SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.:

SUMMONS

Plaintiff designates NEW YORK County as the place of trial.

The basis of venue is:

Nominal Defendants Principal Place of Business

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BOB H. LANKFORD, TRUSTEE UNDER THE ELIZABETH H. LANKFORD BYPASS TRUST AGREEMENT DATED 9/18/1998, derivatively on behalf of AMERICAN EXPRESS COMPANY,

Plaintiff,

-against-

KENNETH I. CHENAULT, JEFFREY C. CAMPBELL, DANIEL T. HENRY, CHARLENE BARSHEFSKY, URSULA M. BURNS, PETER CHERNIN, THEODORE J. LEONSIS, ANNE MARIE ALICE LAUVERGEON, SAMUEL J. PALMISANO, STEVEN S. REINEMUND, EDWARD D. MILLER, RICHARD A. MCGINN, JAN LESCHLY, DANIEL L. VASELLA, ROBERT D. WALTER, DANIEL F. AKERSON, and RONALD A. WILLIAMS,

Defendant.

and

AMERICAN EXPRESS COMPANY,

Nominal Defendant.

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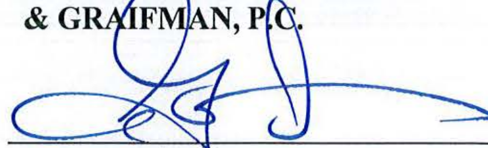
To the above named Defendants

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, of if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiffs' attorneys within twenty days after the services of this summons exclusive of the day of service, where service is made by delivery upon you personally within the state, or within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: Chestnut Ridge, New York
March 18, 2015

KANTROWITZ, GOLDHAMER
& GRAIFMAN, P.C.



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TO:

American Express, 200 Vesey Street, New York, NY 10285

Kenneth I. Chenault, CEO, c/o American Express, 200 Vesey Street, New York, NY 10285

Jeffrey C. Campbell, Vice President, c/o American Express, 200 Vesey Street, New York, NY 10285

Daniel T. Henry, c/o American Express, 200 Vesey Street, New York, NY 10285

Daniel F. Akerson, c/o American Express, 200 Vesey Street, New York, NY 10285

Charlene Barshefsky, c/o American Express, 200 Vesey Street, New York, NY 10285

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Daniel Vasella, c/o American Express, 200 Vesey Street, New York, NY 10285

Samuel J. Palmisano, c/o American Express, 200 Vesey Street, New York, NY 10285

Marie Alice Lauvergeon, c/o American Express, 200 Vesey Street, New York, NY 10285

Robert D. Walter, c/o American Express, 200 Vesey Street, New York, NY 10285

Ronald A. Williams, c/o American Express, 200 Vesey Street, New York, NY 10285

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

BOB H. LANKFORD, TRUSTEE UNDER THE ELIZABETH H. LANKFORD BYPASS TRUST AGREEMENT DATED 9/18/1998, derivatively on behalf of AMERICAN EXPRESS COMPANY, Plaintiff, v. KENNETH I. CHENAULT, JEFFREY C. CAMPBELL, DANIEL T. HENRY, CHARLENE BARSHEFSKY, URSULA M. BURNS, PETER CHERNIN, THEODORE J. LEONSIS, ANNE MARIE ALICE LAUVERGEON, SAMUEL J. PALMISANO, STEVEN S. REINEMUND, EDWARD D. MILLER, RICHARD A. MCGINN, JAN LESCHLY, DANIEL L. VASELLA, ROBERT D. WALTER, DANIEL F. AKERSON, and RONALD A. WILLIAMS, Defendants, and AMERICAN EXPRESS COMPANY, Nominal Defendant.	Index No. **JURY TRIAL DEMANDED**

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

1. Plaintiff Bob H. Lankford, Trustee under the Elizabeth H. Lankford Bypass Trust Agreement dated 9/18/1998 ("Plaintiff"), by and through his undersigned attorneys, hereby submits this Verified Shareholder Derivative Complaint (the "Complaint") for the benefit of nominal defendant American Express Company ("American Express" or the "Company") against certain current and/or former members of its Board of Directors (the "Board") and executive officers seeking to remedy defendants' breaches of fiduciary duties and unjust

enrichment beginning in 2009 and continuing through the present (the "Relevant Period").

NATURE OF THE ACTION

2. According to its public filings, American Express is a global services company, providing customers with access to products, insights and experiences that enrich lives and build business success. The Company provides charge and credit payment card products and travel-related services to customers worldwide.

3. The Company offers general purpose credit and charge cards (collectively, "General Purpose Cards") as payment devices that a consumer can use to make purchases from a wide variety of merchants without accessing or reserving the consumer's funds at the time of the purchase. American Express's network imposes a fee on the merchant for each transaction. American Express's card acceptance fee typically is set as a percentage of the transaction price. For example, American Express imposes a card acceptance fee of 3% for some transactions. In such transactions, merchants would receive $97 on a $100 retail transaction. American Express would extract the remaining $3 from the transaction. The cost borne by merchants for customers' use of American Express General Purpose Cards is often substantially higher than the cost of customers' use of competing networks' General Purpose Cards.

4. American Express has also instituted its own set of "Merchant Restraints" prohibiting or restricting a merchant that accepts American Express cards from encouraging its customers to use any other network's card at the point of sale. Stated simply, American Express's Merchant Restraints impose a competitive straightjacket on merchants, restricting decisions by them to offer discounts, benefits, and choices to customers that many merchants would otherwise be free to offer. The Merchant Restraints impose the following restrictions on merchants that accept American Express:

Merchants must not:

- indicate or imply that they prefer, directly or indirectly, any Other Payment Products over [American Express'] Card,

- try to dissuade Cardmembers from using the Card,

- criticize . . . the Card or any of [American Express'] services or programs,

- try to persuade or prompt Cardmembers to use any Other Payment Products or any other method of payment (*e.g.*, payment by check),

- impose any restrictions, conductions, [or] disadvantages...when the Card is accepted that are not imposed equally on all Other Payment Products, except for ACH funds transfer, cash, and checks, ... or

- promote any Other Payment Products (except the Merchant's own private label card that they issue for use solely at their Establishments) more actively than the Merchant promotes [American Express'] Card.

Merchants may offer discounts from their regular prices for payments in cash or by ACH funds transfer or check, provided that they clearly disclose the terms of the offer (including the regular and discounted prices) to customers and that any discount offered applies equally to Cardmembers and holders of Other Payment Products.

Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, the Merchant must indicate their acceptance of the Card and display [American Express'] Marks according to [American Express'] guidelines and prominently and in the same manner as any Other Payment Products.

5. Throughout the Relevant Period, defendants have caused the Company to repeatedly warn in filings made with the United States Securities and Exchange Commission (the "SEC") of the importance of the Company complying with all laws, rules, and regulations. Likewise, defendants have caused the Company to repeatedly warn that its failure to follow all laws, rules, and regulations could result in "significant fines, penalties, and judgments." Finally, defendants have caused the Company to repeatedly warn that competitive pressures and the prices that the Company may charge its merchants presents a significant risk for the Company. Thus, under no set of circumstances can defendants now claim that they were blamelessly unaware of the risks posed by engaging in illegal activity or the substantial negative impact of being forced to charge its merchants lower prices.

6. Notwithstanding these clear warnings, on October 4, 2010, defendants caused the Company to announce via a Form 8-K filed with the SEC that the United States Department of Justice (the "DOJ") and eighteen states had filed a lawsuit against the Company for antitrust violations under Section 1 of the Sherman Act, 15 U.S.C. § 1, regarding the Merchant Restraints discussed above (the "DOJ Action"). Significantly, the DOJ Action also named two of the Company's competitors – Visa Inc. ("Visa") and MasterCard Inc. ("MasterCard") – as defendants. Notably however, both Visa and MasterCard immediately settled the claims brought against them.

7. Defendants here, conversely, in the October 4, 2010 Form 8-K vehemently denied the DOJ's allegations. In fact, the Company's Chief Executive Officer ("CEO"), defendant Kenneth I. Chenault ("Chenault") referred to the DOJ Action as being "perverse." Four days later, on October 8, 2010, defendant Chenault again staunchly defended the Company's actions in an opinion article that he had published in *The Washington Post.* Accordingly, in light of Chenault's swift denials of the allegations contained in the DOJ Action, no reasonable stockholder would reasonably believe that the Board would have been able to independently consider a demand in good faith.

8. Despite Chenault's repeated denials and after over four years of costly litigation for the Company, on February 19, 2015, United States District Judge for the Eastern District of New York Nicholas G. Garaufis ("Judge Garaufis") issued an order, which specifically found that the DOJ has "proven by a preponderance of the evidence that the challenged restraints constitute an unlawful restraint on trade under Section 1 of the Sherman Act" (the "Antitrust Order").[1]

[1] A true and correct copy of the Antitrust Order is attached hereto as Exhibit 1.

9. Judge Garaufis further found that American Express's Merchant Restraints "create an environment in which there is nothing to offset credit card networks' incentives – including American Express's incentive – to charge merchants inflated prices for their services. This, in turn, results in higher costs to all consumers who purchase goods and services from these merchants."

10. Additionally, Judge Garaufis noted that there "is an absence of price competition among American Express and its rival networks" and that "the record shows that merchant prices have risen dramatically in the absence of merchant steering." Further, American Express has "foreclosed the possibility of a current network or a new entrant to the market differentiating itself from its competitors by pursuing a lower-cost provider strategy." Finally, Judge Garaufis noted that "the court has carefully considered American Express's proffered procompetitive justifications and finds them to be insufficient."

11. In line with their prior denials – and confirming that any demand upon the Board would have been futile – in a February 19, 2015 article in *The Wall Street Journal ("WSJ")* entitled "American Express Loses Antitrust Lawsuit on Merchant Rules," representatives from American Express were again quoted as saying that they believed the "decision was wrong."

12. After the DOJ prevailed in the DOJ Action, matters have only continued to worsen for the Company and its shareholders. For instance, on February 23, 2015, Costco announced that it was ending its 16-year relationship with American Express. This was after one of the Company's other corporate partners, JetBlue Airways Corp. ("JetBlue"), announced that it too would be ending its relationship with the Company.

13. Accordingly, a result of defendants' breaches of fiduciary duty and other misconduct, the Company has been (and continues to be) damaged.

THE PARTIES

14. Plaintiff is a current shareholder of American Express and has continuously held American Express stock since 1996.

15. Nominal defendant American Express is a New York corporation with its principal executive offices located at 200 Vesey Street, New York, NY 10285. According to its public filings, American Express is a global services company, providing customers with access to products, insights and experiences that enrich lives and build business success. The Company provides charge and credit payment card products and travel-related services to customers worldwide. The Company's product portfolio consists of charge and credit card products; expense management products and services; consumer and business travel services; stored value products, including travelers cheques and other prepaid products; network services; merchant acquisition and processing, and servicing and settlement, as well as point-of-sale, marketing, and information products and services for merchants; and fee services comprising market and trend analyses and related consulting services, fraud prevention services, and the design of customer loyalty and rewards programs. The Company sells its products and services to consumers, small businesses, mid-sized companies, and large corporations through direct mail, online applications, in-house and third-party sales forces, and direct response advertising. The Company's subsidiaries include, but are not limited to, American Express Centurion Bank, American Express Travel Related Services Company, Inc., and American Express Bank, FSB.

16. Defendant Chenault has served as the Company's CEO since January 2001 and Chairman of the Board since April 2001.

17. Defendant Jeffrey C. Campbell ("Campbell") has served as the Company's Executive Vice President, Finance since July 2013 and Executive Vice President and Chief

Financial Officer ("CFO") since August 2013.

18. Defendant Daniel T. Henry ("Henry") served as the Company's CFO from October 8, 2007 to August, 2013 and served as the Company's Executive Vice President from February 25, 2007 to August, 2013. In addition, defendant Henry served as the Company's Acting CFO from February 25, 2007 to October 2007.

19. Defendant Daniel F. Akerson ("Akerson") served as a director of the Company from 1995 until 2012. In addition, defendant Akerson served as a member of the Board's Audit and Compliance Committee (the "Audit Committee")[2] during the Relevant Period.

20. Defendant Charlene Barshefsky ("Barshefsky") has served as a director of the Company since 2001.

21. Defendant Ursula M. Burns ("Burns") has served as a director of the Company since 2004. In addition, defendant Burns has served as a member of the Audit Committee during the Relevant Period.

22. Defendant Peter Chernin ("Chernin") has served as a director of the Company since 2006.

23. Defendant Theodore J. Leonsis ("Leonsis") has served as a director of the Company since 2010.

24. Defendant Jan Leschly ("Leschly") served as a director of the Company from 1997 until 2013.

25. Defendant Richard C. Levin ("Levin") has served as a director of the Company since 2007. In addition, defendant Levin has served as a member of the Audit Committee during the Relevant Period.

[2] At earlier points in the Relevant Period, the Audit Committee was known as the Audit and Risk Committee.

26. Defendant Richard A. McGinn ("McGinn") served as a director of the Company from 1998 until 2014.

27. Defendant Edward D. Miller ("Miller") served as a director of the Company from 2003 until 2013.

28. Defendant Steven S. Reinemund ("Reinemund") has served as a director of the Company since 2007. In addition, defendant Reinemund has served as a member of the Audit Committee during the Relevant Period.

29. Defendant Daniel Vasella ("Vasella") has served as a director of the Company since 2012. In addition, defendant Vasella has served as a member of the Audit Committee during the Relevant Period.

30. Defendant Samuel J. Palmisano ("Palmisano") has served as director of the Company since 2013.

31. Defendant Anne Marie Alice Lauvergeon ("Lauvergeon") has served as a director of the Company since 2013. In addition, defendant Lauvergeon has served as a member of the Audit Committee during the Relevant Period.

32. Defendant Robert D. Walter ("Walter") has served as a director of the Company since 2002.

33. Defendant Ronald A. Williams ("Williams") has served as a director of the Company since 2007. In addition, defendant Williams has served as a member of the Audit Committee during the Relevant Period.

34. Collectively, defendants Chenault, Campbell, Henry, Akerson, Barshefsky, Burns, Chernin, Leonsis, Lauvergeon, Palmisano, Reinemund, Miller, McGinn, Leschly, Vasella, Walter, and Williams shall be referred to herein as "Defendants."

35. Collectively, defendants Vasella, Lauvergeon, Reinemund, Williams, Levin, Burns, and Akerson shall be referred to as the "Audit Committee Defendants."

DEFENDANTS' DUTIES

36. By reason of their positions as officers, directors, and/or fiduciaries of American Express and because of their ability to control the business and corporate affairs of American Express, Defendants owed American Express and its shareholders fiduciary obligations of good faith, loyalty, and candor, and were and are required to use their utmost ability to control and manage American Express in a fair, just, honest, and equitable manner. Defendants were and are required to act in furtherance of the best interests of American Express and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit. Each director and officer of the Company owes to American Express and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

37. Defendants, because of their positions of control and authority as directors and/or officers of American Express, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein. Because of their advisory, executive, managerial, and directorial positions with American Express, each of the Defendants had knowledge of material non-public information regarding the Company.

38. To discharge their duties, the officers and directors of American Express were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors of American Express were required to, among other things:

a. Exercise good faith to ensure that the affairs of the Company were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;

b. Exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner and complied with all applicable federal and state laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority; and

c. When put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

39. Pursuant to the Company's Code of Conduct (the "Code of Conduct"), which expressly applies to members of the Board, "American Express strongly supports vigorous yet fair competition. We must all abide by competition laws (also referred to as "antitrust," "monopoly" or "cartel" laws), which are designed to preserve free and open competition." The Code of Conduct further states that Defendants "must avoid even the appearance of agree with a competitor to limit how we compete with one another." The Code of Conduct likewise recognizes that "[c]ompetition law issues may also arise when we deal with customers, vendors and others who are not our competitors."

40. Pursuant to the Company's Code of Business Conduct for Members of the Board of Directors of American Express Company as amended and restated as of November 22, 2010 (the "Directors' Code"), which specifically applies to every member of the Board, "[d]irectors shall assure [sic] that the Company has policies in place that require fair dealing by Employees with the Company's customers, suppliers and competitors." Additionally, pursuant to the Directors' Code, "[d]irectors should promote ethical behavior and take steps to ensure that the Company : (a) encourages employees to report violations of laws, rules, regulations or the Company's Code of Conduct to appropriate personnel…"

41. Pursuant to the terms of the Audit Committee's Charter (the "Audit Committee

Charter") as amended and restated as of September 22, 2014, the members of the Audit Committee were responsible for assisting the Board in its oversight responsibilities related to the integrity of the Company's financial statements and financial reporting process, the integrity of the Company's systems of internal accounting and financial controls, and legal and regulatory compliance. Among other things, the members of the Audit Committee were specifically responsible for:

a. Reviewing with management any significant legal and regulatory exposures, including any regulatory inquiries or concerns regarding the Company's financial statements and accounting policies and the potential impact of regulatory initiatives.

b. Reviewing with the CEO and CFO the Company's disclosure controls and procedures, and reviewing periodically management's conclusions about the efficacy of such disclosure controls and procedures, including any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting and any fraud involving management or other employees who have a significant role in the Company's internal control over financial reporting.

c. Reviewing with management the annual audit financial statements and other financial information to be included in the Company's Annual Report on Form 10-K, including the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations," management's and/or the independent registered public accounting firm's judgment about the quality, not just acceptability, of accounting principles, the reasonableness of significant judgments and the clarity of the disclosures in the financial statements.

d. Recommending to the Board whether the annual audited financial statements should be included in the Company's Form 10-K Annual Report.

e. Reviewing and discussing with management the Company's quarterly financial information to be included in the Company's Quarterly Reports on Form 10-Q, including the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations."

f. Reviewing analyses prepared by management and/or the independent registered public accounting firm setting forth significant financial reporting issues or judgments made in connection with the financial statements.

g. Reviewing management actions on significant compliance matters (*e.g.*, actions taken to remediate significant compliance issues, implement major compliance initiatives, and ensure compliance with open regulatory actions.

h. Reviewing and discussing reports from management concerning significant operating and control issues identified in internal audit reports, management letters and significant regulatory authorities' examination reports pertaining to the Company.

SUBSTANTIVE ALLEGATIONS

A. **The Background of the Company**

42. According to its public filings, American Express is a global services company, providing customers with access to products, insights and experiences that enrich lives and build business success. The Company provides charge and credit payment card products and travel-related services to customers worldwide. The Company's product portfolio consists of charge and credit card products; expense management products and services; consumer and business travel services; stored value products, including travelers cheques and other prepaid products; network services; merchant acquisition and processing, and servicing and settlement, as well as point-of-sale, marketing, and information products and services for merchants; and fee services comprising market and trend analyses and related consulting services, fraud prevention services, and the design of customer loyalty and rewards programs. The Company sells its products and services to consumers, small businesses, mid-sized companies, and large corporations through direct mail, online applications, in-house and third-party sales forces, and direct response advertising. The Company's subsidiaries include, but are not limited to, American Express Centurion Bank, American Express Travel Related Services Company, Inc., and American Express Bank, FSB.

43. During the Company's Relevant Period financial filings, Defendants repeatedly warned of the importance of the Company complying with all laws, rules, and regulations. For

instance, in the Company's Annual Report filed with the SEC on Form 10-K on February 24, 2014 (the "2013 Form 10-K"), Defendants warned:

> ***Our business is subject to significant and extensive government regulation and supervision, which could adversely affect our results of operations and financial condition.***
>
> On November 14, 2008, American Express Company and TRS each became bank holding companies under the BHC Act and elected to be treated as financial holding companies under the BHC Act. As a result of becoming a bank holding company, we are subject to regulation by the Federal Reserve, including, without limitation, consolidated capital regulation at the holding company level, maintenance of certain capital and management standards in connection with our two U.S. depository institutions and restrictions on our non-banking activities, investments and acquisitions under the Federal Reserve's regulations.
>
> ***
>
> We are also subject to extensive government regulation and supervision in jurisdictions around the world, both as a participant in the financial services industry and otherwise. Among other things, as a result of regulators enforcing existing laws and regulations, we could be fined, required to pay restitution, prohibited from engaging in some of our business activities, subjected to limitations or conditions on our business activities or subjected to new or substantially higher taxes or other governmental charges in connection with the conduct of our business or with respect to our employees. Regulatory action could cause significant damage to our global reputation and brand and any change to our business practices that makes our products and services less attractive to our customers could adversely affect our results of operations and financial condition. Moreover, enforcement of laws in some overseas jurisdictions can be inconsistent and unpredictable, which can affect both our ability to enforce our rights and to undertake activities that we believe are beneficial to our business. As a result, the profitability of our operations outside the United States may be adversely affected.
>
> There is also the risk that new laws or regulations or changes in enforcement of existing laws or regulations applicable to our businesses may be imposed, which could impact the profitability of our business activities, limit our ability to pursue business opportunities, require us to change certain of our business practices or alter our relationships with customers, affect retention of our key personnel, or expose us to additional costs (including increased compliance costs). Such changes also may require us to invest significant management attention and resources to make any necessary changes and could adversely affect our results of operations and financial condition. For example, the Credit Card Accountability Responsibility and Disclosure Act of 2009 required us to make fundamental changes to many of our business practices, including marketing, underwriting,

pricing and billing. We have made changes to Card product terms and practices that are designed to comply with, and mitigate the impact of the changes required by, the CARD Act; however, there is no assurance that such changes will continue to be successful. In the event the CARD Act constrains our ability to respond to economic, market and other conditions, it could have a material adverse effect on our results of operations, including our revenue and net income.

44. In the 2013 Form 10-K, Defendants also warned of the "significant fines, penalties, and judgments" that may result from litigation and regulatory actions if they fail to follow all laws, rules, and regulations. Specifically, the 2013 Form 10-K states:

> ***Litigation and regulatory actions could subject us to significant fines, penalties, judgments and/or requirements resulting in increased expenses.***
>
> Businesses in the payments industry have historically been subject to significant legal actions and investigations alleging violations of competition/antitrust law, consumer protection law and intellectual property rights, among others. Many of these actions have included claims for substantial compensatory or punitive damages. We have also been subject to regulatory actions and may continue to be involved in such actions, including subpoenas, investigations and enforcement proceedings, in the event of noncompliance or alleged noncompliance with laws or regulations. The current environment of additional regulation, enhanced compliance efforts and increased regulatory investigations and enforcement is likely to continue to result in changes to practices, products and procedures, increased costs related to regulatory oversight, supervision and examination and additional restitution to Card Members. Litigation and regulatory actions generally could subject us to significant fines, increased expenses, restrictions on our activities and damage to our global reputation and our brand, and could adversely affect our business, financial condition or results of operations.

45. Defendants likewise recognized that competitive pressures and the prices that the Company may charge its merchants present a significant risk for the Company. For instance, in the 2013 Form 10-K, Defendants stated as follows:

> ***We face increasingly intense competitive pressure that may impact the prices we charge merchants that accept our Cards for payment for goods and services.***
>
> Unlike our competitors in the payments industry that rely on high revolving credit balances to drive profits, our business model is focused on Card Member spending. Discount revenue, which represents fees charged to merchants when Card Members use their Cards to purchase goods and services on our network, is primarily driven by billed business volumes and is our largest single revenue source. In recent years, we have been under market pressure, including pressure

> created by regulatory-mandated reductions to competitors' pricing, to reduce merchant discount rates and undertake other repricing initiatives. In addition, differentiated payment models from non-traditional players in the alternative payments space and the regulatory and litigation environment could pose challenges to our traditional payment model and adversely impact our average discount rate. Some merchants also continue to invest in their own payment solutions, using both traditional and new technology platforms. If merchants are able to drive broad consumer adoption and usage, it could adversely impact our merchant discount rate and billed business volumes.
>
> A continuing priority of ours is to drive greater value to our merchants, which, if not successful, could negatively impact our discount revenue and financial results. If we continue to experience a decline in the average merchant discount rate, we will need to find ways to offset the financial impact by increasing billed business volumes, increasing other sources of revenue, such as fee-based revenue or interest income, or both. We may not succeed in sustaining merchant discount rates or offsetting the impact of declining merchant discount rates, particularly in the current regulatory environment, which could materially and adversely affect our revenues and profitability, and therefore our ability to invest in innovation and in value-added services to merchants and Card Members.

46. Notably, Defendants have included nearly identical warnings in all of the Company's Annual Reports dating back to at least the Company's 2010 Annual Report.

47. Accordingly, under no set of circumstances can Defendants now claim that they were blamelessly unaware of the importance of the prices the Company may charge its merchants or the importance of the Company's obedience of all laws, rules, and regulations.

48. Notwithstanding these clear warnings, for the reasons discussed herein, Defendants permitted and/or caused the Company to affirmatively violate the law, which resulted in the successful DOJ Action.

B. <u>The Company's Credit Cards</u>

49. The Company offers General Purpose Cards as payment devices that a consumer can use to make purchases from a wide variety of merchants without accessing or reserving the consumer's funds at the time of the purchase. There are two principal types of General Purpose

Cards:[3]

a. credit cards, which usually permit the cardholder to pay either: (i) all charges within a set period after a monthly bill is rendered; or (ii) only a portion of the charges within that time and pay the remainder in monthly installments, including interest; and

b. charge cards, which require the cardholder to pay all charges within a set period after a monthly bill is rendered.

50. General Purpose Cards include cards for personal use (issued to individuals for their personal use), cards for small business (issued to individuals for use with a small business), and commercial and corporate cards (issued to individuals, organizations, and businesses for business use).

51. General Purpose Cards do not include cards that can be used at only one merchant (such as department store cards) or cards that access funds on deposit in a checking or savings account or on the card itself (such as signature debit cards, PIN debit cards, prepaid cards, or gift cards).

52. American Express issues most of its General Purpose Cards to cardholders directly, combining issuer and network functions with respect to those General Purpose Cards. American Express generally provides network services directly to merchants as well. Some American Express cards are issued through agreements with issuing banks, in which case

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[3] While Plaintiff and Plaintiff's counsel have conducted their own independent investigation, the facts alleged regarding the Company's General Purpose Cards and Merchant Restraints all appear in the Amended Complaint for Equitable Relief for Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 (the "DOJ Complaint"). Accordingly, upon information and belief, all facts alleged herein concerning the Company's General Purpose Cards and Merchant Restraints are accurate as of the time of the filing of the DOJ Complaint, which, as discussed herein, ultimately subjected the Company to substantial liability. A true and correct copy of the DOJ Complaint is attached hereto as Exhibit 2.

American Express operates only as a network. For all purposes relevant to this Complaint, such bank-issued cards function substantially the same as those issued by American Express directly, and American Express imposes the same Merchant Restraints for acceptance of its bank-issued cards.

53. American Express's network imposes a fee on the merchant for each transaction. American Express's card acceptance fee typically is set as a percentage of the transaction price. For example, American Express imposes a card acceptance fee of 3% for some transactions. In such transactions, merchants would receive $97 on a $100 retail transaction. American Express would extract the remaining $3 from the transaction. The cost borne by merchants for customers' use of American Express General Purpose Cards is often substantially higher than the cost of customers' use of competing networks' General Purpose Cards. Any other General Purpose Card selected by the customer from the options in his or her wallet - such as a Discover, MasterCard, or Visa General Purpose Card – generally would be less costly to the merchant.

54. Merchants charge higher retail prices to customers to cover the cost of paying these fees to American Express.

C. **The Company's Merchant Restraints**

55. According to the DOJ Complaint, American Express has instituted its own set of Merchant Restraints[4] prohibiting or restricting a merchant that accepts American Express cards from encouraging its customers to use any other network's card at the point of sale. As alleged in the DOJ Complaint, American Express's Merchant Restraints impose a competitive straightjacket on merchants, restricting decisions by them to offer discounts, benefits, and choices to customers that many merchants would otherwise be free to offer. As the DOJ has

[4] As set forth in the Antitrust Order, American Express's "Merchant Restraints" were internally termed American Express's Non-Discrimination Provisions ("NDPs"). Accordingly, throughout this Complaint Merchant Restraints and NDPs are used synonymously.

successfully established, American Express's Merchant Rules violated Section 1 of the Sherman Act.

56. American Express includes its Merchant Restraints in its contracts with merchants that accept its cards. In circumstances where American Express contracts with the merchant's acquiring bank, American Express requires the acquiring bank to ensure the merchant complies with the Merchant Restraints.

57. Merchants must accept the Merchant Restraints in order to accept American Express's cards. Merchants clearly understand and expressly agree that they must comply with the Merchant Restraints. Defendants actively monitor and vigorously enforce the Merchant Restraints.

58. It has been alleged in the DOJ Complaint that American Express's point-of-sale rules on merchants restrict competition more than the rules of its rival networks. Specifically, the Merchant Restraints at issue in the DOJ Action are described in its "Merchant Reference Guide—US" (April 2010) (the "Guide"), Section 3.2. The language in Section 3.2 is inserted in identical or substantially similar form in most of American Express's contracts with merchants. In many agreements, the Guide is expressly incorporated by reference. The Merchant Restraints described in Section 3.2 of the Guide impose the following restrictions on merchants that accept American Express:

> Merchants must not:
>
> - indicate or imply that they prefer, directly or indirectly, any Other Payment Products over [American Express'] Card,
>
> - try to dissuade Cardmembers from using the Card,
>
> - criticize . . . the Card or any of [American Express'] services or programs,

> - try to persuade or prompt Cardmembers to use any Other Payment Products or any other method of payment (*e.g.*, payment by check),
>
> - impose any restrictions, conductions, [or] disadvantages...when the Card is accepted that are not imposed equally on all Other Payment Products, except for ACH funds transfer, cash, and checks, ... or
>
> - promote any Other Payment Products (except the Merchant's own private label card that they issue for use solely at their Establishments) more actively than the Merchant promotes [American Express'] Card.
>
> Merchants may offer discounts from their regular prices for payments in cash or by ACH funds transfer or check, provided that they clearly disclose the terms of the offer (including the regular and discounted prices) to customers and that any discount offered applies equally to Cardmembers and holders of Other Payment Products.[5]
>
> Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, the Merchant must indicate their acceptance of the Card and display [American Express'] Marks according to [American Express'] guidelines and prominently and in the same manner as any Other Payment Products.

59. The Guide defines the term "Other Payment Products" used in Section 3.2 as "[a]ny charge, credit, debit, stored value or smart cards, account access devices, or other payment cards, services, or products other than the [American Express] Card."

60. As alleged in the DOJ Complaint, American Express's Merchant Restraints thus forbid, among other things, the following types of actions a merchant could otherwise use at the point of sale to foster competition on price and terms among sellers of network services:

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[5] In October, 2010, American Express amended this paragraph of 3.2 of the Guide to state: "Merchants may offer discounts or in-kind incentives from their regular prices for payments in cash, ACH funds transfer, check, debit card or credit/charge card, provided that (to the extent required by applicable law): (i) they clearly and conspicuously disclose the terms of the discount or in-kind incentive to their customers, (ii) the discount or in-kind incentive is offered to all of their prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of issuer or, except as expressly permitted by applicable state statute, payment card network (*e.g.*, Visa, MasterCard, Discovery, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provisions set forth above in this section 3.2."

- promoting a less expensive General Purpose Card brand more actively than any other General Purpose Card brand;

- offering customers a discount or benefit for use of a General Purpose Card brand that costs less to the merchant;

- asking customers at the point of sale if they would consider using another General Purpose Card brand in their wallets;

- posting a sign encouraging use of, or expressing preference for, a General Purpose Card brand that is less expensive for the merchant;

- posting the signs or logos of General Purpose Card brands that cost less to the merchant more prominently than signs or logos of more costly General Purpose Card brands; or

- posting truthful information comparing the relative costs of different General Purpose Card brands.

D. The Company, Under Defendants' Direction and on Their Watch, Violates the Sherman Act

61. As alleged in the DOJ Complaint, each of American Express's vertical Merchant Restraints is directly aimed at restraining horizontal interbrand competition. Specifically, the DOJ argued in the DOJ Action that each of American Express's Merchant Restraints harm competition by: 1. harming the competitive process and disrupting the proper functioning of the price-setting mechanism of a free market; 2. restraining merchants from encouraging or pressing each credit card company to compete over card acceptance fees; 3. insulating American Express from competition from rival networks that would otherwise encourage merchants to favor use of those networks' cards; 4. inhibiting other networks from competing on price at merchants that accept American Express cards; 5. restraining merchants from promoting payment methods other than American Express cards; 6. restraining merchants from competing for customers with discounts, promotions, or other forms of lower prices and other benefits enabled by customers' use of a lower cost General Purpose Card or other payment method; 7. causing increased prices

in the form of higher merchant card acceptance fees; 8. causing increased retail prices for goods and services paid generally by customers; 9. reducing output of lower-cost payment methods; 10. stifling innovation in network services and card offerings that would emerge if competitors were forced to compete for merchant business at the point of sale; and 11. denying consumers information about the relative costs of American Express card usage compared to other card usage that would cause more consumers to choose lower-cost payment methods.

62. In the DOJ Complaint, it is alleged that American Express's Merchant Restraints substantially reduce price and non-price competition for merchant use of network services and interfere with price setting at the merchant point of sale. Without the Merchant Restraints, and faced with American Express's high card acceptance fees, many merchants would encourage customers to use cards offered by the lowest-cost network. Without the Merchant Restraints, American Express would compete more vigorously. The DOJ has successfully established that by imposing the Merchant Restraints, Defendants have insulated the Company from competition with any other network competitor at the merchant point of sale. The Merchant Restraints reduce incentives for American Express, in violation of the Sherman Act, to offer merchants lower-priced network services that would benefit consumers, because merchants cannot encourage customers to use the less expensive options without violating American Express's Merchant Restraints.

63. American Express can thus maintain high prices for its network services with confidence that no competitor will take away significant transaction volume through competition in the form of merchant discounts or benefits to consumers to use lower cost payment options. American Express's price for network services to merchants is higher than it would be without the Merchant Restraints.

64. Further, the DOJ has argued that because American Express's Merchant Restraints obstruct merchants from encouraging customers to use less costly payment methods, merchants bear higher costs and their customers face higher retail prices. For example, if a merchant cannot reduce its costs by encouraging cheaper payment methods or by encouraging competition among networks, the merchant will charge higher prices generally to its customers. A customer who pays with lower-cost methods of payment pays more than he or she would if American Express did not prevent merchants from encouraging network competition at the point of sale.[6]

65. The fees American Express imposes on General Purpose Card transactions are largely not visible to consumers. The Merchant Restraints forbid merchants even from telling consumers simple factual information about what merchants have to pay when consumers use General Purpose Cards. This information could help merchants to encourage customers to choose more cost-effective payment methods. For example, those customers who prefer American Express services and value them at a competitive price could continue to choose them, but others would not be forced to subsidize this choice by paying higher prices.

66. In short, the DOJ has successfully established that American Express's Merchant Restraints unlawfully removed tools that merchants in a competitive marketplace would use to negotiate lower card acceptance fees, to reduce their costs of doing business, to empower their customers with information to make choices about payment methods, to encourage customers to choose a low-cost payment method, and to keep retail prices lower for their customers.

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[6] For example, because American Express General Purpose Cards typically are held by more affluent buyers, less affluent purchasers using non-premium General Purpose Cards, debit cards, cash, and checks effectively subsidize part of the cost of expensive American Express card benefits and rewards.

67. Each of American Express's Merchant Restraints constitute agreements that unreasonably restrain competition in the market for General Purpose Card network services to merchants, and in the market for General Purpose Card network services to travel and entertainment merchants, in the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

68. As alleged in the DOJ Action, these agreements have had and will continue to have illegal anticompetitive effects by protecting American Express from competition over the cost of card acceptance to merchants, and restraining merchants from encouraging customers to use lower-cost payment methods. The Company's restraints unlawfully insulate American Express's card acceptance fees from competition, increase costs of payment acceptance to merchants, increase prices, reduce output, harm the competitive process, raise barriers to entry and expansion, and re innovation.

E. <u>The DOJ Commences and is Victorious in the DOJ Action</u>

69. On October 4, 2010, Defendants caused the Company to announce in a Form 8-K that the DOJ Action had been filed by the DOJ and eighteen states alleging the violations of the Sherman Act discussed above. Despite having conducted no independent investigation into the serious antitrust violations alleged in the DOJ Action, in the October 4, 2010 Form 8-K, defendant Chenault vehemently denied the allegations and stated that "[w]e are confident that the courts will recognize the perverse anti-competitive nature of the government's case..." The October 4, 2010 Form 8-K stated:

> October 4, 2010 – American Express said the antitrust lawsuit filed today against the company is a significant retreat from previous Department of Justice efforts to promote competition in the payments industry. The new approach would ultimately limit consumer choice, reduce competition and curtail innovation.

The government's lawsuit claims that terms of American Express merchant contracts, which protect cardmembers against discrimination and disruption at the point of sale, violate U.S. antitrust laws.

The Justice Department's proposed remedy would interfere with consumer choice at the check-out counter by steering American Express cardmembers to another payment network.

The government's new legal theory ignores a key point that the Justice Department previously made and that the courts have already decided: American Express does not have the ability to force merchants to accept its products or pricing.

"In today's action, the Department has sued a party proven not to have market power," said Kenneth I. Chenault, chairman and chief executive officer. "It represents an extraordinary retreat by the antitrust division. Instead of promoting competition, it now seeks to promote regulation that would ultimately limit competition."

"We have no intention of settling the case," said Mr. Chenault. "We will defend the rights of our cardmembers at the point of sale and our own ability to negotiate freely with merchants. We are confident that the courts will recognize the perverse anti-competitive nature of the government's case and that we will continue providing a competitive, superior service to cardmembers and merchants."

"Whatever the intent, the government's new approach would hand an unfair advantage back to Visa and MasterCard," Mr. Chenault said. "The Justice Department would, in effect, be undoing its own six year fight (1998-2004) to allow smaller payment networks like American Express to provide a competitive choice to consumers and merchants."

American Express, the choice of higher spending cardmembers, partners with merchants who want to build business among these customers.

The company has invested billions of dollars to differentiate its products and services from the competition. It succeeds by offering superior customer service and innovative benefits, along with marketing programs and analytical support for merchants who choose to accept the card.

While virtually all American Express Cardmembers also carry products from a competing network, they choose to use American Express because of the service and value they receive.

"Not all merchants accept American Express Cards, but millions of them find greater value in welcoming our products than in accepting Visa, MasterCard and

> Discover exclusively," said Mr. Chenault. "Those merchants benefit from the investments we make to build strong cardmember relationships and to profit from the increased revenues they receive from these higher spending customers."
>
> When merchants agree to accept American Express they promise not to 'bait and switch' by advertising acceptance of American Express to attract customers and then steering them to another means of payment at the point of sale. While American Express negotiates many contracts that allow merchants to run promotional campaigns with competing networks, they do not permit disrupting cardmembers at the point of sale. The government's proposed solution would eliminate that protection.
>
> "Instead of promoting competition, the government remedy would ultimately wind up marginalizing it. The government's one-sided remedy would put more power in the hands of Visa and MasterCard, the networks that steadily increased prices for credit card transactions over the past decade, that control over 70 percent of the market and that have ten times as many cards as American Express. Anyone familiar with antitrust matters, would realize that in the real world such market power would ultimately work to the disadvantage of merchants as well as consumers.

70. Notably, the Company's October 4, 2010 Form 8-K failed to disclose that the DOJ Action was also brought against two of the Company's competitors, Visa and MasterCard, and that both Visa and MasterCard had reached settlements with the DOJ. On October 5, 2010, *WSJ* published an article entitled "U.S., AmEx in Antitrust Suit," which stated:

> WASHINGTON—The Justice Department slapped American Express Co. with a civil antitrust suit after the credit-card company refused to join an industrywide agreement to allow merchants to steer customers toward cheaper forms of plastic.
>
> To head off a court fight with the government and seven state attorneys general, Visa Inc. and MasterCard Inc. agreed Monday to scrap a range of restrictions on the merchants that accept their cards. Under the proposed settlement, Visa and MasterCard would allow merchants to offer discounts, rebates or other incentives to get customers to use cards with lower merchant fees, such as "plain-vanilla" cards with no rewards or points programs.
>
> AmEx's decision to fight the issue of steering means most consumers won't see any immediate difference when using cards. Many merchants will still be bound by American Express's rules that prohibit them from discouraging customers from using AmEx cards.

The Justice Department alleged the merchant agreements stifled competition among credit-card networks and resulted in higher fees being passed onto consumers.

New York-based American Express vowed to maintain its rules and fight the case, contending that the government's settlement with its rivals was a setback for competition. AmEx says the settlement potentially hands Visa and MasterCard more market power because it would permit merchants to direct away customers from American Express, which typically charges merchants higher fees.

"We are confident that the courts will recognize the perverse anticompetitive nature of the government's case and that we will continue providing a competitive, superior service to card members and merchants," Kenneth Chenault, American Express's chief executive, said in a statement.

The Justice Department didn't mince words.

"Because American Express has refused to change its rules, consumers are being held hostage from receiving the expanded choices and lower prices that they deserve under our settlement," said Attorney General Eric Holder. "We cannot allow this to stand."

AmEx shares tumbled on the news, falling $2.73, or 6.5%, to $39.05 in 4 p.m. New York Stock Exchange trading.

If the company is ultimately forced to change its rules, consumers would have to balance merchant discounts on purchases likely to accompany low-fee cards against generous rewards typically associated with high-fee cards such as American Express's.

It isn't clear if consumers, given the choice, would change their card usage in favor of discounts over rich rewards. Card issuers have been steadily adding rewards perks because consumers are often willing to pay an annual fee for those benefits.

The case is the latest to take aim at the credit-card industry, which is struggling to recover from record delinquencies and defaults. Banks that issue cards are under fire for raising fees and cutting credit lines during the financial crisis; now they are subject to a new law that curtails some of the industry's practices.

Financial institutions that issue plastic are also expected to lose significant revenue from new restrictions on debit-card fees that are part of the recently enacted financial regulation bill.

The issue of steering has long been a controversial one in the credit-card industry. Merchants are already permitted to offer discounts for cash purchases. Some

merchants also encourage customers to use debit cards that require a personal identification number, which is cheaper for the merchant than a debit transaction that requires a signature.

MasterCard, of Purchase, N.Y., played down the effect of the changes, saying it wouldn't have to substantially change its business practices. San Francisco-based Visa also said the new rules wouldn't hurt its business, but acknowledged they would give merchants new leeway.

"The new rules will expand U.S. merchants' ability to discount for their preferred form of payment, though they will not be able to pick and choose amongst issuing banks," it said in a statement.

Neither Visa nor MasterCard admitted to any wrongdoing as part of their settlement, which also didn't impose any fines.

Discover Financial Services , which is the smallest of the big players, wasn't named in the suit or the settlement. A Discover spokeswoman said the Riverwoods, Ill.-based firm cooperated with the government's probe and is "examining the settlement to determine what, if any, impact it may have."

Merchants, some of which have also privately sued the credit-card companies on the issue, viewed the settlement as a victory.

"People are beginning to realize that the card companies have been engaging in egregious behavior for a long time," said Mallory Duncan, general counsel for the National Retail Federation, a trade group.

71. Incredibly, notwithstanding the serious charges levied by the DOJ, in addition to defendant Chenault's denials in the October 4, 2010 Form 8-K, on October 8, 2010 defendant Chenault wrote an opinion article in *The Washington Post* entitled "Why Amex is Fighting Justice's Bad Deal for Credit Card Holders," which again staunchly defended the Company's actions. Accordingly, in light of the CEO's multiple, swift denials of the allegations detailed herein, no reasonable stockholder would reasonably believe that the Board would have been able to independently consider a demand in good faith, which independently excuses any demand. Defendant Chenault's October 8, 2010 denial states:

This week, the Justice Department sued Visa, MasterCard and my company, American Express, alleging that our rules prevent consumers from getting a lower price when they shop. Visa and MasterCard quickly settled and agreed to follow a

complex set of remedies developed by government attorneys. We chose to fight. Let me explain why.

The government remedy does nothing for consumers. And, whatever its intention, the Justice Department is heading down a path that eventually leads to less competition, not more.

Merchants accept plastic because they know many customers often want to use credit, charge or debit cards at the checkout counter. Card acceptance brings higher sales, prevents fraud or counterfeiting, and protects against losses when a customer doesn't pay his or her bill. In return, merchants agree to welcome cards at the point of sale and to pay a fee, which is typically between 2 and 3 percent of the purchase price.

Perversely, the government's remedy would allow merchants that sign a contract and post decals to show which credit cards they accept to then ignore the contract's ban on discrimination by pressuring their customers to use a different card when they pay.

In theory, you might be offered a small discount for putting up with the inconvenience. But this will not lead to lower prices overall for consumers. Merchant associations, even those that support the Justice Department, won't commit to lower prices. Nothing in the government's lawsuit requires them to do so. As it is, merchants are already allowed to offer a discount or incentive to customers who pay by cash, checks or debit cards. Very few do.

The net result of this "bait and switch" is an unhappy customer who was pushed to use a backup card that didn't provide the customer service, buyer protection, benefits or rewards that he or she prefers. Only in Washington could that be called a consumer benefit.

Antitrust laws were designed to promote competition. But in this case, the government lawyers who enforce those laws are doing just the opposite by offering a solution that favors the two dominant networks. Here's how.

Earlier court rulings found that Visa and MasterCard have market power that allows them to unfairly dominate the payment industry. Given the sheer size of their customer base, most merchants do business with them because they have to. Only a small percentage of their card holders also carry an American Express or Discover product.

By contrast, American Express is a network of choice and the smallest in terms of merchant acceptance. Merchants don't have to do business with us, but those that do appreciate our overall service and value, including more business from higher-spending customers who carry our cards. In return, we require that they not discriminate against our card. Unlike the dominant networks, virtually all

American Express customers carry another card in their wallet. American Express customers don't have to use our card, but they choose to do so. Their choice recognizes the superior value and service we provide.

Compare the two different business models, and you'll see the flaw in the government's thinking. It is difficult to steer Visa or MasterCard holders to American Express because those consumers don't carry our card. By contrast, it's possible to pressure our customers toward one of the backup products they carry deeper in their wallet.

If the government is allowed to do away with the protections we build into our merchant contracts, the net result would be more business for the two dominant networks.

Visa and MasterCard already control 70 percent of the market. When dominant parties gain even more market share, no one will be able to negotiate freely or fairly with them. The inevitable result would be higher costs for merchants and less value for consumers. That's the real cost of government intervention.

The Justice Department is supporting bad policy and disguising it with vague promises of consumer benefit. We think their case is weak and we intend to fight it.

It's never easy to take on a long, costly battle with the government, but what's at stake are some important issues: consumer choice, free market competition and the ability to deliver superior products and services to our customers. This is a fight worth fighting.

72. After over four years of costly litigation for the Company, on February 19, 2015, Judge Garaufis issued the Antitrust Order, which specifically found that the DOJ has "proven by a preponderance of the evidence that the challenged restraints constitute an unlawful restraint on trade under Section 1 of the Sherman Act." *See* Exhibit 1 at p.6.

73. In the Antitrust Order, Judge Garaufis specifically held that despite Chenault's contentions to the contrary, "American Express possesses sufficient market power in the network services market to harm competition, as evidenced by its significant market share, the market's highly concentrated nature and high barriers to entry, and the insistence of Defendants' cardholder base on using their American Express cards – insistence that prevents most merchants from dropping acceptance of American Express when faced with price increases or similar

conduct." *Id.*

74. Judge Garaufis further found that American Express's Merchant Restraints "create an environment in which there is nothing to offset credit card networks' incentives – including American Express's incentive – to charge merchants inflated prices for their services. This, in turn, results in higher costs to all consumers who purchase goods and services from these merchants." *Id.* at p.4.

75. Additionally, Judge Garaufis noted that there "is an absence of price competition among American Express and its rival networks" and that "the record shows that merchant prices have risen dramatically in the absence of merchant steering." *Id.* at p.6. Further, American Express has "foreclosed the possibility of a current network or a new entrant to the market differentiating itself from its competitors by pursuing a lower-cost provider strategy." *Id.* Finally, Judge Garaufis noted that "the court has carefully considered American Express's proffered procompetitive justifications and finds them to be insufficient." *Id.*

76. Judge Garaufis specifically noted that he found that the DOJ met its burden of proof "[u]pon consideration of the case law in this circuit and the factual record developed at the lengthy bench trial, which was held over a seven-week period during the summer of 2014 and featured over thirty fact witnesses and four expert witnesses." *Id.* at p.5.

77. Predictably, the financial press was not kind to the Company or defendant Chenault. For example, a February 19, 2015 *WSJ* article entitled "American Express Loses Antitrust Lawsuit on Merchant Rules," succinctly stated that "Kenneth Chenault rolled the dice and lost." The article further noted that as a result of the ruling "merchants who accept AmEx plastic would be permitted to encourage customers to use other, potentially cheaper cards, such as ones that are branded by Visa Inc. and MasterCard Inc. Merchants also could offer discounts

to shoppers for using cards other than AmEx and post signs that specify which card they prefer." Significantly, in the article, representatives from American Express were again quoted as saying that they believed the "decision was wrong." The article stated, in pertinent part:

> Kenneth Chenault rolled the dice and lost.
>
> The longtime chief executive of American Express Co. refused for years to settle an antitrust case with the U.S. government, vowing to fight even as the company's top rivals cut deals.
>
> On Thursday, a U.S. District Court judge sided with the Justice Department, ruling that AmEx's rules are anticompetitive by not allowing merchants to promote other cards or offer certain discounts. For Mr. Chenault, the loss was the second big blow in a week, following AmEx's surprise announcement that its 16-year partnership with Costco Wholesale Corp. would end next year.
>
> The ruling means that merchants who accept AmEx plastic would be permitted to encourage customers to use other, potentially cheaper cards, such as ones that are branded by Visa Inc. and MasterCard Inc. Merchants also could offer discounts to shoppers for using cards other than AmEx and post signs that specify which card they prefer.
>
> The financial impact isn't immediately clear, but AmEx could potentially lose customer spending on its cards or be forced to reduce its rates to merchants, according to industry observers. AmEx has said in financial filings that it could suffer a material adverse effect on its business if it lost the case.
>
> AmEx historically has charged merchants higher fees than those that are set by Visa and MasterCard, although that gap has narrowed in recent years. AmEx uses the fees that it charges to merchants to fund its rewards program and provide other perks to its cardholders.
>
> "American Express might have to bring their fees down and that could potentially destroy their brand image as a premium product," said Richard Hernandez, an antitrust lawyer at McCarter & English LLP in Newark, N.J., who has been following the case.
>
> AmEx said it was disappointed by the judge's decision and will appeal "because we believe the decision was wrong." The government wasn't seeking monetary damages in the case, but instead was trying to force AmEx to drop its restrictions.
>
> "By recognizing that American Express's rules harm competition, the court vindicates the promise of robust marketplaces that is enshrined in our antitrust laws," U.S. Attorney General Eric Holder said on Thursday.

On Thursday, American Express's shares dropped 1.7%, to $78.40, and are off 16% this year. MasterCard gained 1.7%, to $89.20, while Visa's shares ended basically flat, at $269.10.

The decision, handed down in a 150-page ruling by U.S. District Judge Nicholas Garaufis, comes as AmEx has been losing customers to rivals and falling short of revenue targets. Further, the demise of the Costco deal will affect roughly one in 10 AmEx cards in circulation.

AmEx's contractual arrangements have prohibited merchants from steering customers to other cards. Those rules "constitute an unlawful restraint on trade," according to the judge's ruling.

The case dates back to 2010 when the Justice Department filed a lawsuit against AmEx, contending that its merchant rules inhibit competition and raise fees for consumers. The lawsuit was filed just a day after Visa and MasterCard agreed to scrap similar stipulations.

The judge's decision is a big setback for Mr. Chenault, 63 years old, one of the longest-reigning bosses in the U.S. financial-services industry.

Mr. Chenault, who joined AmEx in 1981, led the card company through the financial crisis, when it ran into trouble after an ill-timed expansion into credit-card lending, and has long been one of the top-paid executives on Wall Street. His compensation totaled $24.4 million in 2013, the last full year of data available.

Mr. Chenault wanted the company to go to trial, vowed not to settle the case, and insisted on testifying, according to people familiar with the company's strategy.

During two days of testimony in a Brooklyn court last July, Mr. Chenault repeatedly recounted a period in the 1990s when Visa launched a campaign that encouraged merchants to promote its branded cards with signs that read "We prefer Visa." The effort, combined with Visa and MasterCard rules that prohibited thousands of banks from striking card-issuing deals with AmEx, represented a "double chokehold" on the company, Mr. Chenault said.

"We were fighting for our survival," he said on the witness stand.

An AmEx spokesman declined to make Mr. Chenault available for comment.

Over the course of his tenure, Mr. Chenault has transformed AmEx's customer base and greatly expanded its merchant acceptance. Once known as a card for the affluent that was accepted at exclusive restaurants and hotels, AmEx customers can now use the card at fast-food restaurants and dollar stores.

> Mr. Chenault also is pushing the company into new areas, including prepaid debit cards for consumers who wouldn't qualify for a traditional AmEx card. It also is trying to expand acceptance among small merchants. But the company has struggled as other financial institutions develop cards aimed at affluent customers.
>
> The ruling doesn't mean that AmEx must drop its rules immediately. The judge has asked both sides to submit a proposed remedy to the situation.
>
> The prospect of steering customers to cards with the best deals is appealing to Michael Kurtz, manager of Goldstock Jewelers in Pittsburgh, which accepts AmEx cards and other brands.
>
> "Of course, any business that is trying to maximize profits is going to want to influence people in some way or another," he said, adding that most of his customers already pay with Visa or MasterCard.
>
> In defending itself, AmEx said it isn't big enough to be an anticompetitive presence in the industry. There were 53.6 million AmEx cards in circulation in 2013 compared with 254.1 million U.S.-issued cards from Visa and 178.3 million cards from MasterCard, according to court documents.
>
> "The court's ruling will not provide any benefit to consumers and will, in fact, harm competition by further entrenching the two dominant networks," AmEx said on Thursday.

78. Significantly, in light of Defendants' repeated, prior warnings, Defendants cannot now claim that they were unaware of the risks posed by the DOJ Action or its potential financial impact on the Company. For instance, in the Company's 2013 Form 10-K, Defendants specifically referenced the DOJ Action and warned as follows:

> ***Ongoing legal proceedings regarding our non-discrimination and honor-all-cards provisions in merchant contracts could require changes to those provisions that could result in a material loss of revenue or increased expenses, substantial monetary judgments and/or damage to our global reputation and brand.***
>
> The DOJ and certain states' attorneys general have brought an action against us alleging that the provisions in our Card acceptance agreements with merchants that prohibit merchants from discriminating against our Card products at the point of sale violate the U.S. antitrust laws. Visa and MasterCard, which were also defendants in the DOJ and state action, entered into a settlement and have been dismissed as parties pursuant to that agreement, which was approved by the Court. The settlement enjoins Visa and MasterCard from entering into contracts that prohibit merchants from engaging in various actions to steer cardholders to

other card products or payment forms at the point of sale. In addition, we are a defendant in a number of actions, including proposed class actions filed by merchants that challenge the non-discrimination and honor-all-cards provisions in our Card acceptance agreements. In December 2013, we agreed to settle these merchant class actions and the settlement agreement has been preliminarily approved by the Court. There can be no assurance that the Court will grant final approval of the settlement agreement, which can be impacted by objections to the settlement agreement by plaintiffs and other parties, as well as by the appeals process. A description of these legal proceedings is contained in "Legal Proceedings" below.

An adverse outcome in these proceedings against us could materially and adversely impact our profitability, require us to change our merchant agreements in a way that could expose our Card products to increased steering, selective acceptance or other forms of discrimination at the point of sale that would impair our Card Members' experience, could impose substantial monetary damages and/or could damage our global reputation and brand. Even if we were not required to change our merchant agreements, changes in Visa's and MasterCard's policies or practices as a result of legal proceedings, lawsuit settlements or regulatory actions could result in changes to our business practices and materially and adversely impact our profitability.

79. After the DOJ prevailed in the DOJ Action, matters only worsened for the Company and its shareholders. For example, on February 23, 2015, Costco announced that it was ending its 16-year relationship with American Express.[7] A *Bloomberg* article entitled "Another Big Merchant Dumps American Express" stated, in pertinent part:

If you've got a Costco American Express card, things will be getting a little roomier in your wallet next year. Costco is ending its 16-year relationship with the credit-card provider and is seeking a new partnership, though it's not clear yet which lucky card will be the winner. The Costco AmEx will be discontinued, and the card will no longer be accepted in the warehouses.

It's fair to say that this has been a terrible month for American Express. It also lost a partnership with JetBlue and, even worse, an important court case. American Express cards are more expensive for merchants to take than other cards, so merchants would like to ask customers to use other cards -- only they can't, because American Express merchant agreements forbid this. They can

[7] Notably, even before the ruling in the DOJ Action was issued, the Company was experiencing significant problems as a result of the fees it charges its merchants. For instance, on February 13, 2015, it was reported that JetBlue and the Company would not be renewing their co-brand card arrangement.

refuse to take the cards in the first place, of course, but then they lose customers who don't have a Visa or MasterCard.

American Express has taken a unique approach to a competitive field. Credit cards are what economists call a "two-sided market": They need to get both customers to take their cards and merchants to accept them. Visa and MasterCard keep their fees relatively low in order to woo merchants; AmEx has kept the fees high and passed some of that money back to customers in the form of lower fees and higher rewards. Essentially, it gambled that merchants wouldn't dare refuse its cards as long as enough customers preferred to use them.

That gamble looks to have been a bad bet. A federal judge just ruled that it cannot place those sort of restrictions on merchants, which means American Express will have to lower its fees or lose transactions as merchants ask customers to put that purchase on another card. Lower fees will mean fewer rewards for customers. Unless it can get the decision reversed on appeal, the company is going to have to rework its entire strategy, and "compete with MasterCard and Visa on their own terms" may leave it in a much worse position than in its original plan.

I've seen a few premature obituaries written for the company, but I personally wouldn't count it out just yet. American Express is one of the few companies that has managed to reinvent itself many times, as previously core businesses failed. It survived the nationalization of its original shipping business in part because it had been so innovative in travel and financial services; it survived the death of its traveler's check business because it had been an early innovator in credit cards. It may yet find the innovation that will get it out of this current tailspin.

That's not to downplay the formidable obstacles it has to overcome. American Express's whole credit-card business will have to be reinvented, and reinvention is hard for any company, even one with 160 years of innovation behind it. Maybe especially hard for one of those. Organizations calcify over time, and change gets harder and harder. The saga of American Express may yet have a third act. But it better be writing pretty fast.

80. Again, Defendants cannot claim that they were blamelessly unaware of the importance of the Company's business partner relationships and the detrimental impact that losing any of them could have on the Company. In the 2013 Form 10-K, Defendants specifically warned as follows:

We have agreements with business partners in a variety of industries, including the airline industry, that represent a significant portion of our business. We are exposed to risks associated with these industries, including bankruptcies,

liquidations, restructurings, consolidations and alliances of our partners, and the possible obligation to make payments to our partners.

In the ordinary course of our business we enter into different types of contractual arrangements with business partners in a variety of industries. For example, we have partnered with Costco and Delta Air Lines to offer co-branded cards for consumers and small businesses, and through our Membership Rewards program we have partnered with businesses in many industries, including the airline industry, to offer benefits to Card Member participants. Competition for relationships with key business partners is very intense and there can be no assurance we will be able to grow or maintain these partner relationships. We face the risk that we could lose partner relationships, even after we have invested significant resources, time and expense in acquiring and developing the relationships. The loss of any of our business partners could have a negative impact on our business and results of operations, including as a result of Card Member attrition or additional costs we incur to retain Card Members.

We may be obligated to make or accelerate payments to certain business partners such as co-brand partners and merchants upon the occurrence of certain triggering events such as: (i) our filing for bankruptcy, (ii) our economic condition deteriorating such that our senior unsecured debt rating is downgraded significantly below investment grade by S&P and Moody's, (iii) our ceasing to have a public debt rating, or (iv) a shortfall in certain performance levels. If we are not able to effectively manage the triggering events, we could unexpectedly have to make payments to these partners, which could have a negative effect on our financial condition and results of operations. Similarly, we have credit risk to certain co-brand partners relating to our prepayments for loyalty program points that may not be fully redeemed. We are also exposed to risk from bankruptcies, liquidations, insolvencies, financial distress, restructurings, consolidations and other similar events that may occur in any industry representing a significant portion of our billed business, which could negatively impact particular Card products and services (and billed business generally) and our financial condition and results of operations. For example, we could be materially impacted if we were obligated to or elected to reimburse Card Members for products and services purchased from merchants that have ceased operations or stopped accepting our Cards.

The airline industry represents a significant portion of our billed business and in recent years has undergone bankruptcies, restructurings, consolidations and other similar events. The airline industry accounted for approximately 9 percent of our worldwide billed business for the year ended December 31, 2013.

There continues to be significant consolidation in the airline industry, particularly in the United States (e.g., American/US Airways and United Airlines/Continental Airlines), through mergers and/or grants of antitrust immunity to airline alliances and joint ventures, and this trend could continue. In particular, the United States

> Department of Transportation has granted antitrust immunity to members of the Skyteam, Star and Oneworld Alliances, enabling the covered airlines to closely coordinate their cross-regional operations and to launch highly integrated joint ventures in transatlantic and other markets, including jointly pricing and managing capacity on covered routes, sharing revenues and costs, and coordinating sales and corporate contracts, all outside the scope of the U.S. antitrust laws. The EC has similarly approved the Star and Oneworld Alliances, and its review of the Skyteam Alliance and cooperation between its members is continuing. Increasing consolidation and expanded antitrust immunity could create challenges for our relationships with the airlines including reducing our profitability on our airline business.
>
> Airlines are also some of the most important and valuable partners in our Membership Rewards program. If a participating airline merged with an airline that did not participate in Membership Rewards, the combined airline would have to determine whether or not to continue participation. Similarly, if one of our co-brand airline partners merged with an airline that had a competing co-brand card, the combined airline would have to determine which co-brand cards it would offer. Our largest airline co-brand loan portfolio, American Express' Delta SkyMiles Credit Card, accounted for less than 15 percent of worldwide Card Member loans as of December 31, 2013.
>
> If an airline determined to withdraw from Membership Rewards or to cease offering an American Express co-brand Card, whether as the result of a merger or otherwise, such as the withdrawal of Continental Airlines in 2011 from our Airport Club Access program for Centurion and Platinum Card Members and our Membership Rewards points transfer program or the withdrawal of American Airlines in 2014 from our Airport Club Access program for Centurion and Platinum Card Members, our business could be adversely affected. For additional information relating to the general risks related to the airline industry, see "Risk Management — Exposure to the Airline Industry" on page 44 of our 2013 Annual Report to Shareholders, which is incorporated herein by reference.

F. Defendants' False and Misleading Statements Issued During the Relevant Period

81. During the Relevant Period, Defendants caused American Express to file numerous quarterly and annual reports with the SEC, including an Annual Report each year filed on Form 10-K. Each Form 10-K contained a certification pursuant to the Sarbanes-Oxley Act of 2002 ("SOX"), signed by defendant Chenault and either defendant Taylor or defendant Campbell, all of which were substantially similar to the following from the Company's 2013 Form 10-K:

I, [Kenneth I. Chenault/Jeffrey C. Campbell], certify that:

1. I have reviewed this annual report on Form 10-K of American Express Company;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

> (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.
>
> ***
>
> In connection with the Annual Report on Form 10-K of American Express Company (the "Company") for the fiscal year ended December 31, 2003, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), [Kenneth I. Chenault, as Chief Executive Officer of the Company/Jeffrey C. Campbell, as Chief Financial Officer of the Company] . . . hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:
>
> (1) The Report fully complies with the requirements of Section 13(a) or15(d) of the Securities Exchange Act of 1934; and
>
> (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

82. Similarly, the Defendants have each signed at least one of the Company's Form 10-Ks filed with the SEC during the Relevant Period.

83. Significantly, at no time during the Relevant Period did Defendants cause the Company to disclose in its SEC filings that the Company's internal controls were not sufficient and that the Company, under Defendants' direction and on their watch, was affirmatively violating the Sherman Act. In fact, as discussed above, in multiple instances Company representatives including defendant Chenault himself have staunchly defended the Company's actions and even after the judgment in the DOJ Action was entered, have continued to deny liability.

84. Accordingly, throughout the Relevant Period, Defendants have caused the Company to issue false and misleading financial statements, which have harmed the Company and its reputation.

DERIVATIVE AND DEMAND ALLEGATIONS

85. Plaintiff brings this action derivatively in the right and for the benefit of American Express to redress the breaches of fiduciary duty and other violations of law by Defendants.

86. Plaintiff will adequately and fairly represent the interests of American Express and its shareholders in enforcing and prosecuting its rights.

87. The Board currently consists of the following twelve (12) individuals: defendants Chenault, Barshefsky, Burns, Chernin, Lauvergeon, Leonsis, Levin, Palmisano, Reinemund, Vasella, Walter, and Williams. Plaintiff has not made any demand on the present Board to institute this action because such a demand would be a futile, wasteful and useless act, for the following reasons:

a. The Board's challenged misconduct at the heart of this case constitutes unlawful activity or the facilitation of illegal activity, including the violation of the Sherman Act. In essence, as the "ultimate decision-making body" of the Company, the Board affirmatively adopted, implemented, and/or condoned a business strategy based on violations of law, which Judge Garaufis confirmed in the Antitrust Order. Breaking the law is not, however, a legally protected business decision and such conduct can in no way be considered a valid exercise of business judgment. Accordingly, demand on the Board is excused;

b. A derivative claim to recoup damages for harm caused to the Company by unlawful activity represents a challenge to conduct that is outside the scope of the business judgment rule, which also subjects each member of the Board to a substantial likelihood of liability. Simply put, violating the law, approving

the violations of applicable law by others, or looking the other way while refusing to prevent others under the Board's control from violating the law are all forms of misconduct that cannot under any circumstances be examples of legitimate business conduct and which, consequently, subject the members of the Board to a substantial likelihood of liability. Accordingly, because every member of the Board faces a substantial likelihood of liability for their illegal conduct, demand is excused;

c. The entire Board, and particularly defendant Chenault, has clearly shown its hostility to the relief sought in this action, excusing demand. Specifically, the Company, under the Board's direction has repeatedly denied the allegations in the DOJ Action at every turn including: (i) defendant Chenault's statement immediately following the filing of the DOJ Action in the Company's October 4, 2010 Form 8-K that "[w]e are confident that the courts will recognize the perverse anti-competitive nature of the government's case..."; (ii) defendant Chenault's opinion article published in *The Washington Post* on October 8, 2010, which was entirely devoted to denying the allegations in the DOJ Action; and (iii) the Company's statement immediately after the issuance of the Antitrust Order that the "decision was wrong." Accordingly, under these circumstances, no reasonable shareholder would reasonably believe that the Board could properly and impartially consider a demand in good faith;

d. At various points during the Relevant Period, defendants Vasella, Lauvergeon, Reinemund, Williams, Levin, Burns, and Akerson served as members of the Audit Committee. Pursuant to the Company's Audit Committee Charter, the

members of the Audit Committee were and are responsible for, *inter alia*, reviewing the Company's: (i) legal and regulatory compliance; (ii) accuracy of the Company's financial statements; and (iii) the integrity of the Company's internal controls. Defendants Vasella, Lauvergeon, Reinemund, Williams, Levin, Burns, and Akerson breached their fiduciary duties of due care, loyalty, and good faith, because the Audit Committee, *inter alia*, allowed or permitted the Company affirmatively violate the Sherman Act, allowed or caused the Company to disseminate false and misleading statements in the Company's SEC filings and other disclosures, and caused the above-discussed internal control failures. Therefore, defendants Vasella, Lauvergeon, Reinemund, Williams, Levin, Burns, and Akerson each face a substantial likelihood of liability for their breach of fiduciary duties and any demand upon them is futile;

e. Every member of the Board is required to comply with the Directors' Code and the Code of Conduct. The Directors' Code requires each of the directors to ensure that the Company is dealing fairly with all customers, suppliers, and competitors. Likewise, the Code of Conduct requires each of the directors to, *inter alia*, ensure that the Company's abides by all competition laws and engages in fair dealing. Each member of the Board permitted individuals at all levels of the Company to engage in the illegal conduct described above, thereby abdicating their fiduciary duties to the Company, and severely damaging the Company. Therefore, every member of the Board faces a substantial likelihood of liability for their breaches of fiduciary duties and any

demand upon them is futile;

f. The principal professional occupation of defendant Chenault is his employment with American Express as its CEO, pursuant to which he has received and continues to receive substantial monetary compensation and other benefits. In addition, in the Company's Proxy Statement filed with the SEC on Form DEF 14A on March 21, 2014 (the "2014 Proxy"), Defendants concede that Chenault is not independent. Thus, defendant Chenault lacks independence from demonstrably interested directors, rendering him not disinterested and therefore incapable of impartially considering a demand to commence and vigorously prosecute this action;

g. The principal professional occupation of defendant Barshefsky is her employment with the law firm of Wilmer Cutler Pickering Hale and Dorr LLP, which provided legal services to American Express in 2013. Moreover, in the 2014 Proxy, Defendants concede that Barshefsky is not independent. Thus, defendant Barshefsky lacks independence from demonstrably interested directors, rendering her not disinterested and therefore incapable of impartially considering a demand to commence and vigorously prosecute this action; and

h. Defendant Leonsis has provided consulting services to Company, and has advised the Company in the areas of digital, online and mobile payments, strategic initiatives, technology developments, and potential transactions. As such, the Board previously approved a one-year consulting services agreement between Leonsis and the Company in July 2010, which was renewed for an

additional one-year term. Pursuant to the agreement, American Express agreed to pay defendant Leonsis a monthly fee of $83,333.33, or nearly $1 million per year. Moreover, in the 2014 Proxy, Defendants concede that Leonsis is not independent. Thus, defendant Leonsis lacks independence from demonstrably interested directors, rendering him not disinterested and therefore incapable of impartially considering a demand to commence and vigorously prosecute this action.

COUNT I
AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY DUTY FOR DISSEMINATING FALSE AND MISLEADING INFORMATION

88. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

89. As alleged in detail herein, each of the Defendants (and particularly the Audit Committee Defendants) had a duty to ensure that American Express disseminated accurate, truthful and complete information to its shareholders.

90. Defendants violated their fiduciary duties of care, loyalty, and good faith by causing or allowing the Company to disseminate to American Express shareholders materially misleading and inaccurate information through, *inter alia,* SEC filings and other public statements and disclosures as detailed herein. These actions could not have been a good faith exercise of prudent business judgment.

91. As a direct and proximate result of Defendants' foregoing breaches of fiduciary duties, the Company has suffered significant damages, as alleged herein.

COUNT II
AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY DUTIES FOR FAILING TO MAINTAIN INTERNAL CONTROLS

92. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if fully set forth herein.

93. As alleged herein, each of the Defendants had a fiduciary duty to, among other things, ensure that the Company was operated in a lawful manner and to exercise good faith to ensure that the Company's financial statements were prepared in accordance with GAAP, and, when put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

94. Defendants willfully ignored the obvious and pervasive problems with American Express's internal controls practices and procedures and failed to make a good faith effort to correct the problems or prevent their recurrence, which resulted in, *inter alia*, the Company affirmatively violating the Sherman Act.

95. As a direct and proximate result of the Defendants' foregoing breaches of fiduciary duties, the Company has sustained damages.

COUNT III
AGAINST ALL DEFENDANTS FOR UNJUST ENRICHMENT

96. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

97. By their wrongful acts and omissions, the Defendants were unjustly enriched at the expense of and to the detriment of American Express.

98. Plaintiff, as a shareholder and representative of American Express, seeks restitution from these Defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits and other compensation obtained by these Defendants, and each of them,

from their wrongful conduct and fiduciary breaches.

COUNT IV
AGAINST ALL DEFENDANTS FOR ABUSE OF CONTROL

99. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

100. Defendants' misconduct alleged herein constituted an abuse of their ability to control and influence American Express, for which they are legally responsible. In particular, Defendants abused their positions of authority by causing or allowing American Express to misrepresent material facts regarding its business practices, financial position and business prospects.

101. As a direct and proximate result of Defendants' abuse of control, American Express has sustained significant damages.

102. As a result of the misconduct alleged herein, Defendants are liable to the Company.

103. Plaintiff, on behalf of American Express, has no adequate remedy at law.

COUNT V
AGAINST ALL DEFENDANTS FOR GROSS MISMANAGEMENT

104. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

105. Defendants had a duty to American Express and its shareholders to prudently supervise, manage and control the operations, business and internal financial accounting and disclosure controls of American Express.

106. Defendants, by their actions and by engaging in the wrongdoing described herein,

abandoned and abdicated their responsibilities and duties with regard to prudently managing the businesses of American Express in a manner consistent with the duties imposed upon them by law. By committing the misconduct alleged herein, Defendants breached their duties of due care, diligence and candor in the management and administration of American Express's affairs and in the use and preservation of American Express's assets.

107. During the course of the discharge of their duties, Defendants knew or recklessly disregarded the unreasonable risks and losses associated with their misconduct, yet Defendants caused American Express to engage in the scheme complained of herein which they knew had an unreasonable risk of damage to American Express, thus breaching their duties to the Company. As a result, Defendants grossly mismanaged American Express.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Against all Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of Defendants' breaches of fiduciary duties;

B. Directing American Express to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect the Company and its shareholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for shareholder vote resolutions for amendments to the Company's By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board;

C. Awarding to American Express restitution from Defendants, and each of them, and ordering disgorgement of all profits, benefits and other compensation obtained by the Defendants;

D. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

E. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: March 20, 2015

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Counsel for Plaintiff

AMERICAN EXPRESS COMPANY VERIFICATION

I, Bob H. Lankford, Trustee under the Elizabeth H. Lankford Bypass Trust Agreement dated 9/18/1998, hereby verify that I am familiar with the allegations in the Complaint, that I have authorized the filing of the Complaint, and that the foregoing is true and correct to the best of my knowledge, information, and belief.

Date: March 13, 2015

Bob H. Lankford

INDEX NO.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

BOB H. LANKFORD, TRUSTEE UNDER
THE ELIZABETH H. LANKFORD
BYPASS TRUST AGREEMENT DATED
9/18/1998, derivatively on behalf of
AMERICAN EXPRESS COMPANY,

Plaintiff,

- against -

KENNETH I. CHENAULT, JEFFREY C.
CAMPBELL, DANIEL T. HENRY,
CHARLENE BARSHEFSKY, URSULA
M. BURNS, PETER CHERNIN, THEODORE J.
LEONSIS, ANNE MARIE ALICE LAUVERGEON,
SAMUEL J. PALMISANO, STEVEN S.
REINEMUND, EDWARD D. MILLER,
RICHARD A. MCGINN, JAY LESCHLY,
DANIEL L. VASELLA, ROBERT D.
WALTER, DANIEL F. AKERSON, and
RONALD A. WILLIAMS,

Defendants.

and

AMERICAN EXPRESS COMPANY,

Nominal Defendant.

SUMMONS & COMPLAINT

Kantrowitz, Goldhamer & Graifman P.C.
The Fine Art of Practicing Law

Attorneys for Plaintiff

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