

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE : MDL No. 1409
 : M21-95
CURRENCY CONVERSION FEE :
ANTITRUST LITIGATION : **RECEIVED MAR 09 2010**
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THIS DOCUMENT RELATES TO: :
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ROBERT ROSS et al., :
 : Case No. 05-CV-07116 (WHP) (THK)
 :
 : Plaintiffs, :
 :
 : -against- :
 :
 : BANK OF AMERICA, N.A. (USA) et al., :
 :
 : Defendants. :
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**DFS SERVICES LLC, DISCOVER BANK, AND DISCOVER FINANCIAL SERVICES
RESPONSE IN OPPOSITION TO CLASS PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS
WITH BANK OF AMERICA, CAPITAL ONE, CHASE, AND HSBC**

Defendants DFS Services LLC, Discover Bank, and Discover Financial Services (collectively "Discover"), by and through their counsel, respectfully submit this Opposition to Class Plaintiffs' Motion for Preliminary Approval of Class Action Settlements with Bank of America, Capital One, Chase and HSBC. Specifically, Discover opposes the "Notice of Proposed Settlement and Application for Attorneys' Fees" to the Stipulation and Agreement of Settlements between Plaintiffs and Bank of America, N.A (USA), Bank of America, N.A., JP Morgan 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 (the "Proposed Notice").

The Proposed Notice is attached as Exhibit 8 to the Declaration of David A. Langer in support of Plaintiffs' Motion.

While Plaintiffs' motion and supporting brief focus on the sufficiency of the *manner* in which the Proposed Notice is to be given to class members, Plaintiffs spend very little if any of their briefing discussing the appropriateness of the *contents* of the Proposed Notice. As currently drafted, the Proposed Notice is inaccurate and misleading for at least two reasons:

- First, the Proposed Notice inaccurately asserts that **all** holders of Discover consumer or small business credit cards will be bound by the settlement. For example, the Proposed Notice purports to inform all “[h]olders of consumer or small business credit cards from...Discover” that “[i]f approved, the settlement will bind you.” Additionally, the Proposed Notice states “[n]o, you cannot exclude yourself from the settlement because the relief involves the settling defendants changing their conduct towards you and all other class members.” These statements are incorrect. Because Discover cardmembers who opted-out of arbitration are not part of the certified Discover subclass in this case – precisely because the arbitration clauses do not apply to them – they (and consequently **all** Discover cardmembers) cannot be bound by the settlement.
- Second, the Proposed Notice fails to clearly state that Discover denies and continues to deny Plaintiffs' allegations, potentially giving Discover cardmembers the impression that Discover is not contesting the allegations of wrong-doing. In the section titled “What is the lawsuit about?,” the Proposed Notice fails to properly and clearly state that the non-settling defendants continue to deny Plaintiffs' allegations.

As a result of these deficiencies, the Proposed Notice is harmful and legally prejudicial to Discover.

While Discover opposes the "Notice of Proposed Settlement and Application for Attorneys' Fees," Discover does not oppose the substance of the Stipulation and Agreement of Settlements. Discover is attempting to address its concerns over the "Notice of Proposed Settlement and Application for Attorneys' Fees," with the parties' counsel and will continue to make such efforts prior to the scheduled hearing on March 12, 2010.

For the foregoing reasons, the Court should require the "Notice of Proposed Settlement and Application for Attorneys' Fees" to be revised to address Discover's concerns.

Dated: March 5, 2010

Respectfully submitted,



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