

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE : MDL No. 1409
: :
CURRENCY CONVERSION FEE : M 21-95
ANTITRUST LITIGATION : :
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THIS DOCUMENT RELATES TO: : Index No. 04 CV 05723 (WHP)
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ROBERT ROSS and RANDALL WACHSMUTH, : Jury Trial Demanded
: :
Plaintiffs, : :
: :
-against- : :
: :
AMERICAN EXPRESS CO., et al., : :
: :
Defendants. : :
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**CLASS PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF
PARTIAL CLASS ACTION SETTLEMENT WITH DEFENDANTS
AMERICAN EXPRESS CO., AMERICAN EXPRESS TRAVEL RELATED
SERVICES, INC. AND AMERICAN EXPRESS CENTURION BANK**

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and upon the accompanying Declaration of Charles P. Goodwin, Representative Plaintiffs Robert Ross and Randal Wachsmuth (collectively "Class Plaintiffs") on behalf of themselves and the certified Class and Subclass (the "Class") respectfully move for preliminary approval of the Stipulation and Settlement Agreement ("Settlement") with American Express Co., American Express Travel Related Services, Inc. and American Express Centurion Bank (collectively, "Amex" or "Defendants").

In support of their Motion, Class Plaintiffs state as follows:

1. Class Plaintiffs bring claims for damages on behalf of a damages class (“FX Damages Class”), certified pursuant to Rule 23(b)(3), that is composed of claimants on the settlement in a prior related matter, *In re Currency Conversion Fee Antitrust Litig.* (“*CCF I*”), Master File No. 21-95, No. 01-md-1409 (S.D.N.Y.) (Pauley, J.) (including approximately 48,800 late-filed claims).

2. Plaintiffs allege a damages claim that Amex conspired with certain Banks¹ to fix foreign transaction (“FX”) fees assessed on transactions effected with merchants abroad or in foreign currencies (Count I), and (2) an injunctive claim that Amex conspired with those Banks and certain others to impose class-barring arbitration clauses (“CBA Clauses”) on cardholders (Count II). The proposed settlement *sub judice* provides a gross recovery of \$49.5 million in additional compensation to the FX Damages Class for their damages claim as to the FX fee (Count I), but severs, and thus preserves for trial, the arbitration conspiracy claim (Count II).

3. The proposed partial settlement of Count I compares well with the approved *CCF I* settlement, where this Court has *already* approved – both preliminarily and finally – a settlement of \$336 million for the same injuries to the same group of claimants. *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 133 (S.D.N.Y. 2009); *In re Currency Conversion Fee Antitrust Litig.*, 2006 WL 3247396, at *6 (S.D.N.Y. Nov. 8, 2006). If compensation in the amount of \$336 million is fair, reasonable and adequate, it follows that increased compensation of \$385.5 million is necessarily also fair, reasonable and adequate compensation for these injuries.

¹ At the time of suit, the “Banks” were Bank of America, Bank One/First USA, Chase, Citibank/Diners Club, MBNA, HSBC/Household and Providian.

4. The overall value of the proposed settlement to FX Damages Class Members is enhanced due to the unique opportunity for efficiency and cost reductions in the notice and settlement administration process. The parties agreed Notice Plan, which has already been approved by the Court, will combine notice to the FX Damages Class with the distribution of initial payments in *CCF I*. As a result, there will be increased visibility of the notice by the FX Damages Class, because it will accompany a settlement payment, and the FX Damages Class will only incur the *incremental* increase in costs for sending notice to more than 10 million class claimants. Because of the relationship between the *Ross v. American Express* damages class and the class in *CCF I*, the claims process is already almost completed, *i.e.*, the administration of FX Damages Class claims is complete for all but approximately 48,800 (the late-filed claimants) of the more than 10 million submitted claims. Further, the parties expressly contemplate, as stated in the written settlement agreement, that distribution to the FX Damages Class will be combined with the distribution of secondary payments from the *CCF I* settlement, thereby minimizing the expense of distribution in *both* matters.

5. Preliminary approval of the settlement is warranted because the settlement is well “within the range of possible approval.” *In re Warner Chilcott Ltd. Sec. Litig.*, 2008 WL 5110904, at *1 (Nov. 20, 2008) (Pauley, J.) (quoting *In re Prudential Sec. Inc. Ltd. Partnership Litig.*, 163 F.R.D. 200, 210 (S.D.N.Y. 1995) (Pollack, J.)). It was reached through arm’s-length negotiations among experienced counsel who had the benefit of the full pre-trial record both in this matter and from *CCF I* as well as rulings on the merits in this Court (on summary judgment) and in the Court of Appeals (on arbitration).

6. Accordingly, as explained more fully in the accompanying Plaintiffs’ Memorandum of Law in support of this Motion, Plaintiffs respectfully request that this Court

preliminarily approve the settlement of Count I because the proposed settlement is “sufficiently fair, reasonable and adequate” to warrant preliminary approval. *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 1997 WL 805062, at *24 (S.D.N.Y. Dec. 31, 1997) (“NASDAQ”) (citation omitted).

DATED: October 31, 2011

Respectfully submitted,



Merrill G. Davidoff, Esquire (MD-4099)
Charles P. Goodwin, Esquire
David A. Langer, Esquire
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
215-875-3000
215-875-4673 Fax

Gregory K. Arenson, Esquire
KAPLAN FOX & KILSHEIMER LLP
850 Third Avenue, 14th Floor
New York, NY 10022
212-687-1980
215-687-7714 Fax

Christopher M. Burke, Esquire
Kristen M. Anderson, Esquire
SCOTT+SCOTT, LLP
600 B Street, Suite 1500
San Diego, CA 92101
619-233-4565
619-233-0508 Fax