

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
BERTRAM HIRSCH and IGOR ROMANOV, on	:	
behalf of themselves and all others similarly situated,	:	
	:	
Plaintiffs,	:	Case No. 12 Civ. 1124 (DAB)
	:	
vs.	:	
	:	
CITIBANK, N.A.,	:	
	:	
Defendant.	:	
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ANSWER OF DEFENDANT CITIBANK, N.A.

Defendant Citibank, N.A. (“Citibank”), by its attorneys Stroock & Stroock & Lavan LLP, for its Answer to the Class Action Complaint dated February 14, 2012 (the “Complaint”) filed by Plaintiffs Bertram Hirsch and Igor Romanov (“Plaintiffs”), responds and alleges as follows:

1. Denies the allegations contained in Paragraph 1 of the Complaint, except admits that Plaintiffs purport to bring this action on behalf of themselves and the putative class described therein.
2. States that no response is necessary with respect to the allegations contained in Paragraph 2 of the Complaint to the extent they purport to state conclusions of law. To the extent that a response is required, Citibank denies the allegations contained in Paragraph 2.
3. Denies the allegations contained in Paragraph 3 of the Complaint, except states that in 2010, Citibank offered a promotion whereby new banking customers would receive 20,000 American Airlines miles if they opened a checking account with Citibank by October 31, 2010, and an additional 20,000 American Airlines miles if they deposited a minimum of \$25,000 in a Citibank savings account and completed one of three qualifying activities.
4. Denies the allegations contained in Paragraph 4 of the Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint.

6. Denies the allegations contained in Paragraph 6 of the Complaint.

7. Denies the allegations contained in Paragraph 7 of the Complaint.

8. Denies the allegations contained in Paragraph 8 of the Complaint.

9. Admits that Plaintiffs purport to seek the relief described in Paragraph 9 of the Complaint, but denies that Plaintiffs are entitled to any relief whatsoever.

10. Admits, based on information and belief, that Plaintiff Hirsch is a resident of New York. Denies the allegations contained in the remainder of Paragraph 10 of the Complaint, except states that Plaintiff Hirsch opened a deposit account with Citibank at Citibank's branch in Great Neck, New York.

11. Admits, based on information and belief, that Plaintiff Romanov is a resident of California. Denies the allegations contained in the remainder of Paragraph 11 of the Complaint, except states that Plaintiff Romanov opened a deposit account with Citibank at Citibank's branch in Marina Del Rey, California.

12. Denies the allegations contained in Paragraph 12 of the Complaint, except states that Citibank is a national banking association organized and existing under federal law with its principal location in New York.

13. States that no response is necessary with respect to the allegations contained in Paragraph 13 of the Complaint to the extent they purport to state conclusions of law. To the extent that a response is required, Citibank denies the allegations contained in Paragraph 13.

14. States that no response is necessary with respect to the allegations contained in Paragraph 14 of the Complaint to the extent they purport to state conclusions of law. To the extent that a response is required, Citibank denies the allegations contained in Paragraph 14.

15. States that no response is necessary with respect to the allegations contained in Paragraph 15 of the Complaint to the extent they purport to state conclusions of law. To the extent that a response is required, Citibank denies the allegations contained in Paragraph 15.

16. States that no response is necessary with respect to the allegations contained in Paragraph 16 of the Complaint to the extent they purport to state conclusions of law. To the extent that a response is required, Citibank denies the allegations contained in Paragraph 16.

17. Denies the allegations contained in Paragraph 17 of the Complaint, except states that in 2010, Citibank offered a promotion whereby new banking customers would receive 20,000 American Airlines miles if they opened a checking account with Citibank by October 31, 2010, and an additional 20,000 American Airlines miles if they deposited a minimum of \$25,000 in a Citibank savings account and completed one of three qualifying activities.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint.

21. Admits the allegations contained in Paragraph 21 of the Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint, except admits that Citibank sent Plaintiff Hirsch a 1099 form for \$1,000 in January 2012.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint.

24. Admits the allegations contained in Paragraph 24 of the Complaint.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint.

26. Denies the allegations contained in Paragraph 26 of the Complaint.

27. Denies the allegations contained in Paragraph 27 of the Complaint, except states that in 2010, Citibank offered a promotion whereby new banking customers would receive 20,000 American Airlines miles if they opened a checking account with Citibank by October 31, 2010, and an additional 20,000 American Airlines miles if they deposited a minimum of \$25,000 in a Citibank savings account and completed one of three qualifying activities.

28. Admits the allegations contained in Paragraph 28 of the Complaint.

29. Denies the allegations contained in Paragraph 29 of the Complaint, except admits that Citibank sent Plaintiff Romanov a 1099 form for \$1,000 in January 2012.

30. Denies the allegations contained in Paragraph 30 of the Complaint.

31. Denies the allegations contained in Paragraph 31 of the Complaint.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of the Complaint.

33. Denies the allegations contained in Paragraph 33 of the Complaint, except states that in 2010, Citibank offered a promotion whereby new banking customers would receive

20,000 American Airlines miles if they opened a checking account with Citibank by October 31, 2010, and an additional 20,000 American Airlines miles if they deposited a minimum of \$25,000 in a Citibank savings account and completed one of three qualifying activities.

34. Denies the allegations contained in Paragraph 34 of the Complaint.

35. Denies the allegations contained in Paragraph 35 of the Complaint, except states that Citibank sent each of the Plaintiffs a 1099 form in January 2012.

36. Denies the allegations contained in Paragraph 36 of the Complaint.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint.

38. Denies the allegations contained in Paragraph 38 of the Complaint.

39. Denies the allegations contained in Paragraph 39 of the Complaint.

40. Denies the allegations contained in Paragraph 40 of the Complaint, and states that the referenced documents speak for themselves.

41. Denies the allegations contained in Paragraph 41 of the Complaint, and states that the referenced document speaks for itself.

42. Admits that Plaintiffs purport to seek the relief described in Paragraph 42 of the Complaint, but denies that Plaintiffs are entitled to any relief whatsoever.

43. Denies the allegations contained in Paragraph 43 of the Complaint, except admits that Plaintiffs purport to bring this action on behalf of the putative class described therein.

44. States that no response is necessary with respect to the allegations contained in Paragraph 44 of the Complaint to the extent they purport to state conclusions of law. To the extent that a response is required, Citibank denies the allegations contained in Paragraph 44.

45. Denies the allegations contained in Paragraph 45 of the Complaint.

46. Denies the allegations contained in Paragraph 46 of the Complaint.

47. Denies the allegations contained in Paragraph 47 of the Complaint.

48. Denies the allegations contained in Paragraph 48 of the Complaint.

49. Denies the allegations contained in Paragraph 49 of the Complaint.

50. Denies the allegations contained in Paragraph 50 of the Complaint.

51. Denies the allegations contained in Paragraph 51 of the Complaint.

52. Denies the allegations contained in Paragraph 52 of the Complaint.

53. Denies the allegations contained in Paragraph 53 of the Complaint.

54. Denies the allegations contained in Paragraph 54 of the Complaint.

55. Denies the allegations contained in Paragraph 55 of the Complaint.

56. With respect to the allegations contained in Paragraph 56 of the Complaint,

Citibank incorporates by reference its responses to the allegations contained in Paragraphs 1 through 55 of the Complaint as if fully set forth herein.

57. Denies the allegations contained in Paragraph 57 of the Complaint, except admits that Plaintiffs purport to bring this action on behalf of themselves and the putative class described therein.

58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint.

59. States that no response is necessary with respect to the allegations contained in Paragraph 59 of the Complaint to the extent they purport to state conclusions of law. To the extent that a response is required, Citibank denies the allegations contained in Paragraph 59.

60. States that no response is necessary with respect to the allegations contained in Paragraph 60 of the Complaint to the extent they purport to state conclusions of law. To the extent that a response is required, Citibank denies the allegations contained in Paragraph 60.

61. States that no response is necessary with respect to the allegations contained in Paragraph 61 of the Complaint to the extent they purport to state conclusions of law. To the extent that a response is required, Citibank denies the allegations contained in Paragraph 61.

62. Denies the allegations contained in Paragraph 62 of the Complaint.

63. With respect to the allegations contained in Paragraph 63 of the Complaint, Citibank incorporates by reference its responses to the allegations contained in Paragraphs 1 through 62 of the Complaint as if fully set forth herein.

64. Denies the allegations contained in Paragraph 64 of the Complaint, except states that Plaintiffs entered into, and are bound by, the agreements governing their deposit accounts because each of them opened and used their accounts and signed signature cards in which they agreed to be bound by any agreement governing their accounts.

65. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 65 of the Complaint.

66. Denies the allegations contained in Paragraph 66 of the Complaint.

67. Denies the allegations contained in Paragraph 67 of the Complaint.

68. Denies the allegations contained in Paragraph 68 of the Complaint.

69. With respect to the allegations contained in Paragraph 69 of the Complaint, Citibank incorporates by reference its responses to the allegations contained in Paragraphs 1 through 68 of the Complaint as if fully set forth herein.

70. States that no response is necessary with respect to the allegations contained in Paragraph 70 of the Complaint to the extent they purport to state conclusions of law. To the extent that a response is required, Citibank denies the allegations contained in Paragraph 70.

71. States that no response is necessary with respect to the allegations contained in Paragraph 71 of the Complaint to the extent they purport to state conclusions of law. To the extent that a response is required, Citibank denies the allegations contained in Paragraph 71.

72. Denies the allegations contained in Paragraph 72 of the Complaint.

73. Denies the allegations contained in Paragraph 73 of the Complaint.

74. Denies the allegations contained in Paragraph 74 of the Complaint.

75. With respect to the allegations contained in Paragraph 75 of the Complaint, Citibank incorporates its responses to the allegations contained in Paragraphs 1 through 74 of the Complaint as if fully set forth herein.

76. Denies the allegations contained in Paragraph 76 of the Complaint.

77. Denies the allegations contained in Paragraph 77 of the Complaint.

78. Denies the allegations contained in Paragraph 78 of the Complaint.

79. Denies the allegations contained in Paragraph 79 of the Complaint.

80. Denies the allegations contained in Paragraph 80 of the Complaint.

81. Denies the allegations contained in Paragraph 81 of the Complaint.

82. With respect to the allegations contained in Paragraph 82 of the Complaint, Citibank incorporates its responses to the allegations contained in Paragraphs 1 through 81 of the Complaint as if fully set forth herein.

83. Denies the allegations contained in Paragraph 83 of the Complaint.

84. Denies the allegations contained in Paragraph 84 of the Complaint.

85. Denies the allegations contained in Paragraph 85 of the Complaint.

86. Admits that Plaintiffs purport to seek the relief described in Paragraph 86 of the Complaint, but denies that Plaintiffs are entitled to any relief whatsoever.

87. With respect to the allegations contained in the prayer for relief (at pp. 21-22 of the Complaint), Citibank denies that Plaintiffs are entitled to any relief whatsoever as against Citibank, including, but not limited to, actual, statutory, compensatory, exemplary or punitive damages or any other damages, attorneys' fees and/or costs.

88. With respect to the Demand for Jury Trial (at p. 22 of the Complaint), Citibank denies that Plaintiffs and the putative class are entitled to a jury trial since they each are parties to a valid and binding individual arbitration agreement with Citibank.

AFFIRMATIVE DEFENSES

Citibank asserts the following affirmative defenses to the Complaint and each claim set forth therein:

FIRST AFFIRMATIVE DEFENSE

Each of the Counts in the Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint, and each Count set forth therein, is barred, in whole or in part, on the grounds that the agreement governing the Citibank deposit accounts allegedly at issue contains a valid and binding arbitration provision that authorizes either Plaintiffs or Citibank (or its affiliates) to elect arbitration of any claims pertaining to the accounts.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs failed to mitigate their damages, if any otherwise exist.

FOURTH AFFIRMATIVE DEFENSE

The Complaint, and each Count set forth therein, is barred, in whole or in part, by the doctrine of federal preemption.

FIFTH AFFIRMATIVE DEFENSE

The Complaint, and each Count set forth therein, is barred, in whole or in part, because Plaintiffs suffered no injury as a result of any act or practice by Citibank.

SIXTH AFFIRMATIVE DEFENSE

Each Count of the Complaint that sets forth a request for injunctive and equitable relief is barred to the extent Plaintiffs have an adequate legal remedy.

SEVENTH AFFIRMATIVE DEFENSE

The Complaint, and each Count set forth therein, is barred by the conduct, actions and inactions of Plaintiffs, which amount to and constitute an estoppel of the causes of action and any relief sought thereby.

EIGHTH AFFIRMATIVE DEFENSE

The Complaint, and each Count set forth therein, is barred by the conduct, actions and inactions of Plaintiffs, which amount to and constitute a waiver of any right or rights Plaintiffs may or might have in relation to the matters alleged in the Complaint.

NINTH AFFIRMATIVE DEFENSE

The Complaint, and each Count set forth therein, is barred, in whole or in part, by, upon information and belief, Plaintiffs' failure to either request that Citibank provide a corrected 1099 form or to otherwise challenge the correctness of the 1099 form with the IRS.

TENTH AFFIRMATIVE DEFENSE

The Complaint, and each Count set forth therein, is barred, in whole or in part, on the grounds that Plaintiffs may obtain no relief under the Complaint by reason of the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

Citibank alleges that it appropriately, completely and fully performed and discharged any and all obligations and legal duties, if any, arising out of the matters alleged in the Complaint.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs failed to exercise reasonable and ordinary care, caution or prudence in order to avoid incurring the damages sought by the Complaint; thus, the damages, if any, sustained by Plaintiffs were proximately caused and contributed to by the negligence of Plaintiffs.

THIRTEENTH AFFIRMATIVE DEFENSE

The Complaint, and each and every Count set forth therein, fails to state facts sufficient to constitute a claim for punitive damages against Citibank.

FOURTEENTH AFFIRMATIVE DEFENSE

Citibank expressly reserves the right to assert such other and further affirmative defenses as may be appropriate.

WHEREFORE, Citibank requests the following relief:

- (1) That the Complaint be dismissed with prejudice;
- (2) That Plaintiffs take nothing by virtue of the Complaint;
- (3) That judgment be entered in Citibank's favor;
- (4) That the Court award Citibank its fees, expenses and costs to the full extent

permitted by law; and

(5) That the Court award such other relief as is just and proper under the circumstances.

Dated: New York, New York
May 8, 2013

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