

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE	:	MDL No. 1409
	:	
CURRENCY CONVERSION FEE	:	M 21-95
ANTITRUST LITIGATION	:	
	:	
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THIS DOCUMENT RELATES TO:	:	Index No. 05 CV 7116 (WHP)
	:	
ROBERT ROSS, et al.,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
BANK OF AMERICA, N.A, et al.,	:	
	:	
Defendants.	:	Jury Trial Demanded
	:	
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**MEMORANDUM IN SUPPORT OF CLASS PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS WITH
BANK OF AMERICA, CAPITAL ONE, CHASE, AND HSBC**

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Representative Plaintiffs Robert Ross, Andrea Kune, Woodrow Clark, Herve Senequier, S. Byron Balbach, Jr., Matthew Grabell, Paul Impellezzeri and Richard Mandell (collectively “Class Plaintiffs” or “Plaintiffs”) on behalf of themselves and the certified Class and Subclass (the “Class” or “Settlement Class”) respectfully submit this Memorandum of Law in Support of Class Plaintiffs’ Motion for Preliminary Approval of Class Action Settlements With Bank of America, Capital One, Chase, and HSBC.

I. INTRODUCTION

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure (“Rules”), Class Plaintiffs respectfully move for the preliminary approval of proposed settlement agreements reached with four of the seven defendants here. These proposed settlements are with (i) JP Morgan Chase & Co. and Chase Bank USA, N.A. (“Chase”); (ii) Bank of America, N.A. (USA) (n/k/a FIA Card Services, Inc.) and Bank of America, N.A. (“Bank of America”); (iii) Capital One Bank (USA), N.A. and Capital One, N.A. (“Capital One”); and (iv) HSBC Finance Corporation and HSBC Bank Nevada, N.A. (“HSBC”) (collectively, the “Settling Defendants”¹). These settlements are embodied in four Stipulations and Agreements of Settlement (collectively, “Settlements” or “Settlement Agreements”), one each for Bank of America, Capital One, Chase and HSBC.²

¹ The non-settling defendants are Citigroup Inc, Citibank (South Dakota), N.A., Citibank USA, N.A., Universal Financial Corp., Universal Bank, N.A., Citicorp Diners Club Inc (together, “Citigroup”); Novus Credit Services, Inc., Discover Financial Services, and Discover Bank (“Discover”); and the National Arbitration Forum (“NAF”).

² Copies of these Settlements are attached as Exhibits 1, 2, 3 and 4 to the accompanying Declaration of David A. Langer (“Langer Decl.”), respectively for Bank of America, Chase, Capital One and HSBC. Certain exhibits to the Settlements are identical for each. To reduce the bulk of this filing, only one copy of these exhibits is attached. These are (i) the [Proposed] Final Judgment And Order Of Dismissal With Respect To Defendants Bank Of America, N.A. (USA) (N/K/A FIA Card Services, N.A.), Bank Of America, N.A., JPMorgan Chase & Co., Chase Bank USA, N.A., Capital One Bank, Capital One, F.S.B., HSBC Finance Corporation, And HSBC Bank Nevada, N.A. (Exhibit 5 here); (ii) the Proposed Judgment Approving Attorneys’ Fees and Costs, and the Disbursement of Monies Designated for Notice Costs in Connection with the Settlement as to Defendants Bank of America, N.A. (USA) (n/k/a FIA Card Services, N.A.), Bank

These Settlements warrant preliminary approval. They are well ““within the range of possible approval.”” *In re Warner Chilcott Ltd. Sec. Litig.*, 2008 WL 5110904, at *1 (Nov. 20, 2008) (Pauley, J.) (quoting *In re Prudential Sec. Inc. Ltd. Partnership Litig.*, 163 F.R.D. 200, 210 (S.D.N.Y. 1995) (Pollack, J.)). Each was reached through arm’s-length negotiations among experienced counsel who had the benefit of extensive document discovery in this matter, as well as the complete record from *In re Currency Conversion Fee Antitrust Litigation* (“CCF”), No. 01-md-1409 (WHP), Master File No. 21-95, and following rulings on the merits in this Court and the Court of Appeals. The Settlements deliver substantial and immediate benefits to the Class: (i) the Settling Defendants have already ceased enforcing their arbitration clauses and class action bans; (ii) each agrees to remove its arbitration clause and class action ban from its cardholder documents; and (iii) each agrees to forebear readopting arbitration clauses for three and one-half years (the “Forbearance Period”), as described in full *infra* at p. 9-12. Further, the Settling Defendants will apply these provisions to after-acquired card portfolios that would otherwise be unprotected and to extend these prohibitions to those who acquire their cardholders’ obligations (*i.e.*, debt collectors who could otherwise use debts accumulated under the abrogated arbitration clauses as a basis for invoking the clause). The Settlements cover small businesses, as well individuals, extending the Settlements to cardholders often denied the benefits of the consumer protection laws. The Settling Defendants have promised cooperation in discovery regarding the Class’s claims against the remaining defendants, Citigroup, Discover and NAF. Finally, the Settling Defendants have agreed to pay a collective \$2.35 million to cover a portion of

of America, N.A., JPMorgan Chase & Co., Chase Bank USA, N.A., Capital One Bank (USA), N.A., Capital One Bank, N.A., HSBC Finance Corporation, and HSBC Bank Nevada, N.A. (Exhibit 6); (iii) Notice Plan (Exhibit 7 here), and (iv) the Notice (Exhibit 8 here). The Proposed Preliminary Approval Order, which is an exhibit to the Settlements, is submitted with this filing as the proposed order.

Plaintiffs' attorneys' fees and litigation expenses, including the cost of notice.

In return, the Settling Defendants are accepting a relatively narrow release from the Class. The release here releases only the minimal damages claim, if any, that Class members could have asserted for the injury they incurred from the insertion and maintenance of the Settling Defendants' arbitration clauses (and class action bans) as card terms. The release does *not* release the Settling Defendants for claims, including for damages, that class members may have from the *invocation* or *use* of either the arbitration clauses or the class action bans. Any aggrieved member of the Class may still bring those claims.

As described in the Notice Plan (Ex. 7 to the Langer Decl.) and in conformity with the plethora of cases recognizing that publication notice is appropriate and sufficient for the settlement of claims brought under Rule 23(b)(2), *see McReynolds v. Richards-Cantave*, 588 F.3d 790, 797, 804-05 (2d Cir. 2009); *Handschu v. Special Servs. Div.*, 787 F. 2d 828, 832-33 (2d Cir. 1986); *Meacham v. Wing*, 227 F.R.D. 232, 235 (S.D.N.Y. 2005); *see generally infra* at 20, Plaintiffs and the Settling Defendants propose a notice campaign calculated to apprise:

- (i) Class members in the general public by the publication of notice in the *Wall Street Journal* and *USA Today* and distribution over PR Newswire,
- (ii) Class members who are claimants in the CCF settlement of this related matter on the www.ccfsettlement.com website that has been used for general communications about that settlement,
- (iii) Class members who are attorneys (and thus perhaps best situated to understand the nuances of Plaintiffs' claims and the proposed Settlements) by publication (if feasible) in the *ABA Journal*, and
- (iv) consumer advocacy groups that have a history of advocating on behalf of consumers on issues relating to credit cards and consumer credit generally.

This Notice Plan amply satisfies the requirements of due process and Rule 23 while ably serving the purpose of notice to alert Class members who may have divergent viewpoints to come forward and be heard. *See Handschu*, 787 F.2d at 833; *Mendoza v. United States*, 623 F.2d 1338,

1351 (9th Cir. 1980); *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 298 (W.D. Tex. 2007).

Moreover, although not an official part of the notice campaign, the Settling Defendants are providing nearly all of their cardholding Class members with notice that the arbitration clause has been removed from their card terms.³ In the case of Bank of America, Chase and HSBC, the covering letter or stand-alone notice specifically mentioned (or will mention) the deletion of the arbitration provision.⁴ On a practical basis, this provides more extensive notice of the changes in the Settling Defendants' conduct than is often provided in conjunction with an injunctive relief settlement, where there can be limited publication notice (if any) concerning defendants' change in conduct. Although these mailings are a part of the Settling Defendants' general notification to cardholders of the change to their cardholding terms, it provides notice far more direct and comprehensive than required.

In sum, this Court should preliminarily approve these Settlements because the proposed Settlements are “sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard.” *In re NASDAQ Market-Makers Antitrust Litig.*, 1997 WL 805062, at *24 (S.D.N.Y. Dec. 31, 1997) (citation omitted).

II. PROCEDURAL STATEMENT

A. Statement Concerning Related MDL 1409 Matters

This is the third of three related matters. The first is *In re Currency Conversion Fee Antitrust Litigation*, Master File No. 21-95, No. 01-md-1409 (WHP) (S.D.N.Y.). There, plaintiffs claimed that various defendant banks (including all but two of the Bank Defendants⁵ here), together with MasterCard and Visa, conspired to impose foreign transaction (“FX”) fees on card-

³ Inevitably, some fraction of these notices will be returned due to defective mailing addresses and similar circumstances.

⁴ As Capital One sent out an entirely new cardholder agreement, there was no covering letter.

⁵ The Bank Defendants are Bank of America, Capital One, Chase, Citigroup (which includes Diners Club), Discover and HSBC. Capital One and Discover were not defendants in *CCF*.

holders. This Court first certified the proposed class there on October 15, 2004. *See* 224 F.R.D. 555 (S.D.N.Y. 2004), *on reconsideration*, 361 F. Supp. 2d 237 & 229 F.R.D. 57 (S.D.N.Y. 2005). The settlement received final approval on October 22, 2009 and is now on appeal.

Extensive discovery, including some discovery related to the *CCF* Bank Defendants' adoption of arbitration clauses and class bans, was taken in the initial *CCF* matter. The *CCF* plaintiffs vigorously pursued discovery of meetings among the co-conspirators, including the Bank Defendants here. In 2002, Chase divulged the existence of the May 25, 1999 Wilmer Cutler meeting, attended by representatives of a number of Bank Defendants and where both the FX fee and arbitration issues were addressed. Seeking to learn more about that meeting, the *CCF* plaintiffs deposed American Express's in-house counsel (a co-sponsor of the May 25, 1999 meeting) who revealed, after repeated objections by his counsel, the existence of numerous other meetings, including meetings of the "Arbitration Coalition." The *CCF* plaintiffs then served document requests and interrogatories targeting information about the *CCF* Banks' imposition of arbitration. The *CCF* plaintiffs also issued 22 subpoenas to third parties involved in the arbitration meetings. This *CCF* discovery yielded 21,000-plus pages of documents and the testimony of at least ten fact witness concerning the Bank Defendants' imposition of class-banning arbitration clauses.

The second matter is *Ross, et al. v. American Express Co., et al.*, No. 04-cv-5723 (WHP), where plaintiffs assert claims against American Express Company, American Express Travel Related Services, Inc. and American Express Centurion Bank (collectively, "Amex") as a co-conspirator for collusion on both (i) the FX fees and (ii) the class-banning arbitration clauses on cardholders. This Court certified an injunctive class there on the arbitration collusion claim. 2005 WL 2364969 (Sept. 27, 2005). On January 22, 2010, this Court certified a damages class

for the FX fee claim.

B. Statement Concerning This Matter

In this matter, Plaintiffs allege that the Bank Defendants conspired among themselves and with certain named co-conspirators, including Defendant NAF, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, to foist on their cardholders compulsory arbitration clauses that bar collective remedies.

In their First Amended Class Action Complaint (“Complaint”) (as well as their initial complaint), Plaintiffs prayed for the following relief: (1) class certification; (2) a declaration that Defendants had violated Section 1 of the Sherman Act; (3) “[t]hat Defendants be enjoined from continuing the illegal course of conduct concerning the compulsory arbitration clauses alleged herein”; (4) “[t]hat Defendants’ arbitration clauses be invalidated, declared null and void and stricken from Defendants’ cardholder agreements”; (5) “[t]hat Defendants be required to notify all courts and arbitration forums which have enforced their respective arbitration clauses during the course of the conspiracy as to their illegal conduct in implementing these clauses”; (6) “[t]hat Defendants be required to withdraw all currently pending motions to compel arbitration;” (7) “[t]hat Plaintiffs and other members of the Class recover their costs of this suit, including reasonable attorneys’ fees, as provided by law”; and (8) “[t]hat Plaintiffs and other members of the Class be granted such other, further and different relief that is necessary to prevent a recurrence of the conspiracy.” (Langer Decl., Ex. 9)

The initial complaint was filed August 11, 2005. On November 11, 2005, the Bank Defendants moved to dismiss. On January 10, 2006, the Court stayed discovery. On September 20, 2006, the Court dismissed for want of Article III standing. *See In re Currency Conversion Fee Antitrust Litig.*, 2006 WL 2685082 (Sept. 20, 2006). On April 25, 2008, the Court of Appeals vacated and remanded. *See Ross v. Bank of America, N.A.*, 524 F.3d 217 (2d Cir. 2008). On

May 21, 2008, this Court received the mandate. All Bank Defendants other than Discover answered on December 22, 2008. Discover renewed its motion to dismiss, based on its purported opt-out provision, which motion was denied on January 21, 2009. On January 23, 2009, this Court held a status conference to discuss scheduling, among other matters. On February 3, 2009, this Court held a telephonic conference to further discuss scheduling. On February 23, 2009, Discover answered. On March 9, 2009, this Court entered an initial scheduling Order.

On April 13, 2009, the Bank Defendants agreed that they would not oppose the certification of an injunctive relief class. On April 15, 2009, Plaintiffs moved to amend their complaint to amplify certain allegations and to add NAF as a defendant, which motion was ultimately unopposed by the Bank Defendants. On June 3, 2009, this Court granted Plaintiffs leave to amend their complaint. On June 11, 2009, Plaintiffs served NAF with the amended complaint.

On April 17, 2009, Plaintiffs moved to consolidate this matter with *Ross v. American Express*, which motion was opposed on May 1, 2009, argued on May 28, 2009, and denied on June 18, 2009, without prejudice to its renewal.

On June 5, 2009, Plaintiffs served on the Bank Defendants the Declaration of Oren Bar-Gill, Plaintiffs' economic expert, concerning class certification.⁶ While Plaintiffs' Counsel was preparing their briefing for what they had expected to be their unopposed motion for class certification, Defendants contacted Plaintiffs to discuss a stipulated order for class certification.

On July 17, 2009, all Defendants other than NAF answered the Complaint. On July 24, 2009, Plaintiffs informed all of the Bank Defendants, except Citigroup, that they intended to challenge, under Rule 12(f), the adequacy of the pleading of their affirmative defenses under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). After an exchange of letters, those Defendants

⁶ Dr. Bar-Gill holds both a doctorate in economics (from Tel Aviv University) and a law degree (from Harvard Law School) and is a Professor at the New York University School of Law.

agreed to amend their answers and replead some of their defenses and to withdraw others. Defendants filed and served their Amended Answers on October 22, 2009.

On September 18, 2009, Plaintiffs and the Bank Defendants transmitted their stipulation on class certification and a proposed Order to the Court. On October 6, 2009, the Court entered the Order certifying the Class and Subclass against the Bank Defendants.

On September 23, 2009, NAF noticed its motion to dismiss under Rules 12(b)(1) and 12(b)(6), and submitted a supporting memorandum and affidavit. On October 28, 2009, Plaintiffs moved for class certification as to NAF. On November 6, 2009, Plaintiffs opposed NAF's motion to dismiss. On December 4, 2009, NAF replied. On January 15, 2010, this Court denied NAF's motion to dismiss in an oral opinion following argument. As of this writing, the motion for class certification remains pending as to NAF.

Discovery is ongoing. As of this writing, the parties have responded to interrogatories and completed the first wave of document production amounting to more than 120,000 pages of production from both sides (of which, the Bank Defendants account for approximately 117,000 pages and Plaintiffs for approximately 5,000 pages). Second wave document discovery, based on Plaintiffs' follow up requests, is ongoing. Deposition discovery is in progress.

III. THE SETTLEMENT NEGOTIATIONS

There have been intermittent settlement discussions with various Defendants in this matter. The discussions that culminated in the four proposed Settlements, however, began in or just prior to August 2009, when HSBC requested that Plaintiffs supply it with settlement terms, which Plaintiffs did on August 19, 2009. Discussions with HSBC continued into September 2009, before breaking off due to various issues unrelated to the negotiations.

On or about October 26, 2009, counsel for Plaintiffs and Chase began discussions concerning settlement. From those discussions, counsel developed a ten point settlement plan,

which is substantially reflected in the November 20, 2009 Memorandum of Settlement between Plaintiffs and Chase. After several telephonic negotiation sessions, the parties reached accord on or about November 13, 2009. As noted above, Plaintiffs and Chase executed a Memorandum of Settlement on November 20, 2009, which they submitted to the Court.

Only after Plaintiffs and Chase resolved *all* merits issues, did they discuss Chase's payment of fees as a part of the settlement, other than Plaintiffs' statement that their request would be reasonable, and, if Chase were the first settling defendant, that the demand on it would be lower and subject to most-favored nations protection.

In the next two weeks, separate discussions began with Bank of America and Capital One and resumed with HSBC. Terms were reached with Bank of America on December 11, 2009 and with Capital One on December 17, 2009. The Court was notified of each on the day of agreement. Talks with HSBC continued over the Christmas Holiday. Terms were reached on December 30, 2009. The parties notified the Court on the next day. Each Memorandum of Settlement was adjusted to reflect issues particular to the Defendant involved. As with Chase, attorneys' fees were not discussed until all other issues had been resolved.

Further extensive, arm's-length and at times contentious negotiations took place among the settling parties in the weeks leading up to the February 24, 2010 filing of the four final Stipulations and Agreements of Settlement.

IV. TERMS OF THE SETTLEMENTS

Although separate settlements were reached for each Settling Defendant, the material terms are substantially similar. First, and most significantly, each Settling Defendant agreed immediately to cease enforcing both its arbitration clause and its class action ban, except for cer-

tain specifically identified actions in the case of Chase and Capital One.⁷ (¶ 3⁸) Also excluded are pending cases where an arbitration award has already issued, where a judgment has been rendered or an order compelling arbitration has issued. (¶ 3(c)) In these circumstances, the Settlement Agreements are intended to preserve the parties' *status quo ante* rights to enforce the clause or to challenge its enforcement.

Second, each Settling Defendant will remove its arbitration clause and class action ban and not re-impose either for a period of three and one-half (3-1/2) years from its removal. (¶ 3) Chase began sending its cardholders revised "cardholder agreements" in January 2010 and intends to complete that distribution by March 1, 2010. Capital One began sending revised cardholder agreements on January 15, 2010 and intends to complete distribution on March 15, 2010. HSBC will send its changes to cardholders within 60 days of March 31, 2010. Bank of America will send its changes to cardholders within 60 days of May 1, 2010. The cover letters or stand-alone notices from Chase, Bank of America and HSBC all inform (or will inform) cardholders of the removal of the arbitration clause. In the case of Capital One, a new cardholder "agreement," omitting the arbitration clause, was included with cardholders' monthly statements. Subsequent

⁷ Chase has carved out *Puleo v. Chase Bank USA, N.A.*, No. 08-3837 (3rd Cir.), and *Pillitteri v. JPMorgan Chase & Co. and Chase Manhattan Bank USA, N.A.*, No. 05 Civ. 1164 (SDNY), both of which concern whether Chase can be required to engage in class arbitration. *Caban v. J.P. Morgan Chase*, No. 09-12200 (11th Cir.), which had been carved out in the Chase Memorandum of Settlement, has since settled. Capital One carves out *Whitman v. Capital One Bank (USA), N.A.*, No. WMN-09-1737 (D. Md.) (Nickerson, J.); *Lee v. Capital One Bank*, No. 3:07-CV-04599 MHP (N.D. Cal.) (Patel, J.); and *McAtee v. Capital One. F.S.B.*, No. 04CC08544 (Super. Ct. Orange Co. Cal.) (Sundvold, J.). *Whitman* was ordered to arbitration on November 19, 2009, which order was not final as of the Memorandum of Settlement. *Lee*, which challenged the insertion of arbitration clauses, was dismissed for want of Article III standing, which dismissal was affirmed at the court of appeals, yet formally remains pending. *McAtee* is a "headless" class case where plaintiffs are seeking to find a new representative after the initial representative was disqualified.

⁸ Reference is to the paragraphs of the proposed Settlement Agreements annexed as Exhibits 1 through 4 to the Langer Declaration. The paragraph references are the same for each agreement.

communication, anticipated to be issued in advance of the final approval hearing, will specifically inform cardholders of the removal of the clause.

Third, each Settling Defendant has agreed that anyone to whom it transfers its accounts for collection will also be bound not to enforce the issuer's (former) arbitration clause and class action ban against cardholders. (§ 13(b)) This provision prevents collection agencies, which purchase credit card debts, from enforcing the arbitration clause (or class ban) for debts incurred when that clause was in effect. The effective date for this provision is slightly delayed from the time when the banks themselves are ceasing enforcement due to various logistical and contractual issues relating to the transfer of collectible debts. For Bank of America, this clause became effective on February 1, 2010. For Chase, it will be effective for such contracts entered into after April 1, 2010; for Capital One, on April 1, 2010; and for HSBC, on March 31, 2010.

Further, the Settling Defendants have each agreed that the Settlement Agreements will apply to card portfolios they acquire during the Forbearance Period. (§ 13(a)) This insures that all those who hold cards from a Settling Defendant will receive the protections of this Settlement. This provision extends the Settlement Agreement to those who become their cardholders during the Forbearance Period as well as those who are now their cardholders. It also eliminates the complexities that could arise for Class members who could otherwise have multiple cards from a Settling Defendant where some cards would be subject to the Settlement and others would not.

Finally, each Settling Defendant will not "contract, combine or conspire" with any other issuer regarding the re-imposition or re-adoption of the arbitration clause or the class action ban. (§ 3(d)) This prevents the re-emergence of collusive at the end of the Forbearance Period.

Not only do the Settlement Agreements provide these benefits to the Class, they come at

relatively small cost to the Class. As explained below (see *infra* at 18), the Class is receiving much of the relief it sought. Further, the Settlements interpose no obstacle to damages relief for those Class members who have been injured as a result of the actual invocation of the arbitration clause or class ban. Such claims are beyond the scope of the release. (¶¶ 2(h), 2(aa)) The release in these Settlement Agreements is limited to the Settling Defendants' liability with respect to the *inclusion* of arbitration clauses or class action bans. These Class members are free to seek redress for their grievances even though they will receive all the prospective benefits that the Settlement Agreements provide (on the condition, of course, that they remain cardholders of the Settling Defendants), although the Settling Defendants may defend and assert their (former) arbitration clauses against these claimants on such claims (and only on such claims).

The Settlements also provide for the cooperation of the Settling Defendants in the remaining discovery in this matter. (¶ 5) Cooperation includes the offer of up to eight (8) witnesses for deposition or trial for each of the Settling Defendants. The Settlements expressly do not abrogate any legislation or regulation governing arbitration clauses or class bans between credit card issuers and their cardholders. (¶ 11)

Finally, the Settlements provide that the Settling Defendants will make a payment to defray Plaintiffs' Counsel's attorneys' fees, expenses and notice costs. (¶ 15) Bank of America will pay \$600,000; Capital One, \$650,000; Chase, \$700,000; and HSBC, \$400,000. These amounts are a only a portion of Plaintiffs' "lodestar" to date, even as adjusted for market share.

V. THE PROPOSED SETTLEMENTS WARRANT PRELIMINARY APPROVAL

Plaintiffs now respectfully request preliminary approval of the proposed Settlements. Preliminary approval will authorize notice of the Settlement terms (beyond that already provided by the Settling Defendants), supply procedures for Class members to be heard and provide for

the Court's consideration of final approval. *See In re Currency Conversion Fee Antitrust Litig.*, No. 01 MDL 1409, 2006 WL 3247396, at *5 (S.D.N.Y. Nov. 8, 2006); *In re Initial Public Offering Sec. Litig.* (“*IPO*”), 226 F.R.D. 186, 191 (S.D.N.Y. 2005) (Scheidlin, J.). On final approval, the Court will have a comprehensive record concerning the proposed Settlements and will make a final determination as to whether the Settlements are fair, reasonable and adequate under all of the circumstances of the litigation.

A. Standards for Preliminary Approval

Rule 23(e) provides that before a class action may be compromised, reasonable notice must be given, objecting Class members must be heard and judicial approval must be obtained. FED. R. CIV. P. 23(e). Federal policy favors the settlement of disputed claims, particularly in complex class actions, so as to encourage voluntary, mutually advantageous compromises and conserve judicial and private resources. *See McReynolds*, 588 F.3d at 803; *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005); *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982); *Cohen*, 262 F.R.D. at 157; *Warner Chilcott*, 2008 WL 5110904, at *1. This policy should apply with added force in cases seeking only injunctive relief, as a negotiated outcome gives the parties flexibility to order the settlement to their respective advantages, where a fully litigated outcome may be unable to produce a result as well tuned to the parties' respective interests (*i.e.*, a litigated outcome may direct injunctive relief that is more costly to the defendants and less beneficial to the plaintiffs than the relief that they negotiate themselves).

These proposed Settlements manifestly satisfy the standards for preliminary approval. The test for preliminary approval is whether a proposed settlement is “sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard.” *NASDAQ*, at *8 (S.D.N.Y. Dec. 31, 2007) (quoting *In re Baldwin-United Corp.*, 105 F.R.D. 475, 482 (S.D.N.Y. 1984)); accord *Cohen v. J.P. Morgan Chase & Co.*, 262 F.R.D. 153, 157 (E.D.N.Y.

2009) (Sifton, J.); *Currency Conversion*, 2006 WL 3247396, at *5; *IPO*, 226 F.R.D. at 191.

“[A]t the preliminary approval stage, ‘the Court need only find that the proposed settlement fits “within the range of possible approval” to proceed.’” *Warner Chilcott*, 2008 WL 5110904, at *2 (quoting *Prudential Sec.*, 163 F.R.D. at 210). “In determining whether a settlement is fair, reasonable, and adequate, the District Court examines the ‘negotiating process leading up to the settlement[, *i.e.*, procedural fairness] as well as the settlement’s substantive terms[, *i.e.*, substantive fairness].” *McReynolds*, 588 F.3d at 803-04. The relevant substantive factors, not all of which are applicable here, are:

- i. the complexity, expense and likely duration of the litigation;
- ii. the reaction of the class⁹;
- iii. stage of the proceedings and the amount of discovery undertaken;
- iv. the risks of establishing liability;
- v. the risk of establishing damages;
- vi. the risk of maintaining the class action through trial¹⁰;
- vii. the ability of the defendants to withstand a greater judgment¹¹;
- viii. the range of reasonable settlements in light of the best possible resolution; and
- ix. the range of reasonable settlements to a possible resolution in light of all the attendant risks of litigation.

See, e.g., Wal-Mart, 396 F.3d at 118 (2d Cir. 2005); *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992); *Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974); *Warner Chilcott*, 2008 WL 5110904, at *1; *Currency Conversion*, 2006 WL 3247396, at *2; *Gross v. Washington Mut. Bank, F.A.*, 2006 WL 318814, at *4 (E.D.N.Y. Feb. 9, 2006) (Levy, M.J.); *IPO*, 226 F.R.D. at 190; *Prudential Sec.*, 163 F.R.D. at 210.

⁹ Prior to notice, this factor is premature. *See Warner Chilcott*, 2008 WL 5110904, at *2.

¹⁰ As the Settling Defendants have stipulated to class certification, this factor is inapplicable.

¹¹ Because the Complaint seeks only injunctive relief, this factor is also inapplicable.

B. The Applicable Factors Demonstrate that the Settlements Are Fair, Reasonable and Adequate

1. The Negotiations and the Presumption of Fairness

Class action settlements receive a presumption of fairness when they are the product of arm's-length negotiations following meaningful discovery. *See McReynolds*, 588 F.3d at 803; *Wal-Mart*, 396 F.3d at 116; *Warner Chilcott*, 2008 WL 5110904, at *1; *IPO*, 226 F.R.D. at 190. "So long as the integrity of the arm's-length negotiation process is preserved ... a strong initial presumption of fairness attaches to the proposed settlement." *In re Holocaust Victim Assets Litig.*, 2007 WL 805768, at *23 (E.D.N.Y. Mar. 15, 2007) (quoting *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998)); *see also In re Visa Check/MasterMoney Antitrust Litig.*, 297 F. Supp. 2d 503, 510 (E.D.N.Y. 2003).

The negotiation process for these proposed Settlements is described above at 8-9. Highly experienced counsel on both sides negotiated the terms. The arm's-length settlement negotiations addressed several complicated issues in multiple telephone conferences and other communications. Plaintiffs' Counsel were able to effectively and critically evaluate the litigation and propriety of the proposed terms, in light of the rulings from this Court and the Court of Appeals and the discovery record both here and in the original *CCF* matter.

2. Complexity, Expense and Likely Duration of the Litigation

As with *Currency Conversion*, "[t]his antitrust class action involves a complex factual record and novel issues of law." *Currency Conversion*, 2006 WL 3247396, at *5. Antitrust class actions "are notoriously complex, protracted, and bitterly fought." *Weseley v. Spear, Leeds & Kellogg*, 711 F. Supp. 713, 719 (E.D.N.Y. 1989). The parties have raised novel legal issues. The case has been reviewed at the Court of Appeals, vacated and remanded. There is a voluminous record (developed both here and in *CCF*). In the absence of these Settlements, this case

would continue to be strenuously contested by all Defendants. All Defendants, including those now settling, have demonstrated their ability to defend this case vigorously through and beyond trial. They are represented by some of the most able counsel in the United States.

The expense and delay of continued litigation of this complex antitrust class action against the Settling Defendants would be substantial. Discovery, although advanced, is not complete. Expert discovery regarding the merits has yet to begin. Inevitably, lengthy and onerous summary judgment proceedings would ensue. Trial preparation and trial would command even greater effort, time and expense. Trial would likely take weeks and involve a multitude of attorneys, witnesses, experts, the introduction of voluminous documentary and deposition evidence, vigorously contested motions and the expenditure of vast judicial and counsel resources. Post-trial motions and appeals could further delay resolution with respect to the Settling Defendants for years.¹²

3. Stage of the Proceedings and the Amount of Discovery Undertaken

Courts consider the stage of the proceedings and the discovery completed to ensure that the case has “proceeded to a stage at which counsel have demonstrated a thorough understanding of the complexity of the issues and the strengths and weaknesses of their respective claims, defenses and strategies.” *Currency Conversion*, 2006 WL 3247396, at *5; *see also Weinberger*, 698 F.2d at 74; *Chatelain v. Prudential-Bache Sec.*, 805 F. Supp. 209, 213-14 (S.D.N.Y. 1992).

¹² *See Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) (approval granted where “[d]elay, not just at the trial stage but through post-trial motions and the appellate process, would cause Class Members to wait years for any recovery, further reducing its value”); *Visa Check*, 297 F. Supp. 2d at 510 (fact that the class faced a long trial and the additional time it would take to exhaust all appeals “weigh[ed] heavily in favor of approving Settlements”); *New York v. Nintendo, Inc.*, 775 F. Supp. 676, 681 (S.D.N.Y. 1991) (in an antitrust action, settlement agreement approved where court held: “If the litigation proceeds to trial, it no doubt will be complex, protracted and costly. Even if [plaintiffs] ultimately prevail, it could be years before consumers received any meaningful restitution.”).

Here, counsel unquestionably has the information necessary to evaluate the strengths and weaknesses of the claims and the Settlements. This action has been litigated for more than four years. At every stage, Defendants have aggressively asserted defenses and expressed their belief that Plaintiffs would not prevail on their claims. By the time the Settlements were reached, Plaintiffs had conducted comprehensive document discovery, reviewed and analyzed over a 115,000 pages of newly produced documents from the Defendants here, as well as hundreds of thousands of pages produced in the original *CCF* proceedings, served a class expert report, engaged in intense motion practice and successfully prosecuted an appeal in the Court of Appeals. Plaintiffs' Counsel has a full understanding of the strengths and weaknesses of the claims and the difficulties they would face in obtaining a favorable verdict. *See Chatelain*, 805 F. Supp. at 213-14. Having sufficient information to fully evaluate the strengths and weaknesses of the Class' claims, Plaintiffs' Counsel have settled this litigation on terms very favorable to the Class.

4. The Risks of Establishing Liability and Damages, and Comparison of the Settlement with the Likely Result of Litigation¹³

When weighed against the risks of continued litigation, the proposed Settlements compare favorably with the results that could have been obtained after trial and the exhaustion of appeals. The risks as well as the burdens of continued litigation have been recounted in discussing the complexity of this litigation.¹⁴ *See surpa* at 15-16.

¹³ Because there is substantial overlap in the discussion of the litigation risks and the likely result of litigation, these factors are discussed together for economy's sake.

¹⁴ Because claims remain pending against three non-settling Defendants, it is not reasonable for Plaintiffs' Counsel to articulate the risks they perceive in prosecuting their claims. To do so would reveal Plaintiffs' litigation strategy to the non-settling Defendants and would prejudice the continued prosecution of their claims. *See Manual for Complex Litigation* §21.651, at 329 (4th ed. 2004) ("Given that the litigation might continue against other defendants, the parties may be reluctant to disclose fully and candidly their assessment of the proposed settlement's strengths and weaknesses that led them to settle separately."); *In re Fine Paper Antitrust Litig.*, 1979 WL 1743, at *2 (E.D. Pa. Oct. 2, 1979). Further, because Plaintiff Ross, represented by overlapping

Plaintiffs have achieved much of the relief they sought in their prayer for relief. Plaintiffs prayed for class certification and have received it. (Prayer ¶ A) Plaintiffs demanded that Defendants' arbitration clauses and class bans be stricken (Prayer ¶ D), and they are being stricken for three and one-half years. Plaintiffs asked that Defendants be enjoined from enforcing their arbitration clauses (Prayer ¶ F), and here the Settling Defendants have agreed not to enforce their arbitration clauses until the end of the Forbearance Period. Plaintiffs sought to enjoin Defendants' continued collusion with respect to arbitration and class action bans (Prayer ¶ C), and the Settling Defendants have agreed not to "contract, combine or conspire" as to these clauses. Plaintiffs sought award of counsel's fees, expenses and costs (Prayer ¶ G), and the Settling Defendants have agreed to make a reasonable partial payment of Plaintiffs' litigation costs.¹⁵

Moreover, Plaintiffs have also achieved relief beyond that which they requested in the Complaint. The proposed Settlements bar the purchasers of card debts from invoking the Settling Defendants' arbitration clauses and class bans. Moreover, the proposed Settlements apply to after-acquired portfolios, also extending relief beyond that which could be requested in the Complaint, as it provides benefits to those who are not yet members of the Class.

The duration of the equitable relief is appropriate. In the antitrust conspiracy context, injunctions last only as long as necessary to undo the effects of the violation. *See New York v. Microsoft Corp.*, 224 F. Supp. 2d 76, 184 (D.D.C. 2002). There are strong arguments for a leng-

counsel, is prosecuting related claims against alleged co-conspirator American Express in the related action *Ross, et al. v. American Express Co., et al.*, 04-CV-05723, such disclosure could prejudice those claims as well.

¹⁵ Three of Plaintiffs' prayers for relief are unanswered by the Settlements: their demand that Defendants' collusion be declared unlawful (Prayer ¶ B); their request for additional miscellaneous relief (Prayer ¶ H); and their request that Defendants notify courts and arbitral fora that Defendants' arbitration clauses and class action bans were the product of unlawful agreement (Prayer ¶ E). Settlements are compromises, reflecting concessions on both sides. Class Plaintiffs have gotten most of what they sought.

thier Forbearance Period. However, private antitrust cases have imposed injunctions lasting only three to five years. *See Arthur S. Langenderfer, Inc. v. S.E. Johnson Co.*, 917 F.2d 1413, 1447 (6th Cir. 1990) (monopolization; five years); *New York v. Microsoft Corp.*, 224 F. Supp. 2d 76, 184 (D.D.C. 2002) (monopolization and § 1 tying; five years); *In re Toys R Us Antitrust Litig.*, 191 F.R.D. 347, 350 (E.D.N.Y. 2000) (§ 1 vertical and horizontal agreements; three years); *Blue Cross & Blue Shield United of Wisconsin v. Marshfield Clinic*, 883 F. Supp. 1247, 1268-69 (W.D. Wis. 1995) (price-fixing; three years); *Coleman v. Cannon Oil Co.*, 849 F. Supp. 1458, 1471-72 (M.D. Ala. 1993) (price-fixing; three years); *but see Image Tech. Servs., Inc. v. Eastman Kodak Co.*, 125 F.3d 1195, 1227-28 (9th Cir. 1997) (price-fixing & monopolization; ten years).

In short, the injunctive relief provided – the removal of the Settling Defendants’ arbitration clauses and class action waivers, their (and their assignees’) refraining from enforcing those clauses, and their agreement not to again violate the antitrust laws with respect to such clauses – gives Plaintiffs much of what they had sought and for a suitable period of time.

As the court stated in *W. Va. v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970), *aff’d*, 440 F.2d 1079 (2d Cir. 1971):

It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced. Merely by way of example, two instances in this Court may be cited where offers of settlement were rejected by some plaintiffs and were disapproved by this Court. The trial in each case then resulted unfavorably for plaintiffs....

See also NASDAQ, 187 F.R.D. at 475; *In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 65 (S.D.N.Y. 1993).

VI. THE NOTICE PLAN PROVIDES REASONABLE NOTICE

The instant Class was certified pursuant to Rule 23(b)(2) governing the certification of classes seeking injunctive relief. The relevant provisions of Rule 23 regarding notice of these

Settlements are thus Rules 23(c)(2)(A), 23(e)(1) and 23(h)(1). What these provisions require is “reasonable notice.” The courts examining the requisite notice for Rule 23(b)(2) settlements have uniformly found that publication notice constitutes “reasonable notice.” See *McReynolds*, 588 F.3d at 797, 804-05 (approving notice by publication, posting in Children’s Services offices, and distribution to foster care agencies); *Handschu*, 787 F. 2d at 832-33 (publication notice of settlement in civil rights suit challenging police surveillance of political groups); *Meacham v. Wing*, 227 F.R.D. 232, 235 (S.D.N.Y. 2005) (approving notice by posting in public assistance offices, mailing to advocacy groups, and on website for settlement of suit challenging review procedures for public assistance); see also *Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (publication notice re school discrimination suit); *DeHoyos*, 240 F.R.D. at 295-98 (approving publication notice on settlement of case alleging racial and ethnic discrimination in auto insurance rates); *Allan v. Alabama State Bd. of Educ.*, 190 F.R.D. 602, 606 (M.D. Ala. 2000) (publication notice and mail to deans of state teachers’ colleges re settlement changing method for certifying new public school teachers); *Vaughns v. Board of Educ.*, 18 F. Supp. 2d 569, 578-79 (D. Md. 1998) (publication notice regarding settlement of school discrimination suit). Indeed, where there is no prejudice to absent class members, courts in this district have gone so far as to approve class settlement in Rule 23(b)(2) cases with *no* notice to absent class members. See *Selby v. Principal Mut. Life Ins. Co.*, 2003 WL 22772330, at *4 (S.D.N.Y. Nov. 21, 2003) (Carter, J.) (approving settlement of ERISA claims without notice); cf. *Green v. American Express Co.*, 200 F.R.D. 211, 212-13 (S.D.N.Y. 2001) (Baer, J.) (injunctive settlement of TILA claims without notice to class).

Specifically, under Rule 23(c)(2)(A), notice of class certification is *not* required and is discretionary for classes certified under Rule 23(b)(2). See, e.g., *Finch v. N.Y. State Office of*

Children & Family Servs., 252 F.R.D. 192, 198 (S.D.N.Y. 2008) (Scheindlin, J.); *Sims v. Bank of Am. Corp.*, 2008 WL 479988, at *9 (E.D.N.Y. Feb. 19, 2008) (Sifton J.); *Meacham*, 227 F.R.D. at 235; FED R. CIV. P. 23(b)(2). As to settlements, Rule 23(e)(1) requires only that the court order “notice in a reasonable manner to all class members who would be bound by the propos[ed settlement].” FED. R. CIV. P. 23(e)(1) (emphasis added).¹⁶ As to requests for attorneys’ fees, Rule 23(h)(1) requires only that notice be “directed to class members in a reasonable manner” on “motions by class counsel” for the award of fees. The cases gathered above at p. 20 recognize that publication notice constitutes “reasonable” notice for injunctive settlements.

“Notice must be ‘reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections’ and must express no opinion on the merits of the settlement.” *Handschu*, 787 F. 2d at 832-33 (quoting *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950)). As the Court of Appeals has explained, “[t]he notice must be of such nature as reasonably to convey the required information ... and it must afford a reasonable time for those interested to make their appearance.” *McReynolds*, 588 F.3d at 804 (quoting *Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983); emendation, ellipsis supplied). “Subject to these requirements, however, the district court has virtually complete discretion as to the manner of giving notice to class members.” *Handschu*, 787 F.2d at 833. The notice need not describe the settlement in detail. *See Hand-*

¹⁶ The “reasonable notice” requirement of Rule 23(e)(1) is less demanding than the “the best notice that is practicable” required under Rule 23(c)(2)(b) for damages classes certified pursuant to Rule 23(b)(3). *Compare* FED. R. CIV. P. 23(c)(2)(b) (“the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort”) *with* FED R. CIV. P. 23(e)(1) (“[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal”). Further, Rule 23(c)(2) provides for mandatory contents of notice to a Rule 23(b)(3) class, including apprising class members of their right to opt out. FED. R. CIV. P. 23(c)(2)(b)(i-vii). Those requirements do not apply to Rule 23(b)(2) classes.

schu, 787 F.2d at 832-33; *DeHoyos*, 240 F.R.D. at 298.

The Notice Plan (Langer Decl., Ex. 7) exceeds the pertinent requirements of Rule 23. It provides reasonable notice to the Settlement Class. The Notice Plan here includes publication and more. Notice to class members includes two rounds of publication in the *Wall Street Journal* and *USA Today*, each having a circulation in excess of two million readers. The Notice will also be disseminated via three releases on PR Newswire, which distributes news releases to news organizations across the United States. Notice also allows for publication (if feasible) in the May, 2010 issue of the *ABA Journal*. The *ABA Journal* has a circulation of some 384,000 ABA members, the vast preponderance of whom are lawyers. The *ABA Journal* readership is most likely to fully understand the settlement and its implications and be able to voice their reaction.

The Notice Plan goes even further. It provides for distribution of the notice to leading consumer advocacy organizations: (i) Consumer Action; (ii) Consumer Federation of America; (iii) National Association of Consumer Advocates; (iv) National Consumer Law Center; (v) National Consumers League; (vi) Public Citizen; (vii) Public Justice (formerly, Trial Lawyers for Public Justice)¹⁷; and (viii) U.S. Public Interest Research Groups (“U.S. PIRG.”). These groups have established track records of advocating for and acting to protect consumers’ rights. Each of these organizations has been involved in advocacy and monitoring with regard to consumer credit and credit card issues. Plaintiffs will request they share notice materials with their associates.

Moreover, internet notice is being made by posting (i) notice of this settlement, (ii) the Settlement Agreements themselves, (iii) the related filings, (iv) the First Amended Class Action Complaint, (v) the responsive pleadings and (vi) the Order on class certification, on the

¹⁷ In the interest of full disclosure, Eric L. Cramer, a shareholder of Berger & Montague, P.C., joined the Public Justice Foundation Board in July 2009. Mr. Cramer, who has had no material involvement in this matter, will recuse himself from any discussion of the instant Settlements.

www.ccfsettlement.com website, the website for the settlement in the related matter, *CCF*.

Finally, as a practical matter, the Class is receiving express notice of the changes to the card “agreements” when they receive notice of the changes to their cardholder terms from the Settling Defendants. Unlike the typical injunctive settlement, here virtually every class member will receive actual notice concerning the Settling Defendants’ change in conduct. In the case of Bank of America, Chase and HSBC, the covering materials expressly informed or will inform cardholders of the changes concerning arbitration. (In the case of Capital One, a new multipage cardholder agreement was distributed to all cardholders, which includes the changes with respect to arbitration. Subsequent communication will specifically advert to the removal of the clauses.)

The purpose of providing notice to injunctive relief classes of settlements is to encourage those with divergent points of view to come forward and voice their opinion. *See Handschu*, 787 F.2d at 833 (“Where, as here, the notice of settlement prompts widespread reaction from class members, it would appear that the notice has served its due process purpose.”); *Mendoza*, 623 F.2d at 1351 (“In a class action seeking a structural injunction, notice is intended to encourage those with divergent views to come forth, helping the trial court to identify possible inadequacies in the settlement.”); *DeHoyos*, 240 F.R.D. at 298 (“A class settlement notice need only properly identify the plaintiff class and generally describe the terms of the settlement so as to alert members ‘with adverse viewpoints to investigate and to come forward and be heard.’” (quoting *In re Cement & Concrete Antitrust Litig.*, 817 F.2d 1435, 1440 (9th Cir. 1987))). Here, the proposed Notice Plan ably serves that purpose. Where the newspaper notice suffices to alert the general public, the notice in the *ABA Journal* and to consumer advocacy organizations serves to provide notice to those who are able to understand the implications and details of the settlement and are in a position to voice their reaction. The claims in this action involve matters – arbitration and

class actions – that are undoubtedly obscure to ordinary members of the general public. Specialized knowledge is helpful to understand fully what is at issue and its significance. By placing this notice before a wide swath of lawyers as well as disseminating it directly to consumer protection organizations, the Notice Plan should elicit any divergent point of view concerning the Settlements *sub judice*.

VII. THE PROPOSED SCHEDULE OF EVENTS

In connection with the preliminary approval of the Settlement, the Court must set dates for (1) a final approval hearing, (2) the filing of papers in support of the Settlement and of the request for the reimbursement of attorneys' fees and litigation expenses and (3) the submission of objections to the Settlement. The Court has already tentatively fixed certain of these dates in the Scheduling Order entered January 18, 2010. In accord with those dates, Plaintiffs propose to comply with the following schedule in accordance with the Scheduling Order and Notice Plan:

- Oppositions to preliminary approval, if any, are to be filed with the Court on or before March 5, 2010.
- The Court shall hear argument from all interested parties who desire to be heard on preliminary approval on March 12, 2010 at 11:30 AM.
- If preliminary approval is granted on or before March 16, 2010, publication notice shall appear in the May 2010 issue of the *ABA Journal* (the final advertising submission deadline is March 17, 2010).
- Within seven (7) days of this preliminary approval, notice shall be created on the www.ccfsettlement.com website and an 800-number established to receive inquiries concerning the settlement.
- Within twenty-one (21) days of the date of preliminary approval, publication notice, as described in the Notice Plan, shall first appear in weekday editions of the *Wall Street Journal* and *USA Today*. Within thirty-five (35) days of preliminary approval, notice shall appear a second time in weekday editions of the *Wall Street Journal* and *USA Today*. These notices shall appear at least seven (7) days apart.
- Between seven (7) and thirty-five (35) days after preliminary approval, publication notice shall be disseminated via three releases on PR Newswire, with at least five (5) days elapsing between each release.

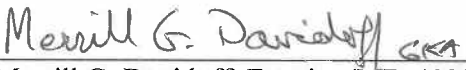
- Between seven (7) and thirty-five (35) days after preliminary approval, Plaintiffs shall disseminate notice to responsible individuals at (i) Consumer Action; (ii) Consumer Federation of America; (iii) National Association of Consumer Advocates; (iv) National Consumer Law Center; (v) National Consumers League; (vi) Public Citizen; (vii) Public Justice; and (viii) U.S. PIRG.
- All papers seeking final approval of these Settlements, as well as any papers seeking the Court's approval for the payment of attorneys' fees or the reimbursement of litigation expenses, shall be filed with the Court on or before May 28, 2010. Within twenty-four (24) hours of filing, these papers shall be posted, in PDF format, on the www.ccfsettlement.com website.
- Objections, if any, to the final approval of any of these Settlements, to the requests for attorneys' fees or to the requests for reimbursement of litigation expenses shall be filed with the Court on or before June 11, 2010.
- Replies to the objections, if any, shall be filed on or before June 25, 2010.
- The hearing on the final approval, the payment of attorneys' fees and the reimbursement of litigation expenses will be held on July 15, 2010 at 11:00 AM.

VIII. CONCLUSION

For all the reasons set forth above, the Court's should preliminarily approve these Settlements.

DATED: February 25, 2010

Respectfully submitted,


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