

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE :
: MDL No. 1409
CURRENCY CONVERSION FEE :
ANTITRUST LITIGATION : M 21-95
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THIS DOCUMENT RELATES TO: : Index No. 04 CV 05723 (WHP)
:
ROBERT ROSS, et al., :
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Plaintiffs, :
:
-against- :
:
AMERICAN EXPRESS CO., et al., :
:
Defendants. :
:
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**ORDER PRELIMINARILY APPROVING CLASS ACTION
SETTLEMENT AND RELATED MATTERS**

Upon review and consideration of the terms and conditions of the Stipulation and Agreement of Settlement, including its exhibits (the “Settlement Agreement”)¹ dated October 24, 2011, between and among the Representative Plaintiffs and the FX Damages Class, by and through the Representative Plaintiffs and Plaintiffs’ Lead Counsel (collectively, “Plaintiffs”), and the Defendants, by and through their respective authorized signatories;

Upon consideration of all prior proceedings in this Matter; and

¹ For purposes of this Order, this Court adopts the definitions of capitalized words and terms used in the Settlement Agreement lodged with Chambers on October 24, 2011.

Upon consideration of the motion for Preliminary Approval of the Settlement Agreement, and the Settlement contemplated thereby, and all memoranda, affidavits and other papers and arguments submitted with respect the settlement;

NOW, it is hereby ORDERED as follows:

1. This Court has jurisdiction over the subject matter of this Matter and over all Parties before the Court, including, without limitation, the members of the FX Damages Class.

2. The Court certified the below FX Damages Class, by Order dated January 22, 2010:

All Visa, MasterCard and Diners Club general purpose cardholders who used cards issued by any of the Issuing Banks during the Damages Period from July 22, 2000 to November 8, 2006, and were assessed a foreign transaction fee or surcharge for using such cards to purchase goods and/or services priced in foreign currencies or in foreign countries and who have submitted valid claims, regardless of timeliness in the settlement of *In re Currency Conversion Fee Antitrust Litigation* (“*CCF I*”), No. 01-MD-1409 (WHP), Master File No. 21-95 (S.D.N.Y.).

The Court further finds and orders that no one may be a member of the FX Damages Class if their *CCF I* claim form is submitted and/or postmarked after October 31, 2011.

3. The Court has appointed, by Order dated January 22, 2010, Robert Ross and Randall Wachsmuth as the Representative Plaintiffs for the FX Damages Class.

4. The Court has appointed, by Order dated January 22, 2010, Merrill G. Davidoff, Esq. and Berger & Montague, P.C. as class counsel for the FX Damages Class.

5. The Court preliminarily approves the Settlement Agreement, and the Settlement contemplated thereby, as being a fair, reasonable and adequate settlement as to all members of the FX Damages Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure, approves the establishment and funding of the Settlement Fund under the Court’s

jurisdiction, and directs the Parties to proceed with said settlement pursuant to the terms and conditions of the Settlement Agreement and exhibits thereto, subject to this Court's further consideration described below.

6. Heffler, Radetich & Saitta, L.L.P. is hereby appointed Claims Administrator to supervise and administer the Settlement Notice Plan and the Allocation Plan, as more fully set forth in the Settlement Agreement.

7. The Settlement Fund, including the Gross Settlement Fund and Net Settlement Fund, shall be deemed and considered to be in custodia legis of the Court, and shall remain subject to the jurisdiction of the Court. No funds may be disbursed from the Gross Settlement Fund or Net Settlement Fund unless expressly authorized by the terms of the Settlement Agreement, and, where required by the Settlement Agreement, expressly approved in advance by the Court. On a periodic basis, Plaintiffs' Lead Counsel and the Claims Administrator shall together file a written report with the Court detailing the nature, amount and recipients of all Settlement Notice and Administration Costs expended, paid or incurred, together with supporting documentation.

8. Any member of the FX Damages Class shall have the right to opt out of the FX Damages Class by sending a written request for exclusion from the FX Damages Class to the addresses provided in the notices, postmarked no later than March 2, 2012. Exclusion requests by nonnatural Persons must: (A) include that Person's full legal name, current address and taxpayer identification number; (B) include all account numbers of that Person's Credit Card accounts for which that Person is a member of the FX Damages Class; and (C) include an affirmation, under penalty of perjury, from an authorized representative of that Person that that

Person has advised any and all joint account holders on any of the account(s) included in respect of this Paragraph 8 that that Person is excluding that account(s) from the FX Damages Class.

9. Exclusion requests by natural Persons must: (A) be signed by that member of the FX Damages Class; (B) include that Person's full name and current address; (C) include all account numbers of that Person's Credit Card accounts for which that Person is a member of the FX Damages Class, or that Person's complete social security number; and (D) include an affirmation, under penalty of perjury, that that Person has advised any and all joint account holders on any such account(s) that that Person is excluding the account(s) from the FX Damages Class.

10. Subject to further order of the Court, no request for exclusion will be valid unless all of the information described above is included. If a timely and valid request for exclusion is made by a member of the FX Damages Class, then no payment shall be made with respect to any account(s) of such Person. Plaintiffs' Lead Counsel and Defendants shall use such opt out information only for purposes of determining and/or establishing whether a Person has timely and properly opted out of the FX Damages Class as permitted by the Court, and shall, absent further court order, redact any social security and account number(s) before providing a request for exclusion to any non-Party (including, without limitation, any filing with the Court).

11. All FX Damages Class Members, shall be bound by all determinations and judgments concerning the Settlement Agreement and the Settlement contemplated thereby.

Within twenty (20) business days after the Court-ordered deadline for timely and properly opting out from the FX Damages Class, Plaintiffs' Lead Counsel shall provide to counsel for Defendants, on an "attorneys' eyes only" basis, an encrypted electronic file of the following, to the extent available: names, applicable addresses, applicable email addresses and the last 4 digits

of either the applicable account number or social security number, whichever is provided on the request for exclusion, of the members of the FX Damages Class who or which have timely and properly opted out of the FX Damages Class as permitted by the Court, as well as the total number of such Persons and of their applicable accounts.

12. The Court hereby schedules a hearing on entry of an Order and Final Judgment (the “Fairness Hearing”) for _____, 2012 at _____ in Courtroom 11D at the Daniel Patrick Moynihan United States Courthouse for the Southern District of New York. At the Fairness Hearing the Court will also consider: whether the settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate and should be approved by the Court; whether the Order and Final Judgment should be entered, dismissing Count I only of the First Amended Class Action Complaint filed herein, on the merits and with prejudice, as against Defendants; whether the Release by the FX Damages Members, as set forth in the Stipulation, should be provided to the Released Persons; whether any proposed Allocation Plan should be approved; the amount of any Fee and Expense Award that should be awarded to Plaintiffs’ Counsel; and whether the requested Representative Plaintiffs Award should be awarded, and, if so, the amounts of such awards.

13. The Court reserves the right to adjourn or continue the date of the Fairness Hearing without further notice to the members of the FX Damages Class, and retains jurisdiction to consider all further applications arising out of or in connection with the Settlement Agreement. At or after the Fairness Hearing, the Court may approve or reject the Settlement Agreement without further notice to members of the FX Damages Class.

14. The issues of any application by Plaintiffs’ Counsel for a Fee and Expense Award, and/or a Representative Plaintiffs Award, and the allocation of the Net Settlement Fund

among Authorized Claimants, shall be heard on the same date and at the same time as scheduled for the Fairness Hearing. Those matters shall be considered and determined by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of this Settlement Agreement, and the Settlement contemplated thereby. Neither Defendants nor counsel for Defendants shall have any responsibility for any application by Plaintiffs' Counsel for a Fee and Expense Award, and/or a Representative Plaintiffs Award.

15. Any FX Damages Class Member who or which wants to object to the approval of the Settlement Agreement, and the Settlement contemplated thereby, the application by Plaintiffs' Counsel for a Fee and Expense Award, or the application by Plaintiffs' Lead Counsel for a Representative Plaintiffs Award, may do so, either personally or through an attorney, by filing a written notice of objection, together with any supporting written or documentary materials with the Clerk of the Court on or before March 16, 2012. Any such written notice of objection must include (a) documents sufficient to show that the Person is a member of the FX Damages Class; (b) a detailed statement of such FX Damages Class Member's specific objections to any such matter; and (c) the grounds for such objections, as well as all documents which such Person desires the Court to consider. This written objection must also be served by hand, overnight mail, or via mail, postmarked no later than March 16, 2012, on Plaintiffs' Lead Counsel. Plaintiffs' Lead Counsel shall promptly, and in any event within three (3) business days after actual receipt, provide copies of such written objections to counsel for Defendants. Any FX Damages Class Member who or which does not make his, her, or its objection in the manner provided for in this Order shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement contemplated by the Settlement

Agreement, the issue of the allocation of the Net Settlement Fund among the Authorized Claimants, or any issues concerning a Fee and Expense Award and a Representative Plaintiffs Award. Any FX Damages Class Member who or which has timely submitted and served a written objection in accordance with the foregoing may formally appear at the Fairness Hearing either in person or through an attorney, and be heard to the extent the Court in its discretion deems appropriate at that time, provided that, at the time of filing of his, her, or its written objection, such FX Damages Class Member also files a notice of intention to appear together with his, her or its written objection.

16. At least one month prior to the final deadline for FX Damages Class Members to object to the Settlement, Plaintiffs' Lead Counsel shall submit to the Court for its approval under Rule 23 of the Federal Rules of Civil Procedure a proposed plan for administering and distributing the Net Settlement Fund ("Allocation Plan"), which in the opinion of Plaintiffs' Lead Counsel fairly and adequately addresses the questions of settlement administration, claims submission, and allocation of monetary payments among the FX Damages Class Members.

17. All supplemental papers in support of the Settlement contemplated by the Settlement Agreement, the allocation of the Net Settlement Fund among Authorized Claimants, and the issues of any applications by Plaintiffs' Counsel for a Fee and Expense Award and/or Representative Plaintiffs Award, and any responses to objections, shall be filed with the Court and served on or before twenty-one (21) days prior to the Fairness Hearing.

18. None of the Released Persons shall have any liability or responsibility whatsoever with regard to the maintenance, preservation, investment, use, allocation, adjustment,

distribution, and/or disbursement of any amount in the Gross Settlement Fund or the Net Settlement Fund.

19. All further proceedings in this Matter relating to the Released Claims (including, but not limited to, any existing discovery obligations) are ordered stayed until the Effective Date or until termination of the Settlement Agreement, whichever occurs earlier, except for those matters necessary to obtain and/or effectuate the Order and Final Judgment, or to prosecute the Excluded Claim-for-Relief or the claims in Ross v. Bank of America.

20. All members of the FX Damages Class, and any Person actually or purportedly acting on behalf of any member of the FX Damages Class, are stayed and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting or enforcing any Released Claims (including, without limitation, in any individual, class or putative class, representative or other action or proceeding), directly or indirectly, in any judicial, administrative, arbitral, or other forum until the Effective Date or termination of the Settlement Agreement, whichever occurs earlier; provided, that this stay and injunction shall not apply to individual claims of any member of the FX Damages Class who has timely and properly opted out from the FX Damages Class as permitted by the Court.

21. The Settlement Agreement (including, without limitation, its exhibits), and any and all negotiations, documents and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, of any liability or wrongdoing, by any of the Defendants, or of the truth of any of the Released Claims, and evidence relating to the Settlement Agreement shall not be discoverable or used, directly or indirectly, in any way, whether in this Matter or in any other action or proceeding, except for purposes of demonstrating, describing, implementing

or enforcing the terms and conditions of the Settlement Agreement, this Order and/or the Order and Final Judgment.

22. If for any reason the Settlement Agreement terminates before the Effective Date, then the Parties shall return to the status quo ante in this Matter, without prejudice to the right of any Party to assert any right or position that it could have asserted if this Settlement Agreement had never been reached or proposed to the Court.

23. The Court retains exclusive jurisdiction over this Matter to consider all further matters arising out of or connected with the Settlement.

SO ORDERED this ____ day of _____, 201__.

Hon. William H. Pauley III
United States District Judge