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File No. 3-256-1247

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10 VISA U.S.A. INC.

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO
14

15 COORDINATION PROCEEDING
SPECIAL TITLE [RULE 1550(b)]

J.C.C.P. No. 4335

16
17 **CREDIT/DEBIT CARD TYING CASES**

**ANSWER OF DEFENDANT VISA U.S.A.
INC. TO CONSOLIDATED AMENDED
COMPLAINT**

18 This Document Relates to:
All Actions

The Honorable Richard A. Kramer
Coordination Trial Judge
Dept. 304

Trial Date: None Set

22
23 Defendant VISA U.S.A. INC. ("Visa") hereby responds to the unverified Consolidated
24 Amended Complaint ("Consolidated Complaint") of plaintiffs Richard S.E. Johns, Bonnie Leonard,
25 Henry Siu, Amy Miller, Ana C. Lossada, Karen Brock and Foad Ahmadi ("plaintiffs") pursuant to
26 California Code of Civil Procedure § 431.30(d). Visa responds to the Consolidated Complaint in
27 accordance with the Court's Order Sustaining in Part and Overruling in Part Defendants' Demurrers to
28 Plaintiffs' Complaint and Scheduling Further Case Management Conference, entered October 14,

1 2004, in which the Court sustained without leave to amend Visa's demurrers to Plaintiff's First,
2 Second and Third causes of actions for violations of the Cartwright Act, Bus. & Prof. Code § 16720
3 and § 16727. Visa generally denies each and every allegation set forth in the Consolidated Complaint
4 and further denies that plaintiffs are entitled to any of the relief requested or that it is guilty of any
5 wrongful conduct or omission, whether alleged or otherwise, or that conduct or omissions of Visa
6 caused any injury or damage to plaintiffs in the amount alleged, to be alleged, or otherwise. Without
7 waiving the foregoing answer or assuming any burden that Visa would not otherwise bear, and as
8 further, separate and additional defenses to plaintiffs' Consolidated Complaint, including each of the
9 causes of action alleged therein, Visa asserts the following defenses:

10 **FIRST AFFIRMATIVE DEFENSE**

11 1. Plaintiffs' Consolidated Complaint fails to state facts sufficient to constitute a cause of
12 action.

13 **SECOND AFFIRMATIVE DEFENSE**

14 2. Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of
15 limitations, including without limitation, Cal. Bus. & Prof. Code § 17208.

16 **THIRD AFFIRMATIVE DEFENSE**

17 3. Plaintiffs' Consolidated Complaint is barred, in whole or in part, by the Commerce
18 Clause the United States Constitution.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 4. Plaintiffs' Consolidated Complaint fails to state a claim that may be maintained as a
21 class action.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 5. Plaintiffs' claims violate Visa's right to due process, as guaranteed under the United
24 States and California Constitutions.

25 **SIXTH AFFIRMATIVE DEFENSE**

26 6. Plaintiffs' claims for restitution fail because Visa did not accrue, directly or indirectly,
27 any monetary benefit and or property from plaintiffs.

28 //

1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 23. Plaintiffs' claims, to the extent they seek to recover on behalf of the general public of
3 California in a representative capacity, violate the United States and California constitutions.

4 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

5 24. Plaintiffs' claims are barred to the extent they seek to adjudicate conduct outside of
6 California or on behalf of parties who reside outside of California on the ground that this Court lacks
7 jurisdiction to adjudicate such claims.

8 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

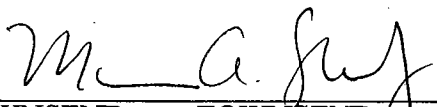
9 25. Visa hereby adopts and incorporates by reference any and all other affirmative defenses
10 asserted or to be asserted by any other defendant in this proceeding to the extent any such defense is
11 applicable to Visa and further reserves its right to amend this Answer to assert such other defenses as
12 may become available by law, or pursuant to statute, or during discovery proceedings of this cause.

13
14 **WHEREFORE**, Visa prays as follows:

- 15 1. That plaintiffs' Consolidated Complaint be dismissed in its entirety;
16 2. That plaintiffs take nothing by the Consolidated Complaint and that judgment be
17 rendered in favor of defendants;
18 3. That class certification be denied;
19 4. That Visa be awarded attorneys' fees and its costs of suit respectively; and
20 5. That Visa be granted such other and further relief as this Court may deem appropriate.

21 DATED: November 19, 2004

22 Respectfully submitted,

23
24 By 
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1 **PROOF OF SERVICE**

2 I hereby certify and declare under penalty of perjury that the following statements are true and
3 correct:

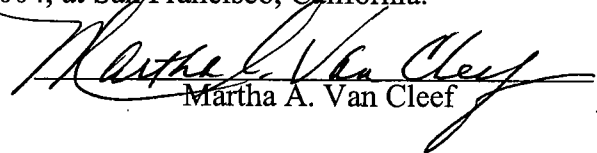
4 1. I am over the age of 18 years and am not a party to the within cause. My business
5 address is Townsend and Townsend and Crew, LLP, Two Embarcadero Center, 8th Floor, San
6 Francisco, California 94111-3834.

7 2. I am familiar with my company's mail collection and processing practices, know that
8 said mail is collected and deposited with the appropriate overnight delivery service or with the United
9 States Postal Service on the same day it is deposited in interoffice mail, and know that postage thereon
10 is fully prepaid.

11 3. Following said practice, on November 19, 2004 I served by United States mail, a true
12 copy of the attached document titled exactly **ANSWER OF DEFENDANT VISA U.S.A. INC. TO**
13 **CONSOLIDATED AMENDED COMPLAINT** by placing it in an addressed, sealed envelope and
14 depositing it in regularly maintained interoffice mail to the following:

15 **See Attached Service List**

16
17 EXECUTED this 19th day of November, 2004, at San Francisco, California.

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19 Martha A. Van Cleef
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