relevant markets identified above.

114. The competitive restraints, among other anticompetitive terms, further and protect Visa's monopoly power by ensuring that no competitor can make inroads on its market position by offering cheaper or more efficient payment services to merchants. The adoption, imposition, and enforcement of the competitive restraints constitute willful maintenance of monopoly power, which harms the competitive process and consumers, in violation of the Antitrust Act, NMSA § 57-1-2.

115. No procompetitive justification exists for the competitive restraints, either in isolation or generally.

116. As a direct and foreseeable result of Visa's willful maintenance of its monopoly power in the markets identified above by the anticompetitive device of the competitive restraints, the State and its economy have suffered and continue to suffer in an amount to be determined.

COUNT V

Attempted Monopolization (Visa and Co-Conspirators)

117. The State re-alleges and incorporates by reference paragraphs 1-93.

118. Visa's above-described competitive restraints constitute predatory or anticompetitive conduct. For example, the honor-all-cards rule requires merchants to accept more expensive-to-them cards on the same terms as less expensive cards, thus impairing price competition among card providers; the anti-steering and no-discount rules are express restraints that prohibit merchants from inducing customers to use less-expensive-to-the-merchant payment methods; and the total result is a Visa-created system in which Visa can have and grow a dominant position in the market for card-

based payment systems, despite the costs to merchants (directly) and end customers (indirectly), with strict limits on the ability for merchants to facilitate competition.

119. Visa has established these restraints with a specific intent to monopolize, as evidenced by the scope and nature of the competitive restraints. As just one illustration, its explicit requirement that merchants refrain from facilitating or encouraging the use by customers of competitors' cards, despite the fact that the use of such competitors' cards would be advantageous to such merchants, evinces such an intent.

120. In the alternative to Count IV, above, if Visa has not established monopoly power, it has a dangerous probability of achieving monopoly power, as evidenced by its already substantial market share and the above-described barriers to entry to the card-based payment system. NMSA § 57-1-2.

121. As a direct and foreseeable result of Visa's predatory and anticompetitive pursuit of monopoly power in the markets identified above by the competitive restraints, the State and its economy have suffered and continue to suffer damages in an amount to be determined.

COUNT VI

Monopolization (MasterCard and Co-Conspirators)

122. The State re-alleges and incorporates by reference paragraphs 1-93.

123. The State repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth here.

124. MasterCard has monopoly power in the relevant markets identified above.

125. The competitive restraints, among other anticompetitive terms, further and protect MasterCard's monopoly power by ensuring that no competitor can make inroads on its market position by offering cheaper or more efficient payment services to merchants. The adoption, imposition, and enforcement of the competitive restraints constitute willful maintenance of monopoly power, which harms the competitive process and consumers, in violation of the Antitrust Act, NMSA § 57-1-2.

126. No procompetitive justification exists for the competitive restraints, either in isolation or generally.

127. As a direct and foreseeable result of MasterCard's willful maintenance of its monopoly power in the markets identified above by the anticompetitive device of the competitive restraints, the State and its economy have suffered and continue to suffer damages in an amount to be determined.

COUNT VII

Attempted Monopolization (MasterCard and Co-Conspirators)

128. The State re-alleges and incorporates by reference paragraphs 1-93.

129. MasterCard's above-described competitive restraints constitute predatory or anticompetitive conduct. For example, the honor-all-cards rule requires merchants to accept more expensive-to-them cards on the same terms as less expensive cards, thus impairing price competition among card providers; the anti-steering and no-discount rules are express restraints that prohibit merchants from inducing customers to use less-

expensive-to-the-merchant payment methods; and the total result is a MasterCard-created system in which MasterCard can have and grow a dominant position in the market for card-based payment systems, despite the costs to merchants (directly) and end customers (indirectly), with strict limits on the ability for merchants to facilitate competition.

130. MasterCard has established these restraints with a specific intent to monopolize, as evidenced by the scope and nature of the competitive restraints. As just one illustration, its explicit requirement that merchants refrain from facilitating or encouraging the use by customers of competitors' cards, despite the fact that the use of such competitors' cards would be advantageous to such merchants, evinces such an intent.

131. In the alternative to Count VI, above, if MasterCard has not established monopoly power, it has a dangerous probability of achieving monopoly power, as evidenced by its already substantial market share and the above-described barriers to entry to the card-based payment system. NMSA § 57-1-2.

132. As a direct and foreseeable result of MasterCard's predatory and anticompetitive pursuit of monopoly power in the markets identified above by the competitive restraints, the State and its economy have suffered and continue to suffer damages in an amount to be determined.

COUNT VIII

Unfair Practices (Visa)

133. The State re-alleges and incorporates by reference paragraphs 1-93.

134. New Mexico's Unfair Practices Act prohibits unfair or deceptive and unconscionable trade acts or practices.

135. The Visa Defendants' willful acts violate, and the State is entitled to relief under, the Unfair Practices Act, NMSA § 57-12-1 *et seq*. The policies, acts, and practices alleged herein, specifically but not limited to the setting of interchange fees at artificial, supracompetitive levels were intended to and did result in overcharges and injuries to merchants.

136. Visa's willful violations justify assessing civil penalties of up to $5,000 for each violation.

COUNT IX

Unfair Practices (MasterCard)

137. The State re-alleges and incorporates by reference paragraphs 1-93.

138. New Mexico's Unfair Practices Act prohibits unfair or deceptive and unconscionable trade acts or practices.

139. The MasterCard Defendants' willful acts violate, and the State is entitled to relief under, the Unfair Practices Act, NMSA § 57-12-1 *et seq*. The policies, acts, and practices alleged herein, specifically but not limited to the setting of interchange fees at artificial, supracompetitive levels were intended to and did result in overcharges and injuries to merchants.

140. MasterCard's willful violations justify assessing civil penalties of up to $5,000 for each violation.

COUNT X

Common Law Unfair Competition (Visa)

141. The State re-alleges and incorporates by reference paragraphs 1-93.

142. The conduct by Visa described above, including price-fixing interchange fees at artificial, supracompetitive levels, setting of merchant restraints, and exercising monopoly power, constitutes common law unfair competition under the Restatement (Third) of Unfair Competition.

143. The State of New Mexico has been damaged and continues to be damaged as a result of this conduct.

COUNT XI

Common Law Unfair Competition (MasterCard)

144. The State re-alleges and incorporates by reference paragraphs 1-93.

145. The conduct by MasterCard described above, including price-fixing interchange fees at artificial, supracompetitive levels, setting of merchant restraints, and exercising monopoly power, constitutes common law unfair competition under the Restatement (Third) of Unfair Competition.

146. The State of New Mexico has been damaged and continues to be damaged as a result of this conduct.

COUNT XII

Unjust Enrichment, Restitution, and Disgorgement (Visa)

147. The State re-alleges and incorporates by reference paragraphs 1-93.

148. Visa and its co-conspirators' financial benefits resulting from their unlawful and inequitable conduct are economically traceable to Visa's price-fixing of interchange fees at artificial, supracompetitive levels, setting of merchant restraints, and monopoly conduct.

149. The State has conferred upon Visa and co-conspirators an economic benefit, in the nature of anticompetitive profits resulting from unlawful and inequitable conduct and monopoly profits, to the economic detriment of the State and the state's economy.

150. Visa's economic benefit is a direct and proximate result of Visa and co-conspirators' unlawful practices and conduct.

151. It would be inequitable and unjust for Visa to retain any of the unlawful proceeds or profits resulting from its unlawful and inequitable conduct.

COUNT XIII

Unjust Enrichment, Restitution, and Disgorgement (MasterCard)

152. The State re-alleges and incorporates by reference paragraphs 1-93.

153. MasterCard and its co-conspirators' financial benefits resulting from their unlawful and inequitable conduct are economically traceable to MasterCard's price-fixing of interchange fees at artificial, supracompetitive levels, setting of merchant restraints, and monopoly conduct.

154. The State has conferred upon MasterCard and co-conspirators an economic benefit, in the nature of anticompetitive profits resulting from unlawful and

inequitable conduct and monopoly profits, to the economic detriment of the State and the state's economy.

155. MasterCard's economic benefit is a direct and proximate result of Visa and co-conspirators' unlawful practices and conduct.

156. It would be inequitable and unjust for MasterCard to retain any of the unlawful proceeds or profits resulting from its unlawful and inequitable conduct.

COUNT XIV

Civil Conspiracy (All Defendants and Co-Conspirators)

157. The State re-alleges and incorporates by reference all prior paragraphs.

158. As alleged more fully above, the Visa and MasterCard Defendants each conspired separately and with each other, and with other entities, including but not limited to issuing banks, member banks, and acquiring banks, to restrain competition in violation of the Antitrust Act and the Unfair Practices Act, to engage in unfair competition, and to unjustly enrich Defendants Visa and MasterCard at the expense of the State of New Mexico and its citizens.

159. The State was damaged and continues to suffer damage as a result of the specific acts carried out by Defendants Visa and MasterCard pursuant to the conspiracy.

COUNT XV

Declaratory and Injunctive Relief (All Defendants)

160. The State re-alleges and incorporates by reference all prior paragraphs.

161. An actual controversy exists, such that jurisdiction over Defendants is proper. The State and the State's economy has been injured and will continue to be injured in its business and property as a result of Defendants' continuing conduct in violation of the Antitrust Act, NMSA § 57-1-1 *et seq.*, the Unfair Trade Practices Act, NMSA § 57-12-1, *et seq.*, and the common law as described in this Complaint.

162. The State requests a declaratory judgment, pursuant to NMRA Rule 1-057, NMSA § 44-6-1 *et seq.*, NMSA § 57-1-1 *et seq.*, and NMSA § 57-12-1, *et seq.*, that Defendants' conduct constitutes unlawful price fixing and other unreasonable restraints of trade, antitrust violations, unfair trade practices, and violations of the common law.

163. The State further requests that the Court enjoin and restrain Defendants' wrongful conduct, alleged herein, pursuant to NMSA §§ 57-1-3(A), 57-1-8, and 57-12-8.

PRAYER FOR RELIEF

WHEREFORE, the State of New Mexico, by and through its Attorney General, respectfully prays that this Court grant the following relief:

A. Entering Judgment in favor of the State in a final order against each Defendant, finding that Defendants' contracts, conspiracies, or combinations are a restraint of trade or commerce and unfair practice in violation of the Antitrust Act and the Unfair Practices Act, and an unlawful combination, trust, agreement, understanding, or concert of action in violation of the Antitrust Act, and as violating common law; and

B. Enjoining Defendants and their agents, officers, directors, and all other persons acting in concert or participation with them, from engaging in further restraints

of trade or commerce, unfair or deceptive trade practices and unconscionable conduct in violation of New Mexico law and ordering temporary, preliminary or permanent injunctions; and

C. Declaring that Defendants' competitive restraints, as described in this Complaint, constitute a separate violation of New Mexico law; and

D. Imposing the maximum civil penalties allowable of up to $5,000 for each violation of the Unfair Practices Act and up to $250,000 per Defendant under the Antitrust Act; and

E. Awarding the State all actual and treble damages, as provided by law; and

F. Awarding restitution or disgorgement of ill-gotten profits obtained by Defendants as a result of their acts of unfair competition and acts of unjust enrichment, or any violation of the state antitrust and consumer protection laws, as permitted by law, including NMSA §§ 57-1-8, 57-12-8; and

G. Awarding pre- and post-judgment interest, and that the interest be awarded at the highest legal rate allowable by law; and

H. Granting recovery of the costs of this suit, including reasonable attorneys' fees as provided by law; and

I. Granting all such other, further, and different relief as the case may require and as the Court may deem just and proper under the circumstances.

Dated: December 23, 2014

Respectfully submitted,

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