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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

SAUL M. KAUFMAN, individually and)
on behalf of all others similarly situated,)
)
Plaintiff,)

**07CV1707
JUDGE GOTTSCHALL
MAGISTRATE JUDGE ASHMAN**

vs.)

NO:)

AMERICAN EXPRESS TRAVEL)
RELATED SERVICES, INC.,)
)
Defendant.)

JURY DEMANDED

NOTICE OF REMOVAL TO FEDERAL COURT

PLEASE TAKE NOTICE THAT, pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, § 1(a), 119 Stat. 4 (codified as amended at 28 U.S.C. § 1711, *et seq.*) ("CAFA") and 28 U.S.C. § 1453(b), defendant American Express Travel Related Services Company, Inc. ("American Express") hereby removes the action entitled *Saul M. Kaufman v. American Express Travel Related Services, Inc.*, Cook County Circuit Court Case No. 07CH-04130 (the "Action"), to the United States District Court for the Northern District of Illinois, Eastern Division, on the following grounds:

1. **American Express's removal is timely.** On or about February 14, 2007, plaintiff Saul M. Kaufman ("Plaintiff") filed a Class Action Complaint (the "Complaint") in the Circuit Court of the State of Illinois for the County of Cook, but the Complaint was not served then. On February 26, 2007, American Express received service of Plaintiff's Motion for Class Certification (the "Motion"). February 26, 2007 was the first date American Express was served with any papers of any kind in this Action. Subsequently, on February 28, 2007, copies of the Summons and Complaint were served on American Express. True and correct copies of these documents are attached hereto as Exhibit "A". This Notice of Removal has been filed within the thirty-day timeframe and is therefore timely under 28 U.S.C. § 1446(b).

2. In the Complaint, Plaintiff alleges causes of action against American Express on behalf of himself and all others similarly situated for: (i) breach of contract; (ii) violations of Illinois's Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq., and "substantially similar consumer protection statutes of each States"; and (iii) unjust enrichment. (Complaint, ¶¶ 61-95.)

3. **CAFA grants original and removal jurisdiction over Plaintiff's claims.** Section 4 of CAFA amended 28 U.S.C. § 1332 to create subject matter jurisdiction in federal courts over "class actions" in which: (1) more than \$5,000,000 is in controversy; and (2) any class member is diverse in citizenship from any defendant. 28 U.S.C. § 1332(d)(2). This Action is a civil action of which this Court has original jurisdiction under CAFA pursuant to 28 U.S.C. § 1332(d)(2) and may be removed to this Court pursuant to 28 U.S.C. § 1453(b), in that:

a. **This Action is a "class action."** A "class action" under CAFA is "any civil action filed in a district court of the United States under rule 23 of the Federal Rules of Civil Procedure or any civil action that is removed to a district court of the United States that was originally filed under a State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). Plaintiff's Complaint purports to allege claims on behalf of a class of nationwide consumers who either purchased or were gifted The American Express Gift Cards ("Gift Cards") (the "Class"). (Complaint, ¶¶ 59-60.) Therefore, the Action is properly considered a "class action" under CAFA.

b. **Diversity is satisfied.** Diversity is satisfied under CAFA so long as "any member of a class of plaintiffs is a citizen of a State different from any defendant" 28 U.S.C. § 1332(d)(2)(A). American Express is a New York corporation with its principal place of business in New York, New York, and therefore is a citizen of New York. Plaintiff is, and at all relevant times was, a resident of Cook County, Illinois, and therefore is a citizen of Illinois. (Complaint, ¶¶ 10-11.)

c. **The amount in controversy is satisfied.** The amount in controversy under CAFA is satisfied “if the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). For purposes of determining the amount in controversy in class actions, CAFA expressly requires that “the claims of the individual members shall be aggregated ...” 28 U.S.C. § 1332(d)(6). Plaintiff has not alleged any specific amount of damages. However, based on the allegations contained in the Complaint, it is clear that the Complaint seeks relief on behalf of the Class that would exceed the sum or value of \$5,000,000. (Declaration of Russell W. Yergensen (“Yergensen Decl.”, ¶ 3)). Plaintiff alleges that “this case seeks to redress American Express’s practice of misrepresenting the value of the [Gift Cards].” (Complaint, ¶ 1.) According to Plaintiff, American Express fraudulently misrepresents the value of the Gift Cards and that the Gift Cards purportedly are good “ALL OVER THE PLACE,” without properly disclosing the significant usage restrictions and limitations applicable to the Gift Cards. Plaintiff contends that this results in consumers being unable to use the full stated value of their Gift Cards and unlawful reversion of funds back to American Express. (e.g., *Id.* at ¶¶ 20, 35, 57, 58, 67 – 71.) Based on these allegations, among others, Plaintiff seeks restitution, actual and consequential damages, punitive damages, prejudgment interest, attorneys’ fees and costs. (Complaint, ¶¶ 71, 84 and 95.) Potential damages for restitution alone well exceed the \$5,000,000 threshold. For example, from August 2004 to February 2007, American Express’s portion of revenue collected from the up-front purchase fee on the Gift Cards sold in the United States totaled significantly more than \$5,000,000.00. (Yergensen Decl., ¶ 3.)¹ In addition, from September 2005 to February 2007, American Express collected significantly more than \$5,000,000.00 in monthly service fees applicable to the Gift Cards sold in the United States. (*Id.*) Further, because Plaintiff seeks injunctive relief (Complaint, ¶ 95), this Court must consider the revenue that American Express is projected to collect in the future from Gift Cards. *Hunt v. Washington State Apple Advertising*

¹ Actual figures are proprietary information of American Express. This data has been compiled, and if the Court deems exact figures necessary, American Express is prepared to file a declaration under seal containing this information.

Com'n, 432 U.S. 333, 347, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977) (citations omitted) (“In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation.”) To that end, it is projected that American Express will collect significantly more than \$5,000,000.00 in up-front purchase fees from Gift Card sales during the remainder of 2007. (Yergensen Decl., ¶ 3.) With respect to monthly service fees applicable to the Gift Cards, it is projected that American Express will collect significantly more than \$5,000,000.00 during the remainder of 2007. Based on the foregoing, the amounts in revenue from up-front purchase fees and monthly service fees that American Express has collected and will collect in the future on the Gift Cards clearly satisfy the amount in controversy requirement under CAFA.

4. **Notice has been effected.** A copy of this Notice of Removal is being filed with the Circuit Court of the State of Illinois for the County of Cook and concurrently served on all counsel of record.

Date: March 27, 2007

Respectfully submitted,

AMERICAN EXPRESS TRAVEL
RELATED SERVICES COMPANY, INC.

By: 

One of its Attorneys

Daniel K. Ryan, Esq.
HINSHAW & CULBERTSON LLP
222 North La Salle Street
Suite 300
Chicago, Illinois 60601
(312) 704-3000
Fax: (312) 704-3001

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

CERTIFICATE OF SERVICE

I, the undersigned, a non-attorney on oath, state that I served the above and foregoing NOTICE OF REMOVAL TO FEDERAL COURT by mailing a copy to the below listed party(ies) of record and depositing the same in the U.S. Mail at 222 North LaSalle, Chicago, Illinois by 5:00 p.m. on the 27th day of March, 2007 with proper postage prepaid.

Malik R. Diab
Phillip A. Bock
Diab & Bock LLC
20 North Wacker Drive
Suite 1741
Chicago, Illinois 60606

Jo Anna Morgan
Jo Anna Morgan

SUBSCRIBED and SWORN to
before me this 27th day of
March, 2007.

Richard S. Weston
Notary Public

