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The Market Funded Lending Industry

September 6, 2007

VIA HAND DELIVERY

Chief Justice Ronald M. George
and Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, California 94102-3600

Re: *Aviation Data Inc., et al. v. American Express Travel Related Services Co., Inc., et al.*, 1st Appellate District
Court Case Nos. A111602 and A114182

Dear Chief Justice George and Associate Justices:

Pursuant to California Rule of Court 28(g), the American Financial Services Association ("AFSA") respectfully submits this *amicus curiae* letter in support of the petition for review filed by American Express in the above-captioned action.

The American Financial Services Association is the national trade association for the consumer credit industry protecting access to credit and consumer choice. The Association encourages and maintains ethical business practices and supports financial education for consumers of all ages. Many of AFSA's members have adopted, as standard features of their business contracts, provisions that provide for the arbitration of disputes arising from or related to such contracts. They use arbitration because it is a fast, fair, and inexpensive method of resolving disputes with consumers and other contracting parties.

Although a consumer arbitration clause with a class action bar is at issue, this case is different from others this Court has reviewed and has been asked to review. The trial court noted that under New York law (the applicable law) the arbitration clause at issue was conscionable and enforceable. The Court of Appeal did not address that point.

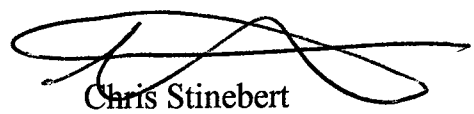
The Court of Appeal decision is troublesome and deserving of review because it ignores long established precedent and finds that a party can be deemed to have waived a contractual right (in this case the right to arbitrate) by virtue of conduct wholly unrelated and collateral to the contractual right (in this case settlement related conduct). That ruling, if allowed to stand, directly affects the ability of financial institutions to manage their contractual relationships and to manage potential disputes efficiently and cost effectively. Financial institutions rely on the enforceability of their dispute resolution clauses with their customers so that they can operate in a predictable and stable environment. The Court of Appeal's decision creates uncertainty and unpredictability for financial institutions and is bad public policy.

The Court of Appeal's decision makes it difficult for financial institutions to enter into settlement talks for fear that if those talks are unsuccessful an adversary will later seize upon something said or done in those discussions to argue that the financial institution waived its right to enforce a contractually required dispute resolution mechanism. Because of the Court of Appeal's decision an adversary can now make that argument despite the lack of any nexus between what may have been said or done and what the contract requires. The associated cost and burden of litigation will grow because there will be fewer settlement discussions and, even if settlement discussions get underway, there will be litigation over whether what was said or done in those discussions constitutes a waiver of a contractual right.

Financial institutions must be able to expect that courts will consistently enforce dispute resolution policies and procedures when they are incorporated in binding contracts. The Court of Appeal's decision undermines that expectation. The Court of Appeal decision is not a narrow one. It is easily subject to expansive abuse by lawyers who seek to avoid contractual rights so they can exploit the threat of expensive and time consuming litigation to gain an unfair advantage. When courts allow parties to nullify a contractually binding term simply because of conduct (in this case settlement related conduct) wholly divorced from the term itself, the courts exacerbate uncertainty and increase transaction costs. The effects of the Court of Appeal decision extend far beyond the alleged conduct at issue in this case. The decision can and will be used to frustrate contracting parties' reasonable expectations in a myriad of situations. Increasing uncertainty and cost of resolving disputes is not a good thing for California businesses, consumers, courts or its already overworked judiciary.

For al these reasons the AFSA respectfully requests urges this Court to review and correct the Court of Appeal's decision. In the alternative we ask that the Court of Appeal's decision be de-published.

Respectfully submitted,



Chris Stinebert
President & CEO
American Financial Services Association

DECLARATION OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business address is 1999 Harrison Street, Suite 900, Oakland, California 94612.

On September 10, 2007, I served the AMICUS CURIAE LETTER on the persons below by OVERNIGHT DELIVERY to:

Clerk of the Court
Alameda County Superior Court
1225 Fallon Street, Room 109
Oakland, CA 94612

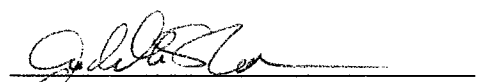
Clerk of the Court
First District, Court of Appeal
350 McAllister Street
San Francisco, CA 94102

On September 10, 2007, I also served the AMICUS CURIAE LETTER on the persons on the attached service list by ELECTRONIC MAIL.

I enclosed the documents in an envelope provided by the overnight delivery carrier and addressed to the persons at the addresses listed on the attached service list. I placed the envelope for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 10, 2007



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