

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., :
:
Plaintiffs, :
:
-against- :
:
AMERICAN EXPRESS CO., et al., :
:
Defendants. :
:
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STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Stipulation” or “Settlement Agreement”) is submitted to the Court for its approval. This Stipulation is entered into among (i) plaintiffs Robert Ross and Randal Wachsmuth (the “Representative Plaintiffs” or “Plaintiffs”), on behalf of themselves and as representatives of the FX Damages Class (as defined below) in Ross, et al. v. American Express Co., et al., No. 04-CV-05723; and (ii) defendants American Express Company, American Express Travel Related Services, Inc., and American Express Centurion Bank (collectively, “American Express” or “Defendants”, and, together with Plaintiffs, the “Parties”); by and through their respective counsel.

WHEREAS:

A. The Complaint in the above-captioned matter, filed on July 22, 2004, and filed as amended on March 16, 2010 (the “First Amended Class Action Complaint”), alleges, on

behalf of a putative class of holders of certain Visa-, MasterCard-, and Diners Club-branded Credit Cards, that Defendants violated the Sherman Antitrust Act, 15 U.S.C. § 1, by participating in a conspiracy with certain banks that issue Visa-, MasterCard- and Diners Club-branded Credit Cards to conceal, impose and inflate Credit Card Foreign Transaction Fees (as defined below).

B. The First Amended Class Action Complaint also includes a claim for injunctive relief alleging that American Express participated in a conspiracy with banks that issue Visa-, MasterCard- and Diners Club-branded Credit Cards to impose arbitration clauses in connection with Credit Cards issued by those banks.

C. By Orders dated September 27, 2005, and January 22, 2010, the Court respectively certified an injunctive relief class and an FX Damages Class (as defined below).

D. Defendants moved on April 20, 2010, for summary judgment on all of Plaintiffs' claims. The Court denied Defendants' Motion for Summary Judgment on March 29, 2011.

E. The Defendants have denied and continue to deny any wrongdoing whatsoever. The Parties agree that this Stipulation, whether or not consummated, any proceedings related to any settlement, or any terms of any settlement, whether or not consummated, shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Defendant with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendants have or could have asserted.

F. Plaintiffs, Defendants and their respective counsel agree not to make any applications for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure or other court rule or statute with respect to any of the Released Claims (as defined below) in this Matter (as defined below). The Parties to this Stipulation agree that the Released Claims are being voluntarily settled after advice of counsel. The Parties agree that this Stipulation shall not be

construed or deemed to be a concession by any Plaintiff of any infirmity in the claims asserted in this Matter.

G. Plaintiffs' Lead Counsel represent that they have conducted an extensive investigation relating to the Released Claims and the underlying events and transactions alleged in the First Amended Class Action Complaint. Plaintiffs' Lead Counsel represent that they have analyzed the evidence adduced during pretrial discovery and have researched the applicable law with respect to the Released Claims.

H. Plaintiffs, by their counsel, have conducted numerous discussions and arm's length negotiations with counsel for Defendants with respect to a compromise and settlement of the Released Claims in this Matter as against the Defendants with a view to settling the issues in dispute and achieving the best possible result for the FX Damages Class.

I. Based upon their investigation, pretrial discovery, and consultation with experts, Plaintiffs' Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to the Representative Plaintiffs and the FX Damages Class, and in the Representative Plaintiffs and the FX Damages Class' best interests; and the Representative Plaintiffs, on behalf of themselves and the FX Damages Class, have agreed to settle the Released Claims raised in this Matter pursuant to the terms and provisions of this Stipulation, after considering (a) the substantial benefits that Plaintiffs and the members of the FX Damages Class will receive from Settlement of the Released Claims in this Matter as against the Defendants, (b) the attendant risks of litigation, and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

J. Defendants represent that they have concluded that further litigation of the Released Claims in this Matter would be protracted and expensive; and it is desirable that the Released Claims be fully and finally settled in the manner and upon the terms and conditions set

forth in this Stipulation to limit further expense, inconvenience and distraction, and to dispose of the burden of protracted litigation. Defendants also have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like this Matter.

NOW, THEREFORE, without any admission or concession on the part of Plaintiffs of any lack of merit of the Released Claims whatsoever, and without any admission or concession on the part of Defendants as to the merit of the Released Claims or as to any liability or wrongdoing whatsoever by Defendants:

IT IS HEREBY STIPULATED AND AGREED, by and among the Parties, through their respective attorneys, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Parties hereto from the Settlement, that the Released Claims as against the Released Persons (as defined below) shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

CERTAIN DEFINITIONS

1. As used in this Stipulation, the following terms shall have the following meanings:

- (a) "Allocation Plan" shall have the meaning set forth in Paragraph 10 below.
- (b) "Attorneys' Fees and Expenses" means any amount awarded by the Court as compensation for the services provided by counsel for Plaintiffs, and any amount awarded by the Court as reimbursement for costs and expenses of litigation of the Released Claims incurred by counsel for Plaintiffs.
- (c) "Authorized Claimant" means an FX Damages Class Member who submitted a valid claim form and is entitled to receive, pursuant to a Court-approved Allocation Plan, a payment from the Net Settlement Fund. This definition is intended to include all FX

Damages Class Members who submitted valid claim forms in CCF I on or before October 31, 2011. For avoidance of doubt, claimants who submitted a late-filed (*i.e.*, post-May 30, 2008) claim in CCF I may be an FX Damages Class Member provided that they (i) filed their CCF I claim on or before October 31, 2011, and (ii) the Claims Administrator determines that the claim is valid.

(d) “Base Exchange Amount” means, with regard to a Credit Card Foreign Transaction, the U.S. dollar amount that results from applying the transaction amount in foreign currency to any factor(s) (however selected, determined, or characterized, and without regard to whether, or the price at which, such currency was obtained from one or more third parties) used in calculating the transaction amount in U.S. dollars for that transaction.

(e) “CCF I” means the first filed matter in MDL No. 1409, styled as In re Currency Conversion Fee Antitrust Litig., MDL No. 1409, Master File M21-95 (S.D.N.Y.) (WHP), which matter has been settled.

(f) “Claimant” means an FX Damages Class Member who or which submitted a valid claim form in CCF I on or before October 31, 2011, and who or which may be entitled to receive a payment from the Net Settlement Fund, pursuant to a Court-approved Allocation Plan.

(g) “Claims Administrator” means Heffler, Radetich & Saitta, L.L.P., approved by the Court as the Claims Administrator in CCF I, who shall, under Plaintiffs’ Lead Counsel’s supervision, issue the class notice and conduct the administration of this Settlement Agreement, and who (including any successor(s) thereto) shall be unrelated to, and independent of, the Defendants within the meaning of Treasury Regulations §§ 1.468B-1(d) and 1.468B-3(c)(2)(i)(A).

(h) “Court” means the United States District Court for the Southern District of New York, the Honorable William H. Pauley III, presiding.

(i) “Credit Cards” means all United States-issued Visa-, MasterCard-, and Diners Club-branded cards that extend to cardholders a line of credit or which require payment of the amount due by a due date. For avoidance of doubt, solely for purposes of use herein, Credit Cards includes, without limitation, cards commonly known as credit cards, charge cards, corporate cards, company cards, and purchasing cards.

(j) “Credit Card Foreign Transaction” means a purchase, cash advance or withdrawal or other transaction effected in any manner by use of a United States-issued Credit Card which transaction (1) is originally denominated in a currency other than the United States dollar, or (2) is originally denominated in the United States dollar and is effected with a merchant or other Person outside the United States and an amount in addition to the transaction amount was applied, by an Issuing Bank, because it is a transaction effected with a merchant or other Person outside the United States.

(k) “Credit Card Foreign Transaction Fee” means, with regard to a Credit Card Foreign Transaction, any amount (however characterized), over and above the amount of any Base Exchange Amount, applied because the transaction is a Credit Card Foreign Transaction or because currency conversion (or “translation”) was performed.

(l) “Defendants” means American Express Company, American Express Travel Related Services, Inc., and American Express Centurion Bank.

(m) “Diners Club-branded Card” means Credit Cards bearing the name Diners Club or any other brand name in the Diners Club family of brands.

(n) “Effective Date” means the date upon which the Settlement contemplated by this Stipulation shall become effective as provided in Paragraph 15 below.

(o) “Escrow Agreement” shall have the meaning set forth in Paragraph 2(b) below.

(p) “Excluded Claim-for-Relief” means Count II of the First Amended Class Action Complaint in this Matter, which alleges that Defendants violated Sherman Antitrust Act § 1 by participating in a conspiracy with certain banks, including the Issuing Banks, that issue Visa-, MasterCard- and Diners Club-branded Credit Cards to impose arbitration clauses in connection with Credit Cards issued by those banks, and through which Plaintiffs will seek injunctive relief only.

(q) “Fee and Expense Award” shall have the meaning set forth in Paragraph 3 below.

(r) “Final” means: (i) the date of final affirmance on an appeal of the Order and Final Judgment, the expiration of the time for a petition for or a denial of a writ of certiorari to review the Order and Final Judgment or, if certiorari is granted, the date of final affirmance of the Order and Final Judgment following review pursuant to that grant; or (ii) the date of final dismissal of any appeal from the Order and Final Judgment or the final dismissal of any proceeding on certiorari to review the Order and Final Judgment; or (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Court’s Order and Final Judgment approving the Stipulation, *i.e.*, thirty (30) days after entry of the Order and Final Judgment, such that the Order and Final Judgment represents a final and binding judgment with respect to this Matter. Any proceeding or order, or any appeal or petition for a writ of certiorari, pertaining solely to an application for Attorneys’ Fees and Expenses or to the payment of incentive awards to the Representative Plaintiffs shall not in any way delay or preclude the Order and Final Judgment from becoming Final.

(s) “FX Damages Class” means all Visa, MasterCard and Diners Club Credit Card cardholders who used Credit Cards issued by any of the Issuing Banks from July 22, 2000, to November 8, 2006, and were assessed a Credit Card Foreign Transaction Fee and who have

submitted valid claims in the settlement of In re Currency Conversion Fee Antitrust Litigation, No. 01-MD-1409 (WHP), Master File No. 21-95 (S.D.N.Y.), on or before October 31, 2011. For the avoidance of doubt, this is the damages class certified by the Court by Order dated January 22, 2010, except that no one may be an FX Damages Class Member if their CCF I claim form is submitted and/or post marked after October 31, 2011.

(t) “FX Damages Class Members” means all members of the FX Damages Class who or which do or did not timely and properly opt out of the FX Damages Class as permitted by the Court.

(u) “Gross Settlement Fund” means the Monetary Settlement Consideration, plus any interest earned thereon, to be paid into a segregated escrow account to be distributed according to the terms and conditions herein.

(v) “Issuing Banks” means Bank of America Corporation, Bank of America, N.A. (USA), and Bank of America, N.A. (collectively, “Bank of America”); JPMorgan Chase & Co. (successor to Chase Manhattan Corporation and Bank One Corporation), Chase Bank USA, N.A. (successor to Chase Manhattan Bank USA, N.A. and First USA Bank, N.A.), and the JPMorgan Chase Bank, N.A. (successor to Chase Manhattan Bank and Bank One, N.A.) (collectively, “JPMorgan Chase”); Citigroup Inc., Citibank (South Dakota), N.A., Universal Bank, N.A., and Universal Financial Corp. (“Diners Club”) (collectively, “Citibank”); HSBC Finance Corporation (f/k/a Household International, Inc.) and HSBC Bank Nevada, N.A. (f/k/a Household Bank (SB), N.A.) (collectively, “HSBC”); MBNA America Bank, N.A. and MBNA America (Delaware), N.A. (collectively, “MBNA”); and Providian Financial Corp., Providian National Bank, and Providian Bank (collectively, “Providian”). This definition includes each of the Issuing Banks’ predecessors, successors (including, without limitation, acquirers of all or substantially all of the assets, stock, or other ownership interests of any of the Issuing Banks) and assigns; the past,

present and future, direct and indirect, parents (including, but not limited to, holding companies), subsidiaries, affiliates and associates (as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934) of any of the above; and the past, present and future principals, trustees, partners, contractual counterparties (including, without limitation, affinity, agent bank, and co-brand contractual parties), officers, directors, employees, agents, attorneys, shareholders, advisors, predecessors, successors (including, without limitation, acquirers of all or substantially all of the assets, stock, or other ownership interests of any of the above), assigns, representatives, heirs, executors and administrators of any of the above.

(w) “MasterCard-branded Card” means Credit Cards bearing the name MasterCard or any other brand name in the MasterCard family of brands.

(x) “Matter” means Ross, et al. v. American Express Co., et al., No. 04-CV-05723 WHP, which is currently pending in the United States District Court for the Southern District of New York as a related matter to CCF I.

(y) “Monetary Settlement Consideration” means the sum of \$49,500,000.

(z) “Net Settlement Fund” shall have the meaning set forth in Paragraph 2(e) below.

(aa) “Order and Final Judgment” means the order and final judgment, to be entered pursuant to Rule 54(b) of the Federal Rules of Civil Procedure approving the Settlement.

(bb) “Person” means an individual, corporation, general or limited partnership, association, joint stock company, joint venture, limited liability company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof and any other business or legal entity and its heirs, predecessors, successors, representatives or assigns.

(cc) “Plaintiffs’ Lead Counsel” means the law firm of Berger & Montague, P.C.

(dd) “Preliminary Approval” means the entry by the Court of an order (the “Preliminary Approval Order”) preliminarily approving this Settlement in all material respects, substantially in the form of a mutually agreeable proposed Preliminary Approval Order to be submitted to the Court in connection with the Parties’ joint application for entry of a Preliminary Approval Order.

(ee) “Publication Notice” means the summary notice of proposed Settlement for publication substantially in the form attached as Exhibit A to this Settlement Agreement.

(ff) “Released Claims” means the claims released by this Stipulation, as set forth in Paragraphs 21 and 22 below.

(gg) “Released Persons” means each of the Defendants; each of the Defendants’ predecessors, successors (including, without limitation, acquirers of all or substantially all of the assets, stock, or other ownership interests of any of the Defendants) and assigns; the past, present and future, direct and indirect, parents (including, but not limited to, holding companies), subsidiaries, affiliates and associates (as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934) of any of the above; and the past, present and future principals, trustees, partners, contractual counterparties (including, without limitation, affinity, agent bank, and co-brand contractual parties), vendors, insurers, officers, directors, employees, agents, attorneys, advisors, shareholders, predecessors, successors (including, without limitation, acquirers of all or substantially all of the assets, stock, or other ownership interests of any of the above), assigns, representatives, heirs, executors and administrators of any of the above. For avoidance of doubt, a Person who or which is a Released Person shall be a Released Person only with respect to those rights, duties, obligations or claims released pursuant to Paragraphs 21 and 22 below.

(hh) “Releases” shall have the meaning set forth in Paragraphs 21 and 22 below.

(ii) “Releasers” means the Representative Plaintiffs and all other FX Damages Class Members.

(ij) “Representative Plaintiffs” means the named plaintiffs in the First Amended Class Action Complaint, to wit, Robert Ross and Randal Wachsmuth.

(kk) “Representative Plaintiff Award” shall have the meaning set forth in Paragraph 3 below.

(ll) “Ross v. Bank of America” means the matter pending before the Court bearing the caption Ross, et al. v. Bank of America, N.A. (USA), et al., No. 05-CV-7116 (S.D.N.Y.) (WHP), in which Plaintiffs allege that the defendants violated Sherman Antitrust Act § 1 by participating in a conspiracy with certain banks, including the Issuing Banks, that issue Visa-, MasterCard- and Diners Club-branded Credit Cards to impose arbitration clauses in connection with Credit Cards issued by those banks, and through which Plaintiffs will seek injunctive relief only.

(mm) “Settlement” means the settlement contemplated by this Stipulation.

(nn) “Settlement Fund” shall have the meaning set forth in Paragraph 2(a) below.

(oo) “Settlement Notice and Administration Costs” shall have the meaning set forth in Paragraph 9 below.

(pp) “Settlement Notice Plan” shall have the meaning set forth in Paragraph 7 below.

(qq) “Signature Date” means October 24, 2011.

(rr) “Tax Payments” shall have the meaning set forth in Paragraph 2(c) below.

(ss) “Visa-branded Card” means Credit Cards bearing the name Visa or any other brand name in the Visa family of brands.

THE SETTLEMENT CONSIDERATION

2. Defendants will pay the Monetary Settlement Consideration in settlement of the Released Claims.

(a) Within ten (10) business days after the Signature Date, Defendants shall cause \$5,000,000 of the Monetary Settlement Consideration to be paid, by wire transfer, into a segregated escrow account (the "Settlement Fund") to be established for receipt of the Defendants' payment. Within twenty (20) business days after Preliminary Approval, Defendants shall cause the remaining \$44,500,000 of the Monetary Settlement Consideration to be paid, by wire transfer, into the Settlement Fund.

(b) The Settlement Fund (including the Gross Settlement Fund and the Net Settlement Fund) shall be established and administered under the Court's continuing supervision and control pursuant to a mutually agreeable escrow agreement (the "Escrow Agreement") and shall be invested solely in obligations of, or obligations guaranteed by, the United States of America or any of its departments or agencies or in money market funds invested solely in obligations of, or obligations guaranteed by, the United States of America or any of its departments or agencies. Plaintiffs' Lead Counsel shall be escrow agent of this Escrow Account; and such escrow agent (and any successor(s)) shall be unrelated to, and independent of, the Defendants within the meaning of Treasury Regulations §§ 1.468B-1(d) and 1.468B-3(c)(2)(i)(A), and any analogous local, state and/or foreign statute, law, rule, or regulation. The Escrow Agreement provides the terms and conditions governing the Settlement Fund. The Parties agree that the Settlement Fund is intended to be treated as a "Qualified Settlement Fund" within the meaning of Treasury Regulation § 1.468B-1 and any analogous local, state and/or foreign statute, law, rule, or regulation. The Parties further agree that, with respect to such treatment, the Parties and the escrow agent shall make a "relation back election" as described in Treasury

Regulation § 1.468B-1(j) and any analogous local, state and/or foreign statute, law rule, or regulation, to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, according to the terms and conditions of the Escrow Agreement; and the Parties shall take such actions as may be necessary or appropriate in connection therewith.

(c) Subject to Paragraph 2(f) below, the Settlement Fund shall be available to Plaintiffs' Lead Counsel prior to the Effective Date for the payment of taxes on earnings from or otherwise in respect of the Settlement Fund and any costs and expenses related to the calculation or payment of such taxes (collectively, the "Tax Payments") or the purposes set forth in Paragraph 9. Subject to Paragraph 2(f) below, the Settlement Fund shall be available to Plaintiffs' Lead Counsel after the Effective Date for any of the purposes set forth in Paragraphs 3 through 4 or Paragraphs 10 through 14 of this Settlement Agreement (provided such payments are expressly approved by the Court in advance).

(d) The Gross Settlement Fund shall be used to pay: (1) Settlement Notice and Administration Costs, as specified in Paragraph 9; (2) any Fee and Expense Award and/or Representative Plaintiff Award as specified in Paragraphs 3 to 4; (3) Tax Payments; or (4) any additional costs and expenses incurred by the Representative Plaintiffs or Plaintiffs' Lead Counsel for the benefit of the FX Damages Class and approved by the Court.

(e) After payment of the amounts described in Paragraph 2(d) above, the balance of the funds in the Gross Settlement Fund shall be the "Net Settlement Fund," which shall be distributed according to an Allocation Plan approved by the Court. FX Damages Class Members shall look solely to the Net Settlement Fund for satisfaction of any and all Released Claims in this Matter.

(f) No distribution or payment from the Gross Settlement Fund or the Net Settlement Fund shall be made without the express prior approval of the Court for any purpose

other than (i) Tax Payments, (ii) costs for Publication Notice, notice printing costs, or notice postage costs, or (iii) payment of Settlement Notice and Administration Costs in amounts of less than \$100,000 to a single vendor.

(g) Released Persons shall have no liability 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.

ATTORNEYS' FEES AND EXPENSES

3. At the time set by the Court, Plaintiffs' Lead Counsel may apply for approval by the Court of an award of attorneys' fees, expenses and costs (the "Fee and Expense Award") from the Settlement Fund. Any request by Plaintiffs' Lead Counsel for an award from the Settlement Fund to the Representative Plaintiffs ("Representative Plaintiff Award") shall also be made to the Court by that time. Plaintiffs' Lead Counsel intends to apply for a Fee and Expense Award, which will include a request for fees not to exceed 25% of the Gross Settlement Fund plus a pro rata share of all interest, dividends, and other distributions and payments (less Tax Payments) accrued by the Settlement Fund, and a request for reimbursement of their expenses of litigation not to exceed \$1.5 million. Defendants shall not be separately liable for any Fee and Expense Award or for any Representative Plaintiff Award approved by the Court. Any such awards shall be payable from, and not in addition to, the Settlement Fund. The Parties agree that the issue of any Fee and Expense Award and Representative Plaintiff Award was not part of any settlement discussions in this Matter; and Defendants intend to take no position regarding such Fee and Expense Award or Representative Plaintiff Award application.

4. The issues of any Fee and Expense Award, and/or any Representative Plaintiffs Award, are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of this Settlement Agreement and the settlement

contemplated hereby. Any order relating solely to such issue(s), or any request for further judicial review from any order(s) relating solely thereto or reversal or modification thereof, shall not operate to terminate the Settlement Agreement or affect or delay the Effective Date.

TERMS OF PRELIMINARY APPROVAL ORDER

5. Promptly after this Stipulation has been fully executed, Plaintiffs' Lead Counsel and Defendants' Counsel jointly shall apply to the Court (unless the Court has previously acted on its own motion) for entry of a Preliminary Approval Order. During the period from the entry of the Preliminary Approval Order to the Effective Date, each of the Parties, and their respective heirs, executors, administrators, successors and assigns and all persons acting in concert with any such person, agree not to institute, maintain or prosecute any or all Released Claims against any or all of the Released Persons. The Parties agree to recommend and use their best efforts to obtain approval of this Settlement Agreement and the settlement contemplated hereby, including, without limitation, the entry of the Preliminary Approval Order, and shall do nothing inconsistent therewith.

TERMS OF ORDER AND FINAL JUDGMENT

6. If the Settlement contemplated by this Stipulation is approved by the Court, counsel for the Parties shall request that the Court enter an Order and Final Judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. The Parties agree to recommend and use their best efforts to obtain entry of the Order and Final Judgment, and shall do nothing inconsistent therewith.

SETTLEMENT NOTICE PLAN

7. In advance of or in connection with the application for entry of a Preliminary Approval Order described in Paragraph 5 above, Plaintiffs' Lead Counsel shall submit to the Court for its approval under Rule 23 of the Federal Rules of Civil Procedure the

plan for notice to the FX Damages Class (the “Settlement Notice Plan”), which in their opinion fully satisfies Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.

8. Defendants shall have the right to reasonably review any proposed or amended Settlement Notice Plan prior to its submission to the Court. The Parties agree to use their best efforts to reach agreement on and obtain approval of any proposed or amended Settlement Notice Plan. The Court shall retain jurisdiction to resolve any disputes regarding any proposed or amended Settlement Notice Plan.

9. Any costs, fees, or expenses occasioned by the Settlement Notice Plan and with implementing a Court-approved Allocation Plan (“Settlement Notice and Administration Costs”) shall be paid exclusively out of the Settlement Fund (and are not costs, fees or expenses of the Defendants), and the Defendants shall have no responsibility whatsoever for any such costs, fees, or expenses. For avoidance of doubt, the Settlement Notice and Administration Costs include any incremental costs, fees, and expenses associated with: the preparation, handling, mailing, printing, publication and any other aspects of the dissemination of notice to the FX Damages Class according to the terms and conditions of the Settlement Notice Plan or applicable order of the Court; the maintenance of the Settlement Fund established by Paragraph 2(a); and all aspects of claims administration, including, without limitation, the costs, fees, and expenses incurred and charged by the Claims Administrator in connection with this Settlement according to the terms and conditions of the Allocation Plan. On a periodic basis, Plaintiffs’ Lead Counsel and the Claims Administrator shall together file with the Court a written report detailing the nature, amount and recipients of all amounts expended, paid or incurred from the Gross Settlement Fund or the Net Settlement Fund, together with supporting documentation.

ADMINISTRATION OF THE SETTLEMENT

10. 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 the 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.

11. The Claims Administrator, under the supervision of Plaintiffs' Lead Counsel, shall administer and calculate the claims submitted by Claimants and, after the Effective Date has occurred and entry by the Court of an order approving disbursement of the Net Settlement Fund to Authorized Claimants according to the terms and conditions of said Allocation Plan, shall oversee distribution of the Net Settlement Fund to Authorized Claimants.

12. The issue of the allocation of the Net Settlement Fund among the Authorized Claimants is: (a) to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of this Settlement Agreement and the Settlement contemplated hereby; (b) not a necessary term of this Settlement, and it is not a condition of this Settlement that any particular Allocation Plan be approved; and (c) any order relating solely to such issue, or any request for further judicial review from any order relating solely thereto or reversal or modification thereof, shall not operate to terminate the Settlement Agreement or affect or delay the Effective Date, provided, however, that it is a material term of this Agreement that Plaintiffs' Lead Counsel will recommend to the Court the adoption of an Allocation Plan that would result in some distribution from the Net Settlement Fund to every Authorized Claimant for whom the Claims Administrator has a valid address and who deposited

or otherwise cashed any amounts received as part of the first distribution of settlement proceeds in CCF I.

13. Defendants shall have the right to reasonably review any proposed Allocation Plan prior to its submission to the Court. The Parties agree to use their best efforts to reach agreement on and obtain approval of the proposed Allocation Plan. The Parties recognize that any distribution of the Net Settlement Fund is intended, subject to Court approval, to be combined with any second distribution from CCF I, i.e., that the Net Settlement Fund will be combined with any residual funds remaining from the first CCF I distribution such that all of these monies will be aggregated into a single fund for purposes of coordinating their distribution, with the costs to be shared equally by, or otherwise apportioned fairly between, this Matter and CCF I. The Court shall retain jurisdiction to resolve any disputes regarding any proposed Allocation Plan.

14. In no event shall any of the Defendants have any liability or responsibility with respect to the administration or distribution of the Settlement Fund, or any dispute by any Claimant or putative Claimant concerning the handling or resolution of his, her or its claim with respect to the Net Settlement Fund. Payment pursuant to this Settlement shall be deemed final and conclusive against all FX Damages Class Members. All FX Damages Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order and Final Judgment to be entered in this Matter and the Releases provided for herein, and will be barred from bringing any action against the Released Persons concerning the Released Claims.

EFFECTIVE DATE OF SETTLEMENT AND TERMINATION

15. The “Effective Date” of Settlement shall be the date when all the following shall have occurred:

- (a) approval by the Court of the Settlement, following notice to the FX Damages Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and
- (b) an Order and Final Judgment has been entered by the Court and has become Final.

16. Defendants and Plaintiffs shall each have the right to terminate the Settlement by providing written notice of their election to do so to all other Parties hereto within thirty (30) days after: (a) the Court’s declining to enter the Preliminary Approval Order in any material respect; (b) the Court’s declining to approve this Settlement or any material part of it; (c) the Court’s declining to enter the Order and Final Judgment in any material respect as it relates to the approval of the terms of the Settlement, but not as it relates to any Fee and Expense Award or Representative Plaintiff Award; or (d) the date upon which the Order and Final Judgment is modified or reversed in any material respect as it relates to the approval of the terms of the Settlement, but not as it relates to any Fee and Expense Award or Representative Plaintiff Award.

17. 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 address listed in the notice provided to the FX Damages Class, postmarked no later than a deadline to be approved by the Court, which deadline shall be set forth in the notices.

- (a) Exclusion requests by non-natural Persons must: (i) include that Person’s full legal name, current address and taxpayer identification number; (ii) include all account

numbers of that Person's Credit Card accounts for which that Person is a member of the FX Damages Class; and (iii) 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 Paragraph 17(a)(ii) that that Person is excluding that account(s) from the FX Damages Class.

(b) Exclusion requests by natural Persons must: (i) be signed by that member of the FX Damages Class; (ii) include that Person's full name and current address; (iii) 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 (iv) 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.

(c) 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, 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). All FX Damages Class Members (whether or not a Claimant or Authorized Claimant), shall be bound by all determinations and judgments concerning the Settlement Agreement and the Settlement contemplated hereby.

(d) 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. Such electronic file shall be delivered by overnight courier to counsel for Defendants, with signature by the recipient required for delivery; and the password/encryption key shall be delivered separately. Counsel for Defendants shall maintain the original and any copy of such information in encrypted format. When not in use, any information obtained from such electronic file shall be kept in encrypted or equally secure format. Provided, however, that nothing in this Paragraph 17(d) shall limit in any way the ability of any Defendant to disclose such information to any court or other forum in un-encrypted format to the extent appropriate to address whether any member of the FX Damages Class timely and properly opted out from the FX Damages Class as permitted by the Court.

18. Defendants, in their sole discretion, shall have the option to terminate, without liability, this Settlement Agreement, and thus prevent the Effective Date, subject to the terms of the Confidential Termination Agreement that has been executed by the Parties. Upon such termination, the Parties will submit the Confidential Termination Agreement to the Court for in camera review. Defendants, in their sole discretion, shall have the option to terminate, without liability, this Settlement Agreement, and thus prevent the Effective Date, in the event that Plaintiffs' Lead Counsel submit for approval an Allocation Plan that is inconsistent with Paragraph 12 hereof, provided that (i) Defendants shall not exercise this option to terminate after

the Effective Date and (ii) Defendants must serve Plaintiffs' Co-Lead Counsel with notice of their decision to terminate under this Paragraph within ten (10) business days of receiving notice of the proposed Allocation Plan.

19. Except as otherwise provided herein, in the event this Settlement is terminated for any reason, including but not limited to those reasons set forth in Paragraphs 16 and 18, then the Parties shall be deemed to have reverted, without prejudice, to their respective position as of September 14, 2011; and the Parties shall proceed in all respects as if this Settlement (other than Paragraph 20) and any related orders had not been entered, the fact and terms of this Settlement shall not be admissible in any trial of this Matter, and any portion of the Monetary Settlement Consideration previously paid by Defendants, together with any interest accrued thereon, less any taxes due with respect to said income, and less the costs of administration and notice actually incurred and paid or payable from the Monetary Settlement Consideration shall be returned to Defendants within ten (10) business days. Notwithstanding any provision to the contrary, Paragraph 20 shall survive the termination of this agreement.

NO ADMISSION OF WRONGDOING

20. This Stipulation, whether or not consummated, and any proceedings taken pursuant to it:

(a) does not constitute, and shall not be offered or received against the Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that had been or could have been asserted in this Matter or in any litigation, including but not limited to the Released Claims, or of any liability, negligence, fault, or wrong-doing of the Defendants;

(b) does not constitute, and shall not be offered or received against the Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by Plaintiffs related to the Excluded Claim-for-Relief;

(c) does not constitute, and shall not be offered or received against the Defendants or against the Plaintiffs or any FX Damages Class Members, as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the parties to this Stipulation, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, Defendants may refer to it to effectuate the liability protection granted them under applicable insurance policies;

(d) does not constitute, and shall not be offered or received against the Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants that a class should be certified other than for purposes of this Settlement;

(e) does not constitute, and shall not be construed against Defendants, Plaintiffs or any other FX Damages Class Members, as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(f) does not constitute, and shall not be construed as or received in evidence as, an admission, concession or presumption against Plaintiffs or any other FX Damages Class Members that any of their claims are without merit or that damages recoverable under the First

Amended Class Action Complaint would not have exceeded the Monetary Settlement Consideration.

RELEASES

21. Upon the Effective Date, as defined in Paragraph 15, the Representative Plaintiffs and each of the FX Damages Class Members, and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns, and any authorized users of their accounts, shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally and forever released, relinquished and discharged any and all rights, duties, obligations, claims (including those that the Representative Plaintiffs or any FX Damages Class Member does not know or suspect to exist in his, her or its favor at the time of the release which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this Settlement), actions, causes of action or liabilities, whether arising under local, state, or federal law, whether by statute, contract, common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, as of the date of Preliminary Approval: (1) that are, were, or could have arisen out of or been related in any way to any Credit Card Foreign Transaction Fees or Base Exchange Amounts, or the disclosure or pricing thereof, up to the date of Preliminary Approval, including, without limitation, any and all claims that are based in whole or in part on any act, agreement, conduct or omission up to the date of Preliminary Approval that has or had, and/or allegedly has or had, the purpose or effect of fixing, inflating, concealing, or inadequately disclosing the nature, pricing, or any other aspect of any Credit Card Foreign Transaction (including, but not limited to, Credit Card Foreign Transaction Fees, Base Exchange Amounts, and/or any component of either); or (2) that arise out of or are related in any way to any

or all of the acts, omissions, facts, matters, transactions, or occurrences that were directly or indirectly alleged, asserted, described, set forth or referred to in Count I of this Matter including, but not limited to, claims for alleged violations of Section 1 of the Sherman Antitrust Act, state consumer credit or consumer protection statutes, common law prohibiting unfair or deceptive trade practices, breach of contract, fraud, and/or misrepresentation and equity prohibiting unjust enrichment or requiring restitution or disgorgement. However, this Release does not include the Excluded Claim-for-Relief, any claim for breach of this Settlement Agreement, or the claims in Ross v. Bank of America.

22. With respect to the Releases set forth in Paragraph 21, each of the Releasors hereby expressly waives and relinquishes the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR;

and any and all provisions, rights and benefits of any similar, comparable, or equivalent state, federal, or other law, rule or regulation or the common law or equity. In addition, upon the Effective Date, each of the Releasors hereby expressly waives and relinquishes the provisions, rights, and benefits of Section 20-7-11 of the South Dakota Codified Laws, which otherwise would bar relinquishment of claims which a creditor does not know or suspect to exist, and any and all provisions, rights and benefits of any similar, comparable, or equivalent state, federal, or other law, rule or regulation or the common law or equity. Each Releasor may hereafter discover facts other than, different from, or in addition to those that he, she or it knows or believes to be true with respect to the Released Claims, but each Releasor hereby expressly waives and fully, finally and forever settles and releases and discharges, any known or unknown, suspected or

unsuspected, contingent or noncontingent Released Claims within the scope of Paragraph 21, whether or not concealed or hidden, and without regard to the subsequent discovery or existence of such other, different or additional facts. The Representative Plaintiffs acknowledge, and the FX Damages Class Members shall be deemed by operation of the Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of this Settlement Agreement.

SIGNATURE

23. The Parties may sign this Settlement Agreement in counterparts, and the signature of counterparts shall have the same effect as if the same instrument had been signed. Facsimile signatures or signature transmissions via .pdf files attached to electronic mail shall be considered as valid signatures as of the Signature Date, although the original signature pages shall thereafter be appended to this Settlement Agreement. This Settlement Agreement shall not be deemed signed until it has been signed by Plaintiffs' Lead Counsel and by an authorized representative of each of the Defendants. Before or promptly upon delivery of all such signatures, Plaintiffs' Lead Counsel shall provide counsel for Defendants with delivery instructions for the making of the wire transfers to the Settlement Fund described in Paragraph 2(a) above.

PUBLICITY

24. Plaintiffs' Lead Counsel, Representative Plaintiffs, Defendants and counsel for Defendants shall not file in any court the full text or substantially all of any copy of this Settlement Agreement during the period from the Signature Date to the date prescribed in Paragraph 5 for the filing of the motion for Preliminary Approval of this Settlement Agreement, subject to any order of the Court or an agreement among the Parties.

25. Plaintiffs' Lead Counsel and Representative Plaintiffs shall make no public statements regarding the Settlement and shall not make any public statements that disparage the business or reputation of any of the Defendants or counsel for Defendants in this Matter based on or related to the subject matter of this Matter. Provided, however, that (a) the previous sentence does not apply to statements in any judicial proceeding, including, but not limited to, the continued litigation of the Excluded Claim-for-Relief in this Matter and Ross v. Bank of America; (b) Plaintiffs' Lead Counsel shall be entitled to make public statements regarding the Settlement on the website established for this case (located at <http://www.ccfsettlement.com/>) if such statements are first approved by Defendants, which approval shall not be unreasonably withheld or delayed more than five (5) business days from its request; and (c) Plaintiffs' Lead Counsel shall be entitled to respond to inquiries so long as Plaintiffs' Lead Counsel does not disparage the business or reputation of any of the Defendants or counsel for Defendants in this Matter. Nor shall Plaintiffs' Lead Counsel or the Representative Plaintiffs fail to comply with any applicable confidentiality order or confidentiality agreements or protective orders in communicating with members of the FX Damages Class or otherwise.

26. Defendants and counsel for Defendants shall not make any public statements that disparage the business or reputation of Plaintiffs' Lead Counsel or the Representative Plaintiffs based on or related to the subject matter of this Matter, provided, however, that this sentence does not apply to statements in any judicial proceeding, including, but not limited to, the continued litigation of the Excluded Claim-for-Relief in this Matter and Ross v. Bank of America. Nothing in this Paragraph shall limit in any way the ability of Defendants to: make any disclosure under state or federal law (including, without limitation, state or federal securities law, such as the Securities Exchange Act of 1934, as amended); make any disclosure under the rules or regulations of any self-regulatory organization, including,

without limitation, New York Stock Exchange LLC; or disclose any information to auditors, accountants, tax and financial advisors and/or legal counsel to render professional advice.

CONFIDENTIALITY PROTECTION

27. All settlement- or discovery-related materials and information provided by any of the Defendants, before or after the date of this Settlement Agreement, including, without limitation, documents, answers to interrogatories, answers to requests for admission, and deposition testimony, shall be governed by the Protective Order entered by this Court on June 19, 2002, in In re Currency Conversion Fee Antitrust Litigation, MDL No. 1409, Master File M21-95, and adopted for this Matter on March 29, 2005, and in force as of the Effective Date of this Settlement Agreement. The Claims Administrator and any other Person(s) involved in notice or claims administration (except for Plaintiffs' Lead Counsel, the Defendants, and counsel for the Defendants) shall agree in writing to comply with the terms of the Protective Order and shall agree in writing to be subject to the jurisdiction of the Court for any violation of such Order or agreement. The Claims Administrator, Plaintiffs' Lead Counsel and any other Person(s) involved in claims administration may upon proper request by any FX Damages Class Member provide to such FX Damages Class Member information relating to his, her, or its particular claim.

PRESERVATION OF DISCOVERY MATERIALS

28. The Parties shall preserve all discovery materials in this Matter until the last to occur of: (i) the final resolution of all remaining claims in this Matter; and (ii) final resolution of Ross v. Bank of America. Within sixty (60) days after the latest event described in the first sentence of this Paragraph 28, and in accordance with the provisions of the Protective Order entered by this Court on June 19, 2002, in CCF I and in force as of the date of this Settlement

Agreement, Plaintiffs' Lead Counsel shall take all steps required under that Protective Order to return the discovery materials produced in this Matter by each Defendant.

MISCELLANEOUS PROVISIONS

29. The exhibit attached hereto is hereby incorporated by reference as though fully set forth herein.

30. The parties to this Stipulation intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Plaintiffs, any other members of the FX Damages Class and their attorneys against the Released Persons with respect to the Released Claims. The Parties hereto shall assert no claims of any violations of Rule 11 of the Federal Rules of Civil Procedure, or any application for sanctions pursuant to another court rule or statute, relating to the institution, prosecution to the date of settlement, defense, or settlement of the Released Claims. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's length in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

31. This Stipulation may not be modified or amended, nor may any of its provisions be waived except by a writing signed by all Parties hereto or their successors-in-interest and as subject to Court approval.

32. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

33. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of Attorneys' Fees and Expenses to Plaintiffs' Lead Counsel and enforcing the terms of this Stipulation.

34. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

35. This Stipulation and its exhibit along with the Confidential Termination Agreement constitute the entire agreement among the Parties hereto concerning the Settlement of the Released Claims; and no representations, warranties, or inducements have been made by any Party hereto concerning this Stipulation and its exhibit other than those contained and memorialized in such documents.

36. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

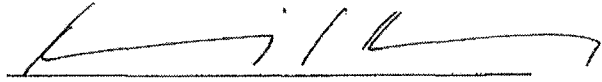
37. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

38. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation.

39. All counsel and any other Person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Stipulation to effectuate its terms.

IT IS HEREBY AGREED by the undersigned as of October 24, 2011.

BERGER & MONTAGUE, P.C.



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*Plaintiffs' Lead Counsel on Behalf of Plaintiffs and
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*Counsel for Defendants on Behalf of American
Express Company, American Express Travel Related
Services, Inc. and American Express Centurion Bank*

EXHIBIT A

Authorized by the U.S. District Court for the Southern District of New York
— Notice of a Pending Class Action Lawsuit and Proposed Settlement —

IMPORTANT: If you submitted a claim concerning foreign transaction fees as part of the settlement in *In re Currency Conversion Fee Antitrust Litig.*, MDL 1409, you may also be a class member in a second class action called *Ross, et al. v. American Express Co., et al.*

This notice contains information about your rights and options in a class action lawsuit.

You are receiving this notice because you submitted a claim in connection with a class action lawsuit titled *In re Currency Conversion Fee Antitrust Litig.*, MDL 1409 ("*CCF I*"), and you, therefore, may also be a member of an FX Damages Class certified by the Court in a second, related action, titled *Ross, et al. v. American Express Co., et al.* ("*Ross v. American Express*").

Both lawsuits concern fees or surcharges imposed by certain banks for the use of a Visa, MasterCard and/or Diners Club credit or charge card to make a transaction in a foreign currency and/or with a foreign merchant.

CCF I was settled in 2006. This notice is not about the refunds for valid, timely claims submitted in connection with the *CCF I* settlement. Instead, this notice provides you with information about membership in the FX Damages Class in *Ross v. American Express* and a proposed settlement of the claims of that FX Damages Class.

What is *Ross v. American Express* about?

Plaintiffs in this lawsuit claim that American Express conspired in violation of the antitrust laws with certain banks that issue Visa, MasterCard and/or Diners Club credit and charge cards to set and conceal fees on foreign transactions. The banks are Bank of America, Bank One/First USA, Chase, Citibank, Diners Club, HSBC/Household, MBNA and Washington Mutual/Provident. Plaintiffs seek money damages and restitution for the FX Damages Class. American Express denies all of the Plaintiffs' claims and says it has done nothing wrong, improper or unlawful.

Plaintiffs also claim that American Express conspired with the banks listed above to add arbitration clauses in connection with credit or charge cards issued by those banks. This notice does not concern the arbitration clause claim, which seeks injunctive relief only. A separate class has been certified with respect to that arbitration claim, and your decision to remain a member of the FX Damages Class described in this notice, or to opt-out as described below, will not affect any rights you may have concerning the arbitration clause claim.

Who is eligible to be a member of the FX Damages Class?

You may be a member of this second FX Damages Class if you used a Visa, MasterCard and/or a Diners Club credit or charge card between July 22, 2000 and November 8, 2006, and were assessed a fee or surcharge for using your card to purchase goods and/or services priced in foreign currencies or in foreign countries, *and* the card you used was issued by one of the following banks: Bank of America, Bank One/First USA, Chase, Citibank, Diners Club, HSBC/Household, MBNA or Washington Mutual/Provident, *and* you submitted a valid claim as part of the *CCF I* settlement. If the claim you submitted in *CCF I* was rejected because you missed the claim submission deadline in that settlement, you may still be a member of this second FX Damages Class, provided that your claim was submitted on or before October 31, 2011.

What is the proposed settlement?

American Express has agreed in principle to create a settlement fund of \$49,500,000 to pay claims by the members of the FX Damages Class, attorneys' fees and expenses to Class Counsel, and the costs of administering the settlement and notice. Plaintiffs will also ask the Court to award up to \$70,000 from the settlement fund to the two class representatives for their efforts on behalf of the class. The lawyers for the FX Damages Class will request a maximum of 25% of the settlement fund, plus interest, for attorneys' fees and they will request a reimbursement of their expenses, not to exceed \$1,500,000, and the cost of notice and settlement administration, to be paid from the fund. The lawsuit will continue with respect to Plaintiffs' arbitration claims.

The proposed settlement is still subject to final documentation and approval by the Court. If the proposed settlement is approved and you do not exclude yourself from the FX Damages Class, you will not be able to sue American Express with respect to the claims of the FX Damages Class because those claims will be released.

What are my options?

You may choose to remain a member of the FX Damages Class or you may request to be excluded from membership in the FX Damages Class.

• **I wish to remain a member of the FX Damages Class:** If you wish to remain a member of the FX Damages Class you are not required to take any further action. As a member of the FX Damages Class, you will be bound by any judgment or settlement entered concerning the claims of the FX Damages Class. Any objections to the proposed settlement must be filed with the Court and must include proof of your membership in the FX Damages Class. Any objections must also be sent to the attorneys for the FX Damages Class by hand, overnight mail, or by certified mail, return receipt requested.

Deadline: Any objections to the settlement must be postmarked no later than March 2, 2012.

• **I wish to be excluded from the FX Damages Class:** If you wish to exclude yourself from the FX Damages Class, you must send the "Opt-Out Form" (available at: www.ccfsettlement.com, or by calling: 1-800-###-####) to: P.O. Box ##, Philadelphia, PA 19###-####. If you opt-out of the FX Damages Class you will not be able to participate in any settlement or judgment and you will not be bound by any judgment or settlement entered in this lawsuit concerning the claims of the FX Damages Class.

Deadline: All "Opt-Out Form Letters" must be postmarked no later than February 17, 2012.

Do I need to hire a lawyer?

The Court has appointed the Class Counsel listed below to represent you. You do not have to hire your own lawyer. But you can if you want to, at your own cost.

More information

This notice is only a summary. To obtain more information about this lawsuit, including the proposed settlement or a full Class Notice, go to: www.ccfsettlement.com. Or call 1-800-###-####. Or mail your questions to Lead Counsel for the FX Damages Class:

Merrill G. Davidoff, Charles P. Goodwin, David A. Langer
Berger & Montague, P.C., 1622 Locust Street, Philadelphia, PA 19103

Questions?

Go to: www.ccfsettlement.com Or call: 1-800-###-####

Do not contact the Court, American Express, or your bank with questions about this case.