



\$50, or \$100) and that its Gift Cards are good “ALL OVER THE PLACE.” Both of American Express’s statements are false.

2. The Gift Card is not accepted at any retailer that does not accept the American Express Card, the Gift Card is not accepted at many retailers that do accept the American Express Card, and the Gift Card is not for use at airline, hotel, car rental, telecom, and gasoline merchants.

3. American Express also represents on its “Cardholder Agreement” that the person using the Gift Card may use the Gift Card plus another form of payment (something American Express refers to as a “split tender”) to make a purchase for an amount greater than the available funds remaining on the Gift Card. But most merchants do not let its customers split bills. Thus, many American Express Gift Card users are left with a worthless “Available Balance” on their Gift Card, which ultimately reverts back to American Express.

4. On the outside of the Gift Card package, American Express represents that for a payment in the amount of the value of the Gift Card, plus an “additional purchase fee,” the Gift Card user receives a Gift Card “good all over the place” and with the value stated on the Gift Card. American Express makes no other representations about the Gift Card on the outside of the Gift Card package.

5. On the outside of the Gift Card package, American Express does not reveal any of the significant and material limitations on the use of its Gift Card. American Express only describes the significant and material limitations on the use of the Gift Card inside the Gift Card package on the Gift Card Agreement. Once the Gift Card is activated at the time the consumer purchases it, however, the consumer cannot return the Gift Card. Because American Express describes the significant and material limitations on the use of the Gift Card inside the Gift Card

package, by the time any consumer discovers the significant and material limitations on the use of the Gift Card, it is too late for the consumer to return it.

6. Because American Express is only able to sell its Gift Cards with deceptive and unfair practices, American Express is liable for statutory fraud.

7. Each Gift Card purchaser agrees to pay American Express consideration in the amount of the value stated on the Gift Card package (e.g. \$25) and an “additional purchase fee.” In exchange, American Express agrees to provide the Gift Card purchaser with a \$25, \$50, or \$100 Gift Card. But, because of the significant limitations on the Gift Card, the value stated on the Gift Card is not the true value of the Gift Card American Express sells to consumers for the “additional purchase fee.” By not providing the purchaser of its Gift Cards with a Gift Card worth the value American Express states the Gift Card is worth, American Express breaches its contracts with each Gift Card purchaser.

8. American Express designed its Gift Card program to assure itself that Gift Card users would end up with unused “Available Funds” on the Gift Card. The unused “Available Funds” revert back to American Express unless the Gift Card user pays American Express a \$10 “check-issuance fee.” However, the \$10 “check-issuance fee” will most likely exceed the “Available Funds” remaining on the Gift Card. American Express is unjustly enriched because any available funds left on the Gift Card revert back to it. American Express should not be allowed to keep each Gift Card users remaining “Available Funds,” especially after (a) the Gift Card purchaser already paid American Express an additional purchase fee and (b) the Gift Card itself is not worth the value American Express claims it is worth. Instead, American Express should be required to return the remaining “Available Funds” on each Gift Card users Gift Card without the Gift Card user paying American Express an additional “check-issuance” fee.

9. Plaintiffs bring this case on behalf of themselves and each American Express Gift Card purchaser and user for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois Consumer Fraud Act”), 815 ILCS 505/1 *et seq.*, and the consumer protection statutes of each state in which American Express sells its Gift Cards, and for breach of contract and unjust enrichment.

**PARTIES, JURISDICTION & VENUE**

10. Kaufman is a resident of Morton Grove, Cook County, Illinois. Kaufman purchased an American Express Gift Card in Niles, Cook County, Illinois, and used and attempted to use it in several locations within Cook County, Illinois.

11. Stegich is a resident of Morton Grove, Cook County, Illinois. Stegich purchased and American Express Gift Card in Morton Grove, Cook County, Illinois.

12. American Express is a New York corporation licensed to do business in Cook County, Illinois and throughout the United States.

13. This court has jurisdiction because Defendant removed this case to this court pursuant to the Class Action Fairness Act of 2005. 28 U.S.C. § 1711; 28 U.S.C. § 1453(b).

**FACTS ABOUT THE AMERICAN EXPRESS GIFT CARD**

14. American Express sells its Gift Cards through retail stores like CVS/pharmacy, Walgreens, and White Hen Pantry.

15. No matter where the Gift Card is purchased, American Express displays the same information on its Gift Card displays and on the outside of the Gift Card package. A copy of the outside of the Gift Card package is attached as Exhibit 1.

16. American Express makes the identical disclosures on its Gift Card package, except for the stated value of the Gift Card (e.g. \$25, \$50, or \$100).

17. On the outside package of the Gift Card package, American Express represents that for an “additional purchase fee (e.g. \$4.95) applied at the register,” a consumer can purchase a Gift Card with a specific value (e.g. \$25, \$50, or \$100). The greater the value of the Gift Card, the more American Express charges for it.

18. American Express represents on the outside of the Gift Card package that the Gift Card can be used “all over the place.” Other than to state that the Gift Card has no value until purchased, the Gift Card can only be used in the U.S., and that the “enclosed American Express Gift Card Agreement includes information for the recipient,” American Express does not reveal any limitations on the usage of the Gift Card on the outside of the Gift Card packaging.

19. American Express instructs the retailers that offer the Gift Card to activate it at the time the Gift Card is purchased. Once the Gift Card is activated, the purchaser cannot return it.

20. American Express includes a one page insert on the inside of the Gift Card package. A copy of the insert is attached as Exhibit 2. The Gift Card purchaser cannot see or read the insert until after the Gift Card is purchased and activated. Despite representing that the Gift Card has a specific dollar value and is “good all over the place,” American Express makes the following disclaimers on the one page insert located inside the Gift Card:

**Important information about your Card:**

- Your Card is welcomed at retail establishments and restaurants in the U.S. that accept the American Express Card.
- This Card is not for use at airline, hotel, car rental, telecom, gasoline merchants, or ATMs. Additional restrictions apply.
- Please use your Card soon! A monthly Service Fee is waived for the first 12 months after purchase. Please see terms and Conditions.

21. None of the restrictions American Express describes on the one page insert found inside the Gift Card package appear on the outside of the package.

22. American Express does not even put Gift Card purchasers on notice of potential restrictions on the use of the Gift Card with a statement like “restrictions on the use of the Gift Card appear on the Terms and Conditions found inside the Gift card package.”

23. American Express’s Gift Card Terms and Conditions include even more restrictions on the use of the Gift Card. A copy of the Terms & Conditions is attached as Exhibit 3. Again, none of the restrictions found in the Gift Card Terms & Conditions appear on the outside of the Gift Card package. On the outside of the Gift Card package, American Express states only that “[t]he enclosed American Express Gift Cardholder Agreement includes information for the recipient.”

24. American Express makes the following additional disclaimers in its Gift Cardholder Agreement:

- (a) The Gift Card user cannot add value to the Gift Card;
- (b) The Gift Card will be declined if the user charges more than the Available Balance on the Gift Card;
- (c) Depending on the individual merchant policy, the Gift Card user may be able to use the Gift Card plus another form of payment to make a purchase for an amount greater than the Available Funds. “This is called a “split tender.”;
- (d) **Some retailers, particularly department stores, will only allow a split tender transaction (use of two forms of payment) if the second form of payment is cash or check. Most mail order and internet merchants do not allow for split transactions. If you plan to use another form of payment to pay for a part of the total charge, please check the retailer’s policy in advance;**
- (e) If Available Funds remain on the Card through the Valid through date, American Express may reissue a Card for \$5.95;
- (f) If Available Funds remain on the Card, the Card user may request a check be issued for the remaining Available funds—American Express reserves the right to charge a \$10 check-issuance fee;
- (g) American Express will not be liable for the failure of any establishment to honor the Gift Card.

25. None of the disclaimers set forth in paragraph 26 above or paragraph 22 above appear on the outside package of the Gift Card. And American Express in no way alerts its customers that there may be significant restrictions on the use of its Gift Card until after the Gift Card package is opened and cannot be returned.

26. Although American Express represents that the Gift Cardholder may be able to use the Gift Card plus another form of payment to make a purchase for an amount greater than the Available Funds remaining on the Gift Card, few retailers allow that type of payment—which American Express refers to as a “split tender.”

27. Because few retailers allow consumers to do a “split tender” transaction, most American Express Gift Cardholders inevitably end up with an unused available balance on the Gift Card.

28. If an American Express Gift Cardholder asks American Express to return the available balance remaining on the Gift Card, American Express charges the Gift Cardholder a \$10 “check-issuance” fee for doing so.

29. American Express intentionally designed its Gift Card to make it difficult, if not impossible, to use the entire value stated on the Gift Card package (e.g. \$25, \$50, or \$100).

30. Within one year from the date the Gift Card is purchased, any remaining balance on the Gift Card will begin to revert to American Express because, after 12 months, American Express charges the Gift Cardholder a \$2.00 monthly service fee.

31. The Gift Card is also routinely declined for no apparent reason that a retailer can explain.

32. American Express does not disclose any of the restrictions set forth above anywhere on the outside of the Gift Card package.

33. Thus, despite representing to the Gift Card purchaser that for a “Card fee” (e.g. \$4.95), the Gift Card purchaser will receive a Gift Card with a specific value (e.g. \$25, \$50, or \$100)—with no limitations—the Gift Card purchaser actually receives the following:

(a) a Gift Card with significant restrictions that do not appear on the face of the Gift Card package;

(b) a Gift Card worth less than the value (e.g. \$50) that appears on the face of the Gift Card;

(c) a Gift Card that is routinely declined;

(d) a Gift Card that inevitably will have an available balance that reverts back to American Express;

(e) a Gift Card that requires the Gift Card user to pay American Express \$10 to receive a check for the Available Balance left on the Gift Card;

(f) a Gift Card in which each of its restrictions benefit American Express; and

(g) a Gift Card in which each of its restrictions hurt the Gift Card purchaser and the Gift Cardholder.

#### **FACTS PERTAINING TO KAUFMAN**

34. On October 27, 2006, Kaufman went to a CVS/pharmacy in Niles, Illinois. At the CVS/pharmacy, Kaufman saw “The American Express Gift Card.”

35. On the outside of the Gift Card package, American Express represented that for an “additional purchase fee (of \$4.95) applied at the register” Kaufman could purchase a Gift Card with a \$50 value. *See* Exhibit 1.

36. American Express represented that the Gift Card could be used “all over the place.” Other than to state that the Gift Card had no value until purchased, the Gift Card could



only be used in the U.S., and that the “enclosed American Express Gift card Agreement includes information for the recipient,” American Express did not reveal any limitations on the usage of the Gift Card on the outside of the Gift Card packaging. *See* Exhibit 1.

37. Kaufman purchased the Gift Card to give to a friend as a holiday gift.

38. Some time after purchasing the Gift Card, Kaufman decided not to gift the Gift Card and, instead, to keep the Gift Card for himself.

39. After opening the Gift Card package, Kaufman realized that he could not use the Gift Card “all over the place” as American Express represented.

40. Instead, after opening the Gift Card package, Kaufman immediately saw the following disclaimers American Express made on a one page insert enclosed in the Gift Card package:

**Important information about your Card:**

- Your Card is welcomed at retail establishments and restaurants in the U.S. that accept the American Express Card.
- This Card is not for use at airline, hotel, car rental, telecom, gasoline merchants, or ATMs. Additional restrictions apply.
- Please use your Card soon! A monthly Service Fee is waived for the first 12 months after purchase. Please see terms and Conditions.

*See* Exhibit 2.

41. None of the restrictions American Express described on the sheet of paper found inside the Gift Card package appeared on the outside of the package.

42. American Express did not even put Kaufman on notice of the potential restrictions on the use of the Gift Card with a statement like “restrictions on the use of the Gift Card appear on the Terms and Conditions found inside the Gift Card package.”

43. Kaufman used the Gift Card at Annies Pancake House on November 11, 2006. He spent \$22.11 of the Gift Card’s value there.

44. Kaufman then used the Gift Card at Costco on November 12, 2006. He spent \$14.59 of the Gift Card's value there.

45. On November 22, 2006, Kaufman tried to use the Gift Card at Sam's Wines & Spirits. The Gift Card was declined.

46. Kaufman asked the store clerk whether he could charge a lesser amount to the Gift Card and let Kaufman pay the remainder in cash. The clerk represented that the store did not split checks. Kaufman asked the clerk for the store manager. The store manager also said the store did not split checks.

47. Kaufman found the Gift Card Terms and Conditions and read them thoroughly. *See Exhibit 3.* After doing so, Kaufman realized the Gift Card had even more restrictions on its usage including, but not limited to:

- (a) The Gift Card user cannot add value to the Gift Card;
- (b) The Gift Card will be declined if the user charges more than the Available Balance on the Gift Card;
- (c) Depending on the individual merchant policy, the Gift Card user may be able to use the Gift Card plus another form of payment to make a purchase for an amount greater than the Available Funds. This is called a "split tender" transaction;
- (d) **Some retailers, particularly department stores, will only allow a split tender transaction (use of two forms of payment) if the second form of payment is cash or check. Most mail order and internet merchants do not allow for split transactions. If you plan to use another form of payment to pay for a part of the total charge, please check the retailer's policy in advance;**
- (e) If Available Funds remain on the Card through the Valid through date, American Express may reissue a Card for \$5.95;
- (f) If Available Funds remain on the Card, the Card user may request a check be issued for the remaining Available funds—American Express reserves the right to charge a \$10 check-issuance fee;
- (g) American Express will not be liable for the failure of any establishment to honor the Gift Card.

48. None of the disclaimers set forth in paragraphs 42 and 49 above appear on the outside package of the Gift Card. And American Express in no way alerts its customers that there may be significant restrictions on the use of the Gift Card until after the Gift Card package is opened and cannot be returned.

49. Kaufman did not realize any restrictions existed on the use of the Gift Card he purchased until after he purchased it, after it was declined for use, and after a retailer refused to split his check so that he could at least use a portion of the remaining balance on the Gift Card.

50. After the Gift Card was declined on November 22, 2006, Kaufman attempted to “split tender” at several retailers and one restaurant.

51. Each time, the retailer and restaurant refused to do so.

52. Kaufman is left with an “Available Balance” on his Gift Card. He cannot bring the balance to zero because he has not found a merchant that will perform a split tender.

53. If Kaufman asks American Express to refund the Available Balance, that will cost him \$10.

54. Even if Kaufman finds a product worth less than the available balance and a merchant who will allow Kaufman to use the Card for a small amount, Kaufman will still have some balance remaining on the Gift Card.

55. Ultimately, the Available Balance on Kaufman’s Card will revert back to American Express.

56. Thus, for \$4.95 plus the \$50 value American Express represents the Gift Card is worth, Kaufman received the following:

(a) a Gift Card with significant restrictions that do not appear on the face of the Gift Card package;

- (b) a Gift Card worth less than the \$50 that appears on the face of the Gift Card;
- (c) a Gift Card that has been routinely declined;
- (d) a Gift Card for which he cannot receive a refund;
- (e) a Gift Card for which he would have to pay American Express \$10 to receive a check for the Available Balance he already paid for and is left on the Gift Card;
- (f) a Gift Card in which each of its restrictions benefit American Express; and
- (g) a Gift Card in which each of its restrictions hurt Kaufman.

**FACTS PERTAINING TO STEGICH**

57. Stegich purchased an American Express Gift Card with a value of \$50.00 a few months prior to her Florida vacation that took place September 26th-30th of 2008.

58. Stegich purchased the Gift Card so that she would not need to carry cash during her trip.

59. On September 26, 2008, Stegich brought the Gift Card on her trip to Florida as originally planned.

60. During her trip, Stegich attempted to use the remaining balance on her Gift Card to pay for a portion of her family's dinner at a restaurant located in Epcot, a Walt Disney World Resort.

61. The waiter took the Gift Card from Stegich and attempted to retrieve the money remaining on the Card.

62. The waiter returned to Stegich's table and informed her that the Gift Card was declined. The waiter made several attempts to process the Gift Card.

63. Stegich did not understand why she could not pay part of her restaurant bill with the money that remained on her Gift Card, so she called the customer service phone number on the back of her Gift Card while she was still in the restaurant.

64. American Express informed Stegich that her Gift Card was rejected because the balance on the Gift Card was less than the amount owed on her bill.

65. American Express customer service never explained to Stegich that the restaurant would need to perform a Split Tender Transaction to retrieve the money remaining on the Gift Card. American Express customer service never told Stegich that she could retrieve the remaining balance on her Gift Card if she paid a Check Issuance Fee.

66. The American Express customer service representative merely told Stegich that the remaining balance could not be used as long as the merchandise cost more than the value of the Gift Card.

67. As a result, Stegich was not able to use the remaining balance on her Gift Card to pay a portion of her restaurant bill.

68. In an attempt to spend some of the money that remained on her Gift Card, Stegich made a few small purchases. However, Stegich was not able to use all of the money that remained on her Gift Card because the value of the Gift Card was lower than the value of the items she wanted to purchase.

69. Stegich finally threw away her Gift Card.

70. Stegich did not realize any restrictions existed on the use of the Gift Card she purchased until after she purchased it, after it was declined for use, and after American Express customer service told her that she could not make purchases that cost more than the amount of money remaining on the Gift Card.

71. Therefore, the money remaining on the Gift Card reverted back to American Express.

### **CLASS ALLEGATIONS**

72. Pursuant to 735 ILCS 5/2-801, Plaintiffs bring this action on behalf of all persons who purchased or were gifted The American Express Gift Card (the “Class”).

73. A class action is proper in that:

- a. On information and belief, the Class consists of thousands of persons residing throughout Illinois and other States and, thus, is so numerous that joinder of all members is impracticable;
- b. There are questions of fact or law common to the Class that predominate over questions affecting only individual Class members, including whether American Express breached contractual obligations, whether American Express is liable for statutory fraud for its failure to disclose material facts, whether American Express is unjustly enriched from its Gift Card program, and whether Plaintiffs and the other members of the Class were damaged;
- c. Kaufman and Stegich will fairly and adequately protect the interests of the Class. They do not have any interests adverse to the other Class members. They have retained counsel to represent them in this action who are experienced in class action litigation; and
- d. A class action is an appropriate method for the fair and efficient resolution of this controversy.

### **COUNT I – BREACH OF CONTRACT**

74. This count is brought pursuant to the laws of the state of New York. (Exhibit 3)

75. Plaintiffs repeat and reallege all preceding paragraphs as though fully set forth herein.

76. Plaintiffs and the other Class members entered into valid and enforceable contracts to purchase The American Express Gift Card with a specific value (e.g. \$25, \$50, or \$100).

77. The terms of each Class member's contracts are substantively identical.

78. Each of these contracts arose out of American Express's uniform disclosures on its Gift Card displays and on the outside of its Gift Card packages.

79. Each Class member offered to purchase a Gift Card with a specific value (e.g. \$25, \$50, or \$100) in exchange for the additional "Card fee" applied at the "checkstand" and for the stated value of the Gift Card. American Express accepted these offers. Each customer paid the "Card fee" and the value of the Gift Card.

80. In exchange, American Express promised to give each Gift Card purchaser a card worth the value stated on the outside of the Gift Card package (e.g. \$25, \$50, or \$100).

81. The contract between American Express and each of its customers did not allow American Express to impose undisclosed restrictions on the use of the Gift Card—restrictions which reduced the stated value of the Gift Card.

82. The restrictions set forth in paragraphs 42, 49, and 58 were not part of any contract between the Gift Card purchaser and American Express. Instead, American Express unilaterally imposed its restrictions on the use of the Gift Card on its customers without negotiation, consideration, or justification.

83. Plaintiffs and the other Class members performed all of the contractual obligations they owed to American Express.

84. American Express breached its contracts with Plaintiffs and the other Class members by declining to honor the Gift Card and imposing restrictions on the use and value of the Gift Card they never agreed to be bound by at the time of purchase.

85. American Express's breaches of contract damaged Plaintiffs and the other Class members in an amount based on the stated value of the Gift Card without the restrictions

American Express unilaterally imposed on its use and the value of the Gift Card with all the restrictions American Express discloses on the inside of the Gift Card package and enforces against every Gift Cardholder.

WHEREFORE, plaintiffs Saul M. Kaufman and Kimberly Stegich, individually and as the representatives of a class of similarly-situated persons, pray for judgment in their favor and against American Express as follows:

- (a) That the Court find this case may be properly maintained as a class action, that the Court appoint Saul M. Kaufman and Kimberly Stegich as the Class representatives, and that the Court appoint Bock & Hatch LLC as Class counsel;
- (b) That the Court award damages to Saul M. Kaufman, Kimberly Stegich and the other members of the Class; and
- (c) That the Court award such other and further relief as the Court may deem just and appropriate.

### **COUNT II – STATUTORY FRAUD**

86. Plaintiffs repeat and reallege all preceding paragraphs as though fully set forth herein.

87. Plaintiffs bring Count II on behalf of the Class pursuant to the Illinois Consumer Fraud Act and the substantially similar consumer protection statutes of the other States where American Express sells its Gift Cards.<sup>1</sup>

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<sup>1</sup> The claims of Illinois Class members are brought under the Illinois Consumer Fraud Act. The claims of non-Illinois Class members are brought under the consumer protection statute(s) of their respective states. *See* Ala. Code § 8-19-1 *et seq.* (Alabama); Alaska Stat. § 45.50.471 *et seq.* (Alaska); Ariz. Rev. Stat. Ann. § 44-1521 *et seq.* (Arizona); Ark. Code Ann. § 4-88-101 *et seq.* (Arkansas); Cal. Bus. & Prof. Code § 17200 *et seq.*, Cal. Bus. & Prof. Code § 17500 *et seq.* (California); Colo. Rev. Stat. § 6-1-105 *et seq.* (Colorado); Conn. Gen. Stat. § 42110a (Connecticut); Del. Code Ann. Tit. 6, § 2511 *et seq.* (Delaware); D.C. Code Ann. § 28-3901 *et seq.* (District of Columbia); Fla. Stat. Ann. § 501.201 *et seq.* (Florida); Ga. Code Ann. § 10-1-390 *et seq.* (Georgia); Haw. Rev. Stat. § 481A-1 *et seq.* and Haw. Rev. Stat. § 480-1 *et seq.* (Hawaii); Idaho Code § 48-601 *et seq.* (Idaho); Kan. Stat. Ann. § 50-623 *et seq.* (Kansas); Ky. Rev. Stat. § 367.110 *et seq.* (Kentucky); La. Rev. Stat. Ann. § 51:1401 *et seq.*, (Louisiana); Me. Rev. Stat. Ann. Tit. 5, § 205-A *et seq.*, (Maine); Md. Com. Law Code Ann. § 13-101 *et seq.*, Md. Com. Law Code Ann. § 13-301 *et seq.*, Md. Com. Law Code Ann. § 13-408 *et seq.* (Maryland); Mass Gen. L. ch. 93A, § 1 *et seq.* (Massachusetts); Mich. Stat. Ann. § 445.901 *et seq.*, Mich. Stat. Ann. § 19.418(1) *et seq.* (Michigan); Minn. Stat. § 325F.68 *et seq.*, Minn. Stat. § 8.31 (Minnesota); Miss. Code Ann. § 75-24-3 *et seq.* (Mississippi); Mo. Rev. Stat. § 407.010 *et seq.* (Missouri); Mont. Code Ann. § 30-14-101 *et seq.* (Montana); Neb. Rev. Stat. § 59-1601 *et seq.* (Nebraska); Nev. Rev. Stat. § 41.600 and Nev. Rev. Stat. § 598.0903 *et seq.* (Nevada); N.H. Rev. Stat. Ann. § 358-A:1 *et seq.* (New Hampshire); N.J. Rev. Stat. §



88. American Express regularly, systematically, and automatically imposes restrictions on the use of its Gift Cards to each Gift Cardholder.

89. American Express engaged in deceptive acts and practices by omitting the significant restrictions on the use of its Gift Card from the outside of its Gift Card packages

90. American Express engaged in deceptive acts and practices by disclosing that its Gift Cards have a stated value (e.g. \$25, \$50, or \$100) when the true value of its Gift Card with all the undisclosed restrictions is less than the value American Express states on the outside of the Gift Card package.

91. American Express engaged in deceptive acts and practices by failing to disclose to Plaintiffs and the other Class members that the Gift Cardholder Agreement included significant restrictions on the use of its Gift Card.

92. American Express intended that Plaintiffs and the other Class members would rely on these misrepresentations and omissions.

93. American Express intended that, by failing to inform Gift Card purchasers of the significant restrictions on the use of the Gift Card, Plaintiffs and the other Class members would believe the Gift Card they purchased was actually worth the stated value on the outside of the Gift Card (e.g. \$25, \$50, or \$100).

94. American Express's misrepresentations and omissions occurred in the course of conduct involving trade or commerce.

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56:8-1 *et seq.*, N.J. Rev. Stat. § 56:12-1 *et seq.* (New Jersey); N.M. Stat. Ann. § 57-12-1 *et seq.* (New Mexico); N.Y. Gen. Bus. Law. § 349 *et seq.* (New York); N.C. Gen. Stat. § 75-1 *et seq.* (North Carolina); N. D. Cent. Code § 51-15-01 *et seq.* (North Dakota); Ohio Rev. Code Ann. § 1345.01 *et seq.* (Ohio); Okla. Stat. Tit. 15, § 751 *et seq.* (Oklahoma); Ore. Rev. Stat. § 646.605 *et seq.* (Oregon); Penn. Stat. § 201-1 *et seq.* (Pennsylvania); R.I. Gen. Laws § 6-13.1-1 *et seq.* (Rhode Island); S.C. Code Ann. § 39-5-10 *et seq.* (South Carolina); S.D. Codified Laws Ann. § 37-24-1 *et seq.* (South Dakota); Tenn. Code Ann. § 47-18-101 *et seq.* (Tennessee); Tex. Bus. & Com. Code Ann. § 17.41 *et seq.* (Texas); Vt. Stat. Ann. Tit. 9, § 2451 *et seq.* (Vermont); Va. Code Ann. § 59.1-196 *et seq.* (Virginia); Wash. Rev. Code § 19.86.010 *et seq.* (Washington); W. Va. Code § 46A-6-101 *et seq.* (West Virginia); and Wyo. Stat. § 40-12-101 *et seq.* (Wyoming).

95. The omitted information is the type of information upon which a consumer would be expected to rely in deciding whether to purchase the American Express Gift Card.

96. American Express's misrepresentations and omissions were material because the restrictions on the use of the Gift Card reduced the true value of the Gift Card and because Plaintiffs and the other Class members, if they had known the truth, would not have paid American Express the Card fee and the stated value on the Gift Card package to receive a Gift Card worth less than its stated value.

97. American Express's misrepresentations and omissions damaged Plaintiffs and the other Class members because they paid money they otherwise would not have paid.

98. American Express's misrepresentations and omissions damaged Plaintiffs and the other Class members because they paid American Express to receive a Gift Card with a stated value and, instead, received a Gift Card worth less than its stated value due to the undisclosed restrictions on the use of the Gift Card.

WHEREFORE, plaintiffs Saul M. Kaufman and Kimberly Stegich, individually and as the representatives of a class of similarly-situated persons, pray for judgment in their favor and against American Express as follows:

- (a) That the Court find this case may be properly maintained as a class action, that the Court appoint Saul M. Kaufman and Kimberly Stegich as the Class representatives, and that the Court appoint Bock & Hatch LLC as Class counsel;
- (b) That the Court award damages to Saul M. Kaufman, Kimberly Stegich and the other members of the Class;
- (c) That the Court award Saul M. Kaufman, Kimberly Stegich and the other members of the Class punitive damages, attorney fees and costs; and
- (d) That the Court award such other and further relief as the Court may deem just and appropriate.

**COUNT III – UNJUST ENRICHMENT**

99. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

100. Plaintiffs bring Count III for unjust enrichment.

101. American Express collected “Card fee[s]” in addition to the stated value of each of its Gift Cards (e.g. \$25, \$50, or \$100) from Plaintiffs and the other Class members.

102. American Express represented and agreed that each Gift Card was worth the stated value on the outside of the Gift Card package.

103. American Express designed its Gift Card program to assure itself that Gift Card users would end up with unused “Available Funds” on the Gift Card. The unused “Available Funds” revert back to American Express unless the Gift Card user pays American Express a \$10 “check-issuance fee.” The \$10 “check-issuance fee” will most likely exceed the “Available Funds” remaining on the Gift Card.

104. American Express does not disclose this limitation anywhere on the outside of the Gift Card package.

105. American Express is unjustly enriched because any available funds left on the Gift Card revert back to it. American Express should not be allowed to keep each Gift Card users remaining “Available Funds,” especially after (a) the Gift Card purchaser already paid American Express an additional purchase fee and (b) the Gift Card itself is not worth the value American Express claims it is worth.

106. American Express’s retention of each Gift Cardholder’s remaining available balance violates fundamental principles of justice, equity, and good conscience.

107. American Express has unjustly retained the remaining available balance on many of the Class members Gift Cards.

108. American Express has retained or will retain the remaining available balance to the detriment of Plaintiffs and the other Class members.

109. Because American Express does not disclose its Gift Card restrictions anywhere on the outside of the Gift Card package, it would be inequitable for American Express to keep each Class member's remaining available balance rather than returning it. It would also be inequitable for American Express to charge each Gift Cardholder \$10 to receive the remaining available balance on the Gift Card.

WHEREFORE, plaintiffs Saul M. Kaufman and Kimberly Stegich, individually and as the representatives of a class of similarly-situated persons, pray for judgment in their favor and against American Express as follows:

- (a) That the Court find that the present case may be properly maintained as a class action, that the court appoint Saul M. Kaufman and Kimberly Stegich as the Class representatives and Bock & Hatch LLC as counsel for the Class;
- (b) That the Court order American Express to return the money it unjustly retained to Kaufman, Stegich and the other class members, plus pre-judgment and post-judgment interest; and
- (c) That the Court award the class such other and further relief as the Court deems just and proper.

Respectfully submitted,

Saul M. Kaufman and Kimberly Stegich,  
individually and as the representatives of a class  
of similarly-situated persons,

By: s/ James M. Smith  
One of Their Attorneys

Date: July 13, 2009

Philip A. Bock  
Richard J. Doherty  
James M. Smith

BOCK & HATCH, LLC.  
134 N. La Salle Street, Suite 1000  
Chicago, IL 60602  
Phone: (312) 658-5500

**JURY DEMAND**

Plaintiffs hereby demands trial by jury.

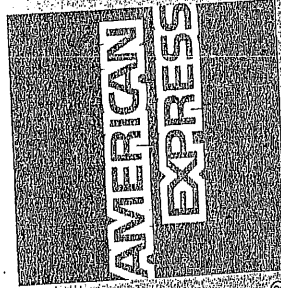
\_\_\_\_\_  
s/James M. Smith  
One of Their Attorneys

Date: July 13, 2009

Philip A. Bock  
Richard J. Doherty  
James M. Smith  
BOCK & HATCH, LLC.  
134 N. La Salle Street, Suite 1000  
Chicago, IL 60602  
Phone: (312) 658-5500

**\$25**  
additional purchase fee  
applied at register

No value until  
purchased  
at checkstand.



The American Express<sup>®</sup>  
GIFT CARD

Instead of one place, it's good all over the place.



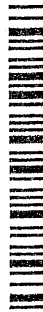
FROM

TO

P/N 22-00716-008

Card number is locked until scanned at the register. The funds on this Card do not expire. The enclosed American Express Gift Card Cardholder Agreement includes information for the recipient.

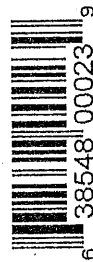
508946 / 002128



**GX 113-904-227**

**Valid Thru 07/10**

**6006496637652587875**



6 38548 00023 9

A \$3.95 Card fee will be applied at the checkstand.

Please note: If this package has been opened, please do not sell. This is a \$25 Gift Card.

**Important Information about your Card:**

- Your Card is welcomed at retail establishments and restaurants in the U.S. that accept the American Express® Card.
- This Card is not for use at airline, hotel, car rental, telecom, gasoline merchants, or ATMs. Additional restrictions apply.
- Please use your Card soon! A monthly Service Fee is waived for the first 12 months after purchase.\* Please see Terms and Conditions.

\*Subject to applicable law.



RECIPIENT'S RECEIPT



06-00207-009

## Using the American Express® Gift Card

Congratulations on receiving the American Express® Gift Card—the gift you can use at retailers and restaurants in the United States that welcome the American Express Card.

**What is the American Express Gift Card?** The American Express Gift Card is not a credit card – it is a prepaid Gift Card that has a set dollar value that is printed on the front of the Card. It can be used at retail stores and restaurants in the US that accept the American Express Card. The total dollar amount of purchases made with the Gift Card will be automatically deducted from the value of the Card. At the time of purchase, you must sign the terminal receipt and keep it for your records. Once the amount available on the Gift Card has been exhausted, all transactions will be declined. Transactions that exceed the remaining card balance will also be declined. Please read the question below on "combining forms of payment" to make a purchase that exceeds the funds available on your Gift Card.

**Do I need to do anything before using my Gift Card?** Yes. The Card has no value until it is activated. Before using your Card, please sign the back of the Card immediately and call 1-888-233-8637 to activate the Card. Activation of this Card may not be possible for up to 24 hours after purchase. You should also write down your Gift Card number and keep it in a separate place, just in case it is lost or stolen. At the time of activation, for your protection and for compliance purposes, we may request some additional identification information from you such as your home phone number, date of birth, and zip code. For more information on this data collection, see the section below entitled "Before Using the Card" in the Terms and Conditions. Such data will be held in confidence in accordance with the section below entitled "Data Protection and Privacy" in the Terms and Conditions.

**Where can I use my Gift Card?** The American Express Gift Card can be used at retail stores such as department stores, gift shops, and online retailers, as well as at restaurants in the U.S. that welcome the American Express Card.

**Where is my Gift Card not valid?** This Card is not for use at airline, hotel, car rental, telecom, gasoline merchants, or ATMs. Additional restrictions apply. It cannot be used outside of the U.S. See Terms and Conditions for further details on Card usage.

**Are there any other usage guidelines?** Please note that restaurants often add a fixed percentage (approx. 20%) to the authorization amount when they swipe your Card to receive approval. This is very common in restaurants to cover the amount of the tip that would normally be added to the transaction amount. This may result in a decline or it may result in a "hold" for the additional amount. Once the actual transaction is cleared between American Express and the restaurant merchant, American Express will remove the hold on any additional funds. For example, if your meal totaled \$50 but the restaurant authorized for \$60 and you paid only the \$50 for the meal with your Card and the tip in cash, then the additional \$10 would be held

until American Express receives confirmation that the transaction was for \$50 (usually within 3 to 7 days). To avoid this, you can generally ask the restaurant to only authorize the amount you have requested.

**Does my Gift Card have an expiration date?** No. The American Express Gift Card is valid through the date embossed on your Card. However, this is not an expiration date. If you still have value on the Card after this date, you can contact American Express at 1-877-AXP-GIFT, 24 hours a day, 7 days a week, to request the remaining funds from the Card. American Express will issue you a replacement Card with the remaining funds. There is a \$5.95 replacement Card fee for this service, unless otherwise restricted by law. See Terms and Condition for more details. Or, if you wish, you may request a check to be issued for the amount of any Available Funds on the Card. If you do, we will charge you a check-issuance fee of \$10, unless otherwise restricted by law. American Express reserves the right to hold funds for ten (10) business days before redepositing any such Available Funds. In any event, we reserve the right to decline to issue a replacement Card.

**What should I do if my Gift Card is lost or stolen?** Call Customer Service toll-free, 24 hours a day, 7 days a week, at 1-877-AXP-GIFT, as soon as possible so we can cancel your Card. Please keep your Card number in a safe place, you will need it for Card replacement. We may also ask you for other identifying data. After the American Express Gift Card is cancelled, we can send you a new one good for the amount remaining on the lost or stolen Card as of the time you notify us. There is a \$5.95 replacement fee. Note: It is critical to notify us as soon as possible if a Gift Card is lost or stolen. Funds debited from a lost/stolen Gift Card prior to our receipt of your notification CANNOT be replaced.

**Can value be added to the American Express Gift Card?** No. Once the value of the Card has been depleted, the Card is no longer valid and should be cut in half and discarded. However, we recommend that you retain your Gift Card at least until you are sure that you do not intend to return any purchased merchandise.

**What about returns, exchanges, or problems with the merchandise purchased?** Purchases made with prepaid cards are similar to purchases made with cash or travelers checks. You cannot lodge a "billing dispute" or request a "stop payment." American Express, its affiliates, employees, and agents are not responsible for the services or merchandise purchased with the Gift Card, and are not responsible for the return or exchange of merchandise purchased with the Gift Card. If you think an error has occurred with a transaction, you must contact the merchant directly. Exchange or return of merchandise purchased in whole or in part with the Gift Card

will be governed by the procedures and policies of each merchant and applicable law. At the time of any exchange or return, you should present both the merchandise receipt and the Gift Card. If you receive a credit, the credit may not be added to the Gift Card for 3 to 7 business days.

**Are there any fees or service charges?** Yes. Any time you request a replacement Card, there is a \$6.95 replacement Card fee, subject to applicable law. Also, if Available Funds remain on the Card after the "valid thru" date on the front, you may request a check to be issued for the amount of any Available Funds on the Card. If you do, we will charge you a check-issuance fee of \$10, subject to applicable law. There is also a Service Fee of \$2 per month that is deducted from the value on your Card. The Service Fee is waived for the first 12 months after purchase, and will only be deducted if value remains on the Card more than 12 months after it is purchased. NOTE: Service Fees are subject to applicable law.

**How do I track my transactions and the funds available on my Gift Card?** To check the amount of funds available on your Gift Card, simply visit [www.americanexpress.com/giftcard](http://www.americanexpress.com/giftcard) or call our 24-hour, toll-free Customer Service line at 1-877-AXP-GIFT. Please note that the value on your Card changes as we receive additional information from merchants about transactions you make with the Card. As result, it is possible that the amount that we tell you is available may change at any time.

**What if I don't have enough on my Gift Card to buy what I want? How**

**do I combine forms of payment?** You can only spend the Available Funds on your Card. Depending on the individual merchant policy, you may be able to use the Gift Card plus another form of payment to make a purchase for an amount greater than the Available Funds. This is called a "split tender" transaction. Before you make such a transaction, please call 877-AXP-GIFT to check your Available Funds. To use your Gift Card for a purchase that is greater than the amount on the Card, you MUST ask the cashier if they can accept two forms of payment. Certain establishments may only accept cash or check for the second form of payment. If the cashier agrees, pay the difference first with another form of payment accepted by the retailer or restaurant, and then use your Gift Card to pay the remaining balance.

**What if my Gift Card is declined?** The American Express Gift Card can be declined if there are not enough funds remaining on your Gift Card to cover the amount of your purchase. It is important to keep track of your Available Funds to ensure that you do not exceed your limit. If you want to make a purchase for more than the funds available on your Card, please follow the instructions detailed in the question "Combining forms of payment." If you believe a purchase transaction has been incorrectly declined, please contact us at 1-877-AXP-GIFT.

**Where can I find complete Terms and Conditions?** The American Express Gift Card Cardholder Agreement, below, contains your complete Terms and Conditions. You can also review this Agreement at [www.americanexpress.com/giftcard](http://www.americanexpress.com/giftcard).

## American Express® Gift Card Cardholder Agreement

The following terms and conditions govern your use of the American Express Gift Card, which you have received as a gift. By signing or using the American Express Gift Card, you are agreeing to these terms and conditions. The terms "you" and "your" refer to the person who received or who is using the American Express Gift Card. The terms "we," "our" and "us" refer to American Express Travel Related Services Company, Inc. The terms "Card" and "Gift Card" refer to the American Express Gift Card.

### The Gift Card:

The Gift Card is an electronic gift card designed to be used at retail establishments and restaurants that have agreed to accept the American Express Card in the United States, including mail order, online and point of sale retail merchants. The Card is not for use at airline, hotel, car rental, gasoline, telecom merchants or ATMs. Like a paper Gift Cheque or gift certificate, the Card is a prepaid payment product. It is not a credit card, charge card or debit card. The amount of funds loaded on the Card when you receive it, prior to activation, is printed on the front of the Card.

The value of the funds that are loaded onto the Card and are available for spending is referred to in this Agreement as the "Available Funds." As you use the Gift Card, the Card's Available Funds will be reduced by the full amount of each purchase including taxes, charges and other fees, if any. You may not use the Card for any amount that exceeds the Available Funds or after the "valid thru" date printed on its face.

### Before Using the Card:

The Card has no value until it is activated. Before using your Gift Card, it must be: (i) activated by calling 1-888-233-8637; and (ii) signed by you on the reverse of the Card, where indicated. Please note that activation of this Card may not be possible for up to 24 hours after purchase. In addition, we suggest that you write down the Card number and the customer service number on a separate piece of paper in case the Card is lost or stolen. See section below entitled "Lost or Stolen Cards."

At the time of activation, for your protection and for compliance purposes, we may request some additional identification information from you such as your home phone number, date of birth, and zip code. This data may be used to facilitate refunds if the Card is lost or stolen, enhance usage at some merchants which may require zip code authorization, and aid in collection efforts in the event of a "shortage." Please see the section on "Transactions in Excess of Available Funds" for more information on "shortages." Such data will be held in confidence in accordance with the section below entitled "Data Protection and Privacy."

**Using the Card:**

To use the Card at a retail establishment or restaurant that accepts American Express Cards, simply present the Card at the time of payment, and sign the receipt with the same signature you have used when you signed the Card. You should retain the receipt as a record of the transaction. You agree:

- Not to permit any other person to use the Gift Card issued to you.
- Not to use the Card at any locations other than retailers and restaurants located in the United States.
- Not to use the Card for any illegal purposes.
- That American Express is authorized to deduct the amount of your purchases, together with any other fees, taxes, or charges from the funds loaded on your Gift Card whenever your Card is used to make a purchase.
- To track your spending and not to use the Card for any amount that exceeds the Available Funds.
- Not to use the Card after the "valid thru" date printed on its face.
- To keep the Card securely and treat it like cash. If your Card is lost or stolen you can only obtain a refund of the Available Funds as of the time you notify us of the loss.
- To notify us at once if the Card is lost or stolen. See the section entitled "Lost or Stolen Cards" below.

The American Express Gift Card can be used to pay for the full amount of the merchandise and applicable taxes, so long as the Available Funds are sufficient. You can only spend the Available Funds on your Card. Depending on the individual merchant policy, you may be able to use the Gift Card plus another form of payment to make a purchase for an amount greater than the Available Funds. This is called a "split tender" transaction. Before you make such a transaction, please call 877-AXP-GIFT to check your Available Funds. To use your Gift Card for a purchase that is greater than the amount on the Card, you **MUST** ask the cashier if they can accept two forms of payment. If the cashier agrees, pay the difference first with another form of payment accepted by the retailer or restaurant, and then use your Gift Card to pay the remaining balance. **Some retailers, particularly department stores, will only allow a split tender transaction (use of two forms of payment) if the second form of payment is cash or check. Most mail order and Internet merchants do not allow for split tender transactions. If you plan to use another form of payment to pay for a part of the total charge, please check the retailer's policy in advance.**

Please note that restaurants often add a fixed percentage (approx. 20%) to the authorization amount when they swipe your Card to receive approval. This is very common in restaurants to cover the tip that would normally be added to the transaction amount. This may result in a decline or it may result in a "hold" for the additional amount on your Available Balance. Once the actual transaction is cleared between American Express and the restaurant merchant, American Express will remove the "hold" on any additional funds. For example, if your meal

totalled \$50 but the restaurant authorized for \$60 and you paid only the \$50 for the meal with your Card and the tip in cash, then the additional \$10 would be held until the American Express receives confirmation that the transaction was for \$50 (usually within 3 to 7 days). To avoid this, you can generally ask the restaurant to only authorize the amount you have requested.

Please note that purchases made with Gift Cards are similar to those made with cash or travelers cheques. You cannot "stop payment" or lodge a "billing dispute" on such transactions. Any problems or disputes you may have regarding a purchase should be addressed directly with the establishment.

**Information About Available Funds:**

You should keep track of the amount of Available Funds on the Gift Card issued to you. You may call us at any time using the Customer Service number shown on your Card to obtain the current Available Funds amount. You may also request information about previous transactions by calling Customer Service. Your Available Funds will reflect all transactions that have been posted to our system. To reach American Express Customer Service for Gift Card, call: Toll Free within the US and Canada: 1-[877-AXP-GIFT] or the number on the back of your Card. If you believe a transaction has been incorrectly posted to your Card (for example, the same transaction has been posted twice or for the incorrect amount), please notify us immediately, but no later than sixty (60) days from the date of the transaction.

**Lost or Stolen Cards:**

If your Gift Card is lost, stolen or used improperly, contact us immediately at the Customer Service number shown on the Card or at 1-877-AXP-GIFT. You will be asked to provide us with the Card number and other identifying details. **We cannot provide a refund if you do not have your Card number available.** If our records show that there are still Available Funds remaining on the Card, we will cancel the Card and refund such Available Fund amounts to you. There is a \$5.95 replacement fee, subject to applicable law.

**PLEASE SAFEGUARD YOUR CARD SECURELY AND TELL US IMMEDIATELY IF THE CARD IS LOST OR STOLEN. UNFORTUNATELY, NO REFUNDS WILL BE PROVIDED FOR AMOUNTS DEBITED FROM YOUR LOST/STOLEN CARD BEFORE YOU NOTIFY US.**

**Returned Merchandise:**

If you wish to return any merchandise purchased with the Gift Card, you will be subject to the merchant's return policies. To service merchandise returns, merchants can either: (a) Process the return as a credit to the Gift Card; or (b) Issue store credit. If the merchant issues a credit to the Gift Card, such funds may not be available for 3 to 7 days.

**Transactions in Excess of Available Funds:**

It is your responsibility to keep track of your spending on the Gift Card. You may also contact us for information on the amount of Available Funds on the Gift Card (see "Information About Available Funds" above). If you attempt to use the Card when there are insufficient Available Funds for the transaction in question, the

transaction in most instances will be declined. However, if due to a systems malfunction or for any reason whatsoever, a transaction occurs despite insufficient Available Funds on the Card (creating a "negative" amount, referred to herein as a "Shortage"), you agree to reimburse us, upon request, for the amount of the Shortage. In addition, we reserve the right to charge you a Shortage fee of \$15 per transaction every time your use of the Card results in a Shortage.

**"Valid Thru" Date -- Available Funds do not expire:**

Please note that the Gift Card has a "valid thru" date indicated on the face of the Card. That is the date after which you may not use that Card. However, this does not mean the Available Funds on the Card expire. If Available Funds remain on the Card after the "valid thru" date, simply contact us at the Customer Service number on the Card for instructions on how to redeem the Available Funds. We may reissue a Card to you, and if so, we reserve the right (subject to applicable law) to charge you a Reissuance Fee of \$5.95. Or, if you wish, you may request a check to be issued for the amount of any Available Funds on the Card. If you do, we reserve the right to charge you a check-issuance fee of \$10 (subject to applicable law). American Express reserves the right to hold funds for ten (10) business days before redeeming any such Available Funds. In any event, we reserve the right to issue a replacement Card.

**Service Fees:**

We encourage you to use your Gift Card soon! You may leave Available Funds on the Card as long as you wish and may contact us at any time to redeem them. Subject to applicable law, we may deduct a monthly Service Fee of \$2.00, however we will waive that Service Fee for the first 12 months after the purchase date.

**No Warranty of Availability or Uninterrupted Use:**

From time to time the Gift Card service may be inoperative, and when this happens, you may be unable to use your Card or obtain information about Available Funds on your Card. Please notify us if you have any problems using your Gift Card. You agree that American Express is not responsible for any interruption of service.

**No Warranty Regarding Goods and Services:**

American Express is not responsible for the quality, safety, legality, or any other aspect of any goods or services purchased by you with your Card.

**Refusal of Card:**

American Express will not be liable for the failure of any establishment to honor the Gift Card. If this occurs, please call Customer Service at 1-877-AXP-GIFT to report the incident.

**Changing these Terms and Conditions/Card Cancellation:**

We may change the terms of, or add new terms to, this Agreement at any time, in accordance with applicable law. In addition, we may suspend, cancel, add, modify or delete any feature offered in connection with your Gift Card at our sole discretion at any time, with or without cause, and without giving you notice, subject to applicable law. If we cancel your Card, any Available Funds remaining

on the Card upon such cancellation, after payment for all applicable fees, will be returned to you. We may condition reimbursement upon return of the Card, in the event the Card has not expired. The Gift Card is the property of American Express.

**Assignment and Waiver:**

We may assign this Agreement at any time without notice to you. However, if we assign this Agreement, the terms of this Agreement will remain substantially and materially the same unless you are notified. In the event we reimburse you for a refund claim you have made for a lost or stolen Card, or if we otherwise provide you with a credit or payment with respect to any problem arising out of any transaction made with the Gift Card, you are automatically deemed to assign and transfer to us any rights and claims, excluding tort claims, that you have, had or may have against any third party for an amount equal to the amount we have paid to you or credited to your Gift Card. You agree that you will not pursue any claim against, or reimbursement from, such third party for the amount that we paid or credited to your Card, and that you will cooperate with us if we decide to pursue the third party for the amount paid or credited.

If we do not exercise our rights under this Agreement, we do not give up our rights to exercise them in the future.

**Data Protection and Privacy**

**Information We Collect:** As part of providing you with the Gift Card, we may obtain personal information ("Cardholder Information") about you, including:

- Information provided to us by the Gift Card purchaser, such as your name and/or your address.
- Information you provide to us at the time of activation.
- Information about purchases you make with the Gift Card, such as the date of the purchase, the amount and the place of purchase.

In addition, we may obtain information from providers of identity verification data and demographic information, in connection with our efforts to protect against fraudulent or unauthorized use of the Gift Card.

**Information Security:** Only those persons who need it to perform their job responsibilities are authorized to have access to Cardholder Information. In addition, we maintain physical, electronic, and procedural security measures that comply with federal regulations to safeguard Cardholder Information.

**Disclosure:** We may use Cardholder Information to process Gift Card transactions, to provide customer service, to process claims for lost or stolen Cards, to develop marketing, to help protect against fraud, and to conduct research and analysis. In addition, it's often necessary for us to disclose Cardholder Information for the same purposes to companies that work with us. For example, we may provide certain Cardholder Information to companies, including American Express Affiliates that perform business operations or services, including marketing services, on our behalf. And we may provide certain Cardholder Information to others outside of American Express as permitted by law, such as to government entities or other third parties in response to subpoenas.

**Offers:** We may develop marketing programs and send you offers for products and services that you may find of value. We do not share customer addresses with other companies for them to market their own products and services.

**Choice:** If you prefer not to receive offers, you may opt out by calling us in the US toll free at 1-800-722-8614 or collect outside the US at 1-801-945-9450. If you opt out from receiving these offers, we may still send important information about the Gift Card or other American Express products and services to you.

**Telephone Monitoring/Recording:**

From time to time we may monitor and/or record telephone calls between you and us to assure the quality of our customer service or as required by applicable law.

**Notices:**

Any notice given by us shall be deemed given when deposited in the United States mail, postage prepaid, addressed to you at the latest address shown on our records.

**Arbitration**

**Purpose:** This Arbitration Provision sets forth the circumstances and procedures under which Claims (as defined below) may be arbitrated instead of litigated in court.

**Definitions:** As used in this Arbitration Provision, the term "Claim" means any claim, dispute or controversy between you and us arising from or relating to the Gift Card or this Agreement as well as any related or prior agreement that you may have had with us or the relationships resulting from this Agreement, including the validity, enforceability or scope of this Arbitration Provision or the Agreement. For purposes of this Arbitration Provision, "you" and "us" also includes any corporate parent, or wholly or majority owned subsidiaries, affiliates, any licensees, predecessors, successors, assigns, any purchaser of any accounts, all agents, employees, directors and representatives of any of the foregoing, and other persons referred to below in the definition of "Claims." "Claim" includes claims of every kind and nature, including but not limited to initial claims, counterclaims, crossclaims and third-party claims and claims based upon contract, tort, fraud and other intentional torts, statutes, regulations, common law and equity. "Claim" also includes claims by or against any third party using or providing any product, service or benefit in connection with the Card or this Agreement (including, but not limited to, third parties who accept the Card, third parties who use, provide or participate in programs accessed with the Card, enrollment services and rewards programs, debt collectors and all of their agents, employees, directors and representatives) if and only if, such third party is named as a co-party with you or us (or files a Claim with or against you or us) in connection with a Claim asserted by you or us against the other. The term "Claim" is to be given the broadest possible meaning that will be enforced and includes, by way of example and without limitation, any claim, dispute or controversy that arises

from or relates to (a) your Gift Card; (b) the amount of Available Funds on the Gift Card; (c) advertisements, promotions or oral or written statements related to the Gift Card, goods or services purchased with the Card; (d) any benefits and services related to the Card; and (e) your enrollment for or activation of the Card. We shall not elect to use arbitration under the Arbitration Provision for any Claim that you properly file and pursue in a small claims court of your state or municipality so long as the Claim is individual and pending only in that court.

**Initiation of Arbitration Proceeding/Selection of Administrator:**

Any Claim shall be resolved, upon the election by you or us, by arbitration pursuant to this Arbitration Provision and the code of procedures of the national arbitration organization to which the Claim is referred in effect at the time the Claim is filed (the "Code"). Claims shall be referred to either the National Arbitration Forum ("NAF"), JAMS, or the American Arbitration Association ("AAA"), as selected by the party electing to use arbitration. If a selection by us of one of these organizations is unacceptable to you, you shall have the right within 30 days after you receive notice of our election to select either of the other organizations listed to serve as arbitrator administrator. For a copy of the procedures, to file a Claim or for other information about these organizations, contact them as follows:

- The NAF at P.O. Box 50191, Minneapolis, MN 55404; website at [www.arbitration-forum.com](http://www.arbitration-forum.com).
- JAMS at 1920 Main Street, Suite 300, Los Angeles, CA 92614; website: [www.jamsadr.com](http://www.jamsadr.com).
- AAA at 335 Madison Avenue, New York, NY 10017; website: [www.adr.org](http://www.adr.org).

**Significance of Arbitration:** IF ARBITRATION IS CHOSEN BY ANY PARTY WITH RESPECT TO A CLAIM, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO HAVE THEIR CLAIMS RESOLVED EXCEPT AS PROVIDED FOR IN THE CODE OF PROCEDURES OF THE NAF, JAMS OR AAA, AS APPLICABLE (THE "CODE"). FURTHER, YOU AND WE WILL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. EXCEPT AS SET FORTH BELOW, THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING. NOTE THAT OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION.

**Restrictions on Arbitration:** If either party elects to resolve a Claim by arbitration, that Claim shall be arbitrated on an individual basis. *There shall be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other Cardholders or other persons similarly situated.* The arbitrator's authority to resolve Claims is limited to Claims between you

and us alone, and the arbitrator's authority to make awards is limited to you and us alone. Furthermore, Claims brought by you against us or by us against you may not be joined or consolidated in arbitration with Claims brought by or against someone other than you, unless otherwise agreed to in writing by all parties.

**Arbitration Procedures:** This Arbitration Provision is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16, as it may be amended (the "FAA"). The arbitration shall be governed by the applicable Code, except that (to the extent enforceable under the FAA) this Arbitration Provision shall control if it is inconsistent with the applicable Code. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statutes of limitations and shall honor claims of privilege recognized at law and, at the timely request of either party, shall provide a brief written explanation of the basis for the decision. The arbitration proceeding shall not be governed by any Federal or state rules of civil procedure or rules of evidence. Either party may submit a request to the arbitrator to expand the scope of discovery allowable under the applicable Code. The party submitting such a request must provide a copy to the other party, who may submit objections to the arbitrator with a copy of the objections provided to the requesting party, within fifteen (15) days of receiving the requesting party's notice. The granting or denial of such a request will be in the sole discretion of the arbitrator who shall notify the parties of his/her decision within twenty (20) days of the objecting party's submission. The arbitrator shall take reasonable steps to preserve the privacy of individuals, and of business matters. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator's decision will be final and binding, except for any right of appeal provided by the FAA. However, any party can appeal that award to a three-arbitrator panel administered by the same arbitration organization, which shall consider anew any aspect of the initial award objected to by the appealing party. The appealing party shall have thirty (30) days from the date of entry of the written arbitration award to notify the arbitration organization that it is exercising the right of appeal. The appeal shall be filed with the arbitration organization in the form of a dated writing. The arbitration organization will then notify the other party that the award has been appealed. The arbitration organization will appoint a three-arbitrator panel which will conduct an arbitration pursuant to its Code and issue its decision within one hundred and twenty (120) days of the date of the appellant's written notice. The decision of the panel shall be by majority vote and shall be final and binding.

**Location of Arbitration/Payment of Fees:** Any arbitration hearing that you attend shall take place in the federal judicial district of your residence. You will

be responsible for paying your share, if any, of the arbitration fees (including filing, administrative, hearing and/or other fees) provided by the Code, to the extent that such fees do not exceed the amount of the filing fees you would have incurred if the Claim had been brought in the state or federal court closest to your residence that would have jurisdiction over the Claim. We will be responsible for paying the remainder of any arbitration fees. At your written request, we will consider in good faith making a temporary advance of all or part of your share of the arbitration fees for any Claim you initiate as to which you or we seek arbitration. You will not be assessed any arbitration fees in excess of your share if you do not prevail in any arbitration with us.

**Continuation:** This Arbitration Provision shall survive termination of your Gift Card as well as voluntary payment of any shortages in full by you, or any legal proceeding by us to collect a debt owed by you, and any bankruptcy by you or us. If any portion of this Arbitration Provision is deemed invalid or unenforceable under any principle or provision of law or equity, it shall not invalidate the remaining portions of this Arbitration Provision or the Agreement, each of which shall be enforceable regardless of such invalidity.

**Applicable Law:**

This agreement is governed by the laws of the State of New York, USA, excluding choice of law principles.

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