

2. This Court has jurisdiction over the subject matter of the Consolidated Action and over all Parties to the Consolidated Action, including all members of the Settlement Damages Class and the Settlement Injunctive Class certified for settlement purposes in this Court's Preliminary Approval Order dated _____, 200_:

SETTLEMENT DAMAGES CLASS: All Persons who or which were holders of United States-issued MasterCard- or Visa-branded Credit or Debit Cards or United States-issued Diners Club-branded Credit Cards and made a Foreign Transaction from February 1, 1996 to the date of Preliminary Approval; and

SETTLEMENT INJUNCTIVE CLASS: All Persons who or which were holders of United States-issued MasterCard- or Visa-branded Credit or Debit Cards or United States-issued Diners Club-branded Credit Cards as of the date of Preliminary Approval.

Provided, however, that Defendants are not members of the Settlement Classes.

3. The Court hereby finds that the Settlement Agreement is the product of arm's length settlement negotiations between the Representative Plaintiffs and Settlement Classes Counsel, and the Defendants, in connection with, inter alia, JAMS dispute resolution mediation proceedings before the Honorable Edward A. Infante;

4. This Court hereby finds and concludes that the Notice of Pendency and Settlement of Class Action, attached as Exhibit 1 hereto, the Agency/Company Notice, attached as Exhibit 2 hereto, the Publication Notice, attached as Exhibit 3 hereto, and the Claim Form, attached as Exhibit 4 hereto, were disseminated to members of the Settlement Classes in accordance with the terms set forth in the Class and Settlement Notice Plan and were in compliance with this Court's Preliminary Approval Order dated _____, 200_, and that the nature and scope of said Plan and the content of the

Notices and Claim Form fully satisfied Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances to members of the Settlement Damages Class, provided individual notice to all members of the Settlement Damages Class who or which could be identified through reasonable effort, and provided Publication Notice to members of the Settlement Damages Class and members of the Settlement Injunctive Class.

5. The Defendants have timely filed notifications of this settlement with the appropriate state and federal officials pursuant to the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4, 7-8 (2005). These notifications apprised the appropriate officials that, in connection with the approval of this settlement, the Defendants would seek certification from this Court that their respective notifications complied with any applicable CAFA requirements. The Court has reviewed such notifications and accompanying materials, and finds that the Defendants’ notifications comply fully with any applicable requirements of CAFA.

6. The Court hereby finds that the Plan of Administration and Distribution, attached as Exhibit H to the Settlement Agreement, fairly and adequately addresses the question of settlement administration and claims submission, and allocation of monetary payments among all members of the Settlement Damages Class. The Court hereby orders that the Plan of Administration and Distribution be effected, and retains jurisdiction to supervise the implementation and effectuation of the Plan of Administration and Distribution.

7. In view of, *inter alia*, the Defendants’ agreements with respect to disclosure in the Settlement Agreement, the Monetary Settlement Consideration, and

other consideration, and the Court's finding that this settlement was the product of an arms-length negotiation, the Court hereby finally approves the Settlement Agreement and the settlement contemplated thereby, and finds that the terms constitute, in all respects, a fair, reasonable, and adequate settlement as to all Settlement Classes Members in accordance with Rule 23 of the Federal Rules of Civil Procedure, and directs its consummation pursuant to its terms and conditions.

8. This Court hereby dismisses, on the merits and with prejudice, without costs to any party (except as provided for in the Settlement Agreement), the Third Amended Complaint in favor of the Defendants and against all Settlement Classes Members. A list of those members of the Settlement Damages Class who or which timely and properly filed requests for exclusion from that Class as permitted by the Court is annexed hereto as Attachment A and made a part hereof. Those Persons appearing on the list annexed hereto as Attachment A shall have no right to receive any payments from the Net Settlement Fund. Any member of the Settlement Damages Class whose legal name does not appear on the list annexed hereto as Attachment A failed to timely and properly file a valid request for exclusion from the Settlement Damages Class as permitted by the Court, is hereby barred and permanently enjoined from asserting otherwise, and is subject to the terms and conditions of the Settlement Agreement, including the Releases, Covenant Not to Sue, Waiver of Rights and Additional Releases set forth therein, and this Order.

9. Each and every Settlement Damages Class Member, and any Person actually or purportedly acting on behalf of any Settlement Damages Class Member(s), are hereby permanently barred 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, against any of the Defendant Releasees or Member Releasees. This permanent bar and injunction includes, but is not limited to, commencing, instituting, continuing, pursuing, maintaining, prosecuting, or enforcing any Released Claims in the following cases: Schwartz v. Visa Int’l Co., et al., No. 822404-4 (Alameda Cty., Cal.) (complaint on behalf of general public nationwide against MasterCard and Visa), 2003 WL 1870370 (Cal. Super. Ct. Apr. 7, 2003), rev’d and remanded, No. A105222, 34 Cal.Rptr.3d 449 (Cal. Ct. App., 1st Dist., Sept. 28, 2005), petition for review granted, No. S-138751 (Cal. Dec. 12, 2005); Schwartz v. Visa Int’l Co., et al., No. 822404-4 (Alameda Cty., Cal. Aug. 6, 2004) (attorneys’ fee and expenses award), appeals filed, Nos. A108180 (Cal. Ct. App., 1st Dist., Oct. 1, 2004) (MasterCard’s notice of appeal of attorneys’ fee and expenses award filed), A108181 (Cal. Ct. App., 1st Dist., Oct. 4, 2004) (Visa’s notice of appeal of attorneys’ fee and expenses award filed); Cavette v. MasterCard International, Inc., No. CT-002506-03 (Shelby Cty., Tenn.) (currently certified Tennessee class of holders of MasterCard-branded credit cards against MasterCard with respect to Tennessee Consumer Protection Act, Tenn. Code § 47-18-104 et seq., negligent misrepresentation, and unjust enrichment claims), interlocutory appeal granted, No. W2005-02422-SC-S09-CV (Tenn. Sup. Ct., May 1, 2006); Fischer v. MasterCard International, Inc., No. 03600572/2003 (N.Y. Cty., N.Y.) (complaint alleges putative New York class of holders of MasterCard-branded credit cards against MasterCard); Friedman v. MasterCard International, Inc., No. 04-CV-539330 (Cuyahoga

Cty., Ohio) (complaint alleges putative Ohio class of holders of MasterCard-branded credit cards against MasterCard); Gastineau v. MasterCard International, Inc., No. CV 2004-483 (Lonoke Cty., Ark.) (complaint alleges putative Arkansas class of holders of MasterCard-branded credit cards against MasterCard); Gillard v. MasterCard International, Inc., No. 03 CH06659 (Cook Cty., Ill.) (complaint alleges putative Illinois class of holders of MasterCard-branded credit cards against MasterCard), appeal filed, No. 05-3143 (Ill. Ct. App., 1st Dist., Sept. 30, 2005) (notice of appeal filed from grant of motion to dismiss); Hernandez v. MasterCard International, Inc., No. C-1056-03-C (Hidalgo Cty., Tex.) (complaint alleges putative Texas class of holders of MasterCard-branded credit cards against MasterCard); Johnson v. MasterCard International, Inc., No. 62-C7-04-009691 (Ramsey Cty., Minn.) (complaint alleges putative Minnesota class of holders of MasterCard-branded credit cards against MasterCard); Perry v. MasterCard International, Inc., No. CV 2003-007154 (Maricopa Cty., Ariz.) (complaint alleges putative Arizona class of holders of MasterCard-branded credit cards against MasterCard; plaintiff has moved for clarification as to whether a class with respect to plaintiff's unjust enrichment claim is currently certified); Rubin v. MasterCard International, Inc., No. 03-09368 CA 20 (Dade Cty., Fla.) (complaint alleges putative Florida class of holders of MasterCard-branded credit cards against MasterCard), appeal filed, No. 3D05-2373 (Fla. Ct. App., 3rd Dist., Sept. 30, 2005) (notice of appeal filed from grant of motion to compel arbitration and stay litigation); Salkin v. MasterCard International, Inc., No. 002648 (Phila. Cty., Pa.) (complaint alleges putative Pennsylvania class of holders of MasterCard-branded credit cards against MasterCard), appeal filed, No. 1741 EDA 2005 (Pa. Super. Ct., Eastern Dist., June 9, 2005) (notice of appeal filed from denial of motion

to compel arbitration and stay litigation); Baker v. Visa Service International Ass'n, et al., Case No. 06-CV-0376 JAH (NLD) (S.D. Cal.) (complaint alleges putative worldwide class of holders of Visa-branded credit cards against Visa); Bildstein v. MasterCard International, Inc., No. 03 Civ. 9826 (plaintiff has moved for certification of a New York class including holders of MasterCard-branded credit cards and debit cards against MasterCard; case coordinated with the Consolidated Action), 329 F. Supp. 2d 410 (S.D.N.Y. July 28, 2004), modified, 2005 WL 1324972 (S.D.N.Y. June 6, 2005); Clarken v. Citicorp Diners Club, Inc., No. 01 Civ. 10857 (S.D.N.Y.) (complaint on behalf of putative nationwide class of Diners Club cardholders against Diners Club); Gaffigan v. MasterCard International, Inc., No. 042-07768 (St. Louis Cty., Mo.) (complaint alleges putative nationwide class of holders of MasterCard-branded credit cards, except California and Illinois residents, against MasterCard); Schrank v. Citibank (South Dakota) N.A., No. 03 Civ. 2843 (S.D.N.Y.) (currently certified, pending reconsideration, New York class of Citibank credit cardholders against Citibank with respect to claims under Section 413(5)(a) of the New York Personal Property Law), 230 F.R.D. 303 (S.D.N.Y. Dec. 2, 2004), modified, 2005 WL 1705285 (S.D.N.Y. July 22, 2005); Relativity Travel, Ltd. v. JP Morgan Chase Bank, No. 05601075/2005 (N.Y. Cty., N.Y.) (complaint alleges putative New York class of holders of Chase ATM cards against Chase); Mattingly v. Visa U.S.A. Inc., et al., No. RG05198142 (Alameda Cty., Cal.) (complaint on behalf of named plaintiffs, putative California class of holders of MasterCard-branded credit cards against MasterCard, and putative nationwide class of holders of Visa-branded credit cards against Visa); Shrieve v. Visa U.S.A. Inc., et al., No. RG04155097 (Alameda Cty., Cal.) (complaint on behalf of named plaintiffs, putative

California class of holders of MasterCard-branded debit cards against MasterCard, putative nationwide class of holders of Visa-branded debit cards against Visa, and general public).¹ This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Final Judgment and Order of Dismissal, and this Court's flexibility and authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

10. Upon Final Settlement Approval (including, without limitation, the exhaustion of any judicial review, or requests for judicial review, from this Final Judgment and Order of Dismissal), each of the Releasers unconditionally, fully and finally releases and forever discharges each of the Defendant Releasees and Member Releasees from the Released Claims. In addition, any rights of Settlement Damages Class Members to the protections afforded under Section 1542 of the California Civil Code, Section 20-7-11 of the South Dakota Codified Laws, and/or any other similar, comparable, or equivalent laws, are terminated.

11. Upon Final Settlement Approval (including, without limitation, the exhaustion of any judicial review, or requests for judicial review, from this Final Judgment and Order of Dismissal), each of the Defendants fully and finally discharges and releases each of the Representative Plaintiffs and their counsel and experts from the Additional Released Claims, and each of the Representative Plaintiffs and the other Settlement Damages Class Members fully and finally discharges and releases each of the Defendants and each of their counsel and experts from the Additional Released Claims.

¹ [The Parties, by agreement, may revise this paragraph of the Proposed Final Judgment and Order of Dismissal to update it for purposes of accuracy.]

12. The Court hereby finds and orders that by not objecting to the certification of the Settlement Classes, and by taking other steps to negotiate, execute and implement the Settlement Agreement, Defendants and each of them are not in any way waiving other rights, if any, they may have to require arbitration of any Claims, including, but not limited to rights, if any, they may have (a) to require arbitration of any of the Released Claims if Final Settlement Approval does not occur or if the Settlement Agreement terminates prior to Final Settlement Approval, or (b) as to any Person who or which has timely and properly opted out of the Settlement Damages Class as permitted by the Court. The Court further finds that if Final Settlement Approval does not occur or if the Settlement Agreement terminates prior to Final Settlement Approval, Settlement Classes Members retain the ability, if any, to oppose or challenge any claim of arbitration rights on any grounds other than any claim of waiver relating to certification of the Settlement Classes or any other act relating to the negotiation, execution or implementation of the Settlement Agreement.

13. 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 Claims, and evidence relating to the Settlement Agreement shall not be discoverable or used, directly or indirectly, in any way, whether in the Consolidated Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing or enforcing

the terms and conditions of the Settlement Agreement, the Preliminary Approval Order and/or this Order.

14. None of the Defendants 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.

15. If for any reason the Settlement Agreement terminates before Final Settlement Approval (including, without limitation, the exhaustion of any judicial review, or requests for judicial review from this Final Judgment and Order of Dismissal), then the filing of the Third Amended Complaint and the certification of the Settlement Damages Class and Settlement Injunctive Class shall be deemed vacated, and the operative complaint in the Consolidated Action shall be the Second Consolidated Amended Class Action Complaint filed on August 15, 2003, and the classes certified in the Consolidated Action shall be those certified in this Court's October 15, 2004 Order, as modified by this Court's March 9, 2005, June 16, 2005, and December 7, 2005 Orders, subject to any further judicial review, requests for further judicial review, and/or further decisions by the Court or the Second Circuit, and the certification of the Settlement Damages Class and the Settlement Injunctive Class for settlement purposes shall not be considered as a factor in connection with any subsequent class certification issues. In that event, the Parties shall return to the status quo ante in the Consolidated Action, without prejudice to the right of any Defendant to assert any right or position that it could have asserted if the Settlement Agreement had never been reached or proposed to the Court.

16. In the event that any of the provisions of the Settlement Agreement or this Final Judgment and Order of Dismissal is asserted by any Defendant Releasee or Member Releasee as a defense in whole or in part to any Claim or cause of action, or otherwise asserted (including, without limitation, as a basis for a stay) in any other suit, action, or other proceeding brought by a Settlement Damages Class Member or any Person actually or purportedly acting on behalf of any Settlement Damages Class Member(s), that suit, action or other proceeding shall be immediately stayed and enjoined until the Court has entered an order or judgment finally determining any issues relating to such defense or assertion. Solely for purposes of such suit, action, or other proceeding, to the fullest extent they may effectively do so under applicable law, the Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court, or that the Court is, in any way, an improper venue or an inconvenient forum. This section 16 is necessary to protect and effectuate the Settlement Agreement, this Final Judgment and Order of Dismissal, and this Court's flexibility and authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

17. Except as otherwise specifically provided by the Settlement Agreement and ordered by the Court, the parties shall each be responsible for his, her, or its own costs, attorneys' fees, and expenses.

18. Without in any way affecting this Final Judgment and Order of Dismissal, the Court hereby reserves exclusive personal and subject matter jurisdiction over the implementation and enforcement of the Settlement Agreement and this Final Judgment and Order of Dismissal, including, but not limited to, any disputes relating to

or arising out of the Releases, the Covenant Not to Sue or Continue Suit, the Waiver of Rights, the Additional Releases, the timeliness and/or validity of any opt out, and/or any Claim Form submitted for payment from the Net Settlement Fund.

SO ORDERED this ____ day of _____, 200__.

Hon. William H. Pauley III
United States District Judge