

04-04-2011 9:46 AM  
CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
**COPY**

E-filing

1 HELANE L. MORRISON (CA Bar No. 127752)  
2 JOHN S. YUN (CA Bar No. 112260)  
3 TRACY L. DAVIS (CA Bar No. 184129)  
Attorneys for Plaintiff  
4 SECURITIES AND EXCHANGE COMMISSION  
44 Montgomery Street, Suite 2600  
5 San Francisco, California 94104  
Telephone: (415) 705-2500  
Telecopy: (415) 705-2501

6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**  
11

12  
13 **C 04 4088**

Civil Action No.

**FMS**

14 \_\_\_\_\_ )  
SECURITIES AND EXCHANGE COMMISSION, )  
15 )  
Plaintiff, )  
16 vs. )  
17 JEREMY R. LENT, JOHN V. HASHMAN, )  
YINZI CAI, DOUGLAS WACHTEL and )  
18 BRUCE RIGIONE, )  
19 Defendants, )  
20 THE LENT FAMILY TRUST, )  
21 Relief Defendant. )  
22 \_\_\_\_\_ )

PLAINTIFF SECURITIES AND  
EXCHANGE COMMISSION'S  
COMPLAINT FOR  
PERMANENT INJUNCTION  
AND OTHER LEGAL AND  
EQUITABLE RELIEF  
  
DEMAND FOR JURY TRIAL

23  
24  
25 Plaintiff United States Securities and Exchange Commission ("Commission") alleges against  
26 defendants Jeremy R. Lent ("Lent"), John V. Hashman ("Hashman"), Yinzi Cai ("Cai"), Douglas Wachtel  
27 ("Wachtel") and Bruce Rigione ("Rigione") (collectively, "Defendants"):  
28

## SUMMARY OF THE ACTION

1  
2 1. This lawsuit involves materially false statements and insider trading by senior executives  
3 of NextCard, Inc. ("NextCard"), a publicly traded company that issued credit cards through its banking  
4 subsidiary, NextBank, N.A. ("NextBank"). During the dot-com boom, NextCard established a major  
5 presence on the internet by placing ads on numerous websites. Those ads touted NextCard's ability to  
6 process internet applications for its credit cards in a matter of seconds. But from at least November 2000  
7 through October 2001, Defendants knew that NextCard's credit card losses and delinquencies were higher  
8 than anticipated. Instead of revealing NextCard's credit card losses to investors, Defendants made a series  
9 of undisclosed, after-the-quarter accounting adjustments on NextCard's books to lower artificially the  
10 reported level of delinquent loans and bad loan write-offs and to deprive investors of the ability to  
11 analyze NextCard's quarter-by-quarter performance in a meaningful fashion. Defendants therefore had  
12 NextCard make material misstatements and omissions in its earnings releases and periodic reports for  
13 the 2000 fiscal year and for the first and second quarters of the 2001 fiscal year.

14 2. Defendants' adjustments - which Hashman described in handwritten notes as being  
15 "accounting gimmickry" - fell into three general categories. First, NextCard took millions of dollars of  
16 seriously delinquent loans that should have been written down as "credit losses" and reclassified them  
17 after the end of the quarter into a category called "loans held for sale." By doing so, NextCard materially  
18 understated its expenses and reserves for bad loans on its financial statements. Second, NextCard took  
19 millions of dollars of other delinquent loans that should have been written down as being "credit losses"  
20 (a line item tracked by analysts), and instead wrote them down as being "fraud losses" (which were buried  
21 in the "other expenses" line item), in order to make it appear that NextCard had fewer losses from  
22 delinquent loans. Third, NextCard substantially changed its methodology for calculating the company's  
23 reserves for bad loans in order to keep the reserve millions of dollars smaller than under the old method  
24 and to reduce the company's expenses on its income statement.

25 3. NextCard did not disclose any of these reclassifications or changes in accounting  
26 methodology to investors in its earnings releases and periodic reports for the 2000 fiscal year and the first  
27 and second quarters of the 2001 fiscal year. By concealing the accounting reclassifications and changes  
28 in methodology, Defendants led analysts and investors to believe falsely that NextCard was meeting

1 projections and that its delinquent loans and credit losses were rising only moderately, when in fact they  
2 were escalating rapidly.

3 4. The Office of the Comptroller of the Currency ("OCC") regulated NextBank and rejected  
4 these accounting adjustments during the Summer of 2001. In October 2001, the OCC therefore directed  
5 NextBank to make a number of accounting changes, including the reclassification of previously reported  
6 fraud losses as now being credit losses. On October 31, 2001, NextCard issued a press release stating  
7 that it was changing its accounting for write-offs and that the OCC considered NextBank to be  
8 significantly undercapitalized. NextCard's stock price fell 84% that day, and the company went into  
9 bankruptcy the following year. Meanwhile, between February 2001 and August 2001, Lent, the Lent  
10 Family Trust, Hashman, Cai and Wachtel sold NextCard shares at artificially inflated prices. Wachtel  
11 also sold NextCard shares in December 2000 at artificially inflated prices.

#### 12 JURISDICTION AND VENUE

13 5. The Commission brings this action pursuant to Sections 20(d)(1) and 22(a) of the  
14 Securities Act of 1933 ("Securities Act") and Sections 21(d) and 21(e) of the Securities Exchange Act  
15 of 1934 ("Exchange Act"). Defendants, directly or indirectly, have made use of the means and  
16 instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange,  
17 in connection with the acts, transactions, practices and courses of business alleged in this Complaint.

18 6. Venue in this District is proper pursuant to Section 22(a) of the Securities Act [15 U.S.C.  
19 §77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa] because many of the defendants are  
20 located in the Northern District of California and a substantial portion of the conduct alleged in this  
21 Complaint occurred within the Northern District of California.

22 7. Assignment to the San Francisco Division is appropriate pursuant to Civil Local Rule  
23 3-2(e) because a substantial part of the events that give rise to the Commission's claim occurred in San  
24 Francisco County, where NextCard is headquartered.

#### 25 DEFENDANTS

26 8. Defendant Lent co-founded NextCard in 1996. Beginning in 1996, Lent served as the  
27 president, chief executive officer and chairman of NextCard. He served as president until March 2000.  
28 Lent served as chief executive officer until August 2000 when he became chief strategy officer. From

1 January 2001, Lent served on NextCard's executive committee. Lent was chairman on the board of  
2 directors throughout the relevant time period.

3 9. Defendant Hashman became NextCard's chief financial officer in 1997. Hashman  
4 succeeded Lent as NextCard's president in March 2000 and as NextCard's chief executive officer in  
5 August 2000. From January 2001, Hashman served on NextCard's executive committee.

6 10. Defendant Cai served as NextCard's general manager of the credit card business during  
7 2000, and was appointed president and chief operating officer effective January 2001. As general  
8 manager, president and chief operating officer, Cai was responsible for the development and  
9 implementation of NextCard's credit and underwriting models used to approve credit card applicants.  
10 From January 2001, Cai served on NextCard's executive committee.

11 11. Defendant Rigione joined NextCard's board of directors in 1998. From July 1999 until  
12 August 2000, Rigione served as NextCard's senior vice president of international development. Rigione  
13 succeeded Hashman as NextCard's chief financial officer in August 2000.

14 12. Defendant Wachtel is a certified public accountant licensed in California. Wachtel served  
15 as NextCard's Controller from 1997 until 2003. As controller, Wachtel was responsible for all aspects  
16 of NextCard's accounting department.

17 **RELIEF DEFENDANT**

18 13. In January 2000, Jeremy Lent and his wife, Molly Lent, established the Lent Family  
19 Trust for their benefit. Jeremy Lent and Molly Lent serve as the trustees for the Lent Family Trust.  
20 Beginning in February 2001, Jeremy Lent transferred NextCard shares that were in the joint name of  
21 himself and his wife to the Lent Family Trust, which then sold the shares on the open market.

22 **FACTUAL ALLEGATIONS**

23 *NextCard's Business*

24 14. NextCard was credit card issuer located in San Francisco, California and incorporated  
25 in Delaware. NextCard had its initial public offering in May 1999, and its stock is registered with the  
26 Commission pursuant to Section 12(g) of the Exchange Act. During the relevant time period, NextCard  
27 was listed on the NASDAQ National Market under the symbol "NXCD". In March 2002, NextCard's  
28 stock was delisted but still trades on the Pink Sheets.

1 15. When NextCard went public in 1999, it was one of the first credit card companies to offer  
2 instant approval of credit cards issued by NextBank, its wholly-owned subsidiary. Unlike nearly all other  
3 credit card companies, NextCard did not obtain customers by direct mail solicitations to persons of a  
4 particular demographic or financial profile. Instead, NextCard solicited credit card customers through  
5 the exclusive method of internet advertising. NextCard purchased advertising space on numerous  
6 websites and partnered with major internet companies such as Amazon.com. Those ads offered internet  
7 users the opportunity to apply and receive approval for a VISA credit card within seconds. This  
8 marketing strategy meant, however, that anyone with internet access could apply for a credit card from  
9 NextCard even if the applicant was having financial difficulty. To attempt to exclude undesirable credit  
10 card customers, NextCard supposedly rejected applicants with FICO scores below an average of 680.

11 16. Given NextCard's unique, and still unproven, business model, securities analysts were  
12 closely watching the "charge-off ratio," "credit losses" and "loan loss reserve" numbers that NextCard  
13 reported on its financial statements.<sup>1</sup> Such numbers should be calculated using the percentage and dollar  
14 value of credit card accounts that were delinquent or non-performing. Honestly presented, those numbers  
15 would have allowed securities analysts and investors to evaluate NextCard's ability to reject applicants  
16 who were poor credit risks and to collect its outstanding credit card receivables.

17 ***Defendants' Manipulation of NextCard's 2000 Fiscal Year Results***

18 17. During November and December 2000, NextCard's senior managers could follow the  
19 delinquent loan numbers on the company's books, and were worried that the delinquent loans were  
20 growing faster than anticipated. In weekly emails to Lent, Hashman described NextCard's problems in  
21 meeting analysts' expectations for the fourth quarter with respect to charge-offs and delinquencies. In  
22 a November 11, 2000 email to Lent, Hashman wrote:

23 You had asked me about business risks that could provide downside for  
24 the stock.... First, the six month lag [credit] loss rate is hovering around

25 \_\_\_\_\_  
26 <sup>1</sup>  
27 The "charge-off ratio" is the percentage of loan write offs within the portfolio. The "credit losses"  
28 number is the amount of delinquent loans that are written off or down as an expense on the income  
statement. The "loan loss reserve" is the reserve on the balance sheet to offset the amount of  
anticipated bad loans in the company's accounts receivable.

1 6.5% before adjustments for fraud, etc. We need to adjust the number by  
2 \$2 million to get to the 5.5% level. This will involve the sale of  
3 charged-off accounts, which is not assured given there is not a tremendous  
4 demand at this time for charge-off paper..

5 18. On November 25, 2000, Hashman informed Lent that NextCard's "[l]oan losses [were]  
6 the biggest concern for the 4q," and that six executives - including Hashman, Cai, Wachtel and Rigione  
7 - would meet every Friday to address the high losses. During this same time period, Hashman made  
8 handwritten notations regarding " - 2/3 more quarters of accounting gimmickry."

9 19. After NextCard's fiscal year ended on December 31, 2000, Hashman, Cai, Rigione and  
10 Wachtel discussed using an accounting classification called "loans held for sale" (which are loans to be  
11 sold at some point in the future, usually within six months) to reduce NextCard's delinquent loan  
12 charge-offs. On January 2, 2001, Wachtel, the company's controller, sent an email to Hashman, Cai and  
13 Rigione stating that \$3.6 million of delinquent loans needed to be transferred to loans held for sale. "[t]o  
14 get our 6-month lag charge-off rate to below 5%."

15 20. On January 7, 2001, Wachtel informed top management that NextCard had experienced  
16 a net loss that was \$1.8 million higher than planned. Subsequently, on January 12, 2001, Wachtel sent  
17 an e-mail to Hashman, Cai and Rigione with the proposed reclassification of delinquent and charged-off  
18 loans to the "loan held for sale" category that would be necessary if NextCard's loss and delinquency rate  
19 were to meet analysts' expectations. Hashman forwarded Wachtel's proposed reclassifications to Lent,  
20 but warned Lent to "look at the numbers before the reclassification to get a feeling for how the underlying  
21 economics are performing. this does not look good...."

22 21. On January 24, 2001, NextCard issued a press release announcing its financial results for  
23 the fourth quarter and fiscal year ended December 31, 2000. Lent, Hashman, Rigione, Cai and Wachtel  
24 participated in the preparation and review of the Company's press release. Wachtel prepared NextCard's  
25 2000 Form 10-K annual report, including drafting the Management's Discussion and Analysis ("MD&A")  
26 section, while Lent, Hashman and Rigione signed the Form 10-K report.

27 22. NextCard's press release and Form 10-K annual report stated that NextCard had a \$0.37  
28 per share net loss for the fourth fiscal quarter, which beat the First Call estimate of a \$0.38 per share net

1 loss. NextCard's books reflected, however, a \$0.42 per share net loss - which failed to beat estimates -  
2 before management's post-quarter accounting adjustments.

3 23. NextCard also represented in the press release and annual report that its bad loan charge  
4 off rate (percentage of loans within the portfolio that were written off) for the fourth quarter was 3.10%  
5 and that its delinquent loan ratio (percentage of loans in the portfolio that were behind in payments) was  
6 3.92%. But the charge-off rate indicated by the company's books - before delinquent and charged-off  
7 loans were reclassified as being "held for sale" - was 4.46% and the delinquency ratio was 4.23%. The  
8 press release and 10-K therefore concealed that NextCard's delinquent loan and charge offs were  
9 materially higher than in prior quarters. Had NextCard not transferred delinquent and charged-off loans  
10 to loans held for sale, its delinquency and charge-off rates would have been much higher than reported  
11 and would have informed investors of the company's true level of delinquent loans.

12 24. On January 24, 2001, Lent, Hashman, Cai and Rigione and Wachtel participated in an  
13 earnings conference call with analysts to discuss NextCard's results for the fourth quarter and fiscal year  
14 ended December 31, 2000. Lent, Hashman, Cai and Rigione used a conference call script that they  
15 prepared with Wachtel's assistance. During the January 2001 earnings call, Hashman and Lent  
16 affirmatively led analysts to believe that the Company's delinquency and charge-off rates had remained  
17 stable.

18 25. The day after the earning release and conference call, one analyst firm raised its rating of  
19 NextCard. Shortly after the earnings release, Lent, Hashman and Cai adopted and implemented written  
20 plans to sell a portion of their NextCard stock holdings.

21 ***Defendants' Manipulate NextCard's Results for the First Quarter of Fiscal 2001***

22 26. After the end of NextCard's first fiscal quarter of 2001, Defendants reclassified more  
23 late-stage delinquent loans from the March 2001 quarter as being "loans held for sale." Defendants  
24 realized, however, that this accounting gimmick would be insufficient to hide its escalating credit losses.  
25 One week before the end of the March 2001 quarter, Hashman told Lent in an email that the quarter "will  
26 be close, but most recent numbers look like we will make it." Hashman warned, however, that "this is  
27 all subject to a myriad of accounting adjustments. Loans held for sale, loans held for securitization, fraud  
28 reclassifications. One thing is certain: we have an increasingly complicated accounting and financial

1 picture."

2 27. The day after NextCard's first fiscal quarter ended, Hashman sent an e-mail to Lent  
3 warning that "the unadjusted credit loss number is nearing 7% for the current period. . . . No matter what  
4 spin we put on it the [7%] loss number is unacceptably high. . . . There is not a lot more we can do on  
5 the accounting side. In fact, it is surprising that we have done so much."

6 28. After the March 2001 quarter ended, Defendants concealed some of NextCard's credit card  
7 losses by reclassifying about \$1.4 million in delinquent loans as presumptively being "fraud losses" for  
8 those accounts where the credit card holder failed to make the first payment and all subsequent monthly  
9 payments (a "First Payment Default"). Through this accounting move, Defendants reduced the amount  
10 of "credit losses" that were disclosed as a separate line item on the income statement; instead, the  
11 write-down was hidden within NextCard's "other expenses" number on the income statement so that  
12 investors would not see the full extent of the company's write-downs. Defendants' reclassification of  
13 delinquent loans as being either "held for sale" or "fraud losses" allowed the Company to under report  
14 its current and six-month charge-off rates by 34% and 33%, respectively, for the first quarter of 2001.

15 29. On April 25, 2001, NextCard issued a press release and held an earnings conference call  
16 announcing its financial results for the first quarter ended March 31, 2001. Lent, Hashman, Cai, Rigione  
17 and Wachtel assisted in the preparation and review of the Company's press release and earnings call  
18 script, while Hashman, Cai and Rigione actually participated in the call. Additionally, Wachtel drafted  
19 the Company's Form 10-Q, which Rigione reviewed and signed. The press release and subsequent Form  
20 10-Q made specific representations regarding NextCard's delinquency and current charge-off rates for  
21 the first quarter. However, NextCard failed to disclose that the first quarter ratios were materially  
22 understated in comparison with prior quarters due to the transfer of delinquent loans to loans held for sale  
23 and the presumptive reclassification of first payment defaults as fraud losses, rather than credit losses.  
24 Investors therefore lacked any way of comparing NextCard's quarterly result on an apples-to-apples basis.

25 ***Defendants Manipulate NextCard's Results for the Second Fiscal Quarter of 2001***

26 30. NextCard's second fiscal quarter of 2001 ended on June 30, 2001. On July 2, 2001,  
27 NextCard's current charge-off rate was 5.29% compared with the company's prior forecast of 4.5% to 5%.  
28 To meet the forecasted charge-off rate, Defendants reclassified approximately \$2.3 million in delinquent



1 accounts as fraud losses - rather than credit losses - where the account holder had filed for bankruptcy  
2 protection and the Company's collections vendor believed there was a basis to challenge the bankruptcy  
3 filing on fraud grounds under the Bankruptcy Code (referred to a "bankruptcy challenges").

4 31. Although the decision to reclassify challenged bankruptcies as fraud occurred in July, after  
5 NextCard's second quarter ended, the reclassification was applied retroactively to accounts in the second  
6 quarter, thus improving NextCard's reported charge-off and delinquency ratios. The reclassification of  
7 bankruptcy challenges allowed the Company to under report its current charge-off rate by 29%.

8 32. During the June 2001 quarter, Defendants also changed the way in which NextCard  
9 calculated its loan loss reserve for writing off bad loans. In prior quarters, NextCard had calculated the  
10 loan loss reserve by forecasting the rate of delinquent loans over a twelve-month period. But during the  
11 June 2001 quarter, NextCard changed its loan loss reserve methodology by forecasting the rate of  
12 delinquent loans over a much shorter nine-month period. Reserving for nine months of losses rather than  
13 twelve months of losses decreased the necessary size of the loan loss reserve by at least \$5 million to \$8  
14 million (or about 15% to 25%) for the June 2001 quarter. Reducing the amount needed for the loan loss  
15 reserve served to reduce artificially the loan loss expenses on NextCard's June 2001 income statement  
16 and to inflate artificially the company's reported net income for the June 2001 quarter.

17 33. On July 25, 2001, NextCard issued a press release and held an earnings conference call  
18 announcing its financial results for the second quarter ended June 30, 2001. Lent, Hashman, Rigione,  
19 Cai and Wachtel assisted in the preparation and review of the Company's press release and earnings call  
20 script, and Hashman, Cai and Rigione participated in the call. Additionally, Wachtel prepared the  
21 Company's Form 10-Q, which Rigione reviewed and signed.

22 34. In NextCard's press release for the second quarter of 2001, Hashman announced that  
23 NextCard's "second quarter results prove once again that the key drivers of our business continue to  
24 progress ahead of expectations." In NextCard's earnings conference call for the second quarter of 2001,  
25 Cai stated that "[a]ll the key performance metrics continue to perform according to our plan" and that  
26 NextCard's charge-offs for the second quarter met the company's prior guidance to analysts. In the press  
27 release, conference call and Form 10-Q quarterly report, NextCard announced a net loss per share of \$.27,  
28 better than the consensus estimate of \$.29. The representations in NextCard's press release, conference

1 call and Form 10-Q quarterly report were materially misleading, however, because Defendants failed to  
2 disclose that those results depended upon changes in NextCard's classification of delinquent loans as  
3 loans held for sale, its reclassification of credit losses as fraud losses, and its change in methodology for  
4 calculating the loan loss reserve.

5 ***The OCC Rejects NextBank's Accounting Methods***

6 35. In the fall of 2001, the OCC began an expanded examination of NextCard's subsidiary,  
7 NextBank. During this examination, the OCC determined that NextCard's management had engaged in  
8 a variety of accounting manipulations that put the financial health of the bank at risk. In addition to  
9 finding other improper business and accounting practices, the OCC determined that NextCard's  
10 reclassification of first pay defaults and challenged bankruptcies during the first and second quarters of  
11 2001 was inappropriate and inconsistent with banking industry standards. The OCC required NextCard  
12 to reverse the reclassifications beginning in the third quarter of 2001, and required NextCard to use the  
13 twelve-month loan loss reserve calculation due to the inherent risk in their loan portfolio. The impact  
14 was significant. Instead of reporting a current net charge-off rate of 6.13% for the third quarter of 2001,  
15 in line with guidance, NextCard reported a rate of 7.89%.

16 36. At the conclusion of its examination, the OCC declared that NextBank was "significantly  
17 undercapitalized." NextCard publicly announced the OCC action on October 31, 2001 and  
18 simultaneously announced that it would be seeking a buyer for NextCard. NextCard's common stock  
19 price dropped 84% on the day of the announcement, closing at a price of \$.87 from the previous day's  
20 closing price of \$5.35.

21 ***The Improper Stock Sales***

22 37. During 2000 and 2001 Lent told NextCard employees not to sell their NextCard stock  
23 because it would depress the NextCard's stock price. However, contrary to Lent's directive, during late  
24 2000 and 2001, Lent, Hashman, Cai and Wachtel each sold significant amounts of NextCard stock while  
25 in possession of material non-public information.

26 38. During January 2000, Lent and his wife established the Lent Family Trust and appointed  
27 themselves as trustees. As a trustee and while possessing material non-public information about  
28 NextCard's financial problems, Lent adopted and implemented a Rule 10b5-1 trading plan on February

1 8, 2001 to sell 220,000 shares of NextCard stock each quarter through the Lent Family Trust. Lent  
2 amended the Rule 10b5-1 plan on June 14, 2001 to sell 415,000 shares of NextCard stock each quarter  
3 through the Lent Family Trust. Between February and August 2001, Lent transferred NextCard shares  
4 that he and his wife held jointly to the Lent Family Trust, which then sold the NextCard shares for  
5 proceeds of approximately \$7 million.

6 39. While possessing material non-public information about NextCard's financial problems,  
7 Hashman adopted and implemented a 10b5-1 trading plan on May 1, 2001. Between May and July 2001,  
8 Hashman sold NextCard stock for proceeds of approximately \$321,000.

9 40. While possessing material non-public information about NextCard's financial problems,  
10 Cai adopted a 10b5-1 plan on February 5, 2001. Between March and August 2001, Cai sold NextCard  
11 stock for proceeds of approximately \$423,000. Additionally, during December 2000 and prior to the  
12 implementation of her 10b5-1 trading plan, Cai sold NextCard stock for proceeds of approximately  
13 \$480,000 while possessing material non-public information about NextCard's financial problems.

14 41. Wachtel did not implement a 10b5-1 trading plan. Between December and August 2001,  
15 Wachtel sold NextCard stock for proceeds of approximately \$105,405 while possessing material non-  
16 public information about NextCard's financial problems.

17 **FIRST CLAIM FOR RELIEF**

18 **(Against Hashman, Lent, Cai and Wachtel for**

19 **Violations of Section 17(a) of the Securities Act)**

20 42. The Commission realleges and incorporates by reference paragraphs 1 through 41 above.

21 43. Defendants Hashman, Lent, Cai, Rigione and Wachtel have, by engaging in the conduct  
22 set forth above, directly or indirectly, in the offer or sale of securities, by the use of means or instruments  
23 of transportation or communication in interstate commerce, or of the mails: (a) with scienter, employed  
24 devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements  
25 of material fact or by omitting to state material facts necessary in order to make the statements made, in  
26 the light of the circumstances under which they were made, not misleading; or (c) engaged in  
27 transactions, practices or courses of business which operated or would operate as a fraud or deceit upon  
28 the purchasers of such securities.

1 44. By reason of the foregoing, defendants have directly or indirectly violated Section 17(a)  
2 of the Securities Act [15 U.S.C. § 77q(a)] and unless enjoined will continue to violate Section 17(a) of  
3 the Securities Act.

4 **SECOND CLAIM FOR RELIEF**

5 **(Against Hashman, Lent, Cai, Rigione and Wachtel for**

6 **Primary Violations of Section 10(b) of the Exchange Act and Rule 10b-5)**

7 45. The Commission realleges and incorporates by reference Paragraphs 1 through 41 above.

8 46. Defendants Hashman, Lent, Cai, Rigione and Wachtel directly or indirectly made material  
9 misstatements or omissions to the public through NextCard's press releases, earnings conference calls  
10 and/or periodic filings with the Commission. Defendants Hashman, Lent, Cai, Rigione and Wachtel  
11 have, by engaging in the conduct set forth above, directly or indirectly, by use of means or  
12 instrumentalities of interstate commerce, or of the mails, or of a facility of a national security exchange,  
13 with scienter: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of  
14 material fact or omitted to state material facts necessary in order to make the statements made, in light  
15 of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or  
16 courses of business which operated or would operate as a fraud or deceit upon other persons, in  
17 connection with the purchase or sale of securities.

18 47. By reason of the foregoing, defendants have directly or indirectly violated Section 10(b)  
19 of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b 5 [17 C.F.R. §§ 240.10b 5] and unless enjoined  
20 will continue to violate Section 10(b) of the Exchange Act and Rule 10b-5.

21 **THIRD CLAIM FOR RELIEF**

22 **(Against Lent, Hashman, Cai and Wachtel for Insider Trading)**

23 48. The Commission realleges and incorporates by reference Paragraphs 1 through 41 above.

24 49. As insiders of NextCard, defendants Lent, Hashman, Cai and Wachtel owed a fiduciary  
25 duty to NextCard and its shareholders not to use any material non-public information about the company  
26 for their own direct or indirect benefit. Defendants Lent, Hashman, Cai and Wachtel violated their  
27 fiduciary duties to NextCard and its shareholders by selling or having others sell their NextCard stock  
28 between December 2000 and August 2001 while in possession of material non-public information about

1 NextCard's financial condition and credit card losses. Defendants Hashman, Lent, Cai and Wachtel have,  
2 by engaging in the conduct set forth above, directly or indirectly, by use of means or instrumentalities of  
3 interstate commerce, or of the mails, or of a facility of a national security exchange, with scienter: (a)  
4 employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted  
5 to state material facts necessary in order to make the statements made, in light of the circumstances under  
6 which they were made, not misleading; or (c) engaged in acts, practices or courses of business which  
7 operated or would operate as a fraud or deceit upon other persons, in connection with the purchase or sale  
8 of securities.

9 50. By reason of the foregoing, defendants have directly or indirectly violated Section 10(b)  
10 of the Exchange Act and Rule 10b-5 thereunder, and unless enjoined will continue to violate Section  
11 10(b) of the Exchange Act and Rule 10b-5.

#### 12 **FOURTH CLAIM FOR RELIEF**

#### 13 **(Against All Defendants for Aiding and Abetting**

#### 14 **Violations of Section 10(b) and Rule 10b-5)**

15 51. The Commission realleges and incorporates by reference Paragraphs 1 through 41 above.

16 52. NextCard made public statements in its press releases and earnings conference calls and  
17 filed with the Commission annual reports on Form 10-K for the fiscal year ended December 31, 2000 and  
18 quarterly reports on Form 10-Q for the quarters ended March 31, 2001 and June 30, 2001, that contained  
19 untrue statements of material fact and omitted to state material information required to be stated therein  
20 or necessary in order to make the required statements made, in the light of the circumstances under which  
21 they were made, not misleading, in violation of Section 10(b) of the Exchange Act and Rule 10b-5  
22 thereunder.

23 53. Defendants knowingly provided substantial assistance to NextCard's violations of Section  
24 10(b) of the Exchange Act and Rule 10b-5.

25 54. By reason of the foregoing, Defendants aided and abetted, and unless restrained and  
26 enjoined, will continue to aid and abet, violations of Section 10(b) of the Exchange Act and Rule 10b-5.

1 **FIFTH CLAIM FOR RELIEF**

2 **(Against Lent, Hashman, Rigione and Wachtel For Aiding and Abetting**

3 **Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13)**

4 55. The Commission realleges and incorporates by reference Paragraphs 1 through 41 above.

5 56. NextCard filed with the Commission annual reports on Form 10-K for the fiscal year  
6 ended December 31, 2000 and quarterly reports on Form 10-Q for the quarters ended March 31, 2001 and  
7 June 30, 2001, that contained untrue statements of material fact and omitted to state material information  
8 required to be stated therein or necessary in order to make the required statements made, in the light of  
9 the circumstances under which they were made, not misleading, in violation of Section 13(a) of the  
10 Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 under the Exchange Act [17  
11 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13].

12 57. Defendants Lent, Hashman, Rigione and Wachtel knowingly provided substantial  
13 assistance to NextCard's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and  
14 13a-13 under the Exchange Act.

15 58. By reason of the foregoing, Defendants Lent, Hashman, Rigione and Wachtel aided and  
16 abetted, and unless restrained and enjoined, will continue to aid and abet, violations of Section 13(a) of  
17 the Exchange Act and Rules 12b-20, 13a-1, 13a-13 under the Exchange Act.

18 **SIXTH CLAIM FOR RELIEF**

19 **(Against Defendants Lent, Hashman, Rigione and Wachtel**

20 **For Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act)**

21 59. The Commission realleges and incorporates by reference Paragraphs 1 through 41 above.

22 60. NextCard, by engaging in the conduct described above, failed to make and keep books,  
23 records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and  
24 dispositions of the assets of the Company, in violation of Section 13(b)(2)(A) of the Exchange Act [15  
25 U.S.C. § 78m(b)(2)(A)].

26 61. Defendants Lent, Hashman, Rigione and Wachtel knowingly provided substantial  
27 assistance to NextCard's violations of Section 13(b)(2)(A) of the Exchange Act.

28 62. By reason of the foregoing, Defendants Lent, Hashman, Rigione and Wachtel aided and

1 abetted, and unless restrained and enjoined, will continue to aid and abet, violations of Section  
2 13(b)(2)(a) of the Exchange Act.

3 **SEVENTH CLAIM FOR RELIEF**

4 **(Against Lent, Hashman and Cai for Control Person Liability)**

5 63. The Commission realleges and incorporates by reference the allegations in Paragraphs 1  
6 through 41 and 51 through 62, above.

7 64. By virtue of their activities and positions at NextCard, including but not limited to their  
8 membership on the executive committee, defendants Lent, Hashman and Cai were persons who, directly  
9 and indirectly, controlled NextCard for purposes of Section 20(a) of the Exchange Act [15 U.S.C. §  
10 78t(a)].

11 65. As control persons, defendants Lent, Hashman and Cai are jointly and severally liable with  
12 NextCard for NextCard's violations of Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.  
13 Additionally, defendants Lent and Hashman are jointly and severally liable as control persons of  
14 NextCard for NextCard's violations of (i) Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1  
15 and 13a-13 under the Exchange Act and (ii) Section 13(b)(2)(a) of the Exchange Act.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, the Commission respectfully requests that this Court:

18 A. Enjoin defendant Lent from, directly or indirectly, engaging in conduct in violation of  
19 Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder,  
20 and from aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules  
21 12b-20, 13a-1 and 13a-13 thereunder;

22 B. Enjoin defendant Hashman from, directly or indirectly, engaging in conduct in violation  
23 of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder,  
24 and from aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules  
25 12b-20, 13a-1 and 13a-13 thereunder;

26 C. Enjoin defendant Cai from, directly or indirectly, engaging in conduct in violation of  
27 Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

28 D. Enjoin defendant Rigione from, directly or indirectly, engaging in conduct in violation of

1 Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from aiding and abetting violations  
2 of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder;

3 E. Enjoin defendant Wachtel from, directly or indirectly, engaging in conduct in violation  
4 of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder,  
5 and from aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules  
6 12b-20, 13a-1 and 13a-13 thereunder;

7 F. Order defendants Lent, Hashman, Cai and Wachtel to disgorge their ill gotten gains in an  
8 amount according to proof, plus prejudgment interest thereon;

9 G. Order relief defendant The Lent Family Trust to disgorge an amount equal to its unjust  
10 enrichment as a result of the conduct alleged herein, plus prejudgment interest thereon;

11 H. Order defendants Lent, Hashman, Cai, Rigione and Wachtel to pay civil penalties pursuant  
12 to Sections 20(d) and 21(d)(3) of the Exchange Act;

13 I. Order defendants Lent, Hashman, Cai and Wachtel to pay civil penalties pursuant to  
14 Sections 21A of the Exchange Act for their insider trading;

15 J. Bar defendants Lent, Hashman, Cai, Rigione and Wachtel from serving as an officer or  
16 director of any entity having a class of securities registered with the Commission pursuant to Section 12  
17 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act,  
18 pursuant to Section 20(e) of the Securities Act;

19 K. Retain jurisdiction of this action in accordance with the principles of equity and the  
20 Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees  
21 that may be entered, or to entertain any suitable application or motion for additional relief within the  
22 jurisdiction of this Court; and

23  
24  
25  
26  
27  
28



1 L. Grant such other and further relief as this Court may determine to be just and necessary.

2 Dated: September 24, 2004

3 Respectfully submitted:

4 By: 

5 Helene L. Morrison

6 John S. Yun

7 Tracy L. Davis

8 Attorneys for Plaintiff

9 SECURITIES AND EXCHANGE COMMISSION

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

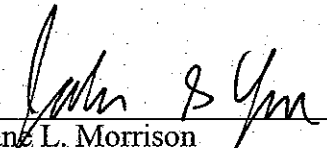
28

**DEMAND FOR JURY TRIAL**

Plaintiff Securities and Exchange Commission requests a trial by jury.

Dated: September 24, 2004

Respectfully submitted:

By:   
\_\_\_\_\_  
Helene L. Morrison  
John S. Yun  
Tracy L. Davis  
Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28