

I. INTRODUCTION

Pursuant to the Stipulation and Agreement of Settlement (“Settlement Agreement”) (Dkt. No. 452, Vol. I), ¶¶ 3(f) & 13(b), the Revised Plan of Administration and Distribution (Dkt. No. 528, Ex. 8), ¶¶ 6 & 7, and the Final Judgment and Order of Dismissal (Dkt. No. 763), ¶ 6, Plaintiffs’ Co-Lead Counsel respectfully request that the Court authorize the distribution of the net settlement fund¹ to claimants who submitted valid, timely filed claims.

Following the recent conclusion of all appeals of the Final Judgment and Order of Dismissal, the Settlement has become final, and disbursement of the net settlement fund is now appropriate. Plaintiffs’ Co-Lead Counsel therefore respectfully request that the Court approve the distribution of the net settlement fund in accordance with the court-approved Revised Plan of Administration and Distribution (“Revised Plan”),² in the manner set forth in the accompanying Affidavit of Edward J. Radetich, Jr., C.P.A. Regarding Claims Administration (“Radetich Affidavit”) (attached as Exhibit 1).

Based on the Claims Administrator’s³ current estimate of the costs of processing and mailing the refund checks and other costs, the total amount of net settlement funds available for distribution is approximately \$275,600,000.00. The payment for each Option 1 claimant (and the

¹ The “net settlement fund” refers to the amount remaining in the settlement fund after the Court-ordered awards to the named Plaintiffs, attorneys’ fees and expenses, and any other approved payments for costs associated with distributing the refund checks.

² The Court approved the Revised Plan in its Order dated September 24, 2007 (Dkt. No. 527), ¶ 5, and again in its Final Judgment and Order of Dismissal (Dkt. No. 763), ¶ 5.

³ Pursuant to this Court’s Order dated November 8, 2006 (Dkt. No. 471), the Court appointed Heffler, Radetich & Saitta, L.L.P. (“Heffler”) as Claims Administrator.

minimum payment for all claimants) is \$18.04, which will be paid to 9,127,836 claimants.⁴ After applying the prescribed pro-ration methodology, the total payments for each category of claimant are as follows:

Option 1:	\$129,083,812.88
Option 2:	\$66,196,292.22
Option 3:	\$67,038,255.81
Agency/Company:	\$13,294,650.50
Total:	\$275,613,011.41

Radetich Affidavit, ¶¶ G.9-13.

Accordingly, Plaintiffs respectfully request that the Court approve the distribution of the net settlement funds as set forth in the Radetich Affidavit.

II. FINAL SETTLEMENT APPROVAL HAS OCCURRED

The Settlement has become final, and disbursement of the net settlement fund to Valid Claimants is appropriate at this time.

The Court granted final approval on October 22, 2009 (Dkt. 755). The Final Judgment and Order of Dismissal (Dkt. No. 763) was entered on November 4, 2009. On May 10 and 11, 2011, the Court received the Mandates of the Court of Appeals for the Second Circuit dismissing the final two appeals relating to the Settlement Agreement (respectively, Appeal Nos. 10-1145(con) (S.D.N.Y. Docket No. 873) and 06-5327cv (S.D.N.Y. Docket No. 874)). With no other appeals of the Final Judgment and Order of Dismissal or of the awards to the named

⁴ The total number of claimants receiving the minimum payment is comprised of all Option 1 claimants (7,155,422 claimants); 1,914,855 Option 2 claimants; 57,554 Option 3 claims; and five Agency/Company claimants. Radetich Affidavit, ¶ G.13.

Plaintiffs or of attorneys' fees and expenses pending, the time for further judicial review of the Settlement Agreement has expired.⁵

Because all conditions for finality have been met, the net settlement fund may now be distributed to claimants who submitted valid, timely claims.

III. NOTICE AND CLAIMS SUBMISSION

The Claims Administrator provided direct notice to the class in two tranches. The first tranche occurred between January and March 2007, and consisted of "stuffer" notices (*e.g.*, the "Statement Insert Notice") placed by the issuing bank defendants in envelopes containing monthly statements provided to cardholders. Declaration of Edward J. Radetich, Jr., CPA Regarding the Dissemination of Notice to the Class (Dkt. No. 556), ¶ 2 (January 21, 2008). A second tranche of direct mail notices, with revised claims procedures, was mailed to cardholders between November 23, 2007 and November 30, 2007. *Id.* at ¶ 7. The list of class members targeted for this mailing was derived from customer information provided by the issuing bank defendants that identified cardholders who made at least one foreign transaction during the class period. The Claims Administrator mailed more than 38 million Notices (containing the three claim options) to class members in the second tranche of direct notice, including to the more than 100,000 class members who had already submitted claims. *Id.*

Notice of the Settlement was also published in twenty-five newspapers and magazines throughout the country and on internet sites. *Id.* at ¶ 8. Additionally, the Claims Administrator established and maintained a settlement website, www.ccfsettlement.com, to provide notice, claim information, claim forms (including an electronic submission mechanism), contact information (including an 800 toll-free number), case documents, answers to frequently-asked

⁵ The Mandates dismissing the other appeals are at S.D.N.Y. Docket Nos. 813, 828, 836, 838, 839, 841, 859, 863, 864, 865 and 867.

questions, and other important information regarding the status of the settlement. *Id.* at ¶ 9.

As provided by the Revised Plan (Dkt. No. 528, Ex. 8), individual class members were offered three claim options, while a separate claims process was used for Agency/Company claims. Individual claimants could choose either: (i) an Option 1 claim, which offers a uniform refund amount; (ii) an Option 2 claim, which calculates the refund amount using an algorithm to process travel data provided by the claimant; or (iii) an Option 3 claim, which calculates the refund based on the foreign transaction amounts provided by the claimant. Agency/Company claimants used a spreadsheet form to identify foreign transaction amounts incurred on each of the qualifying card accounts held by the Agency/Company. Each of these claim options was subject to review and audit by the Claims Administrator.

In response to this notice program, class members filed more than 10 million claims by the May 30, 2008 deadline. Status Report of Edward J. Radetich, Jr., CPA Regarding the Settlement Notice and Claims Process, ¶ 3 (December 4, 2008) (Dkt. No. 655, Ex. B). As of August 28, 2011, another 48,802 claims had been submitted late. *See* Radetich Affidavit, ¶ D.3.

IV. THE CLAIMS ADMINISTRATOR'S PROCESSING AND AUDITING OF CLAIMS

Class members' claims were subjected to a rigorous review and audit procedure. The procedures used by the Claims Administrator to evaluate and audit claims, identify deficiencies, communicate with class members to address questions or cure defects, and to validate timely-filed claims are described in detail in the Radetich Affidavit, and briefly summarized below.

Timely filed claims were subjected to three general phases of processing and review: (i) data entry and review for duplicate submissions; (ii) analysis and audit of claim data; and (iii) refund calculation.

In the first phase, information for each claim was entered into a database. Radetich Affidavit, ¶¶ C.3-7. Individual claims were entered into a claims database and Agency/Company

claims were entered into a second, separate database. *Id.* The Claims Administrator performed multiple, detailed searches of the databases to identify and remove duplicate claim submissions. *Id.* at ¶ E.4. Where the claimant submitted multiple claims for different amounts, the Claims Administrator accepted the larger claim and marked the remaining duplicates as rejected. *Id.* A total of 167,419 duplicate claims have been identified and rejected. *Id.*

In the second phase, the Claims Administrator implemented an audit program to validate claims. The audit program focused predominantly on Option 2 claims seeking refunds for a large number of travel days (3,400 or more travel days out of a maximum of 3,934 travel days during the class period) and Option 3 claims seeking refunds for substantial foreign transaction amounts (\$400,000 or more). *Id.* at ¶ F.1. Additionally, the Claims Administrator audited all Agency/Company claims for \$100,000 or more in foreign transaction amounts and audited a random sample of Option 2 claims with more than 2,999 but less than 3,400 travel days; certain Option 3 claims asserting total foreign transaction amounts between \$100,000 and \$400,000, or Option 3 claims under \$400,000 with an abnormal “spike” in reported foreign transaction amounts (*e.g.*, a single year with an unusually high amount of foreign transactions); and all claims deemed suspicious by the Claims Administrator. *Id.*

Supplementing the detailed audit of the largest claims, the Claims Administrator also reviewed claim submissions to ensure that they were complete and eligible to participate in the claim refund process, *e.g.*, that no claims were submitted for ineligible cards, such as an American Express or Discover cards. *Id.* at ¶ F.6.

For each claim subjected to an audit, an audit letter (or “Audit Notification” letter) was issued to that claimant requesting information necessary to validate the claim. *Id.* at ¶ F.3. Claimants were asked to respond to the audit letter within twenty days, and the Claims Administrator provided staff who were available to assist with claimant inquiries, including

granting extensions of time where requested. *Id.* If the claimant failed to respond by the deadline in the audit letter, the Claims Administrator sent a follow-up letter providing an additional 45 days to respond, after which period the claim was rejected. *Id.* at ¶ F.5. Where claimants responded to the audit letter, all information and documentation submitted by the claimant was reviewed by the Claims Administrator, who then made a final determination on the allowable portion of the claim. *Id.* at ¶¶ F.7-10. All audited claimants were issued an audit letter (or “Audit Result” letter) informing them of the audit determination, including whether the claim was allowed or rejected (either in whole or in part), and each audited claimant was given an additional 45 days from the date of the audit letter to contest the Claims Administrator’s audit determination. *Id.* at ¶ F.9. If the claimant contested the audit result, an additional round of audit review was conducted and the claimant received a second audit letter (or “Final Audit Result” letter) informing the claimant of the final audit determination. *Id.* at ¶ F.10. No claimant has contested the final audit determination. *See id.* at ¶¶ E.10 & F.13.

The Claims Administrator audited a total of 10,099 claims, comprised of 7,712 Option 2 claims, 2,154 Option 3 claims, and 233 Agency/Company claims. *Id.* at F.12. Of the Option 2 claims, 4922 claims were entirely rejected as a result of the audit, 22,805,725 travel days were disallowed, and the overall percentage of audited claims allowed was 27.39%. *Id.* Of the Option 3 claims, 770 claims were entirely rejected as a result of the audit, transaction amounts were disallowed by a total of \$1,616,257,551, and the overall percentage of audited claims allowed was 30.83%. *Id.* Of the Agency/Company claims, 32 claims were entirely rejected as a result of the audit, transaction amounts were disallowed by a total of \$852,665,271, and the overall percentage of audited claims allowed was 79.06%. *Id.* The results of the audit program are reported in detail in the Radetich Affidavit at ¶ F.12.

After removing duplicate claims and conducting the audit program, the Claims

Administrator undertook the third phase of the claims process: determining the refund amount for each claim. *Id.* at ¶ G.2. This process began with an initial calculation of the value of each claim. *Id.* Because the combined value of all valid, timely refunds exceeds the Net Settlement Fund, the Claims Administrator then applied each of the three pro-ratio calculations set forth in the Revised Plan (Dkt. No. 528, Ex. 8), ¶ 6(f). *Id.* at ¶ G.9. The calculation of the refund amounts are described in more detail in the next section.

V. CALCULATING THE REFUND AMOUNTS

The Claims Administrator calculated the total, combined value of allowable claims – prior to any pro-ratio – as \$540,523,727.92. *Id.* This total is comprised of Option 1 claims totaling \$178,885,550.00 (7,155,422 allowable Option 1 claims multiplied by \$25.00); Option 2 claims totaling \$140,676,436.82; Option 3 claims totaling \$184,124,391.30; and Agency/Company claims totaling claims totaling \$36,837,349.80. *Id.* at ¶¶ G.3-5, 9. The Claims Administrator also calculated the amount of net funds available for distribution after subtracting all remaining administrative costs, awards of attorneys’ fees and costs, taxes, and awards to Class Representatives. *Id.* at ¶ G.6 and Exhibit J to the Radetich Affidavit. The amount available for distribution is \$275,613,011.41. Radetich Affidavit, ¶ G.6. Because the total value of allowable claims exceeds the net funds available for distribution, the Claims Administrator applied the pro-ratio methodology identified in the Revised Plan, Section 6(f). *Id.* at ¶¶ G.9-13 . Because of the size of the gap between available funds and the value of allowable claims, all three tiers of the pro-ratio methodology were applied. *Id.* at ¶ G.13.

After applying all three tiers of pro-ratio identified in the Revised Plan, the Claims Administrator determined that the distribution amount for each Option 1 claimant is \$18.04. *Id.* This is also the minimum payment for Option 2 and 3 claims. *Id.*

VI. MANNER OF DISSEMINATION OF THE REFUND CHECKS

Upon approval by the Court, the Claims Administrator will initiate the distribution process, which will require advance payment of certain costs. Claimants with U.S. addresses (“domestic claimants”) receiving refunds of \$50.00 or less will be sent their distribution amount via a self-mailer (or “postcard”) check. *Id.* at ¶ G.16. All claimants with a non-U.S. addresses and all domestic claimants receiving a refund over \$50.00 will be sent their distribution via a standard, letter-type check. *Id.* Mailing the refund checks will occur over several weeks, not to exceed sixty (60) days, and the Claims Administrator will take steps to research alternate address information for checks returned as undeliverable by the United States Post Office. *Id.* at ¶¶ G.17 & 18. All refund checks will carry the notation “Void after 120 Days,” and any checks that are not negotiated after this period will be void. *Id.* at ¶ G.19.

VII. TIMELINE FOR DISTRIBUTION OF THE NET SETTLEMENT FUND

The printing of refund checks will commence by thirty (30) days from the date of the Court’s order approving the distribution, provided that the funds necessary to both pay the costs associated with the distribution and to honor the cashed refund checks are available in liquid form.⁶ *Id.* at ¶ G.17.

For the Claims Administrator to commence the check printing, the costs associated with printing and mailing the refund checks (\$4,981,582.11)⁷ must be available in liquid form to the

⁶ The Claims Administrator’s timeline also assumes that the Court authorizes The Huntington National Bank as the financial institution to provide the banking services associated with the distribution of the net settlement fund. *See* Radetich Affidavit, ¶ G.17 (explaining that the Claims Administrator has completed a testing program with the printer and Huntington Bank to assure that the checks generated by the printer passed all requirements in the bank’s processing systems). The timeline would need to be adjusted in the event a different bank is selected.

⁷ The costs associated with distributing the net settlement fund are: (i) \$4,329,433.85 for costs associated with printing and mailing refund checks; (ii) \$452,148.26 for bank fees; (iii) and

Claims Administrator at least ten (10) days in advance of the check printing start date. *Id.* Additionally, the funds (approximately \$275,600,000.00) for the distribution should be available in liquid form in the distribution bank account, *i.e.*, in order for claimants to cash the refund checks, no later than five (5) days prior to the date the printing of the checks commences. *Id.*

Because of the large volume of checks to be issued (over 10 million), the Claims Administrator will mail, via first-class mail, the refund checks on a rolling basis over a period of several weeks, not to exceed sixty (60) days, beginning within days after the printing of the refund checks starts. *Id.* Refund checks will be issued in groups, organized by geographic location, with the goal of mailing all check recipients in a given zip code at or near the same time. *Id.*

The Claims Administrator recommends that the mailing commence on or about November 1, 2011, in advance of the Thanksgiving holiday, which will provide the opportunity to complete the mailings before the end of the year, prior to the year-end holiday surge in mail volume. *Id.*

VIII. CONCLUSION

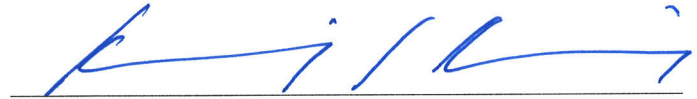
For the foregoing reasons, Plaintiffs' Co-Lead Counsel respectfully request that the Court authorize the distribution of the net settlement fund in accordance with the procedures set forth by the Claims Administrator in the Radetich Affidavit.

up to (but not in excess of) \$200,000.00 for the operation of an IVR telephone system. *See* Exhibit J to the Radetich Affidavit.

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Respectfully submitted,

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