

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, (USA), et al.,	:	
	:	
Defendants.	:	
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**FINAL JUDGMENT AND ORDER OF DISMISSAL
WITH RESPECT TO DEFENDANT NATIONAL ARBITRATION FORUM, INC.**

The Court having held a fairness hearing on _____, 201_, notice of the fairness hearing having duly been given in accordance with this Court’s Order dated _____, 201_, the Court having considered all matters submitted to it at the fairness hearing and otherwise, and finding no just reason for delay in entry of this Final Judgment and Order of Dismissal and good cause appearing therefore,

It is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. The Memorandum of Settlement with National Arbitration Forum, Inc., including its accompanying exhibit (the “Settlement Agreement”), and the definitions of the words and terms contained therein, filed with the Court on May 19, 2010, are incorporated by reference in this Order.

2. This Court has jurisdiction over the subject matter of this litigation, *Ross, et al. v. Bank of America N.A., et al.*, 05-CV-07116 (WHP) (S.D.N.Y.) (the “Litigation”), and over all parties to the Litigation, including all members of the Class and the Subclass (collectively, the “Settlement Class”) certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure in this Court’s Order dated October 6, 2009:

CLASS: All Persons holding during the Period in Suit a Credit Card under a United States Cardholder Agreement with any of the Bank Defendants¹ (including, among other cards, cards originally issued under the MBNA, Bank One, First USA and Provident brands), but not including members of the proposed Subclass, subject to an arbitration provision relating to their cards;² and

SUBCLASS: All Persons holding during the Period in Suit a Credit Card under a United States Cardholder Agreement with Discover Bank, which cardholders have not previously successfully exercised their right to opt out of the Arbitration of Disputes Provision.³

Provided, however, that Defendants (and their corporate parents, subsidiaries and affiliates), American Express (and its corporate parents, subsidiaries and affiliates), Wells Fargo (and its corporate parents, subsidiaries and affiliates), and governmental entities are not members of the Class and Subclass.

3. The terms of this Court’s October 6, 2009, order certifying the Settlement Class are incorporated by reference in this Order.

¹ The “Bank Defendants” are: Bank of America, N.A. (USA) (n/k/a FIA Card Services, N.A.), Bank of America, N.A., Capital One Bank (USA), N.A., Capital One, N.A., JPMorgan Chase & Co., Chase Bank USA, N.A., Citigroup, Inc., Citibank (South Dakota) N.A., Citibank USA, N.A., Universal Bank, N.A., Universal Financial Corp., Citicorp Diners Club, Inc., DFS Services LLC, Discover Financial Services, Discover Bank, HSBC Finance Corporation, and HSBC Bank, Nevada, N.A. The “Defendants” are the National Arbitration Forum (“NAF”) and the Bank Defendants.

² Use of the term “Agreement” in this definition does not reflect any conclusion by the Court that there is any “Agreement” between issuers and cardholders either as a matter of fact or law.

³ In referring to Discover’s opt out provision, the Court does not conclude one way or the other that Discover’s opt out provision is meaningful, effective or legally operative.

4. The Court hereby finds that the Settlement Agreement is the product of arm's length settlement negotiations between Plaintiffs and Plaintiffs' Co-Lead Counsel, and the NAF and their counsel.

5. This Court hereby finds and concludes that the Notice (attached hereto as Exhibit A) was disseminated to members of the Settlement Class in accordance with the terms set forth in the Notice Plan (attached hereto as Exhibit B) and was in compliance with this Court's Preliminary Approval Order dated _____, 201___. The Court further finds and concludes that the Notice described in the Notice Plan and provided pursuant to the Court's Preliminary Approval Order, satisfies Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, and was provided in a reasonable manner to members of the Settlement Class.

6. The NAF has timely filed notifications of this settlement with the appropriate officials pursuant to the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005), effective February 18, 2005, codified at 28 U.S.C. §§ 1711-1715. This notification apprised the appropriate officials that, in connection with the approval of this settlement, the NAF would seek certification from this Court that its respective notifications complied with any applicable CAFA requirements. The Court has reviewed such notifications and accompanying materials, and finds that the NAF's notifications comply fully with any applicable requirements of CAFA.

7. On consideration of, *inter alia*, the NAF's agreement that it shall not administer or process any new credit card arbitration disputes involving business entities in their capacity as cardholders ("Business Card Arbitrations"), and NAF's payment toward notice costs, attorneys' fees, costs and expenses, and other consideration; and the release provided by the

Settlement Class members pursuant to Section 4 of the Settlement Agreement; and the Court's finding that this settlement was the product of arm's length negotiations, as well as of the arguments and submissions made concerning the Settlement Agreement, 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 Class 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 First Amended Class Action Complaint in favor of the NAF and against all Settlement Class members.

9. On final approval of the Settlement Agreement (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 Settlement Class members unconditionally, fully and finally releases and forever discharges the NAF from the Released Claims. Each of the Representative Plaintiffs covenants and agrees that it shall not take any step whatsoever to commence, institute, continue, pursue, maintain, prosecute or enforce any Released Claim(s), on behalf of itself or any other person, against the NAF.

10. The Settlement Agreement (including, without limitation, its exhibit), 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 the NAF, or of the truth of any of Plaintiffs' allegations in the Litigation, and evidence relating to the Settlement Agreement shall not be discoverable or used, directly or indirectly, in any way, whether in the Litigation or

in any other action or proceeding, except by the Parties for purposes of implementing or enforcing the terms and conditions of the Settlement Agreement, the Preliminary Approval Order and/or this Order.

11. If, for any reason, the Settlement Agreement terminates before final approval of the Settlement Agreement (including, without limitation, the exhaustion of any judicial review, or requests for judicial review from this Final Judgment and Order of Dismissal), then the parties to the terminated Settlement Agreement shall return to the *status quo ante* in the Litigation, without prejudice to the right of any Plaintiffs, the Settlement Class members or the NAF to assert any right or position that he, she or it could have asserted if the Settlement Agreement had never been reached or proposed to the Court.

12. 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.

13. 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 Released Claims.

14. All pending motions in the Litigation filed by the NAF, on the NAF's behalf or in which the NAF has joined are deemed moot as to the NAF.

15. Finding that there is no just reason for delay, this Order shall constitute a final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. The Clerk of the Court is directed to enter this order on the docket forthwith.

SO ORDERED this ____ day of _____, 201_

The Honorable William H. Pauley, III
United States District Judge