

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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**CLASS PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENTS WITH BANK OF AMERICA, CAPITAL ONE, CHASE AND HSBC**

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Representative Plaintiffs Robert Ross, Andrea Kune, Woodrow Clark, S. Byron Balbach, Jr., Matthew Grabell, Paul Impellezzeri and Richard Mandell (collectively "Class Plaintiffs") on behalf of themselves and the certified Class and Subclass (the "Class") respectfully move for final approval of four separate Stipulation and Settlement Agreements (collectively, "Settlements") with, respectively, (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").

In support of their Motion, Class Plaintiffs state as follows:

1. Class Plaintiffs bring their claims on behalf of a Class certified pursuant to Rule 23(b)(2). They allege that Defendants<sup>1</sup> violated the antitrust laws by conspiring together and with others to impose arbitration clauses (that, *inter alia*, barred class actions against them) on their cardholders. They request relief to reform Defendants' conduct with respect to arbitration and class actions. Class Plaintiffs have diligently and vigorously prosecuted these claims for over four years as of this date.

2. The proposed Settlements, reached after arm's length negotiations, provide for (i) the immediate cessation of the Settling Defendants' enforcement of their arbitration clauses and class action bans, (ii) the striking of the Settling Defendants' arbitration clauses and class action waiver clauses for three and one-half years, and (iii) other relief provided in the Settlements, which relief is described more fully in the accompanying Memorandum in Support of Class Plaintiffs' Motion For Final Approval of Class Action Settlements with Bank of America, Capital One, Chase, and HSBC.

3. Final approval of the Settlement is warranted because each Settlement is fair, reasonable and adequate. *In re Warner Chilcott Ltd. Secs. Litig.*, 2009 U.S. Dist. LEXIS 58843, at \*5 (S.D.N.Y. July 10, 2008) (Pauley, J.); *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 123 (S.D.N.Y. 2009) (Pauley, J.); *D.S. v. New York City Dep't of Educ.*, 255 F.R.D. 59, 75 (E.D.N.Y. 2008); *Cinelli v. MCS Claim Servs., Inc.*, 236 F.R.D. 118, 121 (E.D.N.Y.

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<sup>1</sup> In addition to the Settling Defendants, Defendants include (i) Citigroup Inc, Citibank (South Dakota), N.A., Citibank USA, N.A., Universal Financial Corp., Universal Bank, N.A., Citicorp Diners Club Inc (together, "Citigroup"), (ii) Novus Credit Services, Inc., Discover Financial Services, and Discover Bank ("Discover") and (iii) the National Arbitration Forum ("NAF") are Defendants in this matter. The NAF has reached a tentative accord with Plaintiffs, which agreement has not received preliminary approval as of this writing.

2006).

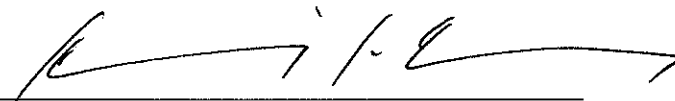
4. Class Plaintiffs have disseminated notice to (i) Class members in the general public by the publication of notice in the *Wall Street Journal* and *USA Today*, and distribution over PR Newswire; (ii) Class members, many of whom are claimants in the settlement of underlying matter *In re Currency Conversion Fee Antitrust Litigation*, Master File No. 21-95, 01-md-1409 (Pauley, J.), via the [www.ccfsettlement.com](http://www.ccfsettlement.com) website used generally for 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 in the May 2010 issue of the *ABA Journal*, and (iv) eight established consumer advocacy groups that have a history of advocating on behalf of consumers on issues relating to credit cards and consumer credit generally. Moreover, notice of the Settlement was supplemented here by the Settling Defendants' distribution of actual notice to the vast preponderance of the cardholders in conjunction with the revision of their cardholder terms, whether through the distribution of change-in-terms notices, statutory notices or entirely new cardholder documents. The dissemination of the notice was reasonable in accordance with Rule 23(e). See *McReynolds v. Richards-Cantave*, 588 F.3d 790, 804-05 (2d Cir. 2005); *Foti v. NCO Fin. Sys., Inc.*, 2008 U.S. Dist. LEXIS 16511, at \*13 (S.D.N.Y. Feb. 20, 2008).

In further support of their motion, Class Plaintiffs also proffer the accompanying Declarations of Merrill G. Davidoff, Nicholas Urban, Jeffrey Cooney, Bryan Reniker, Caroline P. Hillmar, Andrew T. Semmelman and Megan S. Webster.

For the above reasons, and for those stated in the accompanying Memorandum, which is incorporated here as if set forth full, Class Plaintiffs respectfully request that the Court grant final approval of the proposed Settlements and authorize the requested notice.

DATED: May 28, 2010

Respectfully submitted,



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