

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)
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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
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT WITH
NATIONAL ARBITRATION FORUM**

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and upon the accompanying Declaration of David A. Langer, 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 preliminary approval of a Stipulation and Settlement Agreement (the "Settlement") with National Arbitration Forum, Inc. ("NAF"), which preliminary approval includes authorization to disseminate notice.

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

1. Class Plaintiffs bring claims for injunctive relief on behalf of a Class certified pursuant to Rule 23(b)(2). They allege that Defendants¹ 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. Class Plaintiffs have diligently and vigorously prosecuted these claims for over six years as of this date.

2. The proposed Settlement, reached after arm's-length negotiations, provides that NAF (i) shall not administer or process any new credit card arbitration disputes involving business entities in their capacity as cardholders ("Business Card Arbitrations") and will cease administering or processing any new Business Card Arbitrations for a period of three and one-half (3.5) years; (ii) shall comply with the Consent Agreement with the state of Minnesota, dated July 28, 2008, that precludes it from administering or processing any new credit card arbitration disputes involving business entities and a private individual ("Consumer Arbitrations"); and (iii) agree to other relief provided in the Settlements, which relief is described more fully in the accompanying Memorandum in Support of Class Plaintiffs' Motion For Preliminary Approval of Class Action Settlement with National Arbitration Forum.

3. Preliminary approval of the Settlements is warranted because the Settlement is well within the range of possible approval. *See Cohen v. J.P. Morgan Chase & Co.*, 262 F.R.D. 153, 157 (E.D.N.Y. 2009) (Sifton, J.); *In re Warner Chilcott Ltd. Sec. Litig.*, No. 06 Civ. 11515,

¹ In addition to the NAF, 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"), and (ii) Novus Credit Services, Inc., Discover Financial Services, and Discover Bank ("Discover"). Class Plaintiffs also entered into four separate Stipulation and Settlement Agreements, which the Court gave final approval of on July 16, 2010, with, respectively, (i) JPMorgan Chase & Co. and Chase Bank USA, N.A. ("Chase"); (ii) Bank of America, N.A. (USA) and Bank of America, N.A. ("Bank of America"); (iii) Capital One Bank (USA), N.A., Capital One, N.A. ("Capital One"); and (iv) HSBC Finance Corporation and HSBC Bank Nevada, N.A. ("HSBC").

2008 WL 5110904, at *1 (Nov. 20, 2008) (Pauley, J.); *In re Currency Conversion Fee Antitrust Litig.*, No. 01 MDL 1409, 2006 WL 3247396, at *5 (S.D.N.Y. Nov. 8, 2006) (Pauley, J.); *In re Initial Public Offering Sec. Litig.*, 226 F.R.D. 186, 191 (S.D.N.Y. 2005) (Scheindlin, J.).

4. Applicable law holds that publication notice constitutes the required reasonable notice to the class in the context of an injunctive settlement for a Rule 23(b)(2) class. *See, e.g., 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). In keeping with these cases, Class Plaintiffs propose to notify (i) Class members, many of whom are claimants in the settlement of underlying matter *In re Currency Conversion Fee Antitrust Litigation* (“CCF I”), Master File No. 21-95, 01-md-1409 (Pauley, J.), via the www.ccfsettlement.com website used generally for communications about that settlement; (ii) those individual Class members who have previously provided address information, for either electronic or regular mail, in connection with inquiries or correspondence concerning the prior settlements in this matter, and (iii) established consumer advocacy groups that have a history of advocating on behalf of consumers on issues relating to credit cards and consumer credit generally.

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

DATED: November 22, 2011

Respectfully submitted,



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