UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MICHAEL KROLL, individually and on behalf of all others similarly situated,

Plaintiff,

v.

NATIONAL ARBITRATION FORUM, INC., NATIONAL ARBITRATION FORUM, LLC, DISPUTE MANAGEMENT SERVICES, LLC d/b/a FORTHRIGHT, ACCRETIVE, LLC, AGORA, AXIANT, LLC, AMERICAN EXPRESS, BANK OF AMERICA, MBNA CORPORATION, WELLS FARGO, WACHOVIA, CAPITAL ONE FINANCIAL CORPORATION, CAPITAL ONE BANK (USA), N.A., CAPITAL ONE, N.A., J.P. MORGAN CHASE, CITIGROUP, INC., and DISCOVER CARD,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

1. The National Arbitration Forum ("Forum") is a for-profit arbitration company that purports to provide a neutral, private alternative to American courts for the resolution of disputes. In this role, the Forum has specialized in credit disputes between businesses and consumers and handled more consumer credit dispute than any other alternative dispute forum in the nation.

2. For years, the Forum has claimed it is a legitimate alternative to court resolution, and has repeatedly touted its neutrality in statements to the public via its website, among other places, and in contracts with consumers.

3. In its role as a purportedly neutral dispute resolution center, the Forum resolved tens of thousands of disputes between consumers and corporations, mostly between banks and other entities who had extended credit.

4. In July 2009, however, the Office of the Minnesota Attorney General filed a complaint exposing the Forum as an Orwellian entity, before which consumer's liability was predestined as a matter of business. According to General Lori Swanson, the Forum was not impartial but owned by and corporately affiliated with a major consumer debt collection agency. It has further been asserted that under this arrangement, the Forum won 99.8% of consumer debt arbitrations in the State of California alone, with similar numbers achieved nationally. Government reports assert that despite these landslide victories handed to debt corporations by the Forum, 70% of all arbitrations the Forum handled should have been dismissed outright as untimely under statutes of limitations or were otherwise fatally procedurally flawed.

5. Mere days after the Minnesota Attorney General officially exposed the Forum as a sham, the Forum ceased handling consumer debt arbitrations altogether.

6. The Forum's misconduct, and the misconduct of its affiliated entities, parent and sibling companies, and consumer debt company clients, has violated multiple federal and state laws, including those prohibiting anticompetitive business conduct, racketeering, and consumer fraud. Plaintiff brings this class action on behalf of himself and all those similarly situated to recover damages and other relief for the Defendants' egregious violations described herein.

PARTIES

7. Plaintiff Michael Kroll is a physician and a resident of Canton, Georgia. Dr. Kroll was forced to arbitrate credit card debt on three different accounts, which had become delinquent when he attempted to challenge his credit card companies' unilateral increases to his annual percentage rates. Over his disputes, the Forum held the arbitrations and issued awards in favor of the creditors. The Forum issued awards against Dr. Kroll totaling approximately $88,000 on disputed debts totaling less than $76,000

8. National Arbitration Forum, Inc. ("NAF, Inc.") is a privately held, for-profit Minnesota corporation, with a registered address and principal place of operations at 6465 Wayzata Boulevard, St. Louis Park, Minnesota,

55426. NAF, Inc., is the holder of the assumed name, "National Arbitration Forum" and also does business under the names, "National Arbitration Forum" and "Forum."

9. National Arbitration Forum, LLC ("NAF, LLC") is a privately held, for-profit Delaware limited liability company with a registered address and principal place of operations at 6465 Wayzata Boulevard, St. Louis Park, Minnesota, 55426. NAF, LLC's registered agent is Michael Kelly. NAF, LLC also does business under the name "National Arbitration Forum."

10. Dispute Management Services, LLC, d/b/a Forthright ("Forthright") is a privately held, for-profit Delaware limited liability company with a registered address and principal place of operations at 6465 Wayzata Boulevard, St. Louis Park, Minnesota, 55426. Forthright's registered agent is Michael Kelly.

11. Collectively, Defendants NAF, Inc., NAF, LLC, and Forthright are referred herein as the "Forum Defendants." The Forum Defendants share common office space, common directors, and each profits from the Forum's arbitration services.

12. Defendant Accretive, LLC ("Accretive",) is a private equity firm headquartered in New York, New York, which formed and funded Defendants Agora and Axiant, LLC.

13. Defendant Agora is a family of private equity funds based in New York, New York, that was created through Defendant Accretive in 2007 to acquire substantial financial interests in the Forum.

14. Defendant Axiant, LLC ("Axiant",), is a debt collection agency headquartered in Huntersville, North Carolina, which was formed and funded by Defendant Acretive, LLC and which acquired the national debt collection law firm Mann Bracken, LLP.

15. Defendant American Express is headquartered at World Financial Center, 200 Vesey Street, New York, New York, 10285 and identifies the Forum as an arbitrator in its consumer agreements.

16. Defendant Bank of America is headquartered at 100 N. Tryon Street, Bank of America Corporate Center, Charlotte, North Carolina 28255 and identifies the Forum as an arbitrator in its consumer agreements. Bank of America acquired Defendant MBNA Corporation, which also identifies the Forum as an arbitrator in its consumer agreements, in a merger that closed on January 1, 2006.

17. Defendant Wells Fargo is headquartered at 420 Montgomery Street, San Francisco, California, 94163, and identifies the Forum as an arbitrator in its consumer agreements. Wells Fargo acquired Defendant Wachovia, which also identifies the Forum as an arbitrator in its consumer agreements, in a merger that closed on January 1, 2009.

18. Defendant Capital One Financial Corporation is incorporated under Delaware law and, in 2004, became a bank holding company organized under the laws of the United States, with its principal place of business in McLean, Virginia. Capital One Financial Corporation offers consumer lending and general purpose card products through its two principal subsidiaries, Defendants Capital One Bank (USA), N.A. and Capital One, N.A. The Capital One Defendants identify the Forum as an arbitrator in their consumer agreements.

19. Defendant J.P. Morgan Chase is a financial holding company organized under Delaware law with its principal place of business at 270 Park Avenue, New York, New York, and it identifies the Forum as an arbitrator in its consumer agreements. J.P. Morgan Chase was formed by the merger on July 1, 2004, of J.P. Morgan Chase & Co. and Bank One Corporation. The merger was touted as creating the second largest banking franchise in the United States.

20. Defendant Citigroup, Inc. ("Citigroup") is a holding company incorporated under Delaware law with its principal place of business in New York, New York, and it identifies the Forum as an arbitrator in its consumer agreements. Citigroup was formed as a result of an October 8, 1998, merger of Citibank, N.A., with and into a wholly owned subsidiary of Travelers

Group, Inc. After the merger, Travelers Group changed its name to Citigroup, Inc.

21. Defendant Discover Card is headquartered at 2500 Lake Cook Road, Riverwoods, Illinois, 60015, and identifies the Forum as an arbitrator in its consumer agreements.

22. Collectively, Defendants American Express, Bank of America, MBNA Corporation, Wells Fargo, Wachovia, Capital One Financial Corporation, Capital One Bank (USA), N.A., Capital One, N.A., J.P. Morgan Chase, Citigroup and Discover Card are referred to herein as the "Creditor Defendants."

JURISDICTION AND VENUE

23. The Court has jurisdiction pursuant to 15 U.S.C. § 4, 18 U.S.C. § 1964, and 28 U.S.C. §§ 1331 and 1337.

24. Venue is proper in this judicial district pursuant to 15 U.S.C. § 22, 18 U.S.C. § 1965(a), and 28 U.S.C. § 1391(b) and (c) because Defendants transact business, committed an illegal or tortious act, have an agent or are found in this district, or because a substantial part of the events described below were carried out in this district.

25. The Forum Defendants, together with their co-conspirators the Creditor Defendants, through their participation in numerous meetings and other communications, and as an exercise of their immense market power,

combined, conspired and agreed to implement and/or maintain mandatory arbitration clauses as a term and condition of sale. The primary purpose of these arbitration clauses was to eliminate access to American courts and collective remedial action, including class actions, by consumers. The Creditor Defendants' agreement to impose or maintain collusive arbitration clauses in their respective adhesion contracts with their cardholders (which they refer to as "cardholder agreements") constitutes a *per se* violation of the antitrust laws, is an anti-competitive restraint on trade and serves no pro-competitive purposes. As such, the arbitration clauses in the Creditor Defendants' "cardholder agreements" should be declared unlawful and the clauses voided.

FACTS

Replacing Access to Courts with Arbitration

26. For years, consumer debt companies, such as the Creditor Defendants, have placed arbitration provisions in the fine print of their credit card contracts requiring consumers to forego their right to have any dispute heard and resolved by a judge or jury.

27. Such arbitration clauses allow creditors to demand that any dispute be resolved through a private system of binding arbitration, where there is no right to appeal the decision.

28. By using such arbitration clauses, consumer credit companies, including the Creditor Defendants, appointed the Forum the exclusive arbitrator in "hundreds of millions of contracts." According to one of the Forum's officers, "The FORUM is one of a kind; there is no competitor nor is there likely to be one . . . . The barriers to entry border on being insurmountable . . . ." In 2006 alone, it processed over 200,000 consumer collection arbitration claims.

29. Federal law requires companies providing arbitration services to act as impartial neutrals and the Forum repeatedly touted its impartiality in a series of public statements identified by the Minnesota Attorney General. Examples of these statements, which have now been exposed as false, include:

a. "*The FORUM is an independent administrator of alternative dispute resolution services* . . . . The FORUM administers cases and ensures the cases proceed quickly and smoothly according [to] the rules of the arbitration or mediation agreement. Our dispute resolution processes are designed to provide both parties with an equal opportunity to prevail. *We are not beholden to any company or individual that utilizes our services.*" (Emphasis added.)

b. "*Impartiality* and integrity. The FORUM is *independent and neutral*. It is *not affiliated* with any party." (Emphasis added.)

c. "Our Statement of Principles illustrates how the FORUM, *as a neutral administrator of arbitration proceedings*, provides due process and remains neutral and fair." (Emphasis added.)

30. In addition to falsely claiming its impartiality on its website and elsewhere, the Forum repeatedly claimed to be independent, unaffiliated, and free of conflicts of interest. Examples of these representations, which have now been exposed as false, include:

a. "PRINCIPLE 4. INDEPENDENT ADMINISTRATION. *An arbitration should be administered by someone other than the arbitrator or the parties themselves.*" (Emphasis added.)

b. "The FORUM has *no contracts with any party* to any arbitration…." (Emphasis added.)

c. "The FORUM . . . [has] no relationship with any party who uses our services."

d. "Administrative Independence. Staff members of the National Arbitration Forum operate in a manner *analogous to court clerks and administrators*. They are *independent* of any party and have *no relationship of any type* with any arbitrating party…." (Emphasis added.)

e. "*The FORUM is not affiliated with any party*. The FORUM is compensated on a case-by-case basis only for doing the work associated with administering mediations, arbitrations and other ADR proceedings." (Emphasis added.)

f. "Who is the National Arbitration Forum? *The FORUM is not a party to an arbitration claim and is not affiliated with or owned by any party who files a claim with the FORUM*." (Emphasis added.)

g. "As a *neutral* arbitration administrator, the Forum has no exclusive client relationships. *We do not contract with, represent or counsel our users, whether they are businesses or individuals*." (Emphasis added.)

h. "*Far from being aligned with lenders and other business parties*, the NAF and its affiliated arbitrators provide *neutral* and unbiased dispute resolution services." (Emphasis added.) (Written comments submitted by NAF, LLC's managing director to the Federal Trade Commission dated August 13, 2007.)

i. "*The FORUM receives no funds from any source*, other than fees paid for dispute resolution services." (Emphasis added.)

j. "*The FORUM's revenue is derived solely from the fees we charge for our administrative services.* There are different fees for filing

cases, commencing cases, arranging hearings, and processing requests and arbitration decisions. *We have no other source of revenue and we have no relationship with any party who uses our services*." (Emphasis added.)

31. Perhaps most egregiously, the Forum stated publicly that its services were a legitimate dispute resolution alternative to judicial proceedings in an American courtroom. It has now been revealed that the Forum was not an equal alternative to obtain justice, it was a sham designed to ensure consumers lost their all claims at all costs. Examples of the statements disseminated by the Forum on behalf of all Defendants and identified by the Minnesota Attorney General include:

a. "As one of the world's largest *neutral* administrators of arbitration services, The Forum is setting a new standard for civil dispute resolution *within the American justice system*." (Emphasis added.)

b. "One of the FORUM's dispute resolution services, arbitration, *is procedurally very similar to court*." (Emphasis added.)

c. "The core due process procedures that exist in FORUM arbitrations are identical or substantially similar to the due process procedures available in judicial and administrative law dispute resolution systems…. These arbitral procedures provide

truly excellent due process protections, and meet or exceed the rights parties would have in any court or before an administrative law judge." (Emphasis added.)

d. "Alternative dispute resolution (ADR) is a *more efficient, predictable and amicable way to resolve conflicts and achieve legal decisions without the expense and inconvenience of going to court*." (Emphasis added.)

e. "*The FORUM resolves disputes in a manner that is faster, simpler, and less expensive* than traditional courtroom litigation." (Emphasis added.)

Taking Corporate Control of Arbitration Decisions

32. Despite operating under the auspices of impartiality and freedom from conflicts of interest, the Forum in fact worked closely, and secretly, with creditors to place mandatory arbitration clauses in their customer agreements naming the Forum as arbitrator. The Forum then worked to tilt resolution in the creditors' favor and conducted the arbitrations for profit.

33. The Forum in reality, financially affiliated with a New York hedge fund group, Defendant Accretive, a company organized by investment manager J. Michael Cline of New York City, which owns one of the country's major debt collection enterprises.

34. From 2006 to 2007, Accretive arranged two transactions through which it simultaneously took control of the country's largest debt collectors and became affiliated with the Forum.

35. In the first of these transactions, Accretive formed, in 2007, several private equity funds under the name Agora, which invested $42 million in the Forum and obtained governance rights in it. Both Accretive (Agora) and the Forum (Forthright and NAF, LLC) created new companies in an effort to conceal their connection.

36. In the second transaction, three of the country's largest debt collection law firms (Mann Bracken of Georgia, Wolpoff & Abramson of the District of Columbia, and Eskanos & Adler of California) merged into one large national law firm called Mann Bracken, LLP, which Accretive then acquired through a debt collection agency that it formed and funded, Axiant, LLC. Mann Bracken subsequently sold its assets and collection operations to Axiant.

37. Thus, a conglomerated debt collection enterprise was created for the purpose of funneling debt collection proceedings to a financially captive arbitration enterprise, the Forum.

38. As the largest provider of consumer debt arbitrations in the United States, the Forum marketed itself not to consumers but to creditors as a way to collect debt. The Forum Defendants steered their creditor clients,

including the Creditors Defendants to the specific, gigantic debt collection law firms that would uniformly use the Forum to file arbitration claims. The Forum also assisted these consumer debt creditors by helping them draft arbitration clauses, advising them on arbitration trends, and even helping them draft claims to be filed against consumers.

39. Thus, all of the Defendants, individually and as a whole, executed an ingenious, albeit unlawful, business model to generate massive amounts of cash at consumers' expense. Under this arrangement, the Creditor Defendants simply named the Forum as the arbitrator in fundamentally all of their consumer debt contracts. When there was a dispute with a consumer, the Forum arbitrated the Creditor Defendants' claims and patently resolved them in the creditors' favor regardless of the evidence or procedural failings of the creditors' claims. The Forum Defendants then collected arbitration fees on each matter and the Creditor Defendants collected awards from consumers.

40. The Forum's own private statements indicate its true allegiance to consumer debt creditors and not to neutrality. Among the statements the Forum made to consumer credit companies include:

a. "The customer does not know what to expect from Arbitration and is more willing to pay."

b. That consumers "ask you to explain what arbitration is then basically hand you the money."

c. "You [the creditor] have all the leverage [in arbitration] and the customer really has no choice but to take care of the account."

41. Despite its connections, the Forum conceals its affiliation with the collections industry through extensive affirmative misrepresentations, material omissions, and layers of complex and opaque corporate structuring.

42. Several voices from within and without the Forum have decried the unfair and deceptive conduct that results in unjust arbitration awards to credit providers.

43. The former Chief Justice of the West Virginia Court of Appeals, Richard Neely, once worked as an arbitrator for the Forum and reported that the company "tilts the paying field toward creditors and makes a mockery of our legal system." He asserted there was no practical difference between the Forum and a collection agency.

44. A former manager with the Forum, Deanna Richert, reported that the Forum's management improperly favored regular business clients by instructing arbitrators who found against favored companies to change their decisions and by making sure that arbitrators who decided against favored companies did not get more cases.

45. Elizabeth Bartholet, a Harvard Law professor, also worked as an arbitrator for the forum. In her first 19 cases she ruled for the credit card company. On the 20th case, she ruled for the consumer and was promptly stricken from her remaining cases. The case manager for the Forum told her that the reason she was removed was because she had ruled against the credit card company. Arbitrators at the Forum know that if they rule against corporations, they will no longer be receiving income of any kind from the Forum.

46. On July 21, 2009, the U.S. House of Representatives, Domestic Policy Subcommittee Majority Staff Oversight and Governmental Reform Committee, issued a report entitled *Arbitration Abuse: an Examination of Claims Files of the National Arbitration Forum*. The findings included: a study of the Forum and found, among other things:

a. "*All* of the [NAF] arbitrators ignored evidence that should have resulted in *dismissal* of *most* of the claims." (emphasis added).

b. "The NAF, itself, did not follow its own rules and sent claims to arbitrators despite the fact that those claims *should have been dismissed* for failure of the creditor to serve the notice [of] arbitration 'promptly.'" (emphasis added).

c. "Arbitrators in *most* . . . claims *ignored* the absence of evidence of whether or not the claims were brought within the statute of limitations." (emphasis added).

d. "Decisions in *identical* cases differed depending on the *identity of the arbitrator* to whom the claim was assigned." (emphasis added).

e. "Arbitrators in *most* of the claims *ignored* the lack of specific evidence of who was actually served with the notice of arbitration." (emphasis added).

f. "Where there was specific evidence of how the notice was served, it often showed that the signature on the receipt was illegible, was a name *different* from the person who was supposed to be served, or was on one occasion an 'X' and on two occasions a 'John Doe.'" (emphasis added).

g. *Seventy percent* of the claims reviewed in the House investigation "should have been *dismissed* by NAF." (emphasis added).

h. Arbitrators' "decisions are, in most cases, based *solely* upon written statements made by the attorneys representing the creditor." Consumers' responses, "appeared to be given *no weight.*" (emphasis added).

i. "The *most* documentary evidence that was provided was a 'final bill' that recited the past due amount or the total amount owed, without any itemization of charges or any indication of when those charges were incurred." (emphasis added).

j. "NAF *does not care* whether or not its rules [protecting due process] are enforced." (emphasis added).

k. "[T]he vast majority of all cases are assigned to a small number of arbitrators who routinely rule in favor of the creditors."

l. "[T]he creditor can remove the arbitrator with a simple letter, without any need to recite a justification."

m. The outcome of the arbitrations does not depend on the merits of the claim, but on "the arbitrator to whom the case is assigned," and the "assignment is not random" but is instead "designed to maximize decisions favorable to creditors."

n. Arbitrators who rule in favor of consumers are "the exception" and "their decisions appear to result in their receiving fewer subsequent case assignments."

o. NAF's procedures amount not to "debt collection made simpler, for the benefit of the creditor and to the detriment of consumers."

p. An "[a]rbitrator can ignore the law, and is not subject to any review."

q. A "[c]ase is assigned 1) by a business entity that has a financial incentive to seek additional cases from the creditor, 2) to a sole-proprietor (the arbitrator) who has a financial incentive to seek additional cases from the creditor, and who is subject to removal at the whim of the creditor."

r. "Due process is only enforced by an arbitrator who has a financial incentive to seek additional cases from the creditor."

s. "Everything the consumer asks for comes only at an extra cost, including a hearing."

t. "Decisions are usually based on hearsay and often double-hearsay."

Plaintiff Dr. Michael Kroll's Experience with the Forum

47. Dr. Michael Kroll ran into the path of the Defendants' scheme when he stopped paying some credit card bills after his credit card companies unilaterally increased his annual percentage rates on three of his accounts to 29.9% in June 2007.

48. Two of Dr. Kroll's outstanding accounts were with FIA Financial Services, (f/k/a) MBNA, and one account was with J.P. Morgan Chase.

49. After he received notice of the interest rate increases, Dr. Kroll sent each of his creditors a letter, using FTC guideline forms, disputing the total amount and requesting an accounting. He also stopped paying the bills.

50. The creditors did not respond to his dispute, other than to refer the accounts for collection. The debt collectors filed claims with the Forum.

51. Dr. Kroll responded to all three arbitration notices in writing, stating that he disputed the creditors' right to take him to arbitration.

52. The Forum issued awards in all three cases in favor of creditors and debt collectors.

53. On March 18, 2008, the Forum issued an award of $16,597 against Dr. Kroll to FIA Financial Services (MBNA) through its collection entity, Mann Bracken, LLP (the account was originally assigned to Wolpoff & Abramson). As of January 2008, the creditor was reporting the debt owed as $15,815.

54. On November 3, 2008, the Forum issued an award of $61,689.98 against Dr. Kroll to FIA Financial Services (MBNA) through its collection entity, Mann Bracken. As of January 2008, the creditor was reporting the debt owed as $52,646.

55. On May 6, 2008, the Forum issued an award of $7,345.91 against Dr. Kroll to J.P. Morgan Chase through its collection agent. As of January 2008, the creditor was reporting the debt owed as $ 6,157.

56. Dr. Kroll's contracts with J.P. Morgan Chase and FIA Financial Services eventually included an arbitration clause (although the original contracts on the accounts did not), but neither the creditors nor the Forum

ever disclosed to him that any arbitration would not be impartial as was required by law.

57. As a result of Defendants' misconduct, Plaintiff and members of the Class were damaged, including by being made to pay arbitration awards that were the result of a biased process designed to favor the Creditor Defendants; interest on those awards; arbitration fees; and such other expenses that Plaintiff and members of the Class may have incurred (such as attorneys' fees) in connection with their participation in the biased arbitration proceedings.

CLASS ALLEGATIONS

58. Plaintiff sues on his own behalf and on behalf of a class of persons under Rules 23(a), (b)(2), (b)(3), and (c)(4) of the Federal Rules of Civil Procedure as the Court may determine to be applicable and appropriate, in connection with the proceedings to certify this action and its common questions as a class action. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of those provisions.

59. The Class is defined as:

> All persons in the United States who were subject to an arbitration clause requiring them to arbitrate disputes before the National Arbitration Forum and who either were subject to such arbitration proceedings or incurred damages disputing the applicability of the arbitration requirement.

60. Alternatively, should it be found that any of Plaintiff's state law claims could not be certified on a national basis, Plaintiff seeks statewide subclasses (or groups of statewide subclasses) for these same persons.

61. *Numerosity*: Plaintiff does not know the exact size of the proposed Class or Subclass, or the identities of all their members because such information is in the exclusive control of Defendants. However, the members of the class are so numerous that joinder is impracticable based on the thousands of contracts in reference to which the Forum claims to have arbitrated, combined with the fact that the subject arbitration clauses appear on standardized contracts sent to millions of consumers.

62. *Commonality/Predominance*: All members of the Class have been subjected to and affected by the same conduct. There are questions of law and fact that are common to the Class, and predominate over any questions affecting only individual members of the Class. These questions include, but are not limited to:

a. whether partiality on the part of an arbitration forum toward credit providers and against consumers constitutes material information in the context of an agreement to participate in arbitration;

b. whether the Forum Defendants omitted material information from consumers regarding its structural and financial affiliation with debt collection entities;

c. whether Creditor Defendants omitted material information from consumers regarding the Forum's structural and financial affiliation with debt collection entities;

d. whether the Forum's corporate structure constituted a conflict of interest in its role as an impartial arbitration forum;

e. whether the Forum's financial connection with the debt collection enterprise constituted a conflict of interest in its role as an impartial arbitration forum;

f. whether the Forum's management developed and adopted procedures applicable to its appointed arbitrators that favored credit providers and disfavored consumers;

g. whether Defendants' conduct constituted an unreasonable restraint of trade in violation of the federal antitrust laws;

h. whether Defendants conspired to exclude competition from the market for private arbitration of consumer credit disputes and purposefully maintain and exercise monopoly power in that market;

i. whether Defendants purposefully and unlawfully maintained and wielded monopoly power in the market for private arbitration of consumer credit disputes;

j. whether Defendants' actions formed an unlawful enterprise through which Defendants carried out a pattern of racketeering activity;

k. whether Defendants engaged in deceptive and fraudulent practices, and made false and misleading statements, with the intent that Plaintiff and others rely on them;

l. whether the creditor Defendants breached their contracts with Plaintiff;

m. whether the other Defendants tortiously interfered with the contracts between Plaintiff and the Creditor Defendants;

n. whether Defendants knowingly misrepresented material facts regarding the impartiality and neutrality of the arbitration proceedings that Plaintiff was forced to accept as part of the contracts with the creditor Defendants; and

o. whether Plaintiff was damaged by Defendants' conduct.

63. *Typicality*: The claims of the named Plaintiff are typical of the claims of the Class and do not conflict with the interests of other members of the Class in that Plaintiff suffered damages as a result of being subjected to

arbitration proceedings before the Forum or disputing the applicability of the arbitration requirement. Prosecution of Plaintiff's claims will inure to the benefit of the entire proposed class.

64. *Adequacy*: The named Plaintiff will fairly and adequately represent the interests of the Class. Plaintiff is committed to the vigorous prosecution of the Class's claims and have retained attorneys who are qualified to pursue this litigation and have experience in class actions. Neither Plaintiff nor counsel have any interest adverse to those of Class members.

65. *Superiority*: A class action is superior to other methods for the fast and efficient adjudication of this controversy. A class action regarding the issues in this case does not create any problems of manageability. Among other things, class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities with a method for obtaining redress for claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in management of this class action.

66. In the alternative, Defendant has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

CAUSES OF ACTION

COUNT I
Violation of Section I of the Sherman Antitrust Act, 15 U.S.C. § 1: Unlawful Agreements in Unreasonable Restraint of Trade

67. Plaintiff incorporates by reference the allegations contained in all preceding paragraphs as if fully restated herein.

68. As set forth above, on information and belief, in violation of § 1 of the Sherman Act, Defendants entered into exclusionary agreements in unreasonable restraint of trade to steer all consumer credit disputes arising under the contracts between Plaintiff and the creditor Defendants through the Forum. The Forum has admitted that it is "one of a kind," has "no competitor," does not anticipate competitors, and that the "barriers to entry border on being insurmountable."

69. No legitimate, pro-competitive business justification existed for these agreements, which were an unreasonable restraint of trade and affected trade in interstate commerce.

70. Plaintiff and members of the Class have been injured in their business or property by Defendants' antitrust violations, including by being

forced into biased arbitration proceedings, in which they were required to pay supra-competitive, artificially inflated arbitration fees.

71. Such injuries, in the form of overcharges, are of the type the antitrust laws were designed to prevent, and flow from that which makes Defendants' conduct unlawful.

COUNT II
Violation of Section II of the Sherman Antitrust Act, 15 U.S.C. § 2: Conspiracy to Monopolize

72. Plaintiff incorporates by reference the allegations contained in all preceding paragraphs as if fully restated herein.

73. During the Class Period, and in violation of the Sherman Act § 2 as an illegal conspiracy, Defendants conspired to exclude competition from the market for private arbitration of consumer credit disputes, as well as purposefully maintain and exercise monopoly power in that market.

74. No legitimate, pro-competitive business justification existed for this conduct, which not only substantially inhibited competition from other private arbitration firms, but also supported the Forum Defendants' exercise of monopoly power in the market.

75. The conspiracy alleged above has allowed the Forum Defendants and their co-conspirators to exclude less expensive and/or impartial arbitration alternatives from the market, maintain monopoly power in the market, and consequently, maintain supra-competitive arbitration fees. The

anticompetitive overtones of Defendants' actions vastly outweigh any conceivable pro-competitive justification that might exist for its conspiratorial conduct.

76. The anti-competitive actions of Defendants and their co-conspirators injured Plaintiff and the other Class Members by forcing them to pay arbitration fees that were greater than would have existed in a free marketplace.

77. The anti-competitive actions of Defendants and their co-conspirators also injured Plaintiff and the other Class Members by preventing them from participating in unbiased arbitration proceedings.

COUNT III
Violation of Section II of the Sherman Antitrust Act, 15 U.S.C. § 2: Monopolization

78. Plaintiff incorporates by reference the allegations contained in all preceding paragraphs as if fully restated herein.

79. During the Class Period, and in violation of the Sherman Act § 2, Defendants purposefully and unlawfully maintained and wielded monopoly power in the market private arbitration of consumer credit disputes.

80. During the Class Period, Defendants used exclusionary, anticompetitive conduct in violation of the Sherman Act § 2 to maintain and wield their monopoly power.

81. No legitimate business justification exists for the actions taken by Defendants to maintain monopoly power in the market for private arbitration of consumer credit disputes.

82. Defendants' illegal monopolistic actions served to exclude less expensive and/or impartial arbitration alternatives from the market, enabling Defendants to maintain their monopoly power in the market and consequently, to maintain sales at supra-competitive prices. The anticompetitive overtones of Defendants' actions vastly outweigh any conceivable pro-competitive justification that might exist for their conspiratorial conduct.

83. The anti-competitive actions of Defendants and their coconspirators injured Plaintiff and the other Class Members by forcing them to pay arbitration fees that were greater than would have existed in a free marketplace.

84. The anti-competitive actions of Defendants and their coconspirators also injured Plaintiff and the other Class Members by preventing them from participating in unbiased arbitration proceedings.

COUNT IV
Violations of § 1962(c) of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. §§ 1961-1968

85. Plaintiff incorporates by reference the allegations contained in all preceding paragraphs as if fully restated herein.

86. Section 1962(c) of the RICO Act makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt."

87. As described herein, each Defendant (by and through its employees) have operated and managed a legal entity enterprise to obtain money and property from Plaintiff and the Class through a pattern of mail and wire fraud. For instance, each of the Creditor Defendants used NAF, Inc., NAF, LLC, and Forthright, individually, to obtain money and property from the Plaintiff and Class through a pattern of mail and wire fraud. Similarly, NAF, Inc., NAF LLC, and Forthright, each, used each of the Creditor Defendants to obtain money and property from Plaintiff and the Class through a pattern of mail and wire fraud.

88. Each of the Defendants are, separately, an "individual, partnership, corporation, association or other legal entity" and therefore each constitutes a cognizable enterprise under § 1961(4) of the RICO Act.

89. In the alternative, each Creditor Defendant, including Defendant Chase, operated and managed an association-in-fact enterprise composed of NAF, Inc., NAF, LLC, Forthright, Accretive, Agora, and Axiant to both conduct legitimate business and to obtain Plaintiff's money and property

through a pattern of mail and wire fraud. In addition, and in the alternative, Accretive, Agora and Axiant, operated and managed an association-in-fact enterprise composed of the Forum Defendants and Creditor Defendants. Each of these association-in-fact enterprises were structured according to a specific business model, described herein, and constituted a stable group of willing participants with specific roles and bound by the legal endeavor of providing alternative dispute resolution and debt collection, but who used the enterprises to commit acts of racketeering.

90. All of the Defendants involved in the misconduct described herein are legal entities which engage in legitimate business wholly distinct and separate from their engagement in the improper arbitration practices complained of herein.

91. Defendants NAF, Inc., NAF, LLC and Forthright each operated and managed each of the Creditor Defendants by, among other things, assisting them in drafting arbitration clauses for inclusion in consumer contracts, advising them on arbitration trends, and assisting them in drafting actual claims against consumers.

92. The Creditor Defendants, each operated and managed NAF, Inc., NAF, LLC, and Forthright by directing them to employ specific arbitrators and to render specific decisions in the Creditor Defendants' favor. The Creditor Defendants did so by, among other things: (1) sending Forum

arbitrators judgment forms already filled out so all that needed to be done was check a box and sign one's name: (2) calling Forum arbitrators and instructing them to change adverse decisions; (3) striking and prohibiting the Forum from employing arbitrators who ruled adversely to the Creditor Defendants; and (4) drafting claim forms and fictitious affidavits of service for the Creditor Defendants, including the placement of stored electronic signatures for the Creditor Defendants on documents.

93. Defendants issued, and caused to be issued, each of the misstatements described in the allegations set forth above through the wires, including on Forum websites via the Internet. In addition, Defendants mailed, and caused to be mailed, contracts containing sham arbitration clauses through the U.S. Mails. These contracts were materially false and misleading in that they completely failed to alert consumers, including Plaintiff, to the fact the National Arbitration Forum was affiliated with Creditor Defendants and otherwise provided no realistic opportunity to ever prevail in a dispute with Defendants. Further, all of the arbitration documents employed by the Defendants, including those used in Plaintiff's arbitration, were sent via the U.S. Mail or, on information and belief, via the wires on the Internet or otherwise. These materials included claims, notices, rulings, and other arbitration documents sent under the color of authority

but which were a complete sham by virtue of the misconduct described herein.

94. Defendants' predicate activity of mail and wire fraud described herein was carried out at least from 2007, when the Forum became affiliated with Agora, Axiant, and Accretive, and continued unabated until July 2009 when the Forum ceased handling consumer arbitrations in response to a complaint filed by the Minnesota Attorney General. Defendants' racketeering thus constituted a closed-ended pattern in violation of the RICO Act.

95. Plaintiff and members of the Class have suffered serious injury to their business and property as a direct result of Defendants' racketeering. Plaintiff, himself, was ordered to pay some $88,000 by the Forum pursuant to a disputed debts of less than $76,000.

COUNT V

Violations of the RICO Act, 18 U.S.C. § 1962(d)

96. Plaintiff incorporates by reference the allegations contained in preceding paragraphs of this Complaint.

97. Defendants each conspired, in violation of 18 U.S.C. § 1962(d), to commit the violations of 18 U.S.C. § 1962(c) described above.

98. Each of the Defendants described herein committed specific overt acts in furtherance of their conspiracy, as described herein, including, but not limited to Plaintiffs' allegations in Count IV above.

99. As alleged with particularity above, as a direct and proximate result of the aforementioned RICO conduct, Plaintiff and other class members were injured in their business and property.

COUNT VI
Violations of the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.69

100. Plaintiff incorporates by reference the allegations contained in preceding paragraphs of this Complaint.

101. Minn. Stat. § 325F.69, subdivision 1 (2008) provides:

> The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoinable as provided in section 325F.70.

Material omissions stand as violations of Minnesota's consumer protection statutes. Plaintiff and class members need not affirmatively establish subjective reliance upon an omission.

102. Defendants provide arbitration and credit-extension services, both of which fall within the meaning of "merchandise" under Minn. Stat. § 325F.68, subd. 2.

103. Because Defendants wrote arbitration clauses into the contracts to which they sought to bind consumers, Defendants intended that consumers rely on the statements about arbitration.

104. Defendants created the right, or assisted other Defendants in crafting language creating the right, of creditors to compel binding arbitration of disputes using NAF in place of pursuing a claim in court. In so doing, Defendants necessarily and materially implied that such an alternative dispute resolution procedure would be impartial. Impartiality is a fundamental, constitutional principle as applied to courts, and impartiality is equally applicable to the broad statutory language that governs arbitration proceedings. Thus, when Defendants stated that arbitration could be used in place of court proceedings, it was any rational reader's natural conclusion that *impartial* arbitration would be used.

105. However, the intended, natural perception of impartial arbitration was false. NAF's marketing, ownership, and very structure ensured that its profitability was based on bias in favor of businesses filing against consumers. NAF was owned in part by a collection law firm. NAF's procedures required consumers to pay extra fees just to be able to receive a hearing. NAF marketed its services to creditors by heralding the fact that their arbitration process stacked the deck against consumers: "The customer does not know what to expect from Arbitration and is more willing to pay";

consumers "ask you to explain what arbitration is then basically hand you the money"; "You have all the leverage [in arbitration] and the customer really has no choice but to take care of the account."

106. As a direct, proximate and foreseeable result of Defendants' conduct, Plaintiff and class members sustained damages and are entitled to injunctive and equitable relief and an award of attorneys' fees pursuant to Minn. Stat. § 8.31, subd. 3a.

107. Causation is established in a consumer fraud action where an omission is deemed material, an objective standard. Defendants' omissions in this case were material because no reasonable consumer would want to arbitrate in a forum that is partial to his or her opponent.

COUNT VII
Violations of the Minnesota Unlawful Trade Practices Act, Minn. Stat. § 325D.13

108. Plaintiff incorporates by reference the allegations contained in preceding paragraphs of this Complaint.

109. Minnesota Statutes § 325D.13 provides: "No person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of such merchandise." Consumer protection laws of other states make similar conduct unlawful.

110. Defendants misrepresented (i.e., by omission) the true quality of arbitration services, as explained above, constituting unlawful trade practices in violation of Minn. Stat. § 325D.13.

111. As a direct, proximate and foreseeable result of Defendants' conduct in violation of Minnesota's Unlawful Trade Practices Act, Minn. Stat. § 325D.13, Plaintiff and class members sustained damages and are entitled to injunctive and equitable relief and an award of attorneys' fees pursuant to Minn. Stat. § 8.31, subd. 3a.

COUNT VIII
Violations of the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.44

112. Plaintiff incorporates by reference the allegations contained in preceding paragraphs of this Complaint.

113. Minnesota Statutes § 325D.44, subd. 1 provides:

> A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:
>
> * * *
>
> (5) represents that goods or services have . . . characteristics, ingredients, uses, benefits . . . that they do not have;
>
> * * *
>
> (7) represents that goods or services are of a particular standard, quality, or grade, . . . if they are of another . . .;
>
> * * *
>
> (9) advertises goods or services with the intent not to sell them as advertised;
>
> * * *
>
> (13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

114. Defendants misrepresented (i.e., by omission) the true quality and nature of arbitration services, as explained above, in violation of Minn. Stat. § 325D.44, and Plaintiff is thus entitled to injunctive relief. In addition, as a direct, proximate and foreseeable result of Defendants' conduct in violation of Minn. Stat. § 325D.44, Plaintiff and class members are entitled damages and an award of attorneys' fees pursuant to Minn. Stat. § 8.31, subd. 3a.

115. Because Defendants willfully engaged in such trade practices knowing them to be deceptive, Plaintiff and the proposed Class are entitled to recover their costs and attorneys' fees under Minn. Stat. § 325D.45, subd. 2.

COUNT IX
Breach of Contract

116. Plaintiff incorporates by reference the allegations contained in preceding paragraphs of this Complaint.

117. Plaintiff had a contract with a creditor Defendant mandating that any dispute arising under that contract would be resolved through arbitration before the Forum.

118. The creditor Defendants expressly or implicitly represented, and Plaintiff had a right to expect, that the arbitration process before the Forum would be neutral and impartial.

119. As set forth in detail above, the Forum's arbitration process was neither neutral nor impartial, but was instead designed in favor of the creditor Defendants, and therefore constitutes a breach of the agreements between Plaintiff and the creditor Defendants.

120. Plaintiff suffered damages as a result of these contractual breaches, when they were ordered to pay arbitration awards; interest on those awards; arbitration fees; and such other expenses that Plaintiff may have incurred (such as for their own counsel) in connection with the biased arbitration proceedings.

121. Because the Forum Defendants have a principal place of business in Minnesota, and because contract law is sufficiently uniform among the fifty states, it is proper to apply Minnesota law to Plaintiff's or Class members' breach of contract claims.

122. Alternatively, should Minnesota contract law be held inapplicable to the claims of Plaintiff or Class members who are not residents of Minnesota, Plaintiff asserts a claim for Class members under the contract laws of the state in which he or she resides.

COUNT X
Tortious Interference with Contract

123. Plaintiff incorporates by reference the allegations contained in preceding paragraphs of this Complaint.

124. The Forum Defendants intentionally interfered, without privilege or justification, with the contracts between Plaintiff and the creditor Defendants, and specifically with Plaintiff's entitlement to neutral and impartial arbitration proceedings under those contracts.

125. The Forum Defendants' actions have been in willful and reckless disregard of Plaintiff's rights under their contracts with the creditor Defendants.

126. The Forum Defendants' interference with Plaintiff's contracts with the creditor Defendants has caused Plaintiff to suffer financial damages, in the form of arbitration awards; interest on those awards; arbitration fees; and such other expenses that Plaintiff and Class members may have incurred (such as for their own counsel) in connection with the biased arbitration proceedings.

127. Because the Forum Defendants have a principal place of business in Minnesota, and because contract law is sufficiently uniform among the fifty states, it is proper to apply Minnesota law to Plaintiff's and Class members' breach of contract claims.

128. Alternatively, should Minnesota contract law be held inapplicable to the claims of Plaintiff or Class members who are not residents of Minnesota, Plaintiff asserts a claim for Class members under the contract laws of the state in which he or she resides.

COUNT XI
Fraud by Omission

129. Plaintiff incorporates by reference the allegations contained in preceding paragraphs of this Complaint.

130. When fraud is accomplished by omission or "half-truth," the "reliance" element of causation is replaced with a plaintiff's burden to demonstrate that there was a "duty to disclose."

131. One who speaks must say enough to prevent his words from misleading the other party. The word "arbitration" implicitly means impartial arbitration. Thus, once Defendants used the word "arbitration" to describe the alternative to court resolution, they had the concomitant duty to reveal that the Forum had structural and procedural biases and strong financial incentives to be partial to creditor Defendants.

132. Additionally, Defendants had special knowledge of material facts to which consumers do have not have access, triggering a duty to disclose these facts to consumers, including Plaintiff. These material facts are those reflecting demonstrating the biases and partiality described above.

133. Defendants knowingly omitted material facts regarding the impartiality and neutrality of the arbitration proceedings that Plaintiff was forced to accept as part of her contract with the creditor Defendants.

134. Causation is demonstrated when an omission supporting a deceptive practice claim is "material," an objective standard. Defendants' omissions in this case were material because no reasonable consumer would want to arbitrate in a forum that is partial to his or her opponent.

135. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and Class members sustained damages, including but not limited to arbitration awards; interest on those awards; arbitration fees; and such other expenses that Plaintiff and Class members may have incurred (such as for their own counsel) in connection with the biased arbitration proceedings.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants and for the following relief:

(a) That the Court determine that this action may be maintained as a class action pursuant to Rule 23(b)(3), (b)(2), (c)(4), or any combination of those three subsections of the Federal Rules of Civil Procedure;

(b) Judgment against Defendants in favor of Plaintiff and members of the Class for all relief permitted by law, including all applicable damages, the costs of this suit, pre- and post-judgment interest at the legally allowed limit, and reasonable attorney fees;

(c) That the Court grant Plaintiff and the Class members equitable relief, injunctive relief, or both, decrees setting aside and vacating all verdicts

and decisions rendered in Forum arbitration proceedings in favor of any of the Defendants, and requiring the restitution to Plaintiff and the Class members of all sums paid thereunder;

(d) That the Court grant Plaintiff and the Class members declaratory relief, declaring that the filing of arbitration complaints by creditor Defendants in the Forum did not toll the applicable statutes of limitations for debt collection actions against Plaintiff and the Class members; and

(e) That the Court grant Plaintiff and the Class members such other, further, and different relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

TRIAL BY JURY DEMANDED

Plaintiff demands a trial by jury.

Dated: July 29, 2009

Respectfully submitted,

ZIMMERMAN REED, P.L.L.P.

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