

Robert L. Begleiter (RB-7052)
Stacey Anne Mahoney (SM-5425)
Jeffrey I. Shinder (JS-5719)
CONSTANTINE & PARTNERS, P.C.
477 Madison Avenue - 11th Floor
New York, NY 10022
(212) 350-2700

Lloyd Constantine (LC-8465)
Mitchell C. Shapiro (MS-1019)
Gordon Schnell (GS-2567)

Amy N. Roth (AR-4534)

Attorneys for Plaintiffs Wal-Mart Stores, Inc., The Limited, Inc., Sears Roebuck and Company, Inc., Safeway Inc., Circuit City Stores, Inc., and All Similarly Situated Persons, The International Mass Retail Association, The National Retail Federation and The Food Marketing Institute, and Lead Counsel for The Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE :

VISA CHECK/MASTERMONEY ANTITRUST
LITIGATION :

-----X
This Document Relates To :
All Actions: :

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WAL-MART STORES, INC., THE LIMITED, INC., :
SEARS ROEBUCK AND COMPANY, INC., SAFEWAY :
INC. and CIRCUIT CITY STORES, INC., on Behalf :
of Themselves and All Similarly Situated Persons, :
THE INTERNATIONAL MASS RETAIL :
ASSOCIATION, THE NATIONAL RETAIL :
FEDERATION and THE FOOD MARKETING INSTITUTE, :

Plaintiffs, :

v. :

VISA U.S.A. INC. and :
MASTERCARD INTERNATIONAL, INC., :

Defendants. :

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BERNIE'S ARMY-NAVY STORE, AUTO-LAB OF :
FARMINGTON HILLS, and BURLINGTON COAT :
FACTORY WAREHOUSE CORPORATION, On Behalf :
Of Themselves And All Others Similarly Situated, :

Plaintiffs, :

v. :

VISA U.S.A. INC., and MASTERCARD :
INTERNATIONAL, INC., :

Defendants, :

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SPORTSTOP, INC., On Behalf Of Itself And All Others :
Similarly Situated, :

**SECOND AMENDED
CONSOLIDATED CLASS
ACTION COMPLAINT
AND JURY DEMAND**

MASTER FILE NO.
CV-96-5238
(Gleeson, J.) (Mann, M.J.)

CV-96-5238

CV-96-5365

1999 MAY 25 PM 8:07
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Plaintiff,	:	CV-97-0322
v.	:	
VISA U.S.A. INC. and MASTERCARD INTERNATIONAL, INC.,	:	
Defendants.	:	
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PAYLESS SHOESOURCE, INC., On Behalf Of Itself And All Others Similarly Situated,	:	
Plaintiff,	:	CV-97-3027
v.	:	
VISA U.S.A. INC. and MASTERCARD INTERNATIONAL, INC.,	:	
Defendants.	:	
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SHOES, ETC., INC., d/b/a ARNOLD'S SHOES, On Behalf Of Itself And All Others Similarly Situated,	:	
Plaintiff,	:	CV-97-0905
v.	:	
VISA U.S.A. INC. and MASTERCARD INTERNATIONAL, INC.,	:	
Defendants.	:	
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THE COFFEE STOP, INC., d/b/a Torreo Coffee & Tea Company, On Behalf Of Itself And All Others Similarly Situated,	:	
Plaintiff,	:	CV-97-1488
v.	:	
VISA U.S.A. INC. and MASTERCARD INTERNATIONAL, INC.,	:	
Defendants.	:	
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UCC KWIK DOC, INC., f/k/a UCC EXPRESS, INC. On Behalf Of Itself And All Others Similarly Situated,	:	
Plaintiff,	:	CV-97-0676
v.	:	

VISA U.S.A. INC. and MASTERCARD INTERNATIONAL, INC.,	:	
	:	
Defendants.	:	
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COMPUTER SUPPLIES UNLIMITED, On Behalf Of Itself And All Others Similarly Situated,	:	
	:	
Plaintiff,	:	CV-97-1118
	:	
v.	:	
	:	
VISA U.S.A. INC. and MASTERCARD INTERNATIONAL, INC.,	:	
	:	
Defendants.	:	
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DENTURE SPECIALIST, INC. and GENEVA WHITE D.M.D. , P.A. On Behalf Of Itself And All Others Similarly Situated,	:	
	:	
Plaintiff,	:	CV-97-8123
	:	
v.	:	
	:	
VISA U.S.A. INC. and MASTERCARD INTERNATIONAL, INC.,	:	
	:	
Defendants.	:	
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SHARK 3 AUDIO INC. d/b/a Bondys, On Behalf Of Itself And All Others Similarly Situated,	:	
	:	
Plaintiff,	:	CV-97-2741
	:	
v.	:	
	:	
VISA U.S.A. INC. and MASTERCARD INTERNATIONAL, INC.,	:	
	:	
Defendants.	:	
-----X		
53, INC., On Behalf Of Itself And All Others Similarly Situated,	:	
	:	
Plaintiff,	:	CV-97-2799
	:	
v.	:	
	:	
VISA U.S.A. INC. and MASTERCARD INTERNATIONAL, INC.,	:	
	:	
Defendants.	:	
-----X		
SCRUB SHOP, INC., On Behalf Of	:	

Itself And All Others Similarly Situated,	:	
	:	
Plaintiff,	:	CV-97-3410
	:	
v.	:	
	:	
VISA U.S.A. INC. and MASTERCARD	:	
INTERNATIONAL, INC.,	:	
	:	
Defendants.	:	

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Plaintiffs Wal-Mart Stores, Inc. ("Wal-Mart"), The Limited, Inc. ("The Limited"), Sears Roebuck and Company, Inc. ("Sears"), Safeway Inc. ("Safeway"), Circuit City Stores, Inc. ("Circuit City"), Burlington Coat Factory Warehouse Corporation ("Burlington"), Auto-Lab of Farmington Hills ("Auto-Lab"), Bernie's Army-Navy Store ("Bernie's"), Sportstop, Inc. ("Sportstop"), Payless Shoesource, Inc. ("Payless"), Shoes, Etc., Inc., d/b/a Arnold's Shoes ("Shoes, Etc."), The Coffee Stop, Inc., d/b/a Torreo Coffee & Tea ("Coffee Stop"), UCC Kwik Doc, Inc. f/k/a UCC Express, Inc. ("UCC Kwik Doc"), Computer Supplies Unlimited ("Computer Supplies Unlimited"), Denture Specialist, Inc. ("Denture Specialist"), Geneva White D.M.D. , P.A. ("Geneva White"), Shark 3 Audio Inc. d/b/a Bondy's ("Bondys"), 53, Inc. ("53 Inc."), and Scrub Shop, Inc. ("Scrub Shop") (collectively the "Retailer Plaintiffs"), The International Mass Retail Association ("IMRA"), The National Retail Federation ("NRF") and The Food Marketing Institute ("FMI") (collectively the "Trade Association Plaintiffs"), by their undersigned attorneys herein, allege for their complaint against Visa U.S.A. Inc. ("Visa") and MasterCard International, Inc. ("MasterCard"), upon knowledge with respect to their own acts and upon information and belief with respect to all other matters, as follows:

I.
INTRODUCTION

1. The Retailer Plaintiffs own and operate thousands of retail stores throughout the United States. Similar to more than three million United States retail establishments, the Retailer Plaintiffs accept Visa and MasterCard credit cards as a form of payment along with cash, checks, travelers checks and other plastic credit, debit and "travel and entertainment" cards.

2. The Retailer Plaintiffs' acceptance of each of these forms of payment is voluntary, with the exception of two. They are forced to accept two debit cards, the so-called "*Visa Check*" and "*MasterMoney*" cards, issued by members of the Visa and MasterCard bankcard associations. The Retailer Plaintiffs are forced to accept these debit cards as a condition of being able to accept the ubiquitous and dominant Visa and MasterCard credit cards. Without these credit cards, neither they nor virtually any retailer can operate successfully.

3. The Retailer Plaintiffs, on behalf of themselves and a national class of retailers, who accept Visa and MasterCard credit cards and are therefore forced to accept *Visa Check* and *MasterMoney*, and NRF, IMRA and FMI, three trade associations of retailers whose members and affiliates have annual sales of more than \$2 trillion, challenge these tying arrangements under the antitrust laws. The tying arrangements force members of the class to accept *Visa Check* and *MasterMoney* cards. These arrangements force retailers to pay supra-competitive, exorbitant and fixed prices for acceptance of these involuntary payment systems and raise the prices paid by all of their retail customers. The arrangements also limit retailers' ability to accept and receive the forms of payment which they deem cost effective and efficient for themselves and their customers.

4. Visa and MasterCard's longstanding and coercive practice of tying *Visa Check* and *MasterMoney* to Visa and MasterCard credit cards has now become particularly costly as Visa and MasterCard have embarked upon aggressive national advertising campaigns for the *Visa Check* and *MasterMoney* cards. The tying arrangements have resulted in the rapidly escalating use of the *Visa Check* and *MasterMoney* debit cards and have forced the Retailer Plaintiffs and class members to accept them and pay fees which are supra-competitive, exorbitant and fixed. The tying arrangements are alleged to violate Sections 1 and 2 of the Sherman Act.

5. All of the Plaintiffs seek declaratory and injunctive relief, and the Retailer Plaintiffs also seek damages to redress these violations of federal and state law.

II.
JURISDICTION AND VENUE

6. This complaint is filed under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§1 and 2, and for damages under Section 4 of the Clayton Act, 15 U.S.C. § 15. This Court has jurisdiction of the federal antitrust law claims alleged herein under 28 U.S.C. §§ 1331, 1337, 2201 and 2202.

7. Defendants transact business and are found in this District. In particular, tens of thousands of retail establishments located in this District accept Visa and MasterCard credit cards and are forced to accept *Visa Check* and *MasterMoney* plastic debit cards. Hundreds of bank members of Visa and/or MasterCard located in this District issue and/or "acquire" retail merchant transactions for Visa and/or MasterCard credit cards and *Visa Check* and *MasterMoney* debit cards. The interstate trade and commerce involved and affected by the alleged violations of the antitrust laws was and is carried on in part within this District. The acts complained of have had, and will have, substantial anticompetitive effects in this District. Plaintiffs Wal-Mart, The Limited, Sears, Circuit City, and Burlington, Payless, Bondy's, 53, Inc. and countless retailers who are members of the putative class own and operate retail stores in this District. Venue in this District is proper under 28 U.S.C. § 1391 and 15 U.S.C. §§ 15, 22 and 26.

III.
DEFINITIONS

8. As used in this Complaint, the following terms are defined as:

- a. "Automated Teller Machine" ("ATM") is a machine used for banking services including withdrawals from deposit accounts and/or cash advances against a line of credit, after access by the account holder using either a debit card or credit card.
- b. "Point of Sale" ("POS") means a point of sale location for goods or services such as a retail store, hotel, airline ticket counter, gasoline service station, etc.

- c. "Electronic Funds Transfer" ("EFT") is a payment systems industry term used to describe a broad range of technologies involving the electronic transfer of funds among financial institutions, typically using computers and telecommunications.
- d. "Credit Card" is an access device, usually a plastic card, enabling the holder to (i) effect transactions on credit for goods and services purchased, which are paid on behalf of the holder by the issuer of such device or (ii) obtain cash with credit extended by the issuer. Examples of credit cards are the Visa and MasterCard credit cards issued by members of the defendant bank card associations, as well as the *Discover*, *Bravo* and *Private Issue* cards issued by Morgan Stanley, Dean Witter & Co. and the *Optima* cards issued by American Express.
- e. "Charge Card" or "Travel and Entertainment Card" or "T&E Card" is an access device, usually a plastic card, enabling the holder to purchase goods and services on credit to be paid on behalf of the holder by the issuer of such device. Typically, the contractual terms of such cards require that payment from the holder to the issuer be made in full each month, for all payments made on behalf of the cardholder by the issuer during the preceding month. The issuer does not extend credit to the holder beyond the date of the monthly statement, nor does it impose interest charges on the balance due except as a penalty for late payment. Examples of T&E cards are the American Express, Green, Gold, and Platinum cards as well as the *Diners Club* and *Carte Blanche* cards issued by Citibank.
- f. "Debit Card" is an access device, usually a plastic card, enabling the holder, among other things, to effect a cash withdrawal from the holder's

bank account at an ATM or make a purchase at a point of sale which is debited against one or more of the holder's bank accounts.

- g. "ATM Card" is an access device enabling the holder, among other things, to obtain cash at an ATM which is debited against the holder's deposit account or line of credit. An ATM Card is a debit card used at ATMs.
- h. "POS Debit Card" is a debit card used at retail points of sale to purchase goods and services. The *Visa Check* and *MasterMoney* cards are POS debit cards. A bank or other financial institution may issue a single plastic card which will function as both a POS debit card and an ATM card.
- i. "Plastic Card" means a device which enables the holder to perform the functions or obtain the access provided by one or more of the cards defined above, *i.e.*, credit cards, charge cards, T&E cards and debit cards (ATM and/or POS).
- j. "Bug" means the imprint of a proprietary trademark or logo on a plastic card denoting that the card may be used to perform the functions or obtain the access associated with that specific logo or trademark, in addition to the functions available from the issuer of the card. A bank-issued ATM card may contain the bugs of several ATM networks, such as *Plus*, *Cirrus*, *NYCE*, *MAC* and *MOST*, which will permit the holder to access funds at any ATM associated with those networks. Certain ATM networks, such as *NYCE* and *MAC*, also operate POS debit programs. An ATM card bearing the bug of such a network will allow the holder to use her ATM card as a POS debit card at retail stores which accept the debit cards of such network.
- k. "On-line POS debit transaction" means a debit transaction in which (similar to a cash withdrawal from an ATM) the bank that issued the

cardholder's on-line debit card verifies that there are sufficient funds in the cardholder's account to cover the amount of the retail purchase and electronically "puts a hold" on those funds in her account (reducing the amount available) during the retail transaction. The funds are then typically removed from the cardholder's account and deposited into the retailer's account in one day or less. *NYCE, MAC, MOST, Honor, Pulse, Shazam, Star, Maestro* and *Interlink* are among the many on-line debit card networks.

1. "Off-line POS debit transaction" means a debit transaction in which, contrasting with an on-line transaction, the debit card issuing bank may or may not verify that there are sufficient funds in the cardholder's account to cover the amount of the retail purchase and may or may not put a hold on such funds during the course of the retail transaction. With an off-line transaction, funds are typically moved electronically from the cardholder's bank account to the retailer's account one to seven days after the date of the sales transaction. *Visa Check* and *MasterMoney* are off-line POS debit cards.
- m. "Bank card issuing institution" means a bank or other financial institution member of Visa and/or MasterCard that issues Visa and/or MasterCard branded plastic cards ("bankcards") to consumers for their use as payment systems and access devices.
- n. "Bank card acquiring institution" or "bank card merchant institution" means a bank or other financial institution member of Visa and/or MasterCard that establishes agreements with retailers whereby such retailers will accept Visa and/or MasterCard branded plastic cards as payment for the goods and services which they sell.

- o. "Interchange fee" means a fee that the bankcard acquiring institution pays to the card issuing institution for each retail transaction where the issuer's card is used as a payment device at one of the acquirer's retail store accounts. The following example illustrates how the Visa and MasterCard interchange fees work. Bank A issues a Visa credit card to Consumer X, who purchases a garment for \$100 at Store Y, which was "acquired" for Visa by Bank B. Visa rules mandate that Bank B must pay Bank A an interchange fee of 1.25% of the amount of the transaction, *i.e.*, \$1.25. Bank B will charge Store Y a "discount fee" higher than \$1.25 in order to recover the mandated interchange fee and other fees that Visa rules mandate Bank B to pay Visa on each and every Visa credit card (and debit card) transaction and to earn a profit for itself. Thus, Bank B may charge a discount fee of 1.60% of the transaction amount (or \$1.60) to Store Y. When Store Y presents Consumer X's \$100 Visa transaction to Bank B, the bank will credit Store Y's account for \$98.40, send the Visa mandated \$1.25 interchange fee to Bank A and retain the \$.35 balance of the "discount fee." (When the same bank is both the issuing and acquiring institution, it retains the entire discount fee. Therefore, if Bank B both had issued the Visa credit card to Consumer X and had acquired Store Y for the Visa system, it would retain the entire \$1.60 discount fee, including the \$1.25 interchange fee. Such transactions are referred to in the industry as "on us" transactions.) Thereafter, both the issuing and acquiring institutions of both Visa and MasterCard must pay Visa or MasterCard fees for each retail transaction in which they are either the issuing or acquiring institution. In the foregoing example, Bank A pays part of its \$1.25 and Bank B part of its \$.35 to Visa. Visa and MasterCard thus

receive part of the interchange and discount fees from the issuing and acquiring institutions. Visa and MasterCard interchange fees and other Visa and MasterCard mandated fees are precisely passed along to the retailer, along with the balance of the discount fee, by the acquiring institution and the interchange is then paid by the "acquirer" to the "issuer." Then the acquirer and issuer both pay Visa or MasterCard its share. In other networks, interchange fees may be paid in the other direction, that is, from issuers to acquirers, as is the case in ATM and certain on-line POS debit networks.

- p. "Discount fee" means the fee charged by Visa and MasterCard acquiring institutions to their retail store clients for acquiring Visa and MasterCard transactions as described and discussed in the above definition of "interchange fee."

IV. THE PARTIES

9. Plaintiff Wal-Mart is a Delaware corporation with its principal place of business in Bentonville, Arkansas. Wal-Mart, with annual sales of approximately \$105 billion, owns and operates thousands of Wal-Mart retail stores throughout the United States, including this District.

10. Plaintiff The Limited is a Delaware Corporation with its principal place of business in Columbus, Ohio. The Limited is the nation's premier specialty retailer, with sales of more than \$8 billion annually through over 5,000 stores under the following brands: Express, Lerner New York, Lane Bryant, The Limited stores, Victoria's Secret, Structure, The Limited Too, Henri Bendel, Bath & Body Works and Galyan's. The Limited also distributes apparel internationally through Victoria's Secret Catalogue.

11. Plaintiff Sears is a New York corporation with its principal place of business in Hoffman Estates, Illinois. Sears owns and operates thousands of retail stores throughout the United States, including this District. Sears' domestic annual sales are approximately \$23 billion.

12. Plaintiff Safeway is a Delaware corporation with its principal place of business in Pleasanton, California. Safeway, founded in 1926, operated more than 1000 stores at the end of 1996. Safeway's stores offer consumers a wide selection of both food and general merchandise and feature a variety of specialty departments, such as bakery, deli and floral. Safeway's stores, located throughout the United States, had sales of approximately \$17 billion in 1996 and held the number one or number two Market Share position in each of its nine geographical operating areas. In support of its retail operations, Safeway has an extensive network of distribution, manufacturing and food processing facilities.

13. Plaintiff Circuit City is a Virginia corporation with its principal place of business in Richmond, Virginia. Circuit City is the nation's largest retailer of brand-name consumer electronics and major appliances and a leading retailer of personal computers and music software. Circuit City operates 444 superstores, 45 mall-based Circuit City Express stores, and five consumer electronics-only stores. These stores are located throughout the United States, including this district.

14. Plaintiff Bernie's is a sole proprietorship with its principal place of business in Vineland, New Jersey.

15. Plaintiff Auto-Lab is a sole proprietorship with its principal place of business in Farmington Hills, Michigan.

16. Plaintiff Burlington is a Delaware corporation with its principal place of business in Burlington, New Jersey. Burlington, with annual sales of approximately \$1.7 billion, wholly owns hundreds of subsidiaries which own and operate Burlington Coat Factory, DeCelle, Cohoes, Totally 4 Kids, Luxury Linens and Baby Depot retail stores throughout the United States, including this District.

17. Plaintiff Sportstop owns and operates a health club and gym in Birmingham, Michigan.

17(a) Plaintiff Shoes, Etc. is a Pennsylvania corporation which owns and operates a retail store in Jenkintown, Pennsylvania.

17(b) Plaintiff Payless is a national retailer of family footwear with stores located throughout the United States.

17(c) Plaintiff Coffee Stop is a coffee, tea and food establishment located in Philadelphia, Pennsylvania.

17(d) Plaintiff UCC Kwik Doc develops computer software which it sells to retail customers and is located in New York, New York.

17(e) Plaintiff Computer Supplies Unlimited sells computer supplies, hardware and peripherals to retail customers and is located in San Jose, California.

17(f) Plaintiff Denture Specialist is a dental office located in West Palm Beach, Florida.

17(g) Plaintiff Geneva White operates a dental office located in West Palm Beach, Florida.

17(h) Plaintiff Bondys is a sole proprietorship which sells pre-recorded audio tapes and compact disks and has its principal place of business in New York, New York.

17(i) Plaintiff 53, Inc. owns and operates a restaurant located in New York, New York.

17(j) Plaintiff Scrub Shop is a Pennsylvania corporation which owns and operates a retail store in Philadelphia, Pennsylvania.

18. Plaintiff IMRA is a New York not-for-profit corporation with its principal place of business in Arlington, Virginia. IMRA is a trade association of mass retailers whose members operate more than 62,000 stores employing more than 2 million people in the United States, with annual sales of approximately \$294 billion.

19. IMRA's Retail-Members ("IMRA members") account for the overwhelming majority of sales by the nation's major mass merchandisers, such as discount department stores,

specialty discount stores, home centers, catalogue showrooms, membership warehouse clubs, deep discount drugstores, and off-price stores.

20. IMRA's purpose and mission is to protect, promote, foster and advance the interests of its members, the mass retailing business and consumers who shop at IMRA members' retail stores. IMRA is empowered by its members and its Bylaws, through the action of its Board of Directors, to engage in lawful acts necessary, suitable and useful to the attainment of IMRA's mission.

21. Having found that IMRA's members are suffering injury, and threatened injury, to their business and property as a result of the challenged tying arrangements, in January 1997, IMRA's Board of Directors voted to join in this action as a Plaintiff and to seek declaratory and injunctive relief under the antitrust laws on behalf of IMRA members who accept Visa and/or MasterCard credit cards and are therefore forced to accept *Visa Check* and/or *MasterMoney* debit cards, because of the challenged tying arrangements.

22. Most of the 62,000 stores operated by IMRA members accept Visa and/or MasterCard credit cards and therefore are forced and coerced to receive *Visa Check* and *MasterMoney* debit cards because of the tying arrangements.

23. IMRA's members operate retail businesses which offer low prices and deep discounts to retail consumers. IMRA members seek to eliminate excess and wasteful expense from the merchandise they sell through automation and the employment and purchase of the most efficient and cost effective retail systems, including the most efficient retail payment systems.

24. IMRA's retailer-members operate on very low profit margins, relying upon high volume for profitability. IMRA and its Board of Directors allege that the challenged tying arrangements illegally, anticompetitively and unfairly raise significantly the price of doing business for IMRA members and the prices all consumers must pay for the merchandise sold by IMRA members.

25. Plaintiff NRF is the world's largest retail trade association with membership that includes the leading department, specialty and independent stores as well as discount and mass merchandise retailers and 32 national and 50 state associations. Directly, and through NRF's state and national associations, NRF represents more than 50,000 retailers.

26. NRF's purpose and mission are to foster and advance the interests of retailers. NRF is lawfully empowered, and acts through its Board of Directors, to engage in activities which will advance the interests of retailers represented by NRF.

27. The NRF has determined that retailers represented by NRF are suffering injury and threatened injury to their business and property as a result of the challenged tying arrangements. Therefore, in January 1997, NRF's Board of Directors voted to participate in this action and to seek declaratory and injunctive relief under the antitrust laws on behalf of retailers represented by NRF who accept Visa and/or MasterCard credit cards and are therefore forced to accept *Visa Check* and/or *MasterMoney* debit cards, because of the challenged tying arrangements.

28. The overwhelming majority of retailers represented by NRF accept Visa and/or MasterCard credit cards and therefore are forced and coerced to receive *Visa Check* and/or *MasterMoney* transactions, because of the tying arrangements.

29. NRF alleges that the challenged tying arrangements illegally, anticompetitively and unfairly raise significantly the cost of doing business for retailers represented by NRF and the prices all consumers must pay for the merchandise sold by these retailers.

29(a) Plaintiff FMI is a non-profit association incorporated with its principal place of business in the District of Columbia. FMI conducts programs in research, education, industry relations and public affairs on behalf of its 1,500 food retailer and wholesaler members. FMI's United States members operate approximately 21,000 retail food stores with a combined annual sales volume of \$220 billion -- more than half of all the grocery store sales in the United States. FMI's retail membership is composed of large multiple store chains, small regional firms and independent supermarkets.

29(b) FMI's purpose and mission is to foster and advance the interest of its members and their customers. FMI is lawfully empowered, and acts through its Board of Directors, to engage in activities which will advance the interests of retailers who are members of FMI.

29(c) FMI has determined that the food retailers who are members of FMI are suffering injury and threatened injury to their business and property as a result of the tying arrangements and associated business activity described and challenged in the complaint, in the *Wal-Mart Action* and in *In Re Visa Check*. Therefore, in 1997, the Executive Committee of FMI's Board of Directors voted to file this complaint and seek consolidation with the *Wal-Mart Action* and *In Re Visa Check* and to seek declaratory and injunctive relief under the antitrust laws on behalf of retailers represented by FMI who accept Visa and/or MasterCard credit cards and therefore are forced to accept *Visa Check* and/or *MasterMoney* debit cards.

29(d) Most of the approximately 21,000 stores operated by food retailers who are members of FMI accept Visa and/or MasterCard credit cards and therefore are forced and coerced to accept *Visa Check* and/or *MasterMoney* transactions, because of the tying arrangements.

29(e) FMI alleges that the challenged tying arrangements illegally, anticompetitively and unfairly raise significantly the cost of doing business for food retailers that are members of FMI and the prices all consumers must pay for the groceries and other merchandise sold by these retailers.

30. Defendant Visa, a Delaware corporation, is a national bank card association whose members include more than 6,000 banks. Visa's principal place of business is San Francisco, California. Visa is doing business and transacts business in this judicial district.

31. Defendant MasterCard, a Delaware corporation, is also a national bank card association whose members include more than 6,000 banks. MasterCard's principal place of business is Purchase, New York. MasterCard is doing business and transacts business within this judicial district.

V.
CO-CONSPIRATORS

32. Various persons, firms, corporations, organizations and other business entities, some unknown and others known, have participated as co-conspirators in the violations alleged and have performed acts in furtherance of the conspiracies. Co-conspirators whose identities are presently known include, but are not limited to, the following: Approximately 4,400 banks that have issued Visa and/or MasterCard credit cards and also issued *Visa Check* and/or *MasterMoney* debit cards are co-conspirators. Certain banks, that are members of the boards of directors of Visa or MasterCard, adopted and agreed to impose the challenged tying arrangements upon retailers. These banks are co-conspirators. Approximately 1,000 banks, that are acquiring members of *both* the Visa and MasterCard associations and have contemporaneously agreed with Visa to require merchants to accept *Visa Check* as a condition of their ability to accept the Visa credit card while agreeing with MasterCard to require merchants to accept *MasterMoney* as a condition of their ability to accept MasterCard credit cards, are co-conspirators.

VI.
CLASS ACTION ALLEGATIONS

33. The Retailer Plaintiffs bring this action as a class action under Rule 23(b)(1), (2) and (3), Fed. R. Civ. P., for violations of, *inter alia*, 15 U.S.C. §§ 1 and 2 and New York's Donnelly Act. The class is comprised of all persons and business entities who have accepted Visa and/or MasterCard credit cards and therefore are required to accept *Visa Check* and/or *MasterMoney* debit cards under the challenged tying arrangements, during the fullest period permitted by the applicable statutes of limitations (the "Class"). The Class does not include the named Defendants, their directors, officers or members of their families.

34. The tying arrangements have harmed and continue to harm the interests of the vast majority of retailers throughout the United States. The members of the Class are so numerous that joinder of all members is impracticable.

35. Defendants' relationships with the Class members and Defendants' enforcement of the tying arrangements with respect to Class members have been substantially uniform. Questions of law and fact will predominately be common to the Class.

36. The Retailer Plaintiffs have no conflicts of interest with Class members and have retained counsel competent and experienced in federal and state antitrust litigation. The Retailer Plaintiffs and their counsel will fairly and adequately represent the interests of the Class.

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

38. This action is superior to any other method for the fair and efficient adjudication of this legal dispute, as joinder of all members is not only impracticable, but impossible. The damages suffered by certain members of the Class are small in relation to the expense and burden of individual litigation and therefore it is highly impractical for such Class members to attempt redress of the wrongful tying arrangements individually. There will be no extraordinary difficulty in the management of this Class action. Common questions of law and fact exist with respect to all Class members and predominate over any questions solely affecting individual members. Among the questions of law and fact common to the Class, many of which cannot be seriously disputed, are the following:

- (a) Whether Defendants and their co-conspirators tie the acceptance of *Visa Check* and *MasterMoney* to retailers' acceptance of Visa and MasterCard credit cards?
- (b) Whether Defendants' tying arrangements are *per se* unlawful because Visa, MasterCard and their dual members possess and exercise market power, economic power sufficient to make forcing probable, or monopoly power in the markets alleged in this complaint?

- (c) The amount of interchange fees and other Visa/MasterCard mandated fees and assessments that members of the Class have been forced to pay for *Visa Check* and *MasterMoney* transactions, which they neither sought nor willingly accepted?

VII.
FACTUAL ALLEGATIONS

39. Visa and MasterCard (collectively, the "Associations") are national bank card associations whose members include banks, regional banking associations and other financial institutions. Visa and MasterCard were established by their members to develop, promote and operate national bank credit card networks.

40. Visa and MasterCard evolved from regional and local credit card systems formed during the 1960's.

41. Visa's predecessor, BankAmericard, was the local credit card program of the Bank of America, based in California. In 1970, the program was introduced throughout the United States under the name, National Bank Americard, Inc. ("NBI"). In 1977, NBI changed its name to Visa.

42. MasterCard is the successor to MasterCharge, which was created in 1967 when the Interbank Card Association of New York banks merged with the Western States Bankcard Association.

Duality

43. Under their original rules, the Visa and MasterCard Associations were distinct. Members of Visa could not issue MasterCard credit cards to their customers. In 1976, Visa's rules were amended to permit "Duality." Thereafter, banks could be members of both Visa and MasterCard and issue both brands of plastic credit cards. Banks could also "acquire" retail stores for both Visa and MasterCard. Every major bank in the United States is a member of both Visa and MasterCard, and there is currently more than 95% overlap in the Associations' memberships.

Furthermore, virtually every retail store that accepts Visa credit cards as a form of payment also accepts MasterCard credit cards. There are very few exceptions to Duality among the approximately 6,000 financial institutions that issue Visa and/or MasterCard credit cards, and the approximately 1000 financial institutions that acquire retail stores for Visa and/or MasterCard.

44. Duality accelerated two trends that have characterized and dominated the development of the Associations. First, because their memberships are virtually identical, the Associations coordinate much of their activity through joint programs, consciously parallel activity and tacit collusion. Duality also facilitated a high degree of uniformity in interest rates and fees charged by the Associations' owner-members to consumer plastic cardholders, and discount rates charged by the Associations' owner-members to merchants accepting Visa and MasterCard plastic cards.

45. The trend towards uniformity in pricing among dual Visa/MasterCard members has also been facilitated and exacerbated because Visa bank members collectively fix the Visa interchange fees and contemporaneously, acting as MasterCard members, collectively fix the MasterCard interchange fees. These price fixed interchange fees are the bulk of the final "discount fees" charged to retailers who accept Visa and MasterCard plastic cards.

46. Visa bank members also jointly adopted the arrangement tying *Visa Check* to Visa Credit and contemporaneously adopted the arrangement tying *MasterMoney* to the MasterCard credit card. These collective acts are all manifestations of Duality and the parallel and interdependent behavior it has spawned.

Visa/MasterCard, Dominant In Credit Cards, Turn To POS Debit Cards

47. By 1979, Visa and MasterCard and their dual members dominated the credit card industry. Their share of the national market for general purpose credit cards (not including T&E cards and not including single purpose proprietary cards issued by individual merchants such as department stores) was already above 90%. Their share of a market defined as general purpose

credit cards and T&E cards (such as American Express, *Diners Club* and *Carte Blanche*, which do not offer revolving lines of credit) was already above 70%. It is now above 75%.

48. By this time, credit cards had become a necessity for retailers. Few if any stores could remain viable without accepting credit cards and, in particular, the dominant Visa and MasterCard credit cards.

49. Visa/MasterCard domination of the credit card market posed formidable barriers to new entrants, and these barriers were raised even higher by collective conduct aimed at suppressing new competition and making entry as difficult as possible.

50. Visa members collectively adopted a rule barring their members from issuing any plastic cards competitive with Visa cards. This rule exempted MasterCard, permitting Visa's dual members to continue issuing MasterCard plastic cards. Visa members then turned around and, acting as MasterCard members, adopted the same non-competition rule. The effect of these rules was to deprive existing and new competitors of a marketing outlet at the 6,000 largest and most appropriate vendors of their products, *i.e.*, the dual bank members of Visa and MasterCard. The actions were tantamount to requiring a manufacturer of a product primarily sold in department stores to build 6,000 department store chains. These collective actions increased considerably the "sunk costs" required to enter the market.

51. By depriving new entrants of a means for efficient and speedy card issuance, the Associations also dissuaded stores from accepting competing credit cards, since retailer acceptance of a card is premised on widespread issuance of that card.

52. When a competitor persisted and entered the market despite the barriers posed by the Associations' dominance and their pre-emptive exclusionary conduct, the Associations resorted to overt predation.

53. In 1986, when Sears introduced the *Discover* card, the first national general-purpose credit card to enter the market in a generation, Visa and its members organized a boycott of *Discover* card processing. Sears responded by establishing its own state-of-the-art and

lower-priced processing services and offering these to retailers for all of their plastic card transactions. Visa then prohibited any Visa member from allowing Sears to acquire retailers for Visa, adding expense and complexity to a retailer's choice to consolidate its plastic card processing business with Sears. (The *Discover Card* is now issued by Morgan Stanley, Dean Witter & Co., which is neither owned nor affiliated with Sears.)

54. In 1987, when American Express entered the revolving credit card market with the *Optima* card, Visa's Chief Executive Officer sent a telegram to 5,500 bank members of both Visa and MasterCard calling upon them to boycott American Express and its products, such as American Express travelers checks.

55. Once Visa/MasterCard and their dual members consolidated their control of the credit card market, they began to pursue other payment systems as sources of revenue. These included travelers checks, ATM networks (Visa and MasterCard acquired the two largest national ATM networks: Plus and Cirrus) and POS debit cards.

56. Point of sale ("POS") debit cards, which are distinct from credit cards, are plastic cards which access a cardholder's depository bank account(s). If a retailer accepts a particular POS debit card, the money for a retail purchase is electronically transferred from the cardholder's bank account into the retailer's bank account. In an "on-line" POS debit card transaction, the cardholder's account is debited and the retailer's account is credited in one day or less. Popular on-line systems in this judicial district include *NYCE*, *MAC*, *MOST*, Visa's *Interlink* and MasterCard's *Maestro*. Popular on-line POS debit networks in other regions include *Pulse*, *Honor*, *Star* and *Shazam*. In so-called "off-line" debit transactions, the electronic transfer of money from the consumer's bank account to the retailer's account typically occurs one to seven days after the sales transaction. Off-line POS debit transactions are less secure than on-line transactions for retailers and consumers alike. Among the greater risks associated with an off-line transaction is the use of a cardholder signature rather than an alpha-numeric "PIN" (personal

identification number), which results in greater fraud losses for both retailers and consumers.

Visa Check and *MasterMoney* are "off-line" POS debit cards.

57. A retailer's decision to accept or refuse a particular POS debit card or any other form of payment ("payment system") is based upon a combination of factors, including the safety, convenience and cost of accepting each payment system. Retailers also consider whether acceptance of a particular payment system will facilitate sale transactions that might not otherwise occur. For example, acceptance of plastic cards with revolving lines of credit such as Visa/MasterCard credit, *Discover* and *Optima* facilitate purchases by consumers who want to buy something, but will only do so if they can borrow money and pay over time. Such "revolving" credit cards, as well as T&E cards, also facilitate "convenience" transactions by consumers who will only make a purchase if they can borrow money for a short time and pay within the "grace" periods permitted by T&E and revolving credit line cards.

58. In order to capture these revolving credit and convenience transactions, which might not otherwise occur, the Retailer Plaintiffs and the Class will pay the discount fees associated with credit and T&E cards. For retailers other than large supermarkets, these discount fees currently range from approximately 1.4% to 4.5% of the transaction amount. The bulk of the discount fees charged by Visa and MasterCard members are the "interchange fees" and other Visa/MasterCard mandated fees and assessments that the bank members of the Associations collectively fix and which are then precisely passed along by the Visa and MasterCard acquiring members and collected from retailers as part of the discount fee. In this manner, as well as others, Visa and MasterCard share with their owner-members the collectively fixed interchange and other Visa/MasterCard mandated fees and assessments charged to retailers.

59. Interchange and discount rates vary depending upon the degree of electronic automation possessed by a particular retailer at its payment stations. A retailer with state of the art computerized POS terminals will pay lower interchange and discount fees than a store that

manually runs its plastic cards through a "credit card imprinter" and places a telephone call to a bank or card processor for voice authorization.

60. Discount fees also vary among plastic cards. American Express has traditionally charged higher discount fees than Visa/MasterCard banks and asserts that it attracts more affluent consumers to the stores that accept its American Express cards.

61. *Discover* has consistently charged retailers lower discount fees than Visa/MasterCard members, yet is steadily losing market share to the defendants, due to the predatory conduct described herein as well as other abusive exercises of Visa/MasterCard market power.

62. With the exception of Visa and MasterCard, and most specifically, *Visa Check* and *MasterMoney*, each retailer can choose the payment systems it will accept based upon all of these factors, all the while recognizing that the cost of each payment system is ultimately reflected in the prices paid by all consumers.

Visa and MasterCard Tie Their *Visa Check* and *MasterMoney* Debit Cards to Their Dominant Credit Cards

63. In or about 1979, POS debit cards became very attractive to the Associations. While credit cards were the Visa/MasterCard banks most profitable, and in many cases only profitable, line of business, more than 90% of all retail transactions were paid for with cash and checks.

64. POS (retail) debit cards, which had already been in use for several years, promised a "Cashless Society." Debit transactions could replace many, and potentially most, cash and check retail transactions with plastic card transactions, which were safer, more convenient and less costly for banks, and also *potentially* more efficient for consumers and retailers as well.

65. Visa has never hidden its intention to be dominant, stating that it intends to be "the number one payment system in the world." In or about 1979, after Visa/MasterCard dual members had consolidated their control of the credit card market, they moved to convert cash,

check and traveler's check retail transactions to POS debit transactions, but to do so in a manner most profitable for them and most costly and inefficient for retail stores and consumers. Visa initiated the "off-line" POS debit card now known as *Visa Check*. Contemporaneously, MasterCard initiated the off-line debit card now known as *MasterMoney*.

66. From the outset, Visa and MasterCard tied *Visa Check* and *MasterMoney* to their credit cards, forcing retailers to accept these debit cards if they wanted to continue accepting the dominant, ubiquitous and essential Visa and MasterCard credit cards.

67. From the outset Visa, MasterCard and their dual members charged retailers the same fees for their *Visa Check* and *MasterMoney* debit cards as for their credit cards.

68. Each Association charged the same fees for its debit card as for its credit card, despite the fact that the costs and risks associated with credit cards are far greater than for debit cards. Debit transactions do not involve any extension of credit, let alone the highly risky extension of credit with temporally open-ended revolving lines. (American Express entered the revolving credit card market with the *Optima* Card in 1987, and wrote off \$265 million in *Optima* losses by 1991.)

69. In a free and unrestrained market, these higher costs and risks would translate into interchange and discount fees which are much higher for credit cards than for POS debit cards. In 1996, the interchange fees for a \$100 retail transaction at a non-supermarket retail store with the most advanced electronic environment (and hence the lowest possible rates) were:

Visa Credit	-	\$1.25 (1.25% of transaction amount)
<i>Visa Check</i> (debit)	-	\$1.10 (1.04% of transaction amount + \$.06)
MasterCard Credit	-	\$1.31 (1.31% of transaction amount)
<i>MasterMoney</i> (debit)	-	\$1.31 (1.31% of transaction amount)
<i>NYCE</i> (debit)	-	\$.075 (\$.075 per transaction)
<i>MAC</i> (debit)	-	\$.065 (\$.065 per transaction)
<i>MOST</i> (debit)	-	\$.05 (\$.05 per transaction)

<i>Pulse</i> (debit)	-	\$.05 (\$.05 per transaction)
<i>Shazam</i> (debit)	-	\$.05 (\$.05 per transaction)
<i>Honor</i> (debit)	-	\$.05 (\$.05 per transaction)
<i>BankMate</i> (debit)	-	\$.05 (\$.05 per transaction)
<i>Explore</i> (debit)	-	\$.075 (\$.075 per transaction)
<i>Maestro</i> (debit)	-	\$.095 (\$.095 per transaction)

70. In 1996, the lowest *Visa Check* interchange fee for a \$100 retail transaction was more than 14 times the rate for a *NYCE* transaction and nearly 17 times the rate for a *MAC* transaction. The lowest *MasterMoney* interchange fee was more than 17 times the rate of *NYCE* and more than 20 times the rate of *MAC*.

71. The typical *Visa Check/MasterMoney* retail purchase transaction is approximately \$40. In 1996, the interchange fee comparisons among *Visa Check*, *MasterMoney*, and typical competing on-line regional POS debit networks for such \$40 non-supermarket retail purchase transactions using the lowest possible *Visa Check/MasterMoney* interchange rates were:

<i>Visa Check</i>	-	\$.476 (1.04% of transaction amount + \$.06)
<i>MasterMoney</i>	-	\$.524 (1.31% of transaction amount)
<i>NYCE</i>	-	\$.075 (\$.075 per transaction)
<i>MOST</i>	-	\$.05 (\$.05 per transaction)
<i>Pulse</i>	-	\$.05 (\$.05 per transaction)
<i>Shazam</i>	-	\$.05 (\$.05 per transaction)
<i>Honor</i>	-	\$.05 (\$.05 per transaction)
<i>BankMate</i>	-	\$.05 (\$.05 per transaction)
<i>Maestro</i>	-	\$.095 (.095 per transaction)
<i>Explore</i>	-	\$.075 (\$.075 per transaction)

72. *Visa/MasterCard* dual members have collectively fixed slightly different interchange fees for large supermarkets, such as Plaintiff Safeway. In 1996, both Associations

and their dual members charged supermarkets a 1.10% (lowest) interchange fee for credit card transactions. In 1996, MasterCard also charged supermarkets the same 1.10% (lowest) interchange fee for *MasterMoney* debit transactions. Visa charges supermarkets a flat \$.36 (lowest) interchange fee for *Visa Check* debit card transactions. For a \$40 transaction this \$.36 fee equates to .9%. For a \$20 supermarket transaction the \$.36 fee equates to a 1.8% interchange fee. Therefore, the *Visa Check* interchange fees for supermarkets are higher or lower than those charged to non-supermarket retailers depending upon the amount of the transaction, although for typical transactions, they are somewhat lower. In 1996, the supermarket interchange fee comparisons among *Visa Check*, *MasterMoney* and typical competing on-line regional POS debit networks for a \$40 transaction using the lowest possible *Visa Check/MasterMoney* interchange rates were:

<i>Visa Check</i>	-	\$.36 (\$.36 per transaction)
<i>MasterMoney</i>	-	\$.44 (1.10% of transaction amount)
<i>NYCE</i>	-	\$.075 (\$.075 per transaction)
<i>MOST</i>	-	\$.05 (\$.05 per transaction)
<i>Pulse</i>	-	\$.05 (\$.05 per transaction)
<i>Shazam</i>	-	\$.05 (\$.05 per transaction)
<i>Honor</i>	-	\$.05 (\$.05 per transaction)
<i>BankMate</i>	-	\$.05 (\$.05 per transaction)
<i>Maestro</i>	-	\$.095 (\$.095 per transaction)
<i>Explore</i>	-	\$.075 (\$.075 per transaction)

73. Retailers would not willingly pay these fixed, supra-competitive and extortionate *Visa Check* and *Master Money* rates. The Retailer Plaintiffs and their Class have no choice. They must accept any proffered *Visa Check* or *MasterMoney* card if they want to continue receiving Visa and MasterCard credit transactions. Once retailers initially accept Visa and MasterCard credit cards, they must continue to honor these dominant credit cards if they are to remain viable.

74. Under Visa/MasterCard's so-called "anti-discrimination rules," retailers are even prohibited from asking a consumer whether she would not mind using a different payment system, including a debit card such as *NYCE* or *MAC*, which will cost the retailer a small fraction of the fees charged for *Visa Check* or *MasterMoney*. Virtually every consumer holding a *Visa Check* or *MasterMoney* card also holds a plastic card bearing the "bugs" of one or more regional POS debit card networks such as *NYCE* and *MAC*. Indeed, most *Visa Check/MasterMoney* cards currently bear such regional POS debit network bugs.

75. Recognizing that regional on-line systems are cheaper, faster and safer for all parties to a retail sales transaction, Association members have suggested that the competition that on-line POS debit cards potentially pose be eliminated through boycott. At the September 1995 American Bankers Association meeting, the President of a prominent Visa and MasterCard member bank signaled the assembled dual Visa/MasterCard membership to follow the lead of his bank and issue *Visa Check* and *MasterMoney* cards without regional on-line debit network bugs. Other Association members have delivered similar signals, which have been followed by numerous dual Visa/MasterCard member banks removing on-line POS debit network bugs from their *Visa Check* and/or *MasterMoney* cards. Such activities further exacerbate the purposeful tendency of these tying arrangements to foreclose competition from far less expensive and superior payment systems.

76. When a consumer presents a *Visa Check* or *Master Money* card as her chosen method of payment, she has the money for a purchase and wants to use that money for that purpose. If the retailer could refuse these cards, the consumer is likely instead to pay in another manner. She may pay with cash, which can be obtained from an ATM frequently in or adjacent to the retail store. She may pay with a "good" check. (Consumers who habitually write "bad" checks continue to do so, whether or not they carry debit cards. Moreover, habitual "passers" of bad checks, by and large, are not issued off-line debit cards under the Associations' guidelines.) She may pay with a regional on-line POS debit card. She may pay with a travelers check. Thus,

were retailers free to reject *Visa Check* and *MasterMoney* or even free to request a different form of payment, there is virtually no possibility that they would lose the sale. All they would lose are the exorbitant fees and the less secure *Visa Check* or *MasterMoney* transaction that is forced upon them by the Visa and MasterCard tying arrangements.

77. When the non-supermarket Retailer Plaintiffs are forced to accept *Visa Check* for a \$100 purchase, the interchange fee costs them at least \$1.10. When they are forced to accept the *MasterMoney* card, the interchange fee is at least \$1.31 for a \$100 transaction at 1996 rates (\$1.32 at rates effective April 1, 1997).

78. If Retailer Plaintiffs could reject the proffered *Visa Check/MasterMoney* cards, the savings to the non-supermarket Retailer Plaintiffs would amount to well over \$1.00 on every \$100.00 transaction and over \$.40 on every \$40 transaction. However, the Retailer Plaintiffs cannot refuse to accept *Visa Check/MasterMoney*. Consequently, faster, safer and far less costly payment systems are effectively foreclosed from selling their services to the Retailer Plaintiffs and the Class.

79. In 1996, *Visa Check* and *MasterMoney* cards were used in approximately 1.2 billion retail transactions, comprising a dollar volume of approximately \$46 billion.

80. Class members would have realized virtually every dollar of the \$46 billion in sales volume without acceptance of *Visa Check/MasterMoney*, through consumer use of cash, checks, travelers checks or on-line POS debit cards, each costing retailers a small fraction of the fees charged by Visa/MasterCard and their members.

81. In 1996, the average *Visa Check/MasterMoney* retail purchase transaction was approximately \$40. In 1996, the lowest possible *Visa Check* interchange fees for non-supermarket retailers, such as The Limited, Sears, Circuit City and Burlington, were 1.04% of the transaction amount plus \$.06 and 1.31% for *MasterMoney*. Even retailers as large as these pay much higher rates on many of their transactions. Indeed, Wal-Mart, the world's largest retailer, paid higher interchange fees on approximately 10% of its *Visa Check* transactions.

82. The total 1996 *Visa Check/MasterMoney* interchange fees for the approximately 1.2 billion *Visa Check* and *MasterMoney* transactions, were approximately \$580,000,000.

83. In 1996, the costs and fees associated with these approximately 1.2 billion retail transactions would have been less than \$90,000,000 had class members been free to reject *Visa Check/MasterMoney* and instead receive cash, checks, on-line POS debit cards and/or travelers checks. Therefore, in 1996, Class members paid almost \$500 million for *Visa Check/MasterMoney* interchange fees in excess of what they would have paid for the acceptance of cash, checks, travelers checks or on-line POS debit cards for the same retail transactions. For the period 1992-1996, the excess *Visa Check/MasterMoney* interchange fees exceeded \$1 billion dollars and now exceeds several billion dollars in total.

84. The Retailer Plaintiffs' experience with these involuntarily received debit cards is typical of the Class' experience.

85. During the last four years, plaintiffs Wal-Mart, The Limited, Sears, Circuit City, Safeway, Burlington, Payless, Bernie's, Shoes Etc., Coffee Stop, UCC Kwik Doc, Computer Supplies, Denture Specialists, Geneva White, Bondy's, 53, Inc., Scrub Shop, Auto-Lab and Sportstop have been forced to accept *Visa Check* and *MasterMoney* as payment in well over 100 million retail transactions.

86. During this four year period, the named Class representatives, alone, paid tens of millions of dollars in *Visa Check* and *MasterMoney* interchange fees in excess of what they would have paid for the acceptance of cash, checks, travelers checks or on-line POS debit cards on the same retail transactions.

87. The Retailer Plaintiffs were prevented and foreclosed from rejecting *Visa Check* and *MasterMoney* and from requesting that their customers instead use other superior and far less costly forms of payment.

**Visa and MasterCard Concealed The Existence And
Use Of *Visa Check* And *MasterMoney* From Retailers**

88. In fact, most retailers could not have asked for another form of payment even if Visa/MasterCard rules permitted this; because they were, and many still are, unaware that they "accept" *Visa Check/MasterMoney* transactions and have done so for more than 17 years.

89. From the outset, Visa and MasterCard adopted elaborate measures to deceive retailers into believing that they were receiving Visa/MasterCard credit cards, when in fact they were receiving *Visa Check/MasterMoney* debit cards from consumers neither needing nor wanting to buy on credit.

90. Visa/MasterCard designed *Visa Check/MasterMoney* so that the cards would be visually and electronically indistinguishable from Visa/MasterCard credit cards. The Associations also instructed their members to avoid communications with retailers which might disclose the true identity and the fixed and supra-competitive fee structure of *Visa Check* and *MasterMoney*.

91. Visa's "Debit Card Training Materials and Customization Guide" urges Visa banks to avoid and deflect retailers' questions about the *Visa Check* discount rate. The Visa Guide notes that the "inability to tell the difference between Visa Debit and a Visa Credit Card" may result in confusion. Visa's solution for this is to design the cardholder's statement in a manner that will clearly distinguish the two distinct forms of payment. However, the Guide counsels that the retailer can be kept in the dark about these visually indistinguishable plastic cards. The Guide poses the following hypothetical question from a cardholder to a customer service representative: "Do I need to tell the merchant that I am using a debit card?" The Visa Guide's suggested answer is: "There's no need to provide a detailed explanation. Simply tell the merchant that you want to use the Visa card. He or she will handle the transaction like any other Visa payment."

92. Another measure which purposefully concealed the debit cards and the arrangements tying them to the Visa and MasterCard credit cards was the manner in which Visa/MasterCard members priced *Visa Check/MasterMoney* transactions to retailers.

93. From *Visa Check's* inception, Visa members collectively fixed the identical interchange fee for *Visa Check* as they fixed for Visa credit, further reducing the possibility that a retailer would detect the different products.

94. Visa dual members, acting as MasterCard members, contemporaneously and collectively fixed the same interchange fee for *MasterMoney* as they collectively fixed for MasterCard credit.

95. After approximately 15 years, *i.e.*, in April 1994, Visa members collectively adopted a *Visa Check* interchange fee which was slightly different from the interchange fee they collectively fixed for Visa credit cards. The lowest *Visa Check* interchange fee (in 1996 and now) is 1.04% of the transaction amount plus \$.06 compared to the lowest Visa credit interchange fee of 1.25% of the transaction amount (both excepting slightly different rates for “certified” supermarkets, such as Safeway, which, as noted, can be higher or lower than the rates applicable to other retailers depending upon the dollar amounts of the sales transactions). This means that, in 1996, the interchange fee was slightly higher for *Visa Check* than for Visa credit in retail transactions of less than \$28.57 and slightly higher for Visa credit in retail transactions greater than \$28.57.

96. The introduction of slightly divergent *lowest* interchange rates for *Visa Check* and Visa credit in 1994 (the interchange rates are still identical when the lowest rates are not applicable under Visa's rules) and the aggressive national advertising campaign for *Visa Check*, begun in 1995, alerted many retailers that they were being forced to accept *Visa Check*. However, retailers still cannot determine when and how many *Visa Check* transactions they are forced to accept until they receive their processing bills, since the *Visa Check* card intentionally remains

visually indistinguishable from Visa credit to retailers. The *Visa Check* card does not say "*Visa Check*" on the card, only "Visa" in the same size, positioning and format as the Visa credit card.

97. To date, MasterCard members still collectively fix identical interchange fees for MasterCard credit and *MasterMoney*.

**Visa and MasterCard Have Refused
Retailer Demands to Cease the Tying Arrangements**

98. Despite the Associations' campaign of concealment, certain sophisticated retailers such as Wal-Mart, The Limited, Nordstrom and Pay'n Save became aware that they were being forced to take *Visa Check* and *MasterMoney* at exorbitant and fixed prices. These retailers explicitly demanded that Visa and MasterCard cease the tying arrangements and allow them to refuse *Visa Check* and *MasterMoney*. As explained below, these demands were explicitly rejected.

99. In 1982, Pay'n Save, a Washington based chain of several hundred retail stores in eight Western states, discovered that for a period of years, which it could not determine precisely, it had been involuntarily accepting *MasterMoney* transactions. Pay'n Save became aware of this only because Seattle-First National Bank, Pay'n Save's MasterCard acquiring bank, stopped issuing its own lower priced debit card, which had been widely used in Pay'n Save stores.

100. When this occurred, Pay'n Save discovered the existence of *MasterMoney*, demanded the cessation of the tying arrangement and refused to accept *MasterMoney* cards.

101. Pay'n Save was informed by MasterCard that its right to accept the MasterCard credit card would be revoked in 15 days if it did not agree to accept *MasterMoney*. After initial resistance, Pay'n Save found that it was unable to survive without MasterCard credit cards and capitulated.

102. In 1983, Nordstrom, a national chain of department stores, detected that it had been unwittingly accepting *Visa Check* cards for an undetermined period of time.

103. Visa's concealment techniques had effectively prevented Nordstrom from detecting when it first began to receive *Visa Check* and the number of involuntary *Visa Check* transactions. At that time (1983), Nordstrom complained that: "Visa Debit Cards are usually issued in a form that does not identify the card as a debit card, so that a merchant cannot distinguish a Visa debit card from a Visa credit card. Visa charges the same merchant discount fee for debit card transactions as it does for credit card transactions."

104. When Nordstrom discovered its involuntary receipt of *Visa Check*, it stopped honoring the card.

105. Thereafter, in March 1983, Visa and First Interstate Bank, Nordstrom's Visa merchant bank notified Nordstrom that its contractual right to accept Visa credit cards would terminate in 30 days unless it resumed accepting *Visa Check*.

106. Nordstrom's resistance to the tying arrangement continued for a while, but it eventually capitulated because it could not successfully operate without Visa credit cards.

107. In or about 1991, The Limited became aware that it was involuntarily accepting *Visa Check* and *MasterMoney*.

108. In June 1991, The Limited wrote to Visa and MasterCard demanding that they cease the tying arrangements and permit The Limited to refuse acceptance of *Visa Check* and *MasterMoney*.

109. Visa rejected The Limited's demand. Characteristically, one day later, MasterCard rejected The Limited's demand.

110. In or about November 1995, Wal-Mart explicitly demanded that Visa cease the tying arrangement and allow Wal-Mart to reject *Visa Check* cards. Wal-Mart also protested that Visa and its members were actively taking measures to prevent the use of faster, safer and far less costly regional on-line POS debit cards. Visa rejected Wal-Mart's demand and in substance questioned why Visa would allow Wal-Mart to receive a cheaper (regional on-line) POS debit card when it could make Wal-Mart accept *Visa Check* with its much higher fee.

111. The Retailer Plaintiffs and Class members did not and do not want to accept *Visa Check* and *MasterMoney* because the fees charged for these products are exorbitant, fixed and maintained at supra-competitive levels through the coercive force of the tying arrangements.

The Tying Arrangements Catapult *Visa Check* And *MasterMoney* Into Dominance and Effectively Foreclose Competition in the POS Debit Card Market

112. When Visa and MasterCard initiated the *Visa Check* and *MasterMoney* programs in or about 1979, the number and dollar amount of such transactions were relatively small, accounting for under one-tenth of 1% of all Visa and MasterCard transactions. *Visa Check* and *MasterMoney* transactions represented a small minority of the transactions in the nascent POS debit card market.

113. Over the years, Visa and MasterCard carefully, relentlessly and stealthily fostered the domination of *Visa Check* and *MasterMoney* over faster, safer and far less costly on-line POS debit networks.

114. From 1992 to 1996, the number of *Visa Check/MasterMoney* cards annually increased by an average of 56%. In or around 1996, Visa announced that *Visa Check* transactions had "increased nearly 800%" during "the last five years."

115. By the end of 1996, there were more than 47 million *Visa Check/MasterMoney* cards in circulation issued by more than 4,400 Visa/MasterCard members. In 1996, *Visa Check/MasterMoney* cards were used in approximately 1.2 billion retail transactions, comprising a dollar volume of approximately \$46 billion. These figures have been projected to increase to 3.9 billion transactions comprising \$179 billion in retail sales for the year 2000, and \$586 billion in retail sales for the year 2005.

116. Over the years, the cumulative loss to retailers for the much slower transfer of well over \$100 billion in consumers' funds into the stores' bank accounts (one day or less for on-line POS debit versus one to seven days for *Visa Check/MasterMoney*) has been substantial in and of itself.

117. This substantial loss, however, is dwarfed by the losses suffered through forced payment of *Visa Check/MasterMoney* interchange fees. As noted, in 1996 retailers were forced to pay approximately \$580 million in *Visa Check/MasterMoney* interchange fees compared with approximately \$90 million that they would have paid for typical on-line POS debit systems, such as *NYCE*, *MAC* and *MOST*, or for receiving cash, checks or travelers checks.

118. In a free and unrestrained market, *Visa Check* and *MasterMoney* would gain minuscule acceptance and market share given their exorbitant, fixed and supra-competitive prices, and their pronounced inferiority relative to their competitors. However, the synergistic effect of the *Visa/MasterCard* tying arrangements and the anti-discrimination rules, which prohibit a retailer from asking for another form of payment when *Visa Check* or *MasterMoney* is proffered (and when the retailer can ascertain that it is receiving a *Visa Check* or *MasterMoney* debit card rather than a credit card), was intended, and has proven to be, a powerful engine for market foreclosure.

119. As noted, *Visa Check/MasterMoney* transactions initially represented a small percentage of the overall market for POS (retail) debit transactions. By the end of 1995, the foreclosing effects of the tying arrangements and anti-discrimination rules had catapulted the inferior and exorbitantly-priced *Visa Check/MasterMoney* systems into a dominant position in the market. In 1995, the number of *Visa Check/MasterMoney* transactions grew 80% over the previous year, compared to a 40% growth rate for the safer, faster and much less costly on-line POS debit systems. This trend continued in 1996, with the riskier, slower and far more costly *Visa Check/MasterMoney* debit cards once again gaining market share against the on-line POS debit systems.

120. At the end of 1996, the *Visa Check/MasterMoney* share of the national general purpose POS debit card market was approximately 65%. *Visa Check* alone commanded a share of approximately 56% of this market.

121. In 1996, the approximately 37 competing regional on-line POS debit networks, such as *NYCE*, *MAC* and *MOST*, collectively secured approximately 26% of the market despite offering safer, faster and far less costly services. (As noted, the lowest 1996 *Visa Check* and *MasterMoney* interchange fees on a \$100 transaction were \$1.10 and \$1.31, respectively, compared to the 1996 average regional network fee of approximately \$.07.) For a \$40 retail transaction, the 1996 *Visa Check/MasterMoney/regional on-line POS network* comparison was \$.476 versus \$.524 versus \$.07. The comparison for supermarkets with a \$40 transaction was \$.36-*Visa Check* versus \$.44-*MasterMoney* versus \$.07-typical on-line POS debit.

122. The faster and safer, but "untied," on-line POS debit systems owned by Visa and MasterCard -- *Maestro*, priced at 16% of *MasterMoney*, and *Interlink*, priced in 1996 at 38% of *Visa Check* -- have collectively garnered approximately 9% of the POS debit market. Without the foreclosing power of the tying arrangements employed for *Visa Check* and *MasterMoney*, these systems are subjected to real head-to-head competition on the merits.

123. In 1996, for example, Visa's *Interlink* (which is not subject to a tying arrangement) lost a large portion of its market share to the *Explore* (now known as *Star*) POS debit network, because *Interlink's* interchange fee of \$.18 compared unfavorably with *Explore's* rate of \$.075 (on a typical \$40 transaction - at higher transaction amounts the price disparity was much greater). At the same time, *Explore* and the other regional on-line POS debit networks actually lost market share to *Visa Check* and *MasterMoney* where, as noted, the price disparity is still greater, *i.e.*, \$.075-*Explore* versus \$.476-*Visa Check* versus \$.524-*MasterMoney*. The tying arrangements powerfully foreclose competition and marginalize the market participation of superior and far less expensive POS debit networks.

124. Visa and MasterCard have not tied *Interlink* and *Maestro* to their dominant credit cards, in part because they have little desire to increase usage of these faster, safer and less expensive systems and thereby depress the supra-competitive profits earned by the tied *Visa Check* and *MasterMoney* cards.

125. Visa's overall share of the POS debit card market is above 62% (approximately 56% for *Visa Check* and approximately 6% for *Interlink*). MasterCard's overall share is 12% (approximately 9% for *MasterMoney* and approximately 3% for *Maestro*). Visa dual members have thus secured a debit card market share of approximately 74%.

126. *Visa Check* and *MasterMoney*, which are inferior and far more costly products, have quickly moved from a minority share of the market to dominance. *Visa Check's* market share alone far exceeds that of all of the approximately 37 competing regional on-line POS debit networks combined, all offering faster and safer services at a tiny fraction of the price charged for *Visa Check* or *MasterMoney*. The tying arrangements have effectively and substantially foreclosed the market and virtually eliminated the efficacy of competition on the merits.

VII. **RELEVANT MARKETS**

127. General purpose credit cards are the product dimension of a relevant market. The geographic dimension of this market is the United States ("Credit Card Market").

128. General purpose credit cards and T&E cards are the product dimension of a relevant market. The geographic dimension of this market is the United States ("Credit and T&E Market").

129. General purpose POS debit cards is the product dimension of a relevant market. The geographic dimension of this market is the United States ("POS Debit Card Market").

130. Point of Sale ("POS") plastic cards, credit, debit and T&E, permit retail consumers to pay for goods and services at retail stores.

131. Credit cards permit consumers to borrow the money for a retail purchase from the card issuer and to repay the debt over time, according to the provisions of a revolving credit agreement with the issuer.

132. Both credit cards and T&E cards permit a consumer to borrow the money for a retail purchase from a card issuer and to repay the debt without incurring interest charges during a "grace period," according to the provisions of an agreement with the issuer.

133. POS debit cards permit consumers to pay for retail purchases with funds from their depository accounts.

134. Only "credit-worthy" consumers can obtain credit cards. The criteria employed by issuers of T&E cards such as *American Express*, *Diner's Club* and *Carte Blanche* also involve credit-worthiness, but are not identical to the criteria employed by issuers of revolving line credit cards. The divergence in the criteria for issuing credit and T&E cards became more pronounced after *American Express* lost hundreds of million of dollars on the bad debts of *Optima* credit cardholders, who had been proven "credit-worthy" holders of American Express T&E cards (Green, Gold and Platinum).

135. Consumers who use credit cards for retail payment either want to or have to borrow money, which they can either repay to the card issuer without interest during a grace period or repay over time according to a revolving credit agreement.

136. Consumers who use T&E cards for retail payment either want to or have to borrow money which they can repay to the card issuer, without interest, according to the terms of their agreement with the card issuer.

137. Consumers who use debit cards for retail payment either want to or have to make contemporaneous payment for their purchases with funds in their depository accounts. These consumers either do not want to borrow money or cannot do so (e.g., because they do not hold a credit or T&E card accepted by the retailer, or because they are not deemed credit-worthy and therefore cannot obtain a credit or T&E card).

138. Additionally, POS debit cards are used by consumers either wanting or needing to make contemporaneous payment for retail purchases, for example, when the retailer will not accept checks and/or currency (e.g., Federal Express); when for safety or other reasons the

consumer does not want to make a "significant" retail purchase with cash; or, when the consumer merely wants the speed and convenience of a plastic card transaction.

139. General purpose plastic cards (credit, debit and T&E) can be used at all types of retail establishments, in contrast to proprietary cards, such as those issued by department stores or gasoline retailers, solely for use at the issuer's retail outlets.

140. Credit cards are a unique product and bundle of services. Many consumers do not consider other payment systems suitable substitutes for their use of credit cards, nor would they substitute other payment systems for credit cards nor would they do so even in response to a significant, non-transitory increase in the price of credit cards.

141. T&E cards are a unique product and bundle of services. Many consumers do not consider other payment systems suitable substitutes for their use of T&E cards, nor would they substitute other payment systems for T&E cards, nor would they do so even in response to a significant, non-transitory increase in the price of T&E cards.

142. Retailers consider credit and T&E cards to be suitable substitutes for each other. They do not consider other payment systems suitable substitutes for credit and T&E cards, nor would they substitute other payment systems for credit and T&E cards, nor would they do so even in response to a significant, non-transitory increase in the price of credit and T&E cards.

143. POS debit cards are a distinct product and bundle of services.

FIRST CLAIM FOR RELIEF

ALL PLAINTIFFS AGAINST VISA, SHERMAN ACT SECTION ONE, CONTRACT, COMBINATION, CONSPIRACY AND AGREEMENT IN RESTRAINT OF TRADE, PER SE UNLAWFUL AND UNREASONABLE (RULE OF REASON) TYING

144. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 143 with the same force and effect as if here set forth in full.

145. Beginning in or about 1979, the exact date unknown to Plaintiffs, and continuing thereafter until the filing of this Complaint, Defendant Visa and co-conspirators have continually

engaged in an unlawful contract, combination, conspiracy and agreement in unreasonable restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, including forced and coerced contracts and agreements with retailers requiring them to accept *Visa Check*.

146. The contract, combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among Visa and co-conspirators, and forced contracts and agreements with the Retailer Plaintiffs, the Class of retailers and retailers represented by the Trade Association Plaintiffs, the substantial terms of which have been to limit the sale of a distinct "tying" product, Visa Credit Card services (including the right to accept Visa credit cards), to retailers who agree, albeit under coercion and/or unwittingly, to buy a second distinct "tied" product, *Visa Check* services (including the obligation to accept *Visa Check* cards).

147. At all times, Visa and co-conspirators had monopoly power and/or market power and/or economic power in the relevant Credit Card and Credit and T&E Markets, sufficient to force Retailer Plaintiffs, their Class and retailers represented by the Trade Association Plaintiffs, to purchase and accept *Visa Check*.

148. *Visa Check* entered a market in which several safer, faster and far less expensive POS debit networks were already operating. *Visa Check* was an inferior form of an established product from inception. The mechanisms adopted by *Visa Check* to obtain market share were the tying arrangement and concealment campaign, as detailed above.

149. The continued employment of the tying arrangement achieves no legitimate efficiency benefit to counterbalance its demonstrated anticompetitive effect of foreclosing merit competition in the POS Debit Card market.

150. The Retailer Plaintiffs, their Class, and retailers represented by the Trade Association Plaintiffs, were forced to buy and accept *Visa Check* at fixed and supra-competitive prices.

151. The ability of the Retailer Plaintiffs, their Class, and retailers represented by the Trade Association Plaintiffs, to buy, accept and receive superior and less costly payment systems, including on-line POS debit cards, was effectively and substantially reduced, limited and foreclosed.

152. The ability of competing on-line POS debit card networks, to compete effectively with *Visa Check* on the merits was substantially reduced, limited and foreclosed.

153. The contract, combination, conspiracy and agreement has been effectuated by the means and overt acts set forth above, among others.

154. Visa and co-conspirators and others acting in concert with them intended by their actions to:

- a. force the Retailer Plaintiffs, their Class, and retailers represented by the Trade Association Plaintiffs, into buying, accepting and receiving *Visa Check*;
- b. reduce, limit and foreclose merit competition in the POS Debit Card Market; and
- c. injure and eliminate competition in the POS Debit Card Market.

155. The contract, combination, conspiracy and agreement has had and/or is likely to have among other things, the following effects:

- a. actual and potential competition in the POS Debit Card Market has been injured, limited, reduced, restrained, suppressed and effectively foreclosed;
- b. retailers who buy, accept and receive *Visa Check* have paid or are likely to pay artificially inflated prices;
- c. actual and potential competitors of *Visa Check*, including on-line POS debit card systems, have been effectively foreclosed from competing on the merits with *Visa Check* and injured in their business and property; and
- d. the customers of the Retailer Plaintiffs, their Class, and retailers represented by the Trade Association Plaintiffs, have paid higher prices for all retail merchandise and have been deprived of the benefits of a free, open, competitive and unrestrained POS Debit Card Market.

156. As a result of Visa and co-conspirators' violations of Section 1, the Retailer Plaintiffs and their Class have been injured in their business and property in an amount not

presently known with precision but which is, at a minimum, hundreds of million of dollars, prior to trebling.

157. Such violation and the effects thereof are continuing and will continue unless the injunctive relief requested is granted. Plaintiffs have no adequate remedy at law.

SECOND CLAIM FOR RELIEF

ALL PLAINTIFFS AGAINST MASTERCARD, SHERMAN ACT SECTION ONE, CONTRACT, COMBINATION, CONSPIRACY AND AGREEMENT IN RESTRAINT OF TRADE, PER SE UNLAWFUL AND UNREASONABLE (RULE OF REASON) TYING

158. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 157 with the same force and effect as if here set forth in full.

159. Beginning in or about 1979, the exact date unknown to Plaintiffs, and continuing thereafter until the filing of this Complaint, Defendant MasterCard and co-conspirators have continually engaged in an unlawful contract, combination, conspiracy and agreement in unreasonable restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, including forced and coerced contracts and agreements with retailers requiring them to accept *MasterMoney*.

160. The contract, combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among MasterCard and co-conspirators, and forced contracts and agreements with the Retailer Plaintiffs, their Class, and retailers represented by the Trade Association Plaintiffs, the substantial terms of which have been to limit the sale of a distinct "tying" product, MasterCard credit card services (including the right to accept MasterCard credit cards), to retailers who agree, albeit under coercion and/or unwittingly, to buy a second distinct "tied" product, *MasterMoney* services (including the obligation to accept *MasterMoney* cards).

161. At all times MasterCard and co-conspirators had monopoly power and/or market power and/or economic power in the relevant Credit Card and Credit and T&E Markets, sufficient

to force Retailer Plaintiffs, their Class, and retailers represented by the Trade Association Plaintiffs, to purchase and accept *MasterMoney*.

162. *MasterMoney* entered a market in which several safer, faster and far less expensive POS debit networks were already operating. *MasterMoney* was an inferior form of an established product from inception. The mechanisms adopted by *MasterMoney* to obtain market share were the tying arrangement and concealment campaign as detailed above.

163. The continued employment of the tying arrangement achieves no legitimate efficiency benefit to counterbalance its demonstrated anticompetitive effect of foreclosing merit competition in the POS Debit Card market.

164. The Retailer Plaintiffs, their Class, and retailers represented by the Trade Association Plaintiffs, were forced to buy and accept *MasterMoney* at fixed and supra-competitive prices.

165. The ability of the Retailer Plaintiffs, their Class, and retailers represented by the Trade Association Plaintiffs, to buy, accept and receive superior and less costly payment systems, including on-line POS debit cards, was effectively and substantially reduced, limited and foreclosed.

166. The ability of competing on-line POS debit card networks to compete effectively with *MasterMoney*, on the merits, was substantially reduced, limited and foreclosed.

167. The contract, combination, conspiracy and agreement has been effectuated by the means and overt acts set forth above, among others.

168. The intended, likely and actual effects of these acts are the same as those set forth in paragraphs 154 and 155, herein.

169. As a result of MasterCard and co-conspirators' violations of Section 1, the Retailer Plaintiffs and their Class have been injured in their business and property in an amount not presently known with precision but which is, at a minimum, hundreds of million of dollars, prior to trebling.

170. Such violation and the effects thereof are continuing and will continue unless the injunctive relief requested is granted. Plaintiffs have no adequate remedy at law.

THIRD CLAIM FOR RELIEF

**ALL PLAINTIFFS
AGAINST VISA AND MASTERCARD,
SHERMAN ACT SECTION ONE,
CONTRACT, COMBINATION, CONSPIRACY
AND AGREEMENT IN RESTRAINT OF TRADE,
PER SE UNLAWFUL AND UNREASONABLE (RULE OF REASON) TYING**

171. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 170 with the same force and effect as if here set forth in full.

172. Beginning in or about 1979, the exact date unknown to Plaintiffs, and continuing thereafter until the filing of this Complaint, Defendants Visa and MasterCard and co-conspirators have continually engaged in an unlawful contract, combination, conspiracy and agreement in unreasonable restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, including forced and coerced contracts and agreements with retailers requiring them to accept *Visa Check* and/or *MasterMoney*.

173. The contract, combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among Visa, MasterCard and co-conspirators, and forced agreements with the Retailer Plaintiffs, their Class, and retailers represented by the Trade Association Plaintiffs, the substantial terms of which have been to limit the sale of two distinct "tying" products, Visa Credit Card services and MasterCard Credit Card services (including the right to accept Visa and MasterCard credit cards), to retailers who agree, albeit under coercion and/or unwittingly, to buy two other distinct "tied" products, *Visa Check* services and *MasterMoney* services (including the obligation to accept *Visa Check* and *MasterMoney* cards).

174. At all times Visa, MasterCard and co-conspirators had monopoly power and/or market power and/or economic power in the relevant Credit Card and Credit and T&E Markets,

sufficient to force Retailer Plaintiffs, their Class, and retailers represented by the Trade Association Plaintiffs to purchase and accept *Visa Check* and *MasterMoney*.

175. *Visa Check* and *MasterMoney* entered a market in which several safer, faster and far less expensive POS debit networks were already operating. *Visa Check* and *MasterMoney* were inferior forms of an established product from their inception. The mechanisms adopted by *Visa Check* and *MasterMoney* to obtain market share were the tying arrangements and concealment campaigns, detailed above.

176. The continued employment of the tying arrangements achieves no legitimate efficiency benefits to counterbalance their demonstrated anticompetitive effects, including the foreclosure of merit competition in the POS Debit Card Market.

177. The Retailer Plaintiffs, their Class, and retailers represented by the Trade Association Plaintiffs, were forced to buy and accept *Visa Check* and *MasterMoney* at fixed and supra-competitive prices.

178. The ability of the Retailer Plaintiffs, their Class, and retailers represented by the Trade Association Plaintiffs, to buy, accept and receive superior and less costly payment systems, including on-line POS debit cards, was effectively and substantially reduced, limited and foreclosed.

179. The ability of competing on-line POS debit card networks to compete effectively with *Visa Check* and *MasterMoney*, on the merits, was substantially reduced, limited and foreclosed.

180. The contract, combination, conspiracy and agreement has been effectuated by the means and overt acts set forth above, among others.

181. The intended, likely and actual effects of these acts are the same as those set forth in paragraphs 154 and 155.

182. As a result of Visa, MasterCard and co-conspirators' violations of Section 1, the Retailer Plaintiffs and their Class have been injured in their business and property in an amount

not presently known with precision but which is, at a minimum, hundreds of million of dollars, prior to trebling.

183. Such violation and the effects thereof are continuing and will continue unless the injunctive relief requested is granted. Plaintiffs have no adequate remedy at law.

FOURTH CLAIM FOR RELIEF

ALL PLAINTIFFS AGAINST VISA, SHERMAN ACT SECTION TWO, ATTEMPT TO MONOPOLIZE

184. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 183 with the same force and effect as if here set forth in full.

185. In violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, Visa and co-conspirators have knowingly, intentionally and with specific intent to do so, attempted to monopolize the POS Debit Card Market.

186. The attempt to monopolize this market has been effectuated by the means and the overt acts set forth above, among others.

187. Visa and co-conspirators intended by their actions to:

- a. control the supply and price of POS debit card services;
- b. eliminate, reduce, limit and foreclose actual and potential competition in the POS Debit Card Market;
- c. exclude and foreclose other persons from participating in or entering said market; and
- d. injure and eliminate competition in said market.

188. As a result of the conduct alleged herein, Visa and co-conspirators control such a substantial share of the POS Debit Card Market that, when coupled with Visa and Visa dual members' power in the Credit Card and Credit and T&E Markets and Visa's anticompetitive conduct, including the arrangement tying *Visa Check* to Visa credit cards and the collective fixing of debit interchange fees, a dangerous likelihood exists that Visa will monopolize the POS Debit Card Market.

189. The attempt to monopolize has had, or is likely to have, among other things, the following effects:

- a. actual and potential competition in the POS Debit Card Market has been limited, reduced, restrained, suppressed and effectively foreclosed;
- b. retailers who buy, accept and receive *Visa Check* have paid or are likely to pay artificially inflated prices;
- c. actual and potential competitors of *Visa Check*, including on-line POS debit card systems, have effectively been foreclosed from competing on the merits with *Visa Check* and injured in their business and property;
- d. the customers of the Retailer Plaintiffs, their Class, and retailers represented by the Trade Association Plaintiffs have paid higher prices for all retail merchandise and have been deprived of the benefits of a free, open, competitive and unrestrained POS Debit Card Market; and
- e. instead of a free, open and competitive POS Debit Card Market, a monopoly, or dominant position dangerously likely to become a monopoly, has been established and maintained.

190. As a result of Visa and the Visa co-conspirators' violations of Section 2, Retailer Plaintiffs and their Class have been injured in their business and property in an amount not presently known with precision but which is, at a minimum, hundreds of millions of dollars, prior to trebling.

191. Such violation and the effects thereof are continuing and will continue unless the injunctive relief requested is granted. Plaintiffs have no adequate remedy at law.

FIFTH CLAIM FOR RELIEF

ALL PLAINTIFFS AGAINST VISA AND MASTERCARD, SHERMAN ACT SECTION TWO, ATTEMPT TO MONOPOLIZE

192. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 191 with the same force and effect as if here set forth in full.

193. In violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, Visa, MasterCard and co-conspirators have knowingly, intentionally and with specific intent to do so, attempted to monopolize the POS Debit Card Market.

194. The attempt to monopolize this market has been effectuated by the means and the overt acts set forth above, among others.

195. Visa, MasterCard and co-conspirators intended by their actions to restrain trade in the relevant markets in the manner specified in paragraph 187.

196. As a result of the conduct alleged herein, Visa, MasterCard and their dual members control such a substantial share of the POS Debit Card Market that, when coupled with Visa, MasterCard and their dual members' power in the Credit and Credit and T&E markets and the anticompetitive conduct alleged herein, including the arrangements tying *Visa Check* to Visa credit cards and *MasterMoney* to MasterCard credit cards and the collective fixing of debit interchange fees, a dangerous likelihood exists that Visa and MasterCard and their dual members will monopolize the POS Debit Card Market.

197. The attempt to monopolize has had, or is likely to have, among other things, the effects specified in paragraph 189.

198. As a result of Visa, MasterCard and co-conspirators' violations of Section 2, Retailer Plaintiffs and their Class have been injured in their business and property in an amount not presently known with precision but which is, at a minimum, hundreds of millions of dollars, prior to trebling.

199. Such violation and the effects thereof are continuing and will continue unless the injunctive relief requested is granted. Plaintiffs have no adequate remedy at law.

SIXTH CLAIM FOR RELIEF

ALL PLAINTIFFS AGAINST VISA, SHERMAN ACT SECTION TWO, CONSPIRACY TO MONOPOLIZE

200. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 199 with the same force and effect as if here set forth in full.

201. In violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, Visa and co-conspirators have willfully, knowingly, intentionally and with specific intent to do so, combined and conspired to monopolize the POS Debit Card Market.

202. The combination and conspiracy to monopolize this market has been effectuated by the means and the overt acts set forth above, among others.

203. Visa and co-conspirators intended by their actions to restrain trade in the relevant markets in the manner specified in paragraph 187.

204. As a result of the conduct alleged herein, Visa and its dual members control price, have and are able to exclude competitors and competition and have and are able to charge supra-competitive prices in the POS Debit Card Market.

205. The combination and conspiracy to monopolize has had, or is likely to have, among other things, the effects specified in paragraph 189.

206. As a result of Visa and co-conspirators' violations of Section 2, Retailer Plaintiffs and their Class have been injured in their business and property in an amount not presently known with precision but which is, at a minimum, hundreds of millions of dollars, prior to trebling.

207. Such violation and the effects thereof are continuing and will continue unless the injunctive relief requested is granted. Plaintiffs have no adequate remedy at law.

SEVENTH CLAIM FOR RELIEF

ALL PLAINTIFFS AGAINST VISA AND MASTERCARD, SHERMAN ACT SECTION TWO, CONSPIRACY TO MONOPOLIZE

208. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 207 with the same force and effect as if here set forth in full.

209. In violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, Visa, MasterCard and co-conspirators have willfully, knowingly, intentionally and with specific intent to do so, combined and conspired to monopolize the POS Debit Card Market.

210. The combination and conspiracy to monopolize this market has been effectuated by the means and the overt acts set forth above, among others.

211. Visa, MasterCard and co-conspirators intended by their actions to restrain trade in the relevant markets in the manner specified in paragraph 187.

212. As a result of the conduct alleged herein, Visa, MasterCard and their dual members control price, have and are able to exclude competitors and competition and have and are able to charge supra-competitive prices in the POS Debit Card Market.

213. The combination and conspiracy to monopolize has had, or is likely to have, among other things, the effects detailed in paragraph 189.

214. As a result of Visa, MasterCard and co-conspirators' violations of Section 2, Retailer Plaintiffs and their Class have been injured in their business and property in an amount not presently known with precision but which is, at a minimum, hundreds of millions of dollars, prior to trebling.

215. Such violation and the effects thereof are continuing and will continue unless the injunctive relief requested is granted. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand:

A. That the Court declare, adjudge and decree that Defendants have committed the violations of federal law alleged herein;

B. That the Court enter an order pursuant to Rule 23 of the Federal Rules of Civil Procedure permitting this action to be maintained a class action on behalf of the Class specified herein;

C. That Defendants, their directors, officers, employees, agents, successors and members be enjoined and restrained from, in any manner, directly or indirectly continuing or

maintaining the arrangements tying the sales of Visa credit card services to the purchase and acceptance of *Visa Check* card services and tying the sale of MasterCard credit card services to the purchase and acceptance of *MasterMoney* card services; that Defendants, their directors, officers, employees, agents, successors and members be enjoined and restrained from, in any manner, directly or indirectly committing other violations of Sections 1 and 2 of the Sherman Act, in which they and co-conspirators have been engaged; and that Defendants, their directors, officers, employees, agents, successors and members be enjoined and restrained from, in any manner, directly or indirectly, committing any other violations of statutes having a similar purpose or effect.

D. That the Court award damages sustained by the Retailer Plaintiffs, and members of their Class, on the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Claims for Relief in an amount to be proved at trial, to be trebled according to law, plus interest, including prejudgment interest, attorneys' fees and costs of suit, and such other and further relief as this Court may deem just and proper;

E. That the Court award the Trade Association Plaintiffs their attorneys' fees and costs and such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand trial by jury of all issues properly triable thereby.

Dated: New York, New York
May 26, 1999

CONSTANTINE & PARTNERS

By: *Lloyd Constantine*

Robert L. Begleiter (RB-7052)
Lloyd Constantine (LC-8465)
Stacey Anne Mahoney (SM-5425)
Amy N. Roth (AR-4534)
Gordon Schnell (GS-2567)
Mitchell C. Shapiro (MS-1019)
Jeffrey I. Shinder (JS-5719)

477 Madison Avenue - 11th Floor
New York, New York 10022
(212) 350-2700
Attorneys for Wal-Mart, The Limited, Sears,
Safeway, Circuit City, IMRA, NRF and FMI
and Lead Counsel for The Plaintiffs

HAGENS & BERMAN

Steve W. Berman
George W. Sampson (GS-8973)
Jim Solimano
1301 Fifth Avenue, Suite 2929
Seattle, Washington 98101
(206) 623-7292
Attorneys for Bernie's Army-Navy Store and
Co- Lead Counsel for The Plaintiffs

McDERMOTT, WILL & EMERY

Timothy Waters (TW-5208)
Lawrence I. Fox (LF-3733)
50 Rockefeller Plaza
New York, New York 10020
(212) 547-5400
Co-Counsel for IMRA

JENNER & BLOCK

Jerald A. Jacobs
601 Thirteenth Street, N.W.
Washington, D.C. 20005
(202) 639-6000
Co-Counsel for NRF

MALLORY B. DUNCAN, ESQ.

General Counsel
National Retail Federation
325 Seventh Street, NW
Suite 1000
Washington, D.C. 20004
(202) 783-7971
Co-Counsel for NRF

COLLIER, SHANNON, RILL & SCOTT

James F. Rill
Christopher J. MacAvoy
3050 K Street, N.W.
Washington, D.C. 20007
(202) 342-8400
Co-Counsel for FMI

GEORGE R. GREEN, ESQ.

Vice President & General Counsel
Food Marketing Institute
800 Connecticut Avenue, N.W.
Washington, D.C. 20006-2701
(202) 452-8444
Co-Counsel for FMI

ROHAN, GOLDFARB & SHAPIRO, P.S.

Anthony D. Shapiro
Robert Taylor-Manning
600 University Street, Suite 1601
Seattle, WA 98101-3112
223-1600
Co-Counsel for Bernie's Army-Navy Store

LAW OFFICES OF MARTIN E. GROSSMAN

Martin E. Grossman
2121 Green Briar Drive
Villanova, PA 19085
(610) 527-3277
Co-Counsel for Bernie's Army-Navy Store

KIRBY, MCINERNEY & SQUIRE

Alice McInerney (AM-5484)
Jeffrey H. Squire (JHS-8910)
Daniel Hume
James Carroll
830 Third Avenue
New York, New York 10022
(212) 317-2300
Co-Counsel for Bernie's Army-Navy Store

LAW OFFICES OF LIONEL Z. GLANCY

Lionel Z. Glancy
Peter A. Binkow
1801 Avenue of the Stars
Suite 308
Los Angeles, California 90067
(310) 201-9150
Co-Counsel for Auto-Lab of Farmington Hills

LAW OFFICES OF MICHAEL ZWICK

Michael Zwick
3000 Town Center
Suite 2300
Southfield, Michigan 48075
(810) 304-0050
Co-Counsel for Auto-Lab of Farmington Hills

LAW OFFICES OF KENNETH A. ELAN

Kenneth A. Elan
217 Broadway
Suite 404
New York, New York 10007
(212) 619-0261
Co-Counsel for Auto-Lab of Farmington Hills

LAW OFFICES OF JEFFREY F. KELLER

Jeffrey F. Keller
221 Main Street
Suite 1033
San Francisco, California 94105
(415) 543-1305
Co-Counsel for Sportstop, Inc.

GARWIN, BRONZAFT, GERSTEIN & FISHER

Bruce Gernstein
1501 Broadway
Suite 1812
New York, New York 10036
(212) 398-0055
Co-Counsel for Sportstop, Inc.

LAW OFFICES OF JERALD STEIN

Jerald Stein
444 Park Avenue South
11th Floor
New York, New York 10016
Co-Counsel for Sportstop, Inc.

ELWOOD S. SIMON & ASSOCIATES, P.C.

Elwood S. Simon
355 South Woodward Avenue
Suite 250
Birmingham, Michigan 48009
(810) 464-9730
Co-Counsel for Sportstop, Inc.

**MILLER FAUCHER CHERTOW CAFFERTY
and WEXLER**

Kenneth A. Wexler
Marvin A. Miller
30 LaSalle Street, Suite 3200
Chicago, Illinois 60602
(312) 782-4880
Counsel for Burlington Coat Factory Warehouse,
Inc.

STACY JOHN HAIGNEY, ESQ.

263 West 38th Street, 6th Floor
New York, New York 10018
(212) 768-0058
Co-Counsel for Burlington Coat Factory Warehouse,
Inc.

**MILBERG WEISS BERSHAD HYNES &
LERACH LLP**

Joseph Opper
Michael Buchman
Azrah Mehdi
One Pennsylvania Plaza
New York, New York 10119
(212) 594-5300

Dennis Stewart
600 West Broadway, Suite 1800
San Diego, CA 92101
(619) 231-1058
Counsel for Payless Shoesource Inc., and Co-
Counsel for UCC Kwik Doc, Inc. f/k/a UCC Express,
Inc. and The Coffee Shop, Inc. d/b/a Torreo Coffee
& Tea Company

**WOLF HALDENSTEIN ADLER FREEMAN &
HERZ, LLP**

Fred Taylor Isquith
Shane T. Towley
David Leventhal
270 Madison Avenue
New York, NY 10016
(212) 545-4600
Co-Counsel for UCC Kwik Doc, Inc. f/k/a UCC
Express, Inc.

SPECTOR & ROSEMAN

Eugene A. Spector
Mark J. Dorval
2000 Market Street
12th Floor
Philadelphia, PA 19103
(215) 864-2400
Co-Counsel for the Coffee Stop, Inc.

LIEFF, CABRASER HEIMANN & BERNSTEIN

William Bernstein
Joseph R. Saveri
275 Battery Street, Suite 3000
San Francisco, CA 94111
(415) 956-1000
Co-Counsel for Shoes, Etc., Inc. d/b/a Shoes and
Scrub Shop, Inc.

LEVIN FISHBEIN SEDRAN & BERMAN

Donald E. Haviland, Jr.
320 Walnut Street
Suite 600
Philadelphia, PA 19106
(215) 592-1500
Co-Counsel for Shoes, Etc., Inc., d/b/a Arnolds
Shoes and Scrub Shop, Inc.

HOFFMAN & EDELSON

Marc H. Edelson
Jenkintown Plaza, Suite 280
101 Greenwood Ave.
Jenkintown, PA 19046
(215) 230-8043
Co-Counsel for Shoes, Etc., Inc., d/b/a Arnold's
Shoes

MAGER, LIEBENBERG & WHITE

Ann D. White
Robert G. Eisler
Two Penn Center Plaza, 10th Floor
Philadelphia, PA 19102
(215) 569-6921
Co-Counsel for Shoes, Etc., Inc., d/b/a Arnold's
Shoes

ALEXANDER, RAPAZZINI & GRAHAM

William M. Audet
55 S. Market Street - Suite 1080
San Jose, CA 95113
(408) 289-1776
Co-Counsel for Shoes, Etc., Inc., d/b/a Arnold's
Shoes

HEINS, MILLS & OLSON

Samuel D. Heins
Stacey Mills
700 Northstar East
608 Second Avenue South
Minneapolis, MN 55402
(612) 338-4605
Co-Counsel for Shoes, Etc., Inc., d/b/a Arnold's
Shoes

LAW OFFICES OF IRA RICHARDS

Ira Richards
34 Vibemum Court
Lafayette Hill, PA 19444
(610) 941-7047
Co-Counsel for Shoes, Etc., Inc., d/b/a Arnold's
Shoes

LAW OFFICES OF LEO DESMOND

Leo W. Desmond
2161 Palm Beach Lakes Blvd. - Suite 204
West Palm Beach, FL 33409
(561) 712-8000
Counsel for Denture Specialist, Inc. and Geneva
White D.M.D.

RABIN & PECKEL

I. Stephen Rabin
Brian Murray
275 Madison Avenue
New York, NY 10016
(212) 682-1818
Co-Counsel for Denture Specialist, Inc. and Geneva
White D.M.D.

LAW OFFICES OF HARRIS J. SKLAR

Harris J. Sklar
2 Penn Center, Suite 1204
15th St. & JFK Blvd.
Philadelphia, PA 19102
Co-Counsel for Scrub Shop, Inc.

LAW OFFICES OF LAWRENCE METZGER

Lawrence G. Metzger
2 Penn Center, Suite 1204
15th St. & JFK Blvd.
Philadelphia, PA 19102
Co-Counsel for Scrub Shop, Inc.

**GOODKIND, LABATON RUDOFF &
SUCHAROW**

Bernard Persky
Barbara J. Hart.
100 Park Avenue
New York, NY 10017-5563
(212) 907-0700
Counsel for Shark 3 Audio Inc. d/b/a Bondys

JENKINS & MULLIGAN

Daniel J. Mulligan
225 Bush Street, 7th Floor
San Francisco, CA 94104
(415) 982-8500
Counsel for Computer Supplies Unlimited

**ZWERLING, SCHACHTER & ZWERLING,
LLP**

Hillary Sobel.
767 Third Avenue
New York, NY 10017-2023
(212) 223-3900
Counsel for 53, Inc.

