**UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**

**SUMMARY ORDER**

**RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of November, two thousand twenty-six.

PRESENT:

PIERRE N. LEVAL,
RICHARD J. SULLIVAN,
JOSEPH F. BIANCO,
*Circuit Judges.*

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JOHN PALLADINO, GARIB KARAPETYAN,
STEVE PALLADINO, JOHN NYPL,

*Plaintiffs-Appellants*,

v. No. 25-1490

JPMORGAN CHASE & CO., JPMORGAN CHASE BANK N.A., BANK OF AMERICA CORPORATION, BANK OF AMERICA, N.A., CITIGROUP, INC., CITIBANK, N.A., (NATIONAL ASSOCIATION), WELLS FARGO & COMPANY,

WELLS FARGO BANK, N.A., U.S. BANCORP, U.S. BANK NATIONAL ASSOCIATION, PNC FINANCIAL SERVICES GROUP, INC., DBA PNC BANK, N.A., PNC BANK, NATIONAL ASSOCIATION, CAPITAL ONE FINANCIAL CORPORATION, CAPITAL ONE F.S.B, CAPITAL ONE BANK (USA), NATIONAL ASSOCIATION (COBNA), CAPITAL ONE, N.A., (CONA), BANK OF THE WEST, VISA, INC., VISA U.S.A. INC., (VISA U.S.A.), VISA INTERNATIONAL SERVICE ASSOCIATION, MASTERCARD INCORPORATED,

*Defendants-Appellees.*

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| **For Plaintiffs-Appellants:** | JOSEPH M. ALIOTO, Alioto Law Firm, San Francisco, CA. |
| **For Defendants-Appellees JPMorgan Chase & Co. and JPMorgan Chase Bank N.A.:** | BORIS BERSHTEYN (Lara A. Flath, Kamali P. Willett, *on the brief*), Skadden, Arps, Slate, Meagher & Flom LLP, New York, NY. |
| **For Defendants-Appellees Bank of America Corporation, Bank of America, National Association, and Bank of America. N.A.:** | Michael B. Miller, Morrison & Foerster, New York, NY; Natalie Fleming Nolen, Morrison & Foerster, Washington, DC. |
| **For Defendants-Appellees Citigroup Inc. and Citibank, N.A.:** | Benjamin R. Nagin, Tom A. Paskowitz, Sidley Austin LLP, New York, NY. |
| **For Defendants-Appellees Wells Fargo & Company and Wells Fargo Bank, N.A.:** | Amy N. Vegari, William F. Cavanaugh, Jr., Patterson Belknap Webb & Tyler LLP, New York, NY. |

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| **For Defendants-Appellees U.S. Bankcorp and U.S. Bank National Association:** | Kara F. Kennedy, Alston & Bird LLP, Atlanta, GA. |
| **For Defendants-Appellees PNC Financial Services Group, Inc., PNC, and PNC Bank, National Association:** | Michelle Ann Mantine, Reed Smith LLP, Pittsburgh, PA. |
| **For Defendants-Appellees Capital One Financial Corporation, Capital One, F.S.B., Capital One Bank (USA), National Association and Capital One National Association:** | Abby F. Rudzin, Andrew J. Frackman, O'Melveny & Myers LLP, New York, NY. |
| **For Defendants-Appellees BMO Harris Bank N.A., successor-in-interest to Bank of the West:** | Elizabeth P. Papez, Gibson Dunn & Crutcher LLP, New York, NY; Rachel S. Brass, Julian W. Kleinbrodt, Gibson Dunn & Crutcher LLP, San Francisco, CA. |
| **For Defendants-Appellees Visa Inc., Visa U.S.A. Inc., and Visa International Service Association:** | Anne P. Davis, Matthew Eisenstein, Arnold & Porter Kaye Scholer LLP, Washington, DC; Robert J. Vizas, Arnold & Porter Kaye Scholer LLP, San Francisco, CA. |
| **For Defendant-Appellee Mastercard Incorporated:** | William Michael, Brette Tannenbaum, Nina Kovalenko, Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, NY. |

Appeal from an order of the United States District Court for the Eastern District of New York (Margo K. Brodie, *Chief Judge*).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the December 30, 2024 order[1] of the district court is **AFFIRMED**.

John Palladino, Garib Karapetyan, Steve Palladino, and John Nypl ("Plaintiffs"), on behalf of themselves and a putative class of similarly situated Mastercard and Visa cardholders, appeal from the district court's order dismissing their claims against various banks and payment card services providers ("Defendants") under California's Cartwright Act, Cal. Bus. & Prof. Code § 16720 *et seq*. Plaintiffs allege that Defendants conspired to fix the interchange fees charged in processing credit and debit card transactions. The district court dismissed their claims pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(c) for failure to plead antitrust standing. We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision.

[1] The district court did not enter judgment in a separate document, as required by Federal Rule of Civil Procedure 58(a). That oversight, however, "does not affect the validity of an appeal from [the district court's] order." Fed R. App. P. 4(a)(7)(B). Where no separate document has been filed, we consider judgment entered after "150 days have run from the entry in the civil docket" of the order at issue. Fed. R. Civ. P. 58(c)(2)(B); *see Joseph v. Leavitt*, 465 F.3d 87, 89 (2d Cir. 2006). Here, Plaintiffs filed a notice of appeal on June 10, 2025, which is within 30 days of the expiration of the 150-day period.

## I. Plaintiffs Failed to State a Claim for Relief Under the Cartwright Act.[2]

On appeal, Plaintiffs argue that the district court erred in concluding that they failed to allege an antitrust injury, as required to establish antitrust standing under the Cartwright Act. According to Plaintiffs, the fact that they "are consumers of the issuing banks' price-fixed debit and credit card products" is enough to show that they suffered a cognizable injury under California's antitrust laws. Palladino Br. at 20. We disagree.

"We review *de novo* the grant of a motion to dismiss under Rule 12(b)(6) or a motion for judgment on the pleadings under Rule 12(c), accepting as true the factual allegations in the complaint and drawing all inferences in the plaintiff's favor." *Biro v. Conde Nast*, 807 F.3d 541, 544 (2d Cir. 2015). To survive either motion, a complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "And 'a claim has facial plausibility when the plaintiff pleads' facts sufficient to 'allow the court to draw the reasonable inference that the defendant is liable for the

[2] Although Plaintiffs originally filed suit in California state court, that action was removed to the U.S. District Court for the Northern District of California and then transferred by the Judicial Panel on Multidistrict Litigation to the U.S. District Court for the Eastern District of New York.

misconduct alleged.'" *Mueller v. Deutsche Bank AG*, 185 F.4th 307, 312 (2d Cir. 2026) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)) (alterations adopted).

Although the Cartwright Act provides a private right of action to anyone injured by "combinations or agreements [that] restrain trade or competition or which fix or control prices," *Pac. Gas & Elec. Co. v. County of Stanislaus*, 69 Cal. Rptr. 2d 329, 332 (1997) (internal quotation marks omitted), "[a]ntitrust law has long recognized that defendants [that] may have violated a provision of the antitrust statutes are not liable to every person [that] can persuade a jury that he has suffered a loss in some manner that might conceivably be traced to the conduct of the defendants," *In re Aluminum Warehousing Antitrust Litig.*, 833 F.3d 151, 157 (2d Cir. 2016) (internal quotation marks omitted). To assert a violation of the Cartwright Act, a plaintiff must demonstrate that he has "antitrust standing." *Ahn v. Stewart Title Guar. Co.*, 310 Cal. Rptr. 3d 595, 602 (Ct. App. 2023).

To establish antitrust standing, a plaintiff must show that he has suffered an "injury of the type [that] the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful." *Id.* at 604 (internal quotation marks omitted). "Generally, only those that are participants in the defendants' market can be said to have suffered antitrust injury." *Aluminum Warehousing*, 833

F.3d at 158; *see Vinci v. Waste Mgmt.*, 43 Cal. Rptr. 2d 337, 339 (Ct. App. 1995) (explaining that a plaintiff must demonstrate that he is a "consumer" or "competitor" in the restrained market).

Here, Plaintiffs have not identified a cognizable injury. Although they claim that they are the "direct purchasers" of payment card transactions and are therefore harmed by Defendants' allegedly anticompetitive interchange fees, App'x at 62, cardholders do not directly pay interchange fees. When a consumer uses a credit or debit card to make a purchase, the merchant's bank – commonly referred to as the acquiring bank – "pay[s] the merchant the funds owed on the transaction" in exchange for a "discount fee" charged to the merchant. *United States v. Am. Express Co.*, 838 F.3d 179, 188 (2d Cir. 2016). In turn, the consumer's bank – typically referred to as the card-issuing bank – "provides funds to the acquiring bank as payment to [the] merchant for the cardholder's purchase" in exchange for an "interchange fee" charged to the acquiring bank. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 102 (2d Cir. 2005); *see also Salveson v. JPMorgan Chase & Co.*, 663 F. App'x 71, 75 (2d Cir. 2025) ("The cardholder has not directly paid the interchange fee, but rather has only paid the full price for the item or service it has purchased."). Because interchange fees are "paid by the acquirer to

the issuer," *Am. Express*, 838 F.3d at 188, the district court correctly determined that Plaintiffs failed to plausibly allege that they suffered a direct injury attributable to anticompetitive interchange fees.

Plaintiffs alternatively contend that they are harmed as "indirect purchasers" because merchants pass on interchange fees to consumers by charging "inflated prices." App'x at 69. But these purported injuries occur in a market that is separate from the market for general purpose card network services, which is where the allegedly inflated interchange fees are assessed. In the market for general purpose card network services, Visa and Mastercard – which "provide the infrastructure and mechanisms through which general purpose card transactions are conducted" – sell their services to card-issuers and merchants. *United States v. Visa U.S.A., Inc.*, 344 F.3d 229, 239 (2d Cir. 2003) (internal quotation marks omitted). Ordinary consumers do not participate in that market, and using a clever label – "indirect purchasers" – cannot obscure the fact that Plaintiffs have not suffered "an injury within the area of the economy that is endangered by a breakdown of competitive conditions." *Kolling v. Dow Jones & Co.*, 187 Cal. Rptr. 797, 807 (App. Ct. 1982).

Finally, Plaintiffs assert that their injuries are "inextricably intertwined" with the injuries Defendants sought to inflict in the market for general purpose card network services. Palladino Br. at 37. Although a plaintiff typically must demonstrate that he participates in the restrained market to establish antitrust standing, federal antitrust law recognizes a "narrow exception . . . for parties whose injuries are inextricably intertwined with the injuries of market participants." *Aluminum Warehousing*, 833 F.3d at 158 (internal quotation marks omitted). "[T]o assess the plausibility of a putative plaintiff's claim to antitrust injury as being inextricably intertwined with the injuries the defendants ultimately sought to inflict," we "ask whether the plaintiff was manipulated or utilized by defendant as a fulcrum, conduit[,] or market force to injure competitors or participants in the relevant product and geographical markets." *Id.* at 161 (internal quotation marks omitted and alterations adopted).

Here, Plaintiffs did not plausibly allege that they have been used as a "conduit" to injure market participants or that their injuries are "essential to the success of [Defendants'] anticompetitive scheme." *Id.* (internal quotation marks omitted). According to Plaintiffs, their injuries are inextricably intertwined with the injuries of market participants because "there would be no interchange fee" if

Plaintiffs did not use Defendants' payment cards. Palladino Br. at 43. But Plaintiffs do not explain whether they have been injured at all, much less how their purported injuries are anything more than a "byproduct" of Defendants' alleged anticompetitive behavior. *Aluminum Warehousing*, 833 F.3d at 162. We therefore agree with the district court that Plaintiffs have failed to establish that they have antitrust standing to pursue these claims.[3]

## II. The District Court Did Not Abuse Its Discretion in Denying Plaintiffs Leave to Amend the Complaint a Second Time.

Plaintiffs finally assert that the district court abused its discretion in denying their request to amend their complaint a second time pursuant to Federal Rule of Civil Procedure 15. Plaintiffs contend that the district court should have granted them leave to amend their complaint to add allegations supporting their claims that the merchants have entered into a conspiracy with Defendants and that Plaintiffs pay inflated prices as a result of the conspiracy. We are unpersuaded.

In reviewing a district court's denial of a motion for leave to amend, "we apply a deferential, abuse of discretion standard of review." *Iqbal v. Ashcroft*, 574

[3] Because we find that Plaintiffs have not suffered an antitrust injury, we need not consider whether they are efficient enforcers of the Cartwright Act, as would also be required for Plaintiffs to establish antitrust standing. *See Associated Gen. Contractors v. Cal. State Council of Carpenters* (*AGC*), 459 U.S. 519, 538–46 (1983); *Schwab Short-Term Bond Mkt. Fund v. Lloyds Banking Grp.*, 22 F.4th 103, 120 (2d Cir. 2021) ("California law substantially incorporates the *AGC* factors." (citing *Vinci*, 43 Cal. Rptr. 2d at 338–39)).

F.3d 820, 822 (2d Cir. 2009) (internal quotation marks omitted). Although "the usual practice upon granting a motion to dismiss [is] to allow leave to replead," *Cortec Indus. v. Sum Holding L.P.*, 949 F.2d 42, 48 (2d Cir. 1991), a district court may deny a request to replead if "the proposed amendments would be futile," *Williams v. Citigroup, Inc.*, 659 F.3d 208, 214 (2d Cir. 2011).

Because the allegations contained in Plaintiffs' proposed second amended complaint are merely conclusory and would not have cured the defects in their first amended complaint, we cannot say that the district court abused its discretion in denying leave to amend a second time.

* * *

We have considered Plaintiffs' remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the district court's judgment.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court