

# Exhibit A

EXECUTION COPY

CLASS SETTLEMENT AGREEMENT

Subject to the preliminary and final approval of the Court, and as further set forth below, this definitive Class Settlement Agreement (this “Class Settlement Agreement”) is made as of the 19th day of December, 2013, by and between the Class Plaintiffs (as defined below), individually and as representatives of the Settlement Class (as defined below), Class Counsel (as defined below), and the Defendants (as defined below).

WHEREAS, on April 18, 2006, Performance Labs, Inc., Joseph Lepkowski, DDS d/b/a Oak Park Dental Studio, Rookies, Inc., and Jasa, Inc. filed a class action complaint in *Performance Labs, Inc. et al. v. American Express Co., et al.*, 06-CV-2974 (WHP) (S.D.N.Y.), alleging, among other things, that Defendants engaged in unlawful conduct in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2);

WHEREAS, on March 30, 2009, the *Performance Labs, Inc.* action was consolidated for pretrial purposes with other class actions alleging similar or identical claims under the caption *In re American Express Anti-Steering Rules Antitrust Litigation*, 06-CV-2974 (WHP) (S.D.N.Y.).

WHEREAS, the *In re American Express Anti-Steering Rules Antitrust Litigation* action was subsequently consolidated for pretrial proceedings with additional putative class actions and individual plaintiff actions alleging similar or identical claims in *In re American Express Anti-Steering Rules Antitrust Litigation (II)*, No. 11-MD-2221 (NGG)(RER) (E.D.N.Y.), pending before Judge Nicholas Garaufis and Magistrate Judge Reyes in the United States District Court for the Eastern District of New York (“MDL 2221”);

WHEREAS, on March 2, 2011, the law firms of Friedman Law Group LLP, Patton Boggs LLP, and Reinhardt, Wendorf & Blanchfield were appointed as interim lead counsel for the putative class in MDL 2221;

WHEREAS, on March 23, 2011, interim lead counsel for the putative class in MDL 2221 filed a Consolidated Class Action Complaint on behalf of, among others, Animal Land, Inc., that alleged, among other things, that Defendants engaged in unlawful conduct in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) and the Cartwright Act (California Business and Professional Code § 16700, *et seq.*) (the “Animal Land Consolidated Action”);

WHEREAS, the Class Plaintiffs in the Animal Land Consolidated Action have sought relief, including but not limited to damages, injunctive relief, attorneys’ fees, and costs for the alleged conduct of the Defendants;

WHEREAS, the Class Plaintiffs in the Animal Land Consolidated Action received tens of millions of pages of documents in discovery and participated in the depositions of more than 150 witnesses;

WHEREAS, on July 13, 2004, The Marcus Corporation filed a class action complaint in *The Marcus Corp. v. American Express Co. et al.*, (04-CV-05432) (GBD) (S.D.N.Y.) (the “Marcus Action”) alleging, among other things, that the Defendants engaged in unlawful conduct in violation of the Sherman Act (15 U.S.C. § 1, *et seq.*);

WHEREAS, on October 1, 2007, The Marcus Corporation filed a motion for class certification in the Marcus Action;

WHEREAS, on September 22, 2008, The Marcus Corporation filed a motion for summary judgment in the Marcus Action and the Defendants filed a motion for summary judgment in the Marcus Action;

WHEREAS, on January 28, 2009, oral argument on the motions for summary judgment was held in the Marcus Action;

WHEREAS, on March 30, 2009, The Marcus Corporation's motion for class certification in the Marcus Action was denied without prejudice to renew, upon resolution of the Defendants' pending summary judgment motion;

WHEREAS, the Class Plaintiffs in the Marcus Action reviewed millions pages of documents in discovery and participated in the depositions of 40 witnesses;

WHEREAS, in 2003, merchants including Italian Colors Restaurant filed class action complaints in the Northern District of California that were transferred to the Southern District of New York and consolidated with other similar class action complaints under the caption *In Re American Express Merchants Litigation*, Master File No. 03 Civ. 9592 (S.D.N.Y.) (GBD) (the "Italian Colors Action") that alleged, among other things, that Defendants engaged in unlawful conduct in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2);

WHEREAS, on December 11, 2004, attorneys Gary B. Friedman (currently of Friedman Law Group LLP), Read K. McCaffrey of Patton Boggs LLP, and Mark Reinhardt of Reinhardt, Wendorf & Blanchfield were appointed as interim lead counsel for the putative class in the Italian Colors Action;

WHEREAS, on March 15, 2006, the District Court granted American Express's motion to compel arbitration of the Italian Colors Action;

WHEREAS, the Second Circuit reversed the holding of the District Court in *In re American Express Merchants Litig.*, 554 F.3d 300 (2009); the Supreme Court then granted *certiorari* and vacated and remanded that ruling for reconsideration in light of intervening authority by Order dated May 3, 2010; the Second Circuit then, following briefing, reaffirmed its

ruling on March 8, 2011, in *In re American Express Merchants Litig.*, 634 F.3d 187; the Second Circuit then called for briefing to reconsider its ruling following further intervening Supreme Court authority, and again reaffirmed its ruling in *In re American Express Merchants Litig.*, 667 F.3d 204, dated February 1, 2012;

WHEREAS, on June 20, 2013, the United States Supreme Court reversed the Second Circuit's decision in *American Express Co. v. Italian Colors Restaurant*, 133 S. Ct. 2304;

WHEREAS, on August 5, 2013, the Defendants filed a motion to dismiss all claims, including damages claims and injunctive claims, in favor of arbitration in the Animal Land Consolidated Action, which the Class Plaintiffs opposed, insofar as the motion sought to dismiss claims for injunctive relief;

WHEREAS, as a result of arm's-length negotiations over several months, including numerous mediation sessions and exchanges coordinated by mediator Kenneth Feinberg, the Class Plaintiffs and the Defendants have entered into this Class Settlement Agreement that fully resolves all claims relating to injunctive relief or other equitable relief alleged by the Class Plaintiffs in the Animal Land Consolidated Action and the Marcus Action;

WHEREAS, the Class Plaintiffs, Class Counsel, and Class Plaintiffs' other counsel who have appeared in the Animal Land Consolidated Action and the Marcus Action have conducted substantial discovery, have investigated the facts and underlying events relating to the subject matter of their claims, have carefully analyzed the applicable legal principles, engaged in extensive arms-length negotiation, and have concluded, based upon their investigation, and taking into account the risks, uncertainties, burdens, and costs of further prosecution of their claims, and taking into account the substantial benefits to be received pursuant to this Class Settlement Agreement as set forth below, and for the purposes of putting to rest all controversies

with the Defendants relating to injunctive relief or other equitable relief that were or could have been alleged, that a resolution and compromise on the terms set forth herein is fair, reasonable, adequate and in the best interests of the Class Plaintiffs and the Settlement Class;

WHEREAS, the Class Plaintiffs and Class Counsel believe that the modifications of the American Express United States merchant regulations and card acceptance agreements addressed below in this Class Settlement Agreement will improve competition in the alleged markets for payment card acceptance services;

WHEREAS, the Class Plaintiffs and Class Counsel have developed a Notice Plan that they believe satisfies the requirements of due process and Federal Rule of Civil Procedure 23, and is in the interests of all parties and all released parties;

WHEREAS, the Defendants, for the purposes of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Class Plaintiffs' claims in the Animal Land Consolidated Action and the Marcus Action, and for the purpose of putting to rest all controversies with the Class Plaintiffs in the Animal Land Consolidated Action and the Marcus Action and the Settlement Class relating to injunctive relief or other equitable relief that were or could have been alleged, and without any admission of liability or wrongdoing whatsoever, desire to enter into this Class Settlement Agreement;

WHEREAS, Class Counsel represent and warrant that they are fully authorized to enter into this Class Settlement Agreement on behalf of the Class Plaintiffs and Class Plaintiffs' other counsel who have participated in the Animal Land Consolidated Action and the Marcus Action, and that Class Counsel have consulted with and confirmed that all Class Plaintiffs fully support and have no objection to this Class Settlement Agreement;

WHEREAS, it is agreed that this Class Settlement Agreement shall not be deemed or construed to be an admission, concession, or evidence of the truth of any of the claims that the Class Plaintiffs have asserted in the Animal Land Consolidated Action and the Marcus Action or of any violation of any federal, state, or local statute, regulation, rule, or other law, or principle of common law or equity, or of any liability or wrongdoing whatsoever, by any of the Defendants, or any of the Settlement Class Released Parties (as defined below), or any of their alleged co-conspirators; and

NOW, THEREFORE, without any admission or concession by the Class Plaintiffs in the Animal Land Consolidated Action and the Marcus Action of any lack of merit to their allegations and claims, and without any admission or concession by the Defendants of any liability or wrongdoing or lack of merit in their defenses, in consideration of the mutual covenants and terms contained herein, and subject to the final approval of the Court (as defined below), the Class Plaintiffs and Class Counsel, and the Defendants agree as follows:

**Definitions**

1. For the purposes of this Class Settlement Agreement, the following words and terms shall be defined to have the meanings set forth below, and all undefined words and phrases shall have their usual and customary meaning.

a. “Actions” or “these Actions” refer to the Animal Land Consolidated Action and the Marcus Action.

b. “Affiliate,” with regard to American Express, means an entity that is owned or controlled by American Express or under common control with American Express.

c. “American Express-Branded Card” means (1) any card, Credit Card, Debit Card, Prepaid Card, account access device, or payment service, regardless of where in the

world such card, device or service is issued or originates, bearing the American Express name, trademarks, service marks, logos or other proprietary designations issued by American Express or any of its subsidiaries or affiliates or by any unaffiliated entity that is licensed to issue any of the foregoing to be used on the American Express Network, or (2) the account number or other identifier assigned to such American Express-Branded Card by the issuer.

d. “American Express Cardmember” means the holder or owner of any American Express-Branded Card.

e. “American Express-Branded Credit Card” means (1) any Credit Card, regardless of where in the world such Credit Card is issued or originates, bearing the American Express name, trademarks, service marks, logos or other proprietary designations issued by American Express or any of its subsidiaries or affiliates or by any unaffiliated entity that is licensed to issue any of the foregoing to be used on the American Express Network, or (2) the account number or other identifier assigned to such American Express-Branded Credit Card by the issuer.

f. “American Express-Branded Debit Card” means (1) any Debit Card, regardless of where in the world such Debit Card is issued or originates, bearing the American Express name, trademarks, service marks, logos or other proprietary designations issued by American Express or any of its subsidiaries or affiliates or by any unaffiliated entity that is licensed to issue any of the foregoing to be used on the American Express Network, or (2) the account number or other identifier assigned to such American Express-Branded Debit Card by the issuer. American Express-Branded Debit Card includes, but is not limited to, any American Express-Branded Traditional Debit Card.

g. “American Express-Branded Traditional Debit Card” means an American Express-Branded Debit Card (regardless of how such card or its account number is presented, including, *e.g.*, a fob, digital token, or other access device, provided that such method of presentment solely and directly presents such card or its account number) issued by a United States bank that is an Affiliate of American Express or that is a licensee of American Express that is to be used on the American Express Network and that is linked to and debits the American Express Cardmember’s United States demand deposit account held at such bank at the time (including during the same Business Day) that the American Express Cardmember uses such card or its account number to make purchases at merchants; provided, however, an American Express-Branded Traditional Debit Card does not include (i) any Prepaid Card or (ii) any card where transaction authorization is based upon a line of credit, a credit limit, or a spending limit.

h. “American Express Merchant Regulations” means the document entitled “American Express Merchant Regulations – U.S.” that sets forth policies and procedures governing acceptance of American Express-Branded Cards for merchants in the United States, as the document currently exists or as amended in the normal course of business by American Express.

i. “American Express NDPs” means all provisions in the American Express Merchant Regulations and card acceptance agreements applicable to any United States Merchant Locations governing the treatment by merchants of American Express-Branded Cards in their communications and interactions with actual and potential customers, including Section 3.2 of the American Express Merchant Regulations (including any renumbering of such section).

j. “American Express HAC Provisions” means all provisions in the American Express Merchant Regulations and card acceptance agreements applicable to any

United States Merchant Locations requiring merchants that accept any American-Express Branded Card to accept all American Express-Branded Cards.

k. “American Express Merchant Discount Rate” means the Discount Rate charged for American Express transactions as provided in that merchant’s card acceptance agreement for American Express acceptance.

l. “American Express Network” means the network of merchants that accepts American Express-Branded Cards and the operational, service delivery, systems, and marketing infrastructure that supports that network and the American Express brand.

m. “Animal Land Consolidated Action” means the putative class action filed against American Express Company and American Express Travel Related Services Company, Inc. in MDL 2221 by Animal Land, Inc., Firefly Air Solutions, LLC, Il Forno, Inc., Italian Colors Restaurant, Jasa Inc., Lopez-Dejonge, Inc., and Plymouth Oil Corp., d/b/a Liberty Gas Station and all putative class actions in MDL 2221. The Animal Land Consolidated Action was initially captioned *In re American Express Anti-Steering Rules Antitrust Litigation*, 06-CV-2974 (WHP) (S.D.N.Y.) before it was transferred to and centralized before Judge Garaufis in MDL 2221.

n. “Animal Land Consolidated Class Action Complaint” means the Consolidated Class Action Complaint filed in the Animal Land Consolidated Action on or about March 23, 2011.

o. “Animal Land Protective Order” means the Protective Order entered on or about July 2, 2009, by Judge Pauley in *In re American Express Anti-Steering Rules Antitrust Litigation*, 06-CV-2974 (WHP) (S.D.N.Y.) (D. E. No. 41).

p. “Attorneys’ Fee and Expense Award” means the amount awarded, if any, by the Court as (i) compensation for the services provided by Class Counsel and other counsel for the benefit of the Settlement Class in the Class Actions, including the negotiation of this Class Settlement Agreement and in otherwise obtaining benefits for members of the Settlement Class under this Class Settlement Agreement; (ii) reimbursement for costs and expenses incurred by Class Counsel and other counsel in the prosecution of claims in the Class Actions; and (iii) service awards or incentive awards for the Class Plaintiffs that Class Counsel, in its discretion, may apply for.

q. “Business Day” means a day on which national banks are not required or authorized by law or executive order to close in New York, New York.

r. “Class Actions” refer to the Animal Land Consolidated Action (which includes all actions styled as putative class actions in MDL 2221) and the Marcus Action, which are all listed in Appendix A hereto.

s. “Class Administrator” means Epiq Systems, which shall effectuate and administer the Notice Plan, and which firm is unrelated to and independent of the Class Plaintiffs and Defendants within the meaning of Treasury Regulations § 1.468B-1(d) and § 1.468B-3(C)(2)(A).

t. “Class Counsel” means the law firms of Friedman Law Group LLP, Patton Boggs LLP, and Reinhardt, Wendorf & Blanchfield.

u. “Class Objection Period” means the period in which a member of the Settlement Class must file any objections to this Class Settlement Agreement, which period is specified in Paragraph 50 below.

v. “Class Plaintiffs” means (i) the following plaintiffs named in the Consolidated Class Action Complaint in the Animal Land Consolidated Action: Animal Land, Inc., Firefly Air Solutions, LLC, Il Forno, Inc., Italian Colors Restaurant, Jasa Inc., Lopez-Dejonge, Inc., and Plymouth Oil Corp., d/b/a Liberty Gas Station; and (ii) The Marcus Corporation, as the sole plaintiff in the Marcus Action.

w. “Class Settlement Agreement” means this Definitive Class Settlement Agreement, including all of its Appendices.

x. “Class Settlement Order and Final Judgment” means the Court’s order or orders finally approving the Class Settlement Agreement and the final judgment as resolving both the Marcus Action and the Animal Land Consolidated Action, which is described in Paragraph 60 below and is contained in Appendix G hereto.

y. “Class Settlement Preliminary Approval Orders” means (i) the orders preliminarily approving the Class Settlement Agreement in the Marcus Action, which are described in Paragraphs 42 and 43 below and contained in Appendix B and Appendix C hereto and (ii) the order preliminarily approving the Class Settlement Agreement in the Animal Land Consolidated Action, which is described in Paragraph 44 below and contained in Appendix D hereto.

z. “Consideration” means the value a merchant receives in exchange for the merchant’s agreement to waive or otherwise restrict its right to surcharge transactions on American Express-Branded Credit Cards, including but not limited to, *e.g.*, a reduction in the American Express Merchant Discount Rate applicable to the merchant.

aa. “Court” means the Court or Courts before which the Animal Land Consolidated Action and the Marcus Action are pending at the relevant time.

bb. “Credit Card” means (1) any card, plate, or other payment code, token, device, or service, even where no physical card is issued or the code or device is used for only one transaction — including, without limitation, a plastic card, a mobile telephone, a fob, or any other current or future code, device, or service by which a person, business, or other entity can pay for goods or services — that is issued or approved for use through a payment network and that may be used to defer payment of debt or incur debt and defer its payment, or where transaction authorization is based upon a line of credit, a credit limit, or a spending limit, including cards commonly known as credit cards, charge cards, commercial credit or charge cards, corporate credit or charge cards, fleet cards, or purchasing cards, including (2) the account number or other identifier assigned to such Credit Card by the issuer. For the avoidance of doubt, an electronic wallet that is accepted directly by merchants under an acceptance mark of the electronic wallet provided, such as PayPal, that can be funded by Credit Cards, Debit Cards, or other funding sources shall be deemed to be within this definition of “Credit Card” irrespective of how the electronic wallet is funded.

cc. “Debit Card” means any card, plate, or other payment code, token, or device, even where no physical card is issued or the code or device is used for only one transaction — including, without limitation, a plastic card, a mobile telephone, a fob, or any other current or future code, token, device by which a person, business, or other entity can pay for goods or services — that is issued or approved for use through a payment network to debit an asset account, regardless of whether authorization is based on signature, personal identification number (PIN), or other means, and regardless of whether or not the issuer holds the account (such as decoupled debit), including cards commonly known as signature or offline debit cards, PIN or online debit cards, gift cards, or Prepaid Cards.

dd. “Defendants” means American Express Company, American Express Travel Related Services Company, Inc., and each of their respective subsidiaries, successors, purchasers, and assigns.

ee. “Discount Rate” means the Discount Rate as provided in the merchant’s American Express card acceptance agreement.

ff. “Individual Plaintiffs” means the following entities to the extent that they are or have been plaintiffs in MDL 2221 as of the date of execution of this Class Settlement Agreement: CVS Pharmacy, Inc., Rite Aid Corporation, Rite Aid HDQTRS. Corp., Walgreen Co., BI-LO, LLC, H.E. Butt Grocery Company, Meijer, Inc., Publix Super Markets, Inc., Raley’s, Supervalu Inc., The Kroger Co., Safeway Inc., Ahold U.S.A., Inc., Albertson’s LLC, Hy-Vee, Inc., and The Great Atlantic & Pacific Tea Company, Inc., or their affiliated entities.

gg. “MDL 1720” means all actions that are consolidated for pretrial proceedings in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 05-MD-1720 (JG) (JO) (E.D.N.Y.).

hh. “MDL 2221” means all actions that are consolidated for pretrial proceedings in *In re American Express Anti-Steering Rules Antitrust Litigation (II)*, No. 11-MD-2221 (NGG)(RER) (E.D.N.Y.).

ii. “Marcus Action” means the putative class action filed against American Express Company and American Express Travel Related Services Company, Inc., captioned *The Marcus Corp. v. American Express Co. et al.*, 04-CV-05432 (GBD) (RLE) (S.D.N.Y.).

jj. “Marcus Class Action Complaint” means the Class Action Complaint filed in the Marcus Action on or about July 13, 2004 (D.E. No. 1).

kk. “Marcus Protective Order” means the Amended Stipulation and Order of Confidentiality entered by Judge Daniels on or about December 1, 2006 in the Marcus Action (D.E. No. 47).

ll. “Merchant Communications Fund” means the fund established by the Defendants to support advertising and media communications by Class Counsel for the purpose of educating members of the Settlement Class about the amendments to the American Express NDPs and American Express HAC provisions.

mm. “Notice Plan” means the plan for providing notice of these Actions and this Class Settlement Agreement to members of the Settlement Class and contained in Appendix E hereto.

nn. “Objector” means any member of the Settlement Class that timely and properly submits an objection to this Class Settlement Agreement in the manner provided for in Paragraphs 50-52 below.

oo. “Operative Class Action Complaints” means the Animal Land Consolidated Class Action Complaint and the Marcus Class Action Complaint.

pp. “Other Payment Network” means a payment network that supports merchant acceptance of charge, credit, debit, prepaid and smart cards, and other account access devices, payment cards, payment services, payment methods, and payment products other than American Express-Branded Cards, including, but not limited to, Visa, MasterCard, Discover, PayPal, JCB, the STAR Network, and China Union Pay.

qq. “Paragraph” or “Paragraphs” means one or more paragraphs of this Class Settlement Agreement.

rr. “Person” means any natural person, corporation, limited liability company, partnership, firm, association, governmental authority, business, or any other entity whether acting in an individual, fiduciary or other capacity.

ss. “Prepaid Card” is any card, plate, or other payment code, token, device, or service where funds are loaded and/or reloaded prior to use at merchants.

tt. “Proprietary Store Card” means a private label card issued by or on behalf of a particular merchant, containing that merchant’s brand and usable only at that merchant’s U.S. establishments.

uu. “Provisions Change Date” means the date on which the amendments in Paragraph 8 take effect.

vv. “Release Termination Date” means the date that is the latest of:

- i. Ten years following the Provisions Change Date; and
- ii. The date after which either of the following conditions is no longer true:
  1. American Express maintains its NDPs and HAC provisions in substantially the same form as they are in as a result of this Class Settlement Agreement except insofar as the changes to the NDPs or HAC provisions render such provisions less restrictive than they are following the changes required by this Class Settlement Agreement; and
  2. The Visa Defendants or the MasterCard Defendants (as defined in the settlement in MDL 1720) maintain their rules or provisions that govern surcharging, non-discrimination, or requirements to honor

their cards in substantially the same form as they are in as a result of, or can become pursuant to, the settlement in MDL 1720; provided, however, that if the duration of the releases of the Rule 23(b)(2) Settlement Class Released Parties (as defined in the settlement in MDL 1720) are limited as a result of the approval process in MDL 1720 (including by agreement of the parties in MDL 1720), or by any other court of competent jurisdiction, then the Release Termination Date will be the latest of:

iii. Ten years from the Provisions Change Date; and

iv. The duration of the Visa or MasterCard releases as so limited.

ww. “Settlement Class” means the members of the settlement class defined in Paragraph 2 below, from which no exclusions will be permitted.

xx. “Settlement Class Released Parties” means the Persons described in Paragraph 25 below.

yy. “Settlement Class Releasing Parties” means the Persons described in Paragraph 24 below.

zz. “Settlement Class Notices” means the post card and publication notices concerning these Actions and this Class Settlement Agreement to be provided to members of the Settlement Class, which are contained in Appendix F hereto.

aaa. “Settlement Effective Date” means the Business Day after all of the following conditions have been satisfied: (i) the Court has finally approved this Class Settlement Agreement as resolving both the Animal Land Consolidated Action and the Marcus Action; (ii) the Court has entered the Class Settlement Order and Final Judgment without material modification from the form of the attached Appendix G hereto, including without any modification of the certification for the purposes of settlement of the Settlement Class (from

which exclusions are not permitted), and including without any modification of the release and covenant not to sue provided by the Settlement Class; (iii) in the event that there are any appeals from the Court's Class Settlement Order and Final Judgment, any and all such appeals are affirmed without material modification, including without any modification of the certification for the purposes of settlement of the Settlement Class (from which exclusions are not permitted), and including without any modification of the release and covenant not to sue provided by the Settlement Class; and (iv) the Class Settlement Order and Final Judgment is no longer subject to further court review by rehearings, appeals, petitions for *certiorari*, or otherwise. The Class Settlement Order and Final Judgment shall be deemed to be no longer subject to further court review either (x) seventy-five days after the Class Settlement Order and Final Judgment has been entered by the Court if no notice, motion, or other document is filed within that time seeking any rehearing, reconsideration, vacation, review, appeal, or any other action regarding the Class Settlement Order and Final Judgment or this Class Settlement Agreement, or (y) if any such notice, motion, or document is filed, then ten Business Days after the date on which all appellate and/or other proceedings resulting from any such notices, motions, or documents have been finally terminated or resolved without modification of the Class Settlement Order and Final Judgment or this Class Settlement Agreement and in such a manner as to permit no further judicial action, challenge, modification, or review of the Class Settlement Order and Final Judgment or this Class Settlement Agreement. Any proceeding or order, or any appeal or petition for a writ of *certiorari*, pertaining solely to an application for the Attorneys' Fee and Expense Award, however, shall not in any way prevent satisfaction of the conditions identified in this Paragraph.

bbb. “Settlement Preliminary Approval Date” means the Business Day after all of the following conditions have been satisfied: (i) the Class Plaintiffs, Class Counsel, and the Defendants all have executed this Class Settlement Agreement, and (ii) the Court has entered the Class Settlement Preliminary Approval Orders without material modification from the forms of the attached Appendix B, Appendix C, and Appendix D hereto, including without any modification of the provisional certification for the purposes of settlement of the Settlement Class (from which exclusions are not permitted), and including without any modification of the release and covenant not to sue provided by the Settlement Class.

ccc. “Settlement Website” means the dedicated website that will be established for the purposes of this case pursuant to the Notice Plan and which is described in Paragraph 48 below.

ddd. “United States” or “U.S.” means all the States, territories, and possessions of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any political subdivision of the foregoing.

eee. “United States Merchant Locations” means all merchant locations in the United States where American Express-Branded Cards are accepted, including physical merchant locations, online, and mobile applications.

**Settlement Class**

2. The Class Plaintiffs will seek, and the Defendants will not oppose, the Court’s certification of a settlement class for settlement purposes only, defined as follows: A “Settlement Class” under Federal Rule of Civil Procedure 23(a) and Federal Rule of Civil Procedure 23(b)(2), from which exclusions shall not be permitted, consisting of all Persons that as of the Settlement Preliminary Approval Date or in the future accept any American Express-

Branded Cards at any location in the United States (including at a physical merchant location, online and mobile application), except that the Settlement Class shall not include the named Defendants, their directors, officers, or members of their families.

3. The Settlement Class shall include all Persons, described in Paragraph 2 above, regardless of whether such Persons have restricted, in any way, the means by which they can resolve disputes against the Defendants or the procedural mechanisms available for the resolution of disputes against the Defendants. Such restrictions include, without limitation, restrictions regarding or requiring arbitration, jury trials, participation in dispute resolution in a representative capacity, participation in dispute resolution as a member of a class or on a consolidated basis, or any other rights that may be available in court that are not available in arbitration.

4. The Class Plaintiffs and the Defendants stipulate and agree that the definition of the injunctive relief class contained in the Operative Class Action Complaints is amended to be the same as the Settlement Class, and that the Court's orders preliminarily and finally approving this Class Settlement Agreement must so amend the Operative Class Action Complaints.

5. The Class Plaintiffs will seek, and the Defendants will not oppose, the Court's appointment of the law firms of Friedman Law Group LLP, Patton Boggs LLP, and Reinhardt, Wendorf & Blanchfield as Class Counsel to represent the members of the Settlement Class.

6. The Class Plaintiffs agree that they will not seek in any way, by class definition or otherwise, to exclude themselves from the Settlement Class and will not object to the Court's preliminary or final approval of this Class Settlement Agreement. The Class Plaintiffs will seek, and on the basis of and in reliance on this commitment the Defendants will not oppose, the

Court's appointment of the Class Plaintiffs as the representative members of the Settlement Class.

**Consideration Provided to Members of the Settlement Class**

7. Members of the Settlement Class shall receive relief as set forth below.

8. American Express will amend the American Express Merchant Regulations and/or American Express card acceptance agreements applicable to United States Merchant Locations to provide for the following:

a. The American Express NDPs shall remain unchanged and shall continue to prohibit discrimination against the use of American Express-Branded Cards, except as expressly set forth in this Class Settlement Agreement.

b. Any surcharge, whether expressed as a percentage or flat fee, that a merchant imposes on American Express-Branded Credit Card transactions must not be any higher than any surcharge imposed on transactions effected with any other Credit Card, payment card, payment method, products, or services accepted by the merchant, after accounting for any discounts or rebates offered at the point of sale, except for (i) Debit Cards; (ii) cash; (iii) checks; (iv) transfer of funds to merchants via bank wire transfer or via the Automated Clearing House of the Federal Reserve System; and (v) Proprietary Store Cards. The phrase "after accounting for any discounts or rebates at the point of sale" shall mean that to the extent the merchant offers a rebate or discount at the point of sale for the use of any other Credit Card, payment card, payment service or payment method (except for Debit Cards, cash, checks, funds transfers as described above or Proprietary Store Cards), any surcharge, whether expressed as a percentage or flat fee, that the merchant imposes on American Express-Branded Credit Card transactions must not be higher than the net amount of (x) the surcharge imposed on transactions effected

using such other Credit Card, payment card, payment service or payment method, offset by (y) such rebate or discount.

c. In addition, no surcharge imposed on an American Express-Branded Credit Card, whether expressed as a percentage or flat fee, may be higher than the lowest of (i) the amount of the American Express Merchant Discount Rate charged to that merchant for American Express acceptance for the specific transaction; and (ii) any surcharge that the merchant is permitted to impose (which may be zero) on transactions effected with any other Credit Card, regardless of whether the merchant actually surcharges transactions effected on such other Credit Card in excess of the permitted amount.

d. The American Express NDPs shall continue to prohibit any discrimination against American Express-Branded Debit Card transactions (including without limitation American Express-Branded Traditional Debit Card transactions) as compared to any Other Payment Network's Debit Card transactions.

e. Consistent with this Class Settlement Agreement, a merchant may impose a surcharge on Credit Card transactions, including without limitation American Express-Branded Credit Card transactions, without imposing any surcharge upon any transactions made directly with a Debit Card.

f. The American Express HAC Provisions remain unchanged and continue to require that merchants agreeing to accept American Express-Branded Cards must accept all American Express-Branded Cards, except that in the event that there is an American Express-Branded Traditional Debit Card, merchants can choose not to accept such American Express-Branded Traditional Debit Cards.

g. For the sake of clarity, the foregoing change to the American Express HAC Provisions would only permit a merchant that accepts American Express-Branded Cards to choose not to accept an American Express-Branded Traditional Debit Card.

h. The parties understand that (a) there currently are no American Express-Branded Traditional Debit Cards; and (b) American Express's HAC provisions will continue to require merchants that accept any American Express-Branded Cards to accept all currently existing American Express-Branded Cards.

i. Nothing in this Class Settlement Agreement shall prevent Defendants from having a provision in the American Express Merchant Regulations or American Express card acceptance agreements that prevents merchants that charge a convenience fee from also charging a surcharge.

9. The foregoing amendments described in Paragraph 8 above shall take effect on the Provisions Change Date, which will be no later than forty-five days after the Settlement Effective Date.

10. Nothing in this Class Settlement Agreement shall prevent the Defendants from agreeing with merchants (a) not to impose a surcharge on any American Express-Branded Card transactions or (b) not to impose a surcharge on American Express-Branded Credit Card transactions different from any surcharge imposed on Debit Card transactions, so long as such an agreement is (i) for a fixed duration subject to extension by agreement of the parties; (ii) individually negotiated with the merchant; and (iii) supported by Consideration. American Express will not terminate or refuse to renew the card acceptance agreement of any merchant solely as a consequence of such merchant imposing surcharges in compliance with this Class Settlement Agreement or declining to accept an American Express-Branded Traditional Debit

Card in compliance with this Class Settlement Agreement. For the avoidance of doubt, this Class Settlement Agreement does not impact American Express's existing rights to terminate or refuse to renew the acceptance agreement of any merchant for any other reason, and nothing in this Class Settlement Agreement shall affect American Express's right to limit or decline acceptance of American Express-Branded Cards by a payment aggregator or payment service provider that surcharges American Express-Branded Cards or discriminates against American Express-Branded Cards.

11. The requirements of Paragraph 8 above shall remain in effect until the Release Termination Date.

12. To the extent that an American Express card acceptance agreement applicable to any United States Merchant Location contains provisions that would prohibit the conduct described in Paragraph 8, subject to Paragraph 10, the Defendants will not enforce those provisions at any time between the Provisions Change Date and the Release Termination Date. The preceding sentence shall not apply, however, should the Class Settlement Agreement be terminated pursuant to Paragraphs 61-63 below or materially modified or not fully affirmed on any appeal or otherwise.

13. A merchant's ability to surcharge American Express-Branded Credit Card transactions is conditioned on the merchant's agreement to abide by the following disclosure requirements, which will be set forth in further detail (but not in a fashion that is more restrictive of merchant surcharging) in the American Express Merchant Regulations and American Express card acceptance agreements. A merchant must:

a. Provide the Defendants and the merchant's acquirer with no less than thirty days' advance written notice that the merchant intends to impose surcharges.

b. Provide clear disclosure to the merchant's customer at the point of store entry, or in an online or mobile environment on the first page that references Credit Card brands and on any page that identifies payment methods accepted by the merchant, that the merchant imposes a surcharge for all Credit Cards accepted.

c. Such disclosure to the merchant's customers of the merchant's surcharging practices must be provided in a manner that does not disparage American Express. The information on the merchant's surcharging practices at the point of interaction must include (i) the amount of any surcharge that the merchant imposes and (ii) a statement that the surcharge is being imposed by the merchant.

d. Provide clear disclosure of the dollar amount of the surcharge on the transaction receipt provided by the merchant to the customers.

For the avoidance of doubt, the foregoing provisions shall not be deemed to permit the merchant to disclose its American Express Merchant Discount Rate, provided however, that nothing in this Class Settlement Agreement shall limit a merchant's obligations with respect to the disclosures required under paragraphs 42(c)(ii) and 55(c)(ii) of the class settlement agreement in MDL 1720.

14. The Defendants shall modify any other rules as necessary to ensure that the changes set forth in Paragraph 8 (as subject to Paragraph 10) above are applicable to merchants at any United States Merchant Location.

15. The Defendants retain the right, but are in no way obligated, to further modify their rules, provisions, operating regulations, American Express Merchant Regulations, card acceptance agreements (to the extent permitted by each agreement), practices, policies, or procedures in a manner that is more permissive of a merchant's ability to engage in the point of

sale practices described in Paragraph 8; provided, however, that it is expressly agreed for the purpose of clarity that any claim relating to the lack of such further modification of the rules, provisions, operating regulations, American Express Merchant Regulations, card acceptance agreements (to the extent permitted by each agreement), practices, policies, or procedures is within the scope of the release and covenant not to sue set forth in Paragraphs 24-41.

16. The Defendants shall not be required to modify their rules, provisions, operating regulations, American Express Merchant Regulations, card acceptance agreements, practices, policies, or procedures in any manner other than as provided in Paragraph 8 above. Nothing in this Class Settlement Agreement shall prohibit Defendants from (i) implementing, modifying, or continuing a rule that requires a merchant that engages in surcharging to do so at all of its United States Merchant Locations that operate under a common brand, banner, or trade name and to do so for all sales channels within such establishments except where prohibited by law; or (2) implementing, modifying, or continuing a rule that requires a merchant that chooses to accept an American Express Traditional Debit Card to do so at all of its United States Merchant Locations that operate under a common brand, banner, or trade name.

17. The Defendants will pay up to an aggregate of \$2 million in costs relating to providing notice to the Settlement Class in the Animal Land Consolidated Action and the Settlement Class in the Marcus Action (whether by making payments directly to vendors, via Class Counsel, or as the parties may otherwise agree), and will provide to the Class Administrator such electronic and physical mail address information as is reasonably available for the provision of such notice. Any additional notice costs will be borne by Class Counsel in each case.

18. Upon preliminary approval, Defendants will establish the Merchant Communications Fund in an amount not to exceed \$2 million. The Merchant Communications Fund shall be used solely by Class Counsel for the purpose of educating members of the Settlement Class about the amendments to the American Express NDPs and American Express HAC provisions. Defendants will maintain the Merchant Communications Fund for a period of 48 months. Any unused funds in the Merchant Communications Fund following this 48 month period will revert to the Defendants.

19. The Merchant Communications Fund shall be used solely to fund media communications and/or advertising directed to merchants for the purposes specified in Paragraph 18. The Merchant Communications Fund shall not be used for any other purpose, such as attorneys' fees, lobbying, litigation, or any communications and/or advertising directed at consumers.

20. At least five days prior to the withdrawal or expenditure of any funds from the Merchant Communications Fund, Class Plaintiffs shall notify American Express of any proposed expenditures or withdrawal. If American Express believes that the proposed expenditure or withdrawal would be in violation of Paragraphs 18,19, or 21, such expenditure or withdrawal shall not take place unless and until the issue is resolved by further agreement of the parties or by the Court in the absence of such agreement.

21. Class Counsel shall provide the Defendants with at least five Business Days advance notice of the contents, form, method or location of any media communication or advertising funded by the Merchant Communications Fund. All such media communications and advertising must conform to the following guidelines:

a. No media communications or advertising may disparage the business or reputation of American Express, compare the costs of accepting American Express-Branded Cards to other cards, or make any statement that, if made by a merchant to a consumer, would violate the American Express NDPs.

b. Media communications and advertising may describe the amendments to the American Express NDPs and American Express HAC provisions; provided, however, that they may not describe the acceptance practices of particular merchants or groups of merchants or particular types of merchants.

c. All media communications and advertising must be factually accurate.

d. All media communications and advertising regarding surcharging must indicate in words or in substance that if a merchant surcharges American Express-Branded Credit Card transactions, then (i) the merchant must surcharge all Credit Cards at parity and (ii) the merchant may not engage in differential surcharging among Credit Cards.

22. Nothing in the foregoing changes to the American Express Merchant Regulations and/or American Express card acceptance agreements described in Paragraph 8 above shall affect any obligation of any member of the Settlement Class to comply with all applicable state or federal laws, including but not limited to state laws regarding surcharging of credit or debit card transactions, and federal and state laws regarding deceptive or misleading disclosures.

23. Nothing in this Class Settlement Agreement shall impose any limitation upon any other conduct of any Settlement Class Released Party not expressly modified by the terms hereof.

**Release and Covenant Not to Sue by the Settlement Class**

24. The “Settlement Class Releasing Parties” are the Class Plaintiffs, each and every member of the Settlement Class, and any of their respective past, present or future: officers and directors; stockholders, agents, employees, legal representatives, partners and associates (in their capacities as stockholders, agents, employees, legal representatives, partners, and associates of a member of the Settlement Class only); and trustees, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns—whether or not they object to this Class Settlement Agreement, and whether or not they exercise any benefit provided under the Class Settlement Agreement, whether directly, representatively, derivatively, or in any other capacity.

25. The “Settlement Class Released Parties” are all of the following:

a. American Express Company and American Express Travel Related Services Company, Inc.

b. For each of the entities in Paragraph 25(a) above, each of their respective past, present, and future, direct and indirect, parents (including holding companies), subsidiaries, affiliates, and associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934, as amended), or any other entities in which more than 50% of the equity interests are held, and any unaffiliated entities that are licensed to issue American Express-Branded Cards or are authorized or required to enforce the American Express HAC Provisions or the American Express NDPs.

c. For each of the entities in Paragraphs 25 (a)-(b) above, each of their respective past, present, and future principals, trustees, partners, officers, directors, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators,

shareholders, advisors, predecessors, successors, purchasers, and assigns (including acquirers of all or substantially all of the assets, stock, or other ownership interests of each of the foregoing entities to the extent a successor's, purchaser's, or acquirer's liability is based on the actions of the Settlement Class Released Parties as defined in Paragraphs 25 (a)-(b) above).

26. In addition to the effect of the Class Settlement Order and Final Judgment entered in accordance with this Class Settlement Agreement, including but not limited to any *res judicata* effect, the Settlement Class Releasing Parties (i) hereby expressly and irrevocably waive, and fully, finally, and forever settle, discharge, and release the Settlement Class Released Parties from any and all manner of claims, demands, actions, suits, and causes of action, whether individual, class, representative, or otherwise in nature, for any form of declaratory, injunctive, or equitable relief and (ii) hereby expressly and irrevocably waive any and all defenses relating to any form of declaratory, injunctive, or equitable relief, in each case relating to the period from the beginning of time to and including the Release Termination Date, regardless of when such claims or defenses accrue, whether known or unknown, suspected or unsuspected, in law or in equity that any Settlement Class Releasing Party now has, or hereafter can, shall, or may in the future have, arising out of or relating in any way to any conduct, acts, transactions, events, occurrences, statements, omissions, or failures to act of any Settlement Class Released Party that fall within the identical factual predicate doctrine as applied to the Marcus Action and the Animal Land Consolidated Action, including but not limited to any claims based on or relating to:

a. Any actual or alleged rules or provisions that limit merchants, in any way, from engaging in any of the following (except as explicitly provided by applicable law):  
indicating or implying a preference, directly or indirectly for any payment product or method of

payment; dissuading customers from using American Express-Branded Cards; criticizing or mischaracterizing American Express-Branded Cards or any services or programs of American Express; persuading or prompting customers to use other payment products or methods of payment; imposing any restriction, conditions, or disadvantages on American Express-Branded Cards that are not imposed equally on all other payment products; engaging in activities that harm American Express's business or brand; promoting any payment products or methods of payment more actively than American Express-Branded Cards; communicating with customers about the cost of acceptance of payment cards, payment products, or methods of payments; displaying signs or decals of other payment products, payment cards, or methods of payment more prominently than signs or decals for American Express-Branded Cards; and any other conduct inconsistent with the American Express NDPs;

b. Any actual or alleged "no surcharge" rules or provisions, "no discounting" rules or provisions, "non-discrimination" rules or provisions, "anti-steering" rules or provisions, rules or provisions that limit merchants in favoring or steering customers to use certain payment forms, or any point of sale practices relating to any American Express-Branded Cards;

c. In any proceeding related to the American Express NDPs or American Express HAC Provisions, any claims or defenses that have been raised or could have been raised in these Actions concerning the enforceability or legality of any rules or provisions (as they currently exist or as they exist in the future in substantially similar form) that limit merchants, in any way, from consolidating or aggregating any claim with another claim asserted by any other Person; acting as a representative plaintiff in any class action; or participating in any class action as a non-representative member of the class.

d. Any actual or alleged rules or provisions that require merchants to accept all American Express-Branded Cards, including but not limited to charge cards, credit cards, corporate cards, debit cards, prepaid cards, reloadable prepaid cards, Bluebird® cards, Serve® cards, and gift cards, as a condition of accepting any American Express-Branded Card;

e. Any actual or alleged rules or provisions that tie acceptance by merchants of any type of American Express-Branded Card to any other type of American Express-Branded Card;

f. The future effect in the United States of the continued imposition of or adherence to any rule or provision identified above, any rule or provision as modified by this Class Settlement Agreement, and any rule or provision that is substantially similar; and

g. Any conduct in these Actions, including the negotiation and execution of this Class Settlement Agreement.

And it is expressly agreed, for purposes of clarity, without expanding or limiting the foregoing, that any claims based on or relating to (a)-(g) above are claims that fall within the identical factual predicate doctrine as applied to the Marcus Action and the Animal Land Consolidated Action.

27. In addition to the effect of the Class Settlement Order and Final Judgment entered in accordance with this Class Settlement Agreement, including but not limited to any *res judicata* effect, the Settlement Class Releasing Parties hereby expressly and irrevocably waive, and fully, finally, and forever settle, discharge, and release the Settlement Class Released Parties from any and all manner of claims, demands, actions, suits, and causes of action, whether individual, class, representative, or otherwise in nature, for any damages or other monetary relief relating to the period after the Provisions Change Date and continuing to and including the

Release Termination Date, regardless of when such claims accrue, whether known or unknown, suspected or unsuspected, in law or in equity that any Settlement Class Releasing Party now has, or hereafter can, shall, or may in the future have, arising out of or relating in any way to any conduct, acts, transactions, events, occurrences, statements, omissions, or failures to act of any Settlement Class Released Party, provided such claims fall within the identical factual predicate doctrine as applied to the Marcus Action and the Animal Land Consolidated Action and provided further that such claims are based on the American Express NDPs or the American Express HAC Provisions (including as amended in connection with this Class Settlement Agreement), including but not limited to any claims based on or relating to the following:

a. Any actual or alleged rules or provisions that limit merchants, in any way, from engaging in any of the following (except as explicitly provided by applicable law): indicating or implying a preference, directly or indirectly for any payment product or method of payment; dissuading customers from using American Express-Branded Cards; criticizing or mischaracterizing American Express-Branded Cards or any services or programs of American Express; persuading or prompting customers to use other payment products or methods of payment; imposing any restriction, conditions, or disadvantages on American Express-Branded Cards that are not imposed equally on all other payment products; engaging in activities that harm American Express's business or brand; promoting any payment products or methods of payment more actively than American Express-Branded Cards; communicating with customers about the cost of acceptance of payment cards, payment products, or methods of payments; displaying signs or decals of other payment products, payment cards, or methods of payment more prominently than signs or decals for American Express-Branded Cards; and any other conduct inconsistent with the American Express NDPs;

b. Any actual or alleged “no surcharge” rules or provisions, “no discounting” rules or provisions, “non-discrimination” rules or provisions, “anti-steering” rules or provisions, rules or provisions that limit merchants in favoring or steering customers to use certain payment forms, or any point of sale practices relating to any American Express-Branded Cards;

c. Any actual or alleged rules or provisions that require merchants to accept all American Express-Branded Cards, including but not limited to charge cards, credit cards, corporate cards, debit cards, prepaid cards, reloadable prepaid cards, Bluebird® cards, Serve® cards, and gift cards, as a condition of accepting any American Express-Branded Card;

d. Any actual or alleged rules or provisions that tie acceptance by merchants of any type of American Express-Branded Card to any other type of American Express-Branded Card; and

e. The future effect in the United States of the continued imposition of or adherence to any rule or provision identified above, any rule or provision as modified by this Class Settlement Agreement, and any rule or provision that is substantially similar.

And it is expressly agreed, for purposes of clarity, without expanding or limiting the foregoing, that any claims based on or relating to (a)-(e) above are claims that are based on the American Express NDPs or the American Express HAC Provisions.

28. Each Settlement Class Releasing Party further expressly and irrevocably waives, and fully, finally, and forever settles and releases, any and all defenses, rights, and benefits that the Settlement Class Releasing Party may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in the preceding Paragraphs 24-27. Without limiting the generality of the foregoing, each Settlement Class Releasing Party expressly and irrevocably waives and releases any and all

defenses, rights, and benefits that the Settlement Class Releasing Party might otherwise have in relation to the release by virtue of the provisions of California Civil Code Section 1542, South Dakota Codified Laws Section 20-7-11, or similar laws of any other state or jurisdiction.

CALIFORNIA CIVIL CODE SECTION 1542 PROVIDES: "CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." SECTION 20-7-11 PROVIDES: "UNKNOWN CLAIMS NOT RELEASED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." In

addition, although each Settlement Class Releasing Party may hereafter discover facts other than, different from, or in addition to those that it or he or she knows or believes to be true with respect to any claims released in the preceding Paragraphs 24-27, each Settlement Class Releasing Party hereby expressly waives, and fully, finally, and forever settles, discharges, and releases, any known or unknown, suspected or unsuspected, contingent or non-contingent claims within the scope of the preceding Paragraphs 24-27, whether or not concealed or hidden, and without regard to the subsequent discovery or existence of such other, different, or additional facts. Class Plaintiffs acknowledge, and the members of the Settlement Class shall be deemed by operation of the Class Settlement Order and Final Judgment to have acknowledged, that the

foregoing waiver was separately bargained for and is a key element of this Class Settlement Agreement.

29. Each Settlement Class Releasing Party covenants and agrees that it shall not, hereafter, seek to establish, or permit another to act for it in a representative capacity to seek to establish, liability against any of the Settlement Class Released Parties based, in whole or in part, upon any conduct covered by any of the claims released in Paragraphs 24-28 above.

30. For purposes of clarity, it is specifically intended for the release and covenant not to sue provisions of Paragraphs 24-29 above to preclude all members of the Settlement Class from seeking or obtaining any form of declaratory, injunctive, or equitable relief prior to the Release Termination Date (which date shall be a minimum of ten years following the Provisions Change Date) with respect to any rule or provision that was or could have been challenged in these Actions as it is alleged to exist, now exists, may be modified in the manner provided in Paragraph 8, subject to Paragraph 10, above, or may in the future exist in the same or substantially similar form thereto.

31. For purposes of clarity, it is specifically intended for the release and covenant not to sue provisions of Paragraphs 24-29 above to preclude all members of the Settlement Class from seeking or obtaining any form of damages or other monetary relief allegedly arising during the period starting with the Provisions Change Date and ending with the Release Termination Date (which period shall be a minimum of ten years) with respect to any American Express NDPs or the American Express HAC Provisions (including as amended in connection with this Settlement) that was or could have been challenged in these Actions as it is alleged to exist, now exists, may be modified in the manner provided in Paragraph 8, subject to Paragraph 10, above, or may in the future exist in the same or substantially similar form thereto.

32. For purposes of clarity, it is specifically intended for the release and covenant not to sue provisions of Paragraphs 24-29 above to preclude all members of the Settlement Class from challenging the American Express NDPs, the American Express HAC Provisions, or the changes to those provisions described in Paragraph 8, subject to Paragraph 10 (by seeking an injunction, a declaratory judgment, or any other form of equitable relief), or seeking damages associated with the American Express NDPs or the changes to those provisions described in Paragraph 8, subject to Paragraph 10, for a period starting with the Provisions Change Date and ending with the Release Termination Date (which period shall be for a minimum of ten years).

33. It is intended for the release and covenant not to sue provisions of Paragraph 24 to 29 to be as broad as legally permissible subject to the identical factual predicate doctrine as applied to the Animal Land Consolidated Action and the Marcus Action.

34. For avoidance of doubt, no provision in this Class Settlement Agreement releases any claim of a Settlement Class Releasing Party that is based on:

- a. Breach of this Class Settlement Agreement;
- b. *Parens patriae*, law enforcement, or regulation actions by any government or quasi-governmental entity to enforce sovereign or quasi-sovereign interests;
- c. An action by a competitor except for claims by such competitor in its capacity as a merchant; or
- d. Standard commercial disputes arising in the ordinary course of business regarding individual chargeback disputes, products liability, breach of warranty, misappropriation of cardholder data or invasion of privacy, compliance with technical specifications for a merchant's acceptance of a Credit Card or Debit Card, and any other dispute arising out of a breach of any contract between any of the Settlement Class Releasing Parties and

any of the Settlement Class Released Parties; provided, however, that Paragraphs 24-33 above and not this Paragraph shall control in the event that any such claim challenges the legality of any American Express HAC Provisions, any American Express NDPs, discrimination rule, provision, or other conduct covered by any of the claims released in Paragraphs 24-33 above.

35. The parties recognize that certain provisions or aspects of the American Express NDPs are currently being challenged by the Department of Justice in *United States v. American Express*, 10-cv-4496 (E.D.N.Y.) (NGG) (RER). In the event that such litigation concludes with a judgment, order or consent decree implementing a further revision of American Express's rules, nothing in this release shall be deemed to affect any right that a member of the settlement class may have to seek enforcement of any such judgment, order or consent decree, or to enjoy any benefits or rights to injunctive relief secured by such judgment, order or consent decree.

36. Each Settlement Class Releasing Party further releases each of the named Defendants and their counsel and experts in these Actions from any claims relating to the conduct in these Actions and defense of these Actions, including the negotiation and terms of this Class Settlement Agreement, except for any claims relating to enforcement of this Class Settlement Agreement. Each named Defendant releases the Class Plaintiffs, other plaintiffs in the Class Actions, Class Counsel, and their respective experts in the Class Actions, from any claims relating to their institution or prosecution of the Class Actions, including the negotiation and terms of this Class Settlement Agreement, except for any claims relating to enforcement of this Class Settlement Agreement.

37. In the event that this Class Settlement Agreement is terminated pursuant to Paragraphs 61-63 below, or any condition for the Settlement Effective Date is not satisfied, the

release and covenant not to sue provisions of Paragraphs 24-36 above shall be null and void and unenforceable.

38. All claims for injunctive relief sought in the Class Actions shall be dismissed with prejudice.

39. All claims for damages sought in the Class Actions, including without limitation the Marcus Action, shall be dismissed without prejudice.

40. Except as expressly set forth in Paragraphs 26 and 27 nothing in this release and covenant not to sue shall affect the right of any Settlement Class Member to pursue any action or arbitration for damages for any claim. Subject to the release and covenant not to sue, each of the putative class representatives in the Class Actions, including without limitation The Marcus Corporation, agrees that it can only pursue any damages claims through binding arbitration consistent with its card acceptance agreement with American Express (as amended or modified).

41. The release and covenant not to sue of the Settlement Class shall remain in effect until the Release Termination Date. No member of the Settlement Class can challenge the American Express NDPs or American Express HAC Provisions, or the amendments set forth in Paragraph 8 (by seeking an injunction, declaratory judgment, or any other form of equitable relief) or seek damages associated with the American Express NDPs or American Express HAC Provisions or the amendments set forth in Paragraph 8 relating to the period of time between the Provisions Change Date and the Release Termination Date.

**Preliminary Approval in the Marcus Action**

42. Separately from any motion for the Attorneys' Fee and Expense Award, the Class Plaintiffs and Class Counsel agree to file with the Court in the Marcus Action a motion and supporting papers seeking preliminary approval of this Class Settlement Agreement, after

providing Defendants with at least two days advance notice of the contents of those papers, and to seek the Court's entry of the Class Settlement Preliminary Approval Order in the form in Appendix B hereto, which will:

a. Preliminarily approve this Class Settlement Agreement as being within the range of a fair, reasonable, and adequate settlement within the meaning of applicable law.

b. Approve the provisional certification of the Settlement Class defined in Paragraph 2 above for settlement purposes only, and declare that in the event of termination of this Class Settlement Agreement, certification of the Settlement Class shall automatically be vacated and the Defendants may fully contest certification of any class as if no Settlement Class had been certified.

c. Appoint the Class Plaintiffs to serve as the representatives of the Settlement Class and appoint as Class Counsel the law firms of Friedman Law Group LLP, Patton Boggs LLP, and Reinhardt, Wendorf & Blanchfield.

d. Order that notice shall be provided to the Settlement Class by subsequent order of the Court or another court of competent jurisdiction.

e. Order that a final approval hearing shall be set by subsequent order of the Court or another court of competent jurisdiction.

f. Stay all further proceedings in the Marcus Action as between the Class Plaintiffs or any other plaintiff in the Marcus Action, and the Defendants or any other defendant in the Marcus Action, except for proceedings related to effectuating and complying with this Class Settlement Agreement, pending the Court's determination of whether this Class Settlement Agreement should be finally approved or the termination of this Class Settlement Agreement.

g. Enjoin the members of the Settlement Class, pending (i) entry by the Court of the Supplemental Class Settlement Preliminary Approval Order or (ii) the termination of the Class Settlement Agreement, from challenging in any action or proceeding any matter covered by the Class Settlement Agreement or its release and covenant not to sue provisions, except for (x) proceedings in the Class Actions related to effectuating and complying with the Class Settlement Agreement; (y) proceedings brought in this Court challenging or objecting to the Class Settlement Agreement; and (z) subject to Paragraph 40, any claims for damages based on any conduct, acts, transactions, events, occurrences, statements, omissions, or failures to act of any Settlement Class Released Party prior to the date of the Court's entry of the Class Settlement Preliminary Approval Order. The Class Settlement Preliminary Approval Order shall state that this injunction shall be subject to extension as set forth in the Supplemental Class Settlement Preliminary Approval Order.

43. Separately from any motion for the Attorneys' Fee and Expense Award, the Class Plaintiffs and Class Counsel agree to file with the Court in the Marcus Action a motion and supporting papers seeking entry of the Supplemental Class Settlement Preliminary Approval Order, after providing Defendants with at least five days advance notice of the contents of those papers, and to seek the Court's entry of the Supplemental Class Settlement Preliminary Approval Order in the form in Appendix C hereto, which will:

- a. Affirm the Class Settlement Preliminary Approval Order in the Marcus Action in all respects.
- b. Appoint Epiq System as the Class Administrator to assist Class Counsel in effectuating and administering the Notice Plan.

c. Order that notice should be provided to members of the Settlement Class but that no exclusions should be permitted from the Settlement Class.

d. Approve the method of notice to be provided to the Settlement Class in substantially the form described in the Notice Plan and budget contained in Appendix E hereto, including use of the website and post card notice and publication notice contained in Appendix F hereto, and direct any further notice (and expenses therefore) that the Court may find necessary to provide due process.

e. Schedule a final approval hearing for a time and date convenient for the Court on a date after May 18, 2014 that is at least one hundred nineteen days after (i) the Court's entry of the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Class Action or (ii) the Court's entry of the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action, whichever is later, and establish a briefing schedule consistent with this Agreement and the convenience of the Court. At the final approval hearing the Court will conduct an inquiry into the fairness, reasonableness, and adequacy of this Class Settlement Agreement and address any objections to it, and determine whether this Class Settlement Agreement should be finally approved, and whether to approve any motion for the Attorneys' Fee and Expense Award.

f. Stay all further proceedings in the Marcus Action as between the Class Plaintiffs or any other plaintiff in the Marcus Action, and the Defendants or any other defendant in the Marcus Action, except for proceedings related to effectuating and complying with this Class Settlement Agreement, pending the Court's determination of whether this Class Settlement Agreement should be finally approved or the termination of this Class Settlement Agreement.

g. Enjoin the members of the Settlement Class, pending the Court's determination of whether this Class Settlement Agreement should finally be approved or the termination of this Class Settlement Agreement, from challenging in any action or proceeding any matter covered by this Class Settlement Agreement or its release and covenant not to sue provisions, except for (i) proceedings in the Class Actions related to effectuating and complying with this Class Settlement Agreement, (ii) proceedings brought in this Court challenging or objecting to the Class Settlement Agreement and (iii) subject to Paragraph 40, any claims for damages based on any conduct, acts, transactions, events, occurrences, statements, omissions, or failures to act of any Settlement Class Released Party prior to the date of the Court's entry of the Class Settlement Preliminary Approval Order.

**Preliminary Approval in the Animal Land Consolidated Action**

44. Separately from any motion for the Attorneys' Fee and Expense Award, the Class Plaintiffs and Class Counsel agree to file with the Court in the Animal Land Consolidated Action a motion and supporting papers seeking preliminary approval of this Class Settlement Agreement, after providing Defendants with at least five days advance notice of the contents of those papers, and to seek the Court's entry of the Class Settlement Preliminary Approval Order in the form in Appendix D hereto, which will:

a. Preliminarily approve this Class Settlement Agreement as being within the range of a fair, reasonable, and adequate settlement within the meaning of applicable law.

b. Approve the provisional certification of the Settlement Class defined in Paragraph 2 above for settlement purposes only, and declare that in the event of termination of this Class Settlement Agreement, certification of the Settlement Class shall automatically be

vacated and the Defendants may fully contest certification of any class as if no Settlement Class had been certified.

c. Appoint the Class Plaintiffs to serve as the representatives of the Settlement Class and appoint as Class Counsel the law firms of Friedman Law Group LLP, Patton Boggs LLP, and Reinhardt, Wendorf & Blanchfield.

d. Appoint \_\_\_ as the Class Administrator to assist Class Counsel in effectuating and administering the Notice Plan.

e. Order that notice should be provided to members of the Settlement Class but that no exclusions should be permitted from the Settlement Class.

f. Approve the method of notice to be provided to the Settlement Class in substantially the form described in the Notice Plan and budget contained in Appendix E hereto, including use of the website and post card notice and publication notice contained in Appendix F hereto, and direct any further notice (and expenses therefore) that the Court may find necessary to provide due process.

g. Schedule a final approval hearing for a time and date convenient for the Court on a date after May 18, 2014 that is at least one hundred nineteen days after (i) the Court's entry of the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Class Action or (ii) the Court's entry of the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action, whichever is later, and establish a briefing schedule consistent with this Agreement and the convenience of the Court. At the final approval hearing the Court will conduct an inquiry into the fairness, reasonableness, and adequacy of this Class Settlement Agreement and address any objections to it, and determine whether this Class Settlement

Agreement should be finally approved, and whether to approve any motion for the Attorneys' Fee and Expense Award.

h. Stay all further proceedings in the Animal Land Consolidated Action as between the Class Plaintiffs or any other plaintiff in the Animal Land Consolidated Action, and the Defendants or any other defendant in the Animal Land Consolidated Action, except for proceedings related to effectuating and complying with this Class Settlement Agreement, pending the Court's determination of whether this Class Settlement Agreement should be finally approved or the termination of this Class Settlement Agreement.

i. Enjoin the members of the Settlement Class, pending the Court's determination of whether this Class Settlement Agreement should finally be approved or the termination of this Class Settlement Agreement, from challenging in any action or proceeding any matter covered by this Class Settlement Agreement or its release and covenant not to sue provisions, except for (i) proceedings in the Class Actions related to effectuating and complying with this Class Settlement Agreement, (ii) proceedings brought in this Court challenging or objecting to the Class Settlement Agreement and (iii) subject to Paragraph 40, any claims for damages based on any conduct, acts, transactions, events, occurrences, statements, omissions, or failures to act of any Settlement Class Released Party prior to the date of the Court's entry of the Class Settlement Preliminary Approval Order.

45. At least thirty-five days before the end of the Class Objection Period specified in Paragraph 50 below, Class Counsel will file all motion and supporting papers seeking the Court's final approval of this Class Settlement Agreement and any Attorneys' Fee and Expense Award with respect to any Class Action, so that notice of such motion or motions and any award sought may be provided to members of the Settlement Class under the Notice Plan, provided

however that such papers shall in no event be due prior to March 7, 2014. Any reply papers by the proponents of the settlement shall be filed on or before the later of May 5, 2014 and fifteen days before the final approval hearing.

46. Within ten days after the filing with the Court of this Class Settlement Agreement and the accompanying motion papers seeking its preliminary approval, the Defendants shall cause notice of the Class Settlement Agreement to be served upon appropriate State and Federal officials as provided in the Class Action Fairness Act, 28 U.S.C. § 1715.

**Class Settlement Notice Procedures**

47. Class Counsel and the Class Administrator shall carry out the settlement notice procedures as ordered by the Court, and shall perform such related duties as may be necessary to provide those notice procedures.

48. As soon as practicable following the Court's entry of the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Class Action and (ii) the Court's entry of the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action, but before commencement of the mail and publication notice, the Class Administrator shall establish the dedicated Settlement Website, post office box, and toll-free telephone line for providing notice and information to members of the Settlement Class, as provided in the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action contained in Appendix C, the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Action contained in Appendix D and the Notice Plan contained in Appendix D hereto.

49. Within twenty-four days following (i) the Court's entry of the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Class Action or (ii) the Court's entry of the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action,

whichever is later, the Class Administrator shall complete the mail and publication notice to members of the Settlement Class, using the publication notice contained in Appendix F hereto, as provided in the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action contained in Appendix C, the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Action contained in Appendix D and the Notice Plan contained in Appendix E hereto, or as otherwise ordered by the Court.

50. Any Settlement Class member shall have until (a) seventy-six days after the Court's entry of the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Class Action, (b) seventy-six days after the Court's entry of the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action, or (c) April 11, 2014, whichever is later (the "Class Objection Period"), to submit an objection to this Class Settlement Agreement (be an "Objector") and any notice to appear.

51. Any Objector must file with the Court within the Class Objection Period and send to a designee of Class Counsel and a designee of counsel for the Defendants, by first-class mail and postmarked within the Class Objection Period, a written statement of objections. The Objector's statement must: (a) contain the words "American Express Class Action Settlement"; (b) state each and every objection of the Objector and the specific reasons therefor; (c) provide all legal support and all evidence that the Objector wishes to bring to the Court's attention in support of any objection; (d) state the full name and address and telephone number of the Objector; (e) provide information sufficient to establish that the Objector is a Settlement Class member; and (f) state the full name, mail address, email address, and telephone number of any counsel representing the Objector in connection with the objections.

52. In addition, any Objector or counsel for an Objector that desires to appear at the final approval hearing must file with the Court within the Class Objection Period, and send to a designee of Class Counsel and a designee of counsel for the Defendants by first class mail and postmarked within the Class Objection Period, a separate notice of intention to appear that identifies by name, position, address, and telephone number each person who intends to appear at the final approval hearing on behalf of the Objector.

53. Upon receipt of any objection or notice of intention to appear, whether as provided in Paragraphs 51-52 above or otherwise, the designees of Class Counsel and counsel for the Defendants shall confer to ensure that they each receive a complete copy of all objections and any notice of intention to appear.

54. Within forty days after (i) the Court's entry of the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Class Action or (ii) the Court's entry of the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action, whichever is later, the Class Administrator shall prepare and file with the Court, and provide to a designee of Class Counsel and a designee of counsel for the Defendants, a report that:

a. Confirms that the Notice Plan was carried out and that the website notice, mail notice, publication notice, and any other notice to members of the Settlement Class was provided in the manner directed by the Court.

b. Identifies the date when the Settlement Website was fully established and its content made available to the members of the Settlement Class, the date or dates on which mail notices were mailed, the dates of the publication notices, and the date or dates of any other notice directed by the Court.

55. Class Counsel may, upon notice to the Settlement Class in the manner approved by the Court, seek an Attorneys' Fee and Expense Award. Defendants will not object to Class Counsel seeking an Attorneys' Fee and Expense Award in connection with the Class Settlements in these Actions and for otherwise obtaining benefits for Class Members, including for fees and costs incurred in the negotiation of the Class Settlement Agreement, in an aggregate amount for all cases not to exceed \$75 million. American Express further agrees that it will pay the Attorneys' Fees and Expenses Award awarded by the Court, after such application, in an amount no greater than \$75 million in the aggregate for these Actions.

56. An Attorney's Fees and Expense Award awarded by the Court in an amount less than the amount requested by Class Counsel or that in the aggregate is less than \$75 million shall not be grounds for the Class to withdraw from pursuing approval of this Class Settlement Agreement or carrying out the terms hereof.

57. The Attorneys' Fee and Expense Award, if granted by the Court, shall be used for the payment of all costs, expenses, and attorneys' fees for the prosecution and settlement of the Class Actions in these Actions, and for any service awards or incentive awards for the Class Plaintiffs that Class Counsel may in its discretion apply for and that the Court may approve. There shall be a single Attorneys' Fee and Expense Award sought in these Actions. No other payments, including service awards or incentive awards for the Class Plaintiffs, will be sought from or paid by the Defendants to Class Counsel or any Settlement Class member in connection with the Class Actions (excluding payments pursuant to Paragraphs 17 and 18.)

58. The Court may consider an application for an Attorneys' Fee and Expense Award separately from a motion for preliminary or final approval of this Class Settlement Agreement, and may enter orders regarding such applications separately from the Class Settlement Order and

Final Judgment. Any rehearing, reconsideration, vacation, review, appeal, or any other action taken regarding only a separate order concerning only an application for an Attorneys' Fee and Expense Award and not in any way concerning the Class Settlement Order and Final Judgment, shall not delay the Settlement Effective Date that otherwise would occur with respect to the Class Settlement Order and Final Judgment.

**Final Court Approval**

59. Upon the entry of the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Action and the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action, the Class Plaintiffs, Class Counsel, and the Defendants agree to use reasonable and good faith efforts to effectuate the Court's final approval of this Class Settlement Agreement, including filing the necessary motion papers and scheduling any necessary hearings for a date and time that are convenient for the Court.

60. Separately from any motion for an Attorneys' Fee and Expense Award, the Class Plaintiffs agree to file with the Court a motion and supporting papers seeking final approval of this Class Settlement Agreement, after providing Defendants with at least ten days advance notice of the contents of those papers, and to seek the Court's entry of the Class Settlement Order and Final Judgment in the form in Appendix G hereto, which will:

a. Determine that the Court has jurisdiction over the Class Plaintiffs, all members of the Settlement Class, and the Defendants, and jurisdiction to finally approve this Class Settlement Agreement.

b. Approve the notice procedures provided to the Settlement Class as fair, adequate, and sufficient, as the best practicable notice under the circumstances, and as reasonably calculated to apprise members of the Settlement Class of the Action, this Class

Settlement Agreement, and their objection rights, and as fully satisfying the requirements of Federal Rule of Civil Procedure 23, any other applicable laws or rules of the Court, and due process.

c. Finally approve this Class Settlement Agreement, including its consideration and release provisions, and find that the Class Settlement Agreement was made in good faith, following arm's-length negotiations, and was not collusive, and further find that the Class Settlement Agreement is fair, reasonable, and adequate for the Settlement Class, and consistent with the requirements of federal law and all applicable court rules, including Federal Rule of Civil Procedure 23.

d. Finally certify the Settlement Class as defined in Paragraph 2 above for settlement purposes only and declare that in the event of termination of this Class Settlement Agreement, certification of the Settlement Class shall automatically be vacated and each Defendant may fully contest certification of any class as if no Settlement Class had been certified.

e. Certify that the notification requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, have been met.

f. Incorporate all terms and conditions of this Class Settlement Agreement by reference, state the full terms of the release and covenant not to sue of the Settlement Class, and provide that each Settlement Class Releasing Party unconditionally, fully, and finally releases and forever discharges each of the Settlement Class Released Parties from all released claims and waives any rights of Settlement Class members to the protections afforded under California Civil Code § 1542 and/or any other similar, comparable, or equivalent laws.

g. Mandate that American Express modify the American Express NDPs and American Express HAC Provisions in conformity with this Class Settlement Agreement;

h. Enjoin all members of the Settlement Class, and those subject to their control, from commencing, maintaining, or participating in, or permitting another to commence, maintain, or participate on its behalf, in any claims released against Settlement Class Released Parties.

i. Provide that the Court retains exclusive continuing jurisdiction in the Animal Land Consolidated Action and the Marcus Action over the Class Plaintiffs, the members of the Settlement Class, and the Defendants to implement, administer, consummate, and enforce this Class Settlement Agreement and the Class Settlement Order and Final Judgment, including any disputes relating to, or arising out of, the release and covenant not to sue of the Settlement Class or any claim that was or could have been alleged in these Actions.

j. Direct that, as to the Defendants, all putative class actions consolidated in the Class Actions, listed in Appendix A hereto, be dismissed with prejudice and without costs (except as provided for in Paragraph 39).

k. Determine that there is no just reason for delay in entering the final judgment, and direct that the Class Settlement Order and Final Judgment shall be final and appealable.

**Termination**

61. In the event that (a) any condition for the Settlement Preliminary Approval Date is not satisfied, (b) the Class Administrator fails to provide its report described in Paragraph 54 above by the date specified in Paragraph 54 or by such other date ordered by the Court, or (c)

any condition for the Settlement Effective Date is not satisfied, the Class Plaintiffs as a group or the Defendants may terminate this Class Settlement Agreement.

62. The Defendants may terminate this Class Settlement Agreement by providing written notice to the other parties and the Court within thirty days of any of the following:

a. The Definitive Class Settlement Agreement in MDL 1720 is not finally approved (including after appeals have run) in the form in which it was preliminarily approved (except for granting American Express's request to be excluded from or permitted to opt out of the settlement class in that case, and except for a modification relating to the duration of the release); or

b. The Department of Justice objects to the Class Settlement Agreement as presented in the Animal Land Consolidated Action or the Marcus Action; or

c. Any State Attorney General objects to the Class Settlement Agreement as presented in the Animal Land Consolidated Action or the Marcus Action; or

d. Any of the Individual Plaintiffs object to the Class Settlement Agreement as presented in the Animal Land Consolidated Action or the Marcus Action; or

e. Any Class Plaintiff objects to the Class Settlement Agreement as presented in the Animal Land Consolidated Action or the Marcus Action; or

f. Members of the Settlement Class representing 20% of American Express charge volume of the Settlement Class for the year 2012 object to the Class Settlement Agreement as presented in the Animal Land Consolidated Action or the Marcus Action; or

g. This Class Settlement Agreement is not approved in the form in which it is submitted to the Court in the Animal Land Consolidated Action or the Marcus Action for

approval (including after appeals have run and including that the Settlement Class is a non-opt out class).

63. In the event that this Class Settlement Agreement is terminated pursuant to Paragraphs 61-62 above:

a. The Defendants shall not be obligated to comply with Paragraph 8 and Paragraph 10 above.

b. Any certification of the Settlement Class will be automatically vacated, Defendants will retain all defenses to class certification, and Defendants' non-opposition to the certification of the Settlement Class for settlement purposes only shall not be used as evidence, and shall not be admissible as such, in support of or in opposition to class certification in the Action or any other civil action or proceeding.

c. The terms and conditions of this Class Settlement Agreement, any publicly disseminated information regarding this Class Settlement Agreement, and any orders, motion filings, objections, or oral argument concerning this Class Settlement Agreement, including any motion papers with respect to motions for preliminary or final approval of this Class Settlement Agreement, or for the Attorneys' Fee and Expense Award, may not thereafter be used as evidence, and shall not be admissible as such, in the Actions or any other civil action or other proceeding.

d. With the exception of Paragraphs 63(a)-(c) above and Paragraphs 72-75 below, this Class Settlement Agreement including its release and covenant not to sue shall be null and void, and of no force and effect, and the Class Plaintiffs and the Defendants shall revert to their positions before the execution of this Class Settlement Agreement, including with respect

to the appropriateness of class certification, as if this Class Settlement Agreement had not been reached or executed.

**Continuing Jurisdiction**

64. The Court will retain continuing jurisdiction over the Class Plaintiffs, the members of the Settlement Class, and the Defendants to implement, administer, consummate, and enforce this Class Settlement Agreement and the Class Settlement Order and Final Judgment.

65. The Defendants and the Class Plaintiffs agree, and the members of the Settlement Class will be deemed to have agreed, to submit irrevocably to the exclusive jurisdiction of the United States District Court for the Eastern District of New York for the resolution of any matter covered by this Class Settlement Agreement, the Class Settlement Order and Final Judgment, or the applicability of this Class Settlement Agreement or the Class Settlement Order and Final Judgment.

66. All applications to the Court with respect to any aspect of this Class Settlement Agreement or the Class Settlement Order and Final Judgment shall be presented to and be determined by United States District Court Judge Nicholas Garaufis for resolution as a matter within the scope of the Actions, or, if he is not available, any other District Court Judge designated by the Eastern District of New York. Without limiting the generality of the foregoing, it is hereby agreed that any suit, action, proceeding, or dispute of a Class Plaintiff or member of the Settlement Class, in which the provisions of this Class Settlement Agreement or the Class Settlement Order and Final Judgment are asserted as a ground for a defense, in whole or in part, to any claim or cause of action, or are otherwise raised as an objection, constitutes a

suit, action, proceeding, or dispute arising out of or relating to this Class Settlement Agreement or the Class Settlement Order and Final Judgment.

67. In the event that the provisions of this Class Settlement Agreement or the Class Settlement Order and Final Judgment are asserted by any Defendant or Settlement Class Released Party as a ground for a defense, in whole or in part, to any claim or cause of action, or are otherwise raised as an objection in any other suit, action, or proceeding by a Class Plaintiff or member of the Settlement Class, it is hereby agreed that the Settlement Class Released Parties shall be entitled to an immediate stay of that suit, action, or proceeding until after the Court has entered an order or judgment determining any issues relating to the defense or objections based on such provisions, and no further judicial review of such order or judgment is possible.

**Damages Arbitrations**

68. In any arbitration proceeding filed by a merchant against American Express asserting a claim solely for damages relating to the American Express NDPs or American Express HAC Provisions where such claim was or could have been asserted in either of these Actions, both American Express and any merchant which has filed such a claim shall be permitted to receive in discovery in connection with such arbitration any court-filed documents in these Actions or any discovery in these Actions (including depositions, documents, interrogatory answers, and expert reports) that Class Counsel actually received or had the right to receive during the pendency of these Actions. The parties agree that all discovery in the Marcus Action and all court-filed documents in the Marcus Action were reproduced or deemed reproduced to Class Counsel in the Animal Land Consolidated Action and are covered by the Animal Land Protective Order.

a. Before any merchant shall be permitted to receive any such documents or discovery, such merchant and its counsel shall agree (a) to be bound by a confidentiality agreement that provides at least the same level of protections as the Animal Land Protective Order and the Marcus Protective Order and (b) to follow substantially the same protections afforded to each such document or discovery as such document or discovery received pursuant to the Animal Land Protective Order or Marcus Protective Order when initially produced.

b. Defendants and Class Counsel agree to seek modification of the Animal Land Protective Order, and further to seek modification of the Marcus Protective Order and any other protective order entered in MDL 2221 or *United States v. American Express Co. et al.*, 10-CV-496 (NGG)(RER) that may be required to allow for such disclosure. A denial in whole or in part by the Court of the Parties' request to modify the protective orders is not grounds for termination of this Class Settlement Agreement.

**Additional Terms and Conditions**

69. The Class Plaintiffs, Class Counsel, Class Plaintiffs' other counsel who participated in the negotiation of this Class Settlement Agreement, Defendants, and counsel for the Defendants, agree that they:

a. Shall not in any way encourage, promote, or solicit any Person within the definition of the Settlement Class, or their counsel, to object to this Class Settlement Agreement or to seek any relief inconsistent with this Class Settlement Agreement.

b. Shall not in any way encourage, promote, or solicit any Person within the definition of the Settlement Class, or their counsel, to facilitate, induce, or cause the non-fulfillment of a condition, or the occurrence of an event, that could result in the termination of this Class Settlement Agreement.

70. The Class Plaintiffs, Class Counsel, and the Defendants shall undertake reasonable efforts to timely obtain any required approvals or consents to execute and proceed with this Class Settlement Agreement.

71. The Class Plaintiffs, Class Counsel, and the Defendants shall execute all documents and perform any additional acts reasonably necessary and proper to effectuate the terms of this Class Settlement Agreement.

72. The terms and provisions of the Animal Land Protective Order shall survive and continue in effect through and after any final adjudication of the Class Actions, except as modified by the Court.

73. Each of the Defendants specifically denies any and all liability in these Actions. It is expressly understood and agreed that, by entering into this Class Settlement Agreement, each Defendant and each Settlement Class Released Party is not admitting any liability or wrongdoing whatsoever to the Class Plaintiffs, any member of the Settlement Class, or any other Person, and is not admitting the truth of any allegations or circumstances, nor is any Defendant or Settlement Class Released Party waiving any defense.

74. The Defendants' agreement not to oppose the certification of the Settlement Class for settlement purposes does not constitute a waiver of the Defendants' rights to invoke or seek the enforcement of any arbitration provisions in the American Express Merchant Regulations or card acceptance agreements, including class action waivers, in these Actions or in any other action.

75. This Class Settlement Agreement, and all negotiations, documents, and discussions associated with it, shall be without prejudice to the rights, positions, or privileges of any Class Plaintiff or Defendant or Settlement Class Released Party (except as expressly

provided for in this Class Settlement Agreement), and shall not be construed as, or deemed to be, an admission or evidence on the part of any Defendant or Settlement Class Released Party of any violation of any statute, regulation, law, rule, or principle of common law or equity, or of any liability or wrongdoing, or of the truth or merit of any allegations or claims in these Actions, and shall not be discoverable, used, offered, or accepted, directly or indirectly, as evidence of such in these Actions or any other action, litigation, arbitration, or other proceeding, and shall have no precedential value; provided, however, that nothing contained herein shall preclude use of this Class Settlement Agreement in any proceeding to enforce this Class Settlement Agreement or the Class Settlement Order and Final Judgment.

76. This Class Settlement Agreement, and all negotiations, documents, and discussions associated with it shall not be used in any subsequent proceeding by any Class Settlement member against the Defendants, including arbitrations for damages claims described in Paragraph 40.

77. Nothing in this Class Settlement Agreement is intended to waive any right to assert that any information or material is protected from discovery by reason of any individual or common interest privilege, attorney-client privilege, work product protection, or other privilege, protection, or immunity, or is intended to waive any right to contest any such claim of privilege, protection, or immunity.

78. This Class Settlement Agreement constitutes the entire, complete, and integrated agreement between and among the Class Plaintiffs, on behalf of themselves and the Settlement Class, and the Defendants with respect to the settlement of the Class Actions. All of the Appendices to this Class Settlement Agreement are material and integral parts of it and are incorporated by reference as if fully set forth herein.

79. The terms of this Class Settlement Agreement are not severable, but are interdependent and have been agreed to only as a whole by the Class Plaintiffs, Class Counsel, and the Defendants.

80. This Class Settlement Agreement supersedes all prior negotiations and agreements, and is not subject to any condition not provided for in this Class Settlement Agreement. In entering into and executing this Class Settlement Agreement, the Class Plaintiffs and the Defendants warrant that they are acting upon their respective independent judgments and upon the advice of their respective counsel, and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Person, other than the warranties and representations expressly made in this Class Settlement Agreement.

81. This Class Settlement Agreement may not be modified or amended except by a writing signed by the Class Plaintiffs and the Defendants or their respective counsel and approved by the Court.

82. This Class Settlement Agreement or any portion thereof shall not be construed more strictly against any party to it merely because it may have been prepared by counsel for one of them, it being recognized that because of the arm's-length negotiations resulting in this Class Settlement Agreement, all parties to this Class Settlement Agreement have contributed substantially and materially to the preparation of it.

83. All headings used in this Class Settlement Agreement are for reference and convenience only and shall not affect the meaning or interpretation of this Class Settlement Agreement.

84. The waiver by any Class Plaintiff or Defendant of any breach of this Class Settlement Agreement shall not be deemed or construed as a waiver of any other breach of this Class Settlement Agreement, whether prior, subsequent, or contemporaneous.

85. This Class Settlement Agreement shall be binding upon, and shall inure to the benefit of, the Class Plaintiffs, the members of the Settlement Class, and the Defendants. The Settlement Class Released Parties, other than the Defendants, are third party beneficiaries of this Class Settlement Agreement and are authorized to enforce the provisions of this Class Settlement Agreement, including without limitation the release and covenant not to sue provisions in Paragraphs 24-41, the continuing jurisdiction provisions in Paragraphs 64-67 above, and such other provisions of this Class Settlement Agreement as are applicable to them.

86. Any notice or materials to be provided to the Class Plaintiffs pursuant to this Class Settlement Agreement shall be sent to Class Counsel, and any notice or materials to be provided to the Defendants pursuant to this Class Settlement Agreement shall be sent to their counsel, whose names and contact information are set forth in Appendix H hereto. Any notice or materials to be submitted to the Court pursuant to this Class Settlement Agreement shall also be filed in the Animal Land Consolidated Action and the Marcus Action through the Electronic Court Filing (ECF) system of the Court.

87. Class Plaintiffs and Class Counsel shall not make any public statements that disparage the business or reputation of Defendants or counsel for Defendants based on or related to the subject matter of these Actions or that disparage this Class Settlement Agreement, provided, however that (a) the previous sentence does not apply to statements in any judicial proceeding; and (b) Class Counsel shall be entitled to make public statements regarding the Class Settlement Agreement on the Settlement Website if such statements are first approved by the

Defendants, which approval shall not be unreasonably withheld or delayed more than five Business Days from its request. Nor shall Class Counsel or the Class Plaintiffs fail to comply with any applicable confidentiality order or confidentiality agreements or protective orders in communicating with members of the Settlement Class or otherwise

88. The Defendants and counsel for the Defendants shall not make any public statements that disparage the business or reputation of Class Counsel or the Class Plaintiffs based on or related to the subject matter of these Actions; provided, however, that this sentence does not apply to statements in any judicial proceeding. Nothing in this Paragraph shall limit in any way the ability of the Defendants to: make any disclosure under state or federal law and regulation (including, without limitation, state or federal banking or securities law, such as the Securities Exchange Act of 1934, as amended); make any disclosure to governmental agencies, such as banking or securities regulators, or under the rules or regulations of any self-regulatory organization, including without limitation, the New York Stock Exchange; or disclose any information to auditors, accountants, tax and financial advisors and/or legal counsel to render professional advice.

89. Without limiting Paragraph 90 below, nothing in this Class Settlement Agreement shall limit the ability of American Express to determine American Express Merchant Discount Rates or other pricing or fees applicable (either by rule or negotiated agreement) to individual merchants or groups of merchants.

90. The parties recognize and agree that this Class Settlement Agreement shall be governed by the good faith and fair dealing obligations applicable to contracts under New York law.

91. This Class Settlement Agreement shall be governed, construed, enforced, and administered in accordance with the laws of the State of New York without reference to its conflict of laws principles.

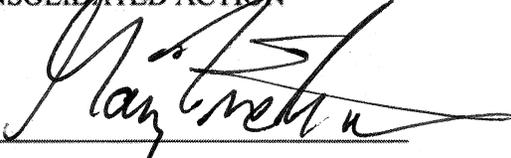
92. Class Counsel represent and warrant that they are fully authorized to enter into this Class Settlement Agreement on behalf of the Class Plaintiffs and Class Plaintiffs' other counsel who have participated in the Animal Land Consolidated Action and the Marcus Action, and that Class Counsel have consulted with and confirmed that all Class Plaintiffs fully support and have no objection to this Class Settlement Agreement.

93. Each of the undersigned representatives of each Class Plaintiff and each Defendant represents that it is fully authorized to enter into, and to execute, this Class Settlement Agreement on behalf of that Class Plaintiff or Defendant. Each of the Class Plaintiffs and the Defendants agrees that, in return for the agreements in this Class Settlement Agreement, it is receiving good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged.

94. This Class Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. The Class Settlement Agreement shall become effective only when executive by all of the Class Plaintiffs, Class Counsel, and Defendants listed below.

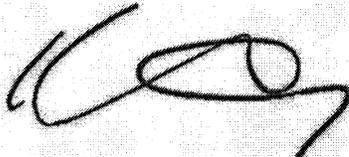
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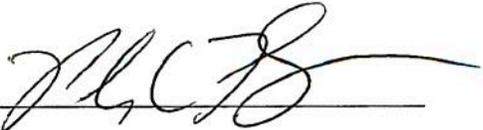
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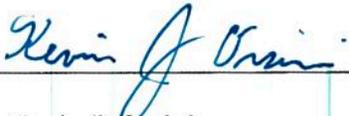
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**APPENDIX A**

All putative class actions consolidated in *In re American Express Anti-Steering Rules Antitrust Litigation (II)*, No. 11-MD-2221 (E.D.N.Y.) (NGG)(RER), including but not limited to

*In re American Express Anti-Steering Rules Antitrust Litigation*, No. 06-CV-02974 (NGG) (RER) (E.D.N.Y.), formerly No. 06-CV-02974 (WHP) (S.D.N.Y.)

*Firefly Air Solutions, LLC v. American Express Company, et al.*, No. 10-cv-05200 (NGG) (RER) (E.D.N.Y.)

*Plymouth Oil Corp. v. American Express Company, et al.*, No. 10-cv-05369 (NGG) (RER) (E.D.N.Y.)

*Jasa, Inc. et al. v. American Express Company, et al.*, No. 11-cv-00732 (NGG) (RER) (E.D.N.Y.)

*Nat'l Supermarkets Ass'n, Inc. v American Express Company*, No. 11-cv-01448 (NGG) (RER) (E.D.N.Y.), formerly 10-CV-04551 (WHP) (S.D.N.Y.)

*Treehouse, Inc. v. American Express Company, et al.*, No. 11-cv-00882 (NGG) (RER) (E.D.N.Y.), formerly No. 10-CV-00790 (SLC) (W.D. Wis.)

*Il Forno, Inc. v. American Express Company, et al.*, No. 11-cv-00881 (NGG) (RER) (E.D.N.Y.), formerly No. 11-CV-00306 (AHM) (PJW) (C.D. Cal.)

All putative class actions consolidated in *In re American Express Anti-Steering Rules Antitrust Litigation*, No. 06-CV-02974 (E.D.N.Y.) (NGG)(RER), including but not limited to

*Animal Land, Inc., et al. v. American Express Company, et al.*, No. 09-CV-2291 (S.D.N.Y.) (WHP)

*Performance Labs, Inc. et al. v. American Express Company, et al.*, No. 06-CV-2974 (S.D.N.Y.) (WHP)

*Lopez DeJonge, Inc. et al., v. American Express Company. et al.*, No. 07-CV-1303 (S.D.N.Y.) (WHP)

*Nat'l Supermarkets Ass'n, Inc. v. American Express Company, et al.*, No. 06-CV-4551 (S.D.N.Y.) (WHP)

*The Marcus Corp. v. American Express Co. et al.*, No. 04-CV-05432 (GBD) (S.D.N.Y.)

**APPENDIX B – Class Settlement Preliminary Approval Order in the Marcus Action**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE MARCUS CORPORATION, on behalf of itself and all similarly situated persons,  Plaintiffs,  -against-  AMERICAN EXPRESS COMPANY and AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC., Defendants.
--

04 CV 5432 (GBD)  
ECF CASE

**CLASS SETTLEMENT PRELIMINARY APPROVAL ORDER**

WHEREAS, the Court has considered the Definitive Class Settlement Agreement, including its Appendices, dated as of \_\_\_\_\_, 2013 (the “Class Settlement Agreement”) among the Class Plaintiffs and the Defendants, which sets forth the terms and conditions for a proposed settlement of the Class Actions, and the termination and disposition of all causes of action against the Defendants seeking injunctive relief in those Class Actions with prejudice and all causes of action against the Defendants seeking damages in those Class Actions without prejudice;

WHEREAS, the Court has considered the motion of Class Plaintiffs for preliminary approval of the Class Settlement Agreement, the Memorandum of Law and evidence filed in support thereof, the objections to preliminary approval of the Class Settlement Agreement and all evidence filed in support of such objections, and all other papers submitted in connection with the Class Settlement Agreement; and

WHEREAS, the Court held a hearing on \_\_\_\_\_, 201\_, at which the Court heard argument on whether the Class Settlement Agreement should be preliminarily approved;

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED as follows:

1. This Class Settlement Preliminary Approval Order incorporates by reference the definitions in the Class Settlement Agreement, and all terms herein shall have the same meanings as set forth in the Class Settlement Agreement.

2. The Court has subject matter and personal jurisdiction over the Class Plaintiffs, all members of the settlement class provisionally certified below, and the Defendants.

3. The Court preliminarily approves the Class Settlement Agreement as within the range of a fair, reasonable, and adequate settlement within the meaning of applicable law.

4. Based on and pursuant to the class action criteria of Federal Rules of Civil Procedure 23(a) and 23(b)(2), the Court provisionally certifies, for settlement purposes only, a Settlement Class, from which exclusions shall not be permitted, consisting of all Persons that as of the Settlement Preliminary Approval Date or in the future accept any American Express-Branded Cards at any location in the United States (including at a physical merchant location, online and mobile application), except that the Settlement Class shall not include the named Defendants, their directors, officers, or members of their families.

5. The Settlement Class shall include all Persons, described in Paragraph 4 above, regardless of whether such Persons have restricted, in any way, the means by which they can resolve disputes against the Defendants or the procedural mechanisms available for the resolution of disputes against the Defendants. Such restrictions include, without limitation, restrictions regarding or requiring arbitration, jury trials, participation in dispute resolution in a representative capacity, participation in dispute resolution as a member of a class or on a

consolidated basis, or any other rights that may be available in court that are not available in arbitration.

6. The definition of the proposed injunctive relief class in the Marcus Class Action Complaint is hereby amended to be the same as the Settlement Class provisionally certified above.

7. In the event of termination of the Class Settlement Agreement as provided therein, certification of the Settlement Class shall automatically be vacated and each Defendant may fully contest certification of any class as if no Settlement Class had been certified.

8. The Court finds and concludes that the Class Plaintiffs will fairly and adequately represent and protect the interests of the Settlement Class, and appoints them to serve as the representatives of the Settlement Class. Based on and pursuant to the criteria of Federal Rule of Civil Procedure 23(g), the Court appoints the law firms of Friedman Law Group LLP, Patton Boggs LLP, and Reinhardt, Wendorf & Blanchfield to serve as Class Counsel.

9. Notice shall be provided to the Settlement Class by subsequent order of the Court or another court of competent jurisdiction.

10. A final approval hearing shall be set by subsequent order of the Court or another court of competent jurisdiction.

11. The Court stays all further proceedings in the Marcus Action as between the Class Plaintiffs or any other plaintiff in the Marcus Action, and the Defendants or any other defendant in the Marcus Action, except for proceedings related to effectuating and complying with the Class Settlement Agreement, pending the Court's determination of whether the Class Settlement Agreement should be finally approved or the termination of the Class Settlement Agreement.

12. The Court enjoins the members of the Settlement Class, pending (i) entry by the Court or a court of competent jurisdiction of the Supplemental Class Settlement Preliminary Approval Order or (ii) the termination of the Class Settlement Agreement, from challenging in any action or proceeding any matter covered by the Class Settlement Agreement or its release and covenant not to sue provisions, except for (x) proceedings in the Class Actions related to effectuating and complying with the Class Settlement Agreement; (y) proceedings brought in this Court challenging or objecting to the Class Settlement Agreement; and (z) subject to Paragraph 40 of the Class Settlement Agreement, any claims for damages based on any conduct, acts, transactions, events, occurrences, statements, omissions, or failures to act of any Settlement Class Released Party prior to the date of the Court's entry of the Class Settlement Preliminary Approval Order. This injunction shall be subject to extension as set forth in the Supplemental Class Preliminary Approval Order.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE GEORGE DANIELS

**APPENDIX C – Supplemental Class Settlement Preliminary Approval Order**  
**In the Marcus Action**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

THE MARCUS CORPORATION, on behalf of itself and all similarly situated persons,  Plaintiffs,  -against-  AMERICAN EXPRESS COMPANY and AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC., Defendants.
--

13-CV-07355 (NGG) (RER)  
ECF CASE

**SUPPLEMENTAL CLASS SETTLEMENT PRELIMINARY APPROVAL ORDER**

WHEREAS, this Action has been transferred from the Southern District of New York (Daniels, J.) to the undersigned judge of the Eastern District of New York;

WHEREAS, on December 23, 2013, Judge Daniels entered an order, among other things, preliminarily approving the Class Settlement Agreement, provisionally certifying the Settlement Class for settlement purposes, and enjoining, subject to certain exceptions, members of the Settlement Class from challenging in any action or proceeding any matter covered by the Class Settlement Agreement or its release and covenant not to sue provisions;

WHEREAS, this Court has also considered the Class Settlement Agreement, which sets forth the terms and conditions for a proposed settlement of the Class Actions, and the termination and disposition of all causes of action against the Defendants seeking injunctive relief in those Class Actions with prejudice and all causes of action against the Defendants seeking damages in those Class Actions without prejudice;

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED as follows:

1. The preliminary approval order entered by Judge Daniels in the Marcus Action is adopted in all respects. Specifically, and without limitation, the Court affirms that the Class Settlement Agreement, for the purposes of preliminary approval, is within the range of a fair, reasonable, and adequate settlement within the meaning of applicable law and that the Settlement Class has been properly provisionally certified.
2. The Court appoints Epiq Systems as the Class Administrator to assist Class Counsel in effectuating and administering the Notice Plan.
3. The Court determines that notice should be provided to members of the Settlement Class but that no exclusions should be permitted from the Settlement Class.
4. The Court approves the method of notice to be provided to the Settlement Class in substantially the form described in the Notice Plan and budget contained in Appendix E to the Class Settlement Agreement, including use of the website and post card notice and publication notice contained in Appendix F to the Class Settlement Agreement. The Court finds and concludes that such notice: (a) is the best notice that is practicable under the circumstances, and is reasonably calculated to reach the members of the Settlement Class that would be bound by the Class Settlement Agreement and apprise them of the Action, the terms and conditions of the Class Settlement Agreement, their right to object to the Class Settlement Agreement; and (b) meets the requirements of Federal Rule of Civil Procedure 23 and due process.
5. Consistent with the Notice Plan, the Court directs the Class Administrator, as soon as practicable following the Court's entry of the Supplemental Class Settlement Preliminary Approval Order, but before commencement of the mail and publication notice, to establish the

dedicated Settlement Website, post office box, and toll-free telephone line for providing notice and information to members of the Settlement Class.

6. Within twenty-four days following (i) the Court's entry of the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Class Action or (ii) the Court's entry of the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action, whichever is later, the Class Administrator shall complete the mail and publication notice to members of the Settlement Class that is described in the Notice Plan, using the website and post card notice and publication notice contained in Appendix F to the Class Settlement Agreement.

7. The Court shall hold a final approval hearing on a date after May 18, 2014 that is at least one hundred nineteen days after (i) the Court's entry of the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Class Action or (ii) the Court's entry of the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action, whichever is later, at \_\_\_ o'clock on \_\_\_\_\_, 2014 at the Court house for the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201. At that final approval hearing, the Court will conduct an inquiry into the fairness, reasonableness, and adequacy of this Class Settlement Agreement and address any objections to it, and determine whether this Class Settlement Agreement should be finally approved, and whether to approve any motion for the Attorneys' Fee and Expense Award.

8. At least thirty-five days before the end of the Class Objection Period specified in Paragraph 9 below, Class Counsel will file all motion and supporting papers seeking the Court's final approval of this Class Settlement Agreement and any Attorneys' Fee and Expense Award with respect to any Class Action, so that notice of such motion or motions and any award sought may be provided to members of the Settlement Class under the Notice Plan, provided however

that such papers shall in no event be due prior to March 7, 2014. Class counsel will provide notice of such motions to members of the Settlement Class by causing all such motions and supporting papers to be posted prominently on the Settlement Website prior to, or simultaneous with, their filing with the Court. Any reply papers by the proponents of the settlement shall be filed on or before the later of May 5, 2014 and fifteen days before the final approval hearing.

9. As explained in the website and post card notice and publication notice, any Settlement Class member shall have until (a) seventy-six days after the Court's entry of the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Class Action, (b) seventy-six days after the Court's entry of the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action, or (c) April 11, 2014, whichever is later (the "Class Objection Period"), to submit an objection to this Class Settlement Agreement (be an "Objector") and any notice to appear.

10. Any Objector must file a written statement of objections with the Court within the Class Objection Period, and send it to the following designees of Class Counsel and counsel for the Defendants, by first-class mail and postmarked within the Class Objection Period:

Designee of Class Counsel: Mark Reinhardt, Reinhardt, Wendorf & Blanchfield,  
E-1250 First National Bank Bldg., 332 Minnesota St., St. Paul, MN 55101

Designee of Defendants: John F. LaSalle, Boies, Schiller & Flexner LLP, 575  
Lexington Avenue, 7<sup>th</sup> Floor, New York, New York 10022

11. The Objector's statement must: (a) contain the words "American Express Class Action Settlement"; (b) state each and every objection of the Objector and the specific reasons therefor; (c) provide all legal support and all evidence that the Objector wishes to bring to the Court's attention in support of any objection; (d) state the full name and address and telephone number of the Objector; (e) provide information sufficient to establish that the Objector is a

Settlement Class member; and (f) state the full name, mail address, email address, and telephone number of any counsel representing the Objector in connection with the objections.

12. In addition, any Objector or counsel for an Objector that desires to appear at the final approval hearing must file with the Court within the Class Objection Period, and send to the designees of Class Counsel and counsel for the Defendants identified above, by first class mail and postmarked within the Class Objection Period, a separate notice of intention to appear that identifies by name, position, address, and telephone number each person who intends to appear at the final approval hearing on behalf of the Objector.

13. Within forty days after (i) the Court's entry of the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Class Action or (ii) the Court's entry of the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action, whichever is later, the Class Administrator shall prepare and file with the Court a report, and provide the report to the designees of Class Counsel and counsel for the Defendants identified above.

14. The Class Administrator's report shall:

(1) Confirm that the Notice Plan was carried out and that the website notice, mail notice, publication notice, and any other notice to members of the Settlement Class was provided in the manner directed by the Court.

(2) Identify the date when the Settlement Website was fully established and its content made available to the members of the Settlement Class, the date or dates on which mail notices were mailed, the dates of the publication notices, and the date or dates of any other notice directed by the Court.

15. The Court stays all further proceedings in the Marcus Action as between the Class Plaintiffs or any other plaintiff in the Marcus Action, and the Defendants or any other defendant

in the Marcus Action, except for proceedings related to effectuating and complying with the Class Settlement Agreement, pending the Court's determination of whether the Class Settlement Agreement should be finally approved or the termination of the Class Settlement Agreement.

16. The Court enjoins the members of the Settlement Class, pending the Court's determination of whether this Class Settlement Agreement should finally be approved or the termination of the Class Settlement Agreement, from challenging in any action or proceeding any matter covered by the Class Settlement Agreement or its release and covenant not to sue provisions, except for (i) proceedings in the Class Actions related to effectuating and complying with the Class Settlement Agreement; (ii) proceedings brought in this Court challenging or objecting to the Class Settlement Agreement; and (iii) subject to Paragraph 40 of the Class Settlement Agreement, any claims for damages based on any conduct, acts, transactions, events, occurrences, statements, omissions, or failures to act of any Settlement Class Released Party prior to the date of the Court's entry of the Class Settlement Preliminary Approval Order.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE NICHOLAS GARAUFGIS

**APPENDIX D – Class Settlement Preliminary Approval Order in the Animal Land Consolidated Action**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

IN RE AMERICAN EXPRESS  
ANTI-STEERING RULES  
ANTITRUST LITIGATION (II)

11-MD-02221-NGG-RER  
ECF CASE

THIS DOCUMENT RELATES TO:

ALL CASES

**CLASS SETTLEMENT PRELIMINARY APPROVAL ORDER**

WHEREAS, the Court has considered the Definitive Class Settlement Agreement, including its Appendices, dated as of December 19, 2013 (the “Class Settlement Agreement”) among the Class Plaintiffs and the Defendants, which sets forth the terms and conditions for a proposed settlement of the Class Actions, and the termination and disposition of all causes of action against the Defendants seeking injunctive relief in those Class Actions with prejudice and all causes of action against the Defendants seeking damages in those Class Actions without prejudice;

WHEREAS, the Court has considered the motion of Class Plaintiffs for preliminary approval of the Class Settlement Agreement, the Memorandum of Law and evidence filed in support thereof, the objections to preliminary approval of the Class Settlement Agreement and all evidence filed in support of such objections, and all other papers submitted in connection with the Class Settlement Agreement; and

WHEREAS, the Court held a hearing on \_\_\_\_\_, 201\_, at which the Court heard argument on whether the Class Settlement Agreement should be preliminarily approved;

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED as follows:

1. This Class Settlement Preliminary Approval Order incorporates by reference the definitions in the Class Settlement Agreement, and all terms herein shall have the same meanings as set forth in the Class Settlement Agreement.

2. The Court has subject matter and personal jurisdiction over the Class Plaintiffs, all members of the settlement class provisionally certified below, and the Defendants.

3. The Court preliminarily approves the Class Settlement Agreement as within the range of a fair, reasonable, and adequate settlement within the meaning of applicable law.

4. Based on and pursuant to the class action criteria of Federal Rules of Civil Procedure 23(a) and 23(b)(2), the Court provisionally certifies, for settlement purposes only, a Settlement Class, from which exclusions shall not be permitted, consisting of all Persons that as of the Settlement Preliminary Approval Date or in the future accept any American Express-Branded Cards at any location in the United States (including at a physical merchant location, online and mobile application), except that the Settlement Class shall not include the named Defendants, their directors, officers, or members of their families.

5. The Settlement Class shall include all Persons, described in Paragraph 4 above, regardless of whether such Persons have restricted, in any way, the means by which they can resolve disputes against the Defendants or the procedural mechanisms available for the resolution of disputes against the Defendants. Such restrictions include, without limitation, restrictions regarding or requiring arbitration, jury trials, participation in dispute resolution in a representative capacity, participation in dispute resolution as a member of a class or on a

consolidated basis, or any other rights that may be available in court that are not available in arbitration.

6. The definition of the proposed injunctive relief class in the Animal Land Consolidated Class Action Complaint is hereby amended to be the same as the Settlement Class provisionally certified above.

7. In the event of termination of the Class Settlement Agreement as provided therein, certification of the Settlement Class shall automatically be vacated and each Defendant may fully contest certification of any class as if no Settlement Class had been certified.

8. The Court finds and concludes that the Class Plaintiffs will fairly and adequately represent and protect the interests of the Settlement Class, and appoints them to serve as the representatives of the Settlement Class. Based on and pursuant to the criteria of Federal Rule of Civil Procedure 23(g), the Court appoints the law firms of Friedman Law Group LLP, Patton Boggs LLP, and Reinhardt, Wendorf & Blanchfield to serve as Class Counsel.

9. The notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, have been met.

10. The Court appoints Epiq Systems as the Class Administrator to assist Class Counsel in effectuating and administering the Notice Plan.

11. The Court determines that notice should be provided to members of the Settlement Class but that no exclusions should be permitted from the Settlement Class.

12. The Court approves the method of notice to be provided to the Settlement Class in substantially the form described in the Notice Plan and budget contained in Appendix E to the Class Settlement Agreement, including use of the website and post card notice and publication notice contained in Appendix F to the Class Settlement Agreement. The Court finds and

concludes that such notice: (a) is the best notice that is practicable under the circumstances, and is reasonably calculated to reach the members of the Settlement Class that would be bound by the Class Settlement Agreement and apprise them of the Action, the terms and conditions of the Class Settlement Agreement, their right to object to the Class Settlement Agreement; and (b) meets the requirements of Federal Rule of Civil Procedure 23 and due process.

13. Consistent with the Notice Plan, the Court directs the Class Administrator, as soon as practicable following the Court's entry of the Class Settlement Preliminary Approval Order, but before commencement of the mail and publication notice, to establish the dedicated Settlement Website, post office box, and toll-free telephone line for providing notice and information to members of the Settlement Class.

14. Within twenty-four days following (i) the entry of the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action or (ii) the entry of this Class Settlement Preliminary Approval Order in the Animal Land Consolidated Action, whichever is later, the Class Administrator shall complete the mail and publication notice to members of the Settlement Class that is described in the Notice Plan, using the website and post card notice and publication notice contained in Appendix F to the Class Settlement Agreement.

15. The Court shall hold a final approval hearing at least one hundred nineteen days after (i) the Court's entry of the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Class Action or (ii) the Court's entry of the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action, whichever is later, at \_\_\_ o'clock on \_\_\_\_\_, 2014 at the Court house for the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201. At that final approval hearing, the Court will conduct an inquiry into the fairness, reasonableness, and adequacy of this Class Settlement

Agreement and address any objections to it, and determine whether this Class Settlement Agreement should be finally approved, and whether to approve any motion for the Attorneys' Fee and Expense Award.

16. At least thirty-five days before the end of the Class Objection Period specified in Paragraph 17 below, Class Counsel will file all motion and supporting papers seeking the Court's final approval of this Class Settlement Agreement and any Attorneys' Fee and Expense Award with respect to any Class Action, so that notice of such motion or motions and any award sought may be provided to members of the Settlement Class under the Notice Plan, provided however that such papers shall in no event be due prior to March 7, 2014. Class counsel will provide notice of such motions to members of the Settlement Class by causing all such motions and supporting papers to be posted prominently on the Settlement Website prior to, or simultaneous with, their filing with the Court. Any reply papers by the proponents of the settlement shall be filed on or before the later of May 5, 2014 and fifteen days before the final approval hearing.

17. As explained in the website and post card notice and publication notice, any Settlement Class member shall have until (a) seventy-six days after the Court's entry of the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Class Action, (b) seventy-six days after the Court's entry of the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action, or (c) April 11, 2014, whichever is later (the "Class Objection Period"), to submit an objection to this Class Settlement Agreement (be an "Objector") and any notice to appear.

18. Any Objector must file a written statement of objections with the Court within the Class Objection Period, and send it to the following designees of Class Counsel and counsel for the Defendants, by first-class mail and postmarked within the Class Objection Period:

Designee of Class Counsel: Mark Reinhardt, Reinhardt, Wendorf & Blanchfield, E-1250 First National Bank Bldg., 332 Minnesota St., St. Paul, MN 55101

Designee of Defendants: John F. LaSalle, Boies, Schiller & Flexner LLP, 575 Lexington Avenue, 7<sup>th</sup> Floor, New York, New York 10022

19. The Objector's statement must: (a) contain the words "American Express Class Action Settlement"; (b) state each and every objection of the Objector and the specific reasons therefor; (c) provide all legal support and all evidence that the Objector wishes to bring to the Court's attention in support of any objection; (d) state the full name and address and telephone number of the Objector; (e) provide information sufficient to establish that the Objector is a Settlement Class member; and (f) state the full name, mail address, email address, and telephone number of any counsel representing the Objector in connection with the objections.

20. In addition, any Objector or counsel for an Objector that desires to appear at the final approval hearing must file with the Court within the Class Objection Period, and send to the designees of Class Counsel and counsel for the Defendants identified above, by first class mail and postmarked within the Class Objection Period, a separate notice of intention to appear that identifies by name, position, address, and telephone number each person who intends to appear at the final approval hearing on behalf of the Objector.

21. Within forty days after (i) the Court's entry of the Class Settlement Preliminary Approval Order in the Animal Land Consolidated Class Action or (ii) the Court's entry of the Supplemental Class Settlement Preliminary Approval Order in the Marcus Action, whichever is

later, the Class Administrator shall prepare and file with the Court a report, and provide the report to the designees of Class Counsel and counsel for the Defendants identified above.

22. The Class Administrator's report shall:

(1) Confirm that the Notice Plan was carried out and that the website notice, mail notice, publication notice, and any other notice to members of the Settlement Class was provided in the manner directed by the Court.

(2) Identify the date when the Settlement Website was fully established and its content made available to the members of the Settlement Class, the date or dates on which mail notices were mailed, the dates of the publication notices, and the date or dates of any other notice directed by the Court.

23. The Court stays all further proceedings in the Animal Land Consolidated Action as between the Class Plaintiffs or any other plaintiff in the Animal Land Consolidated Action, and the Defendants or any other defendant in the Animal Land Consolidated Action, except for proceedings related to effectuating and complying with this Class Settlement Agreement, pending the Court's determination of whether this Class Settlement Agreement should be finally approved or the termination of this Class Settlement Agreement.

24. The Court enjoins the members of the Settlement Class, pending the Court's determination of whether this Class Settlement Agreement should finally be approved or the termination of the Class Settlement Agreement, from challenging in any action or proceeding any matter covered by the Class Settlement Agreement or its release and covenant not to sue provisions, except for (i) proceedings in the Class Actions related to effectuating and complying with the Class Settlement Agreement; (ii) proceedings brought in this Court challenging or objecting to the Class Settlement Agreement; and (iii) subject to Paragraph 40 of the Class

Settlement Agreement, any claims for damages based on any conduct, acts, transactions, events, occurrences, statements, omissions, or failures to act of any Settlement Class Released Party prior to the date of the Court's entry of the Class Settlement Preliminary Approval Order.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE NICHOLAS GARAUFGIS

**APPENDIX E — Notice Plan**



***Settlement Notice Plain for In re American Express Anti-Steering Rules Antitrust Litigation (II) and The Marcus Corporation v American Express Co. et al.***

***Designed by Hilsoft Notifications  
January 7, 2014***

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**Attachment 1 - *Hilsoft Notifications Curriculum Vitae***

# 1. Introduction

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The “Notice Plan” (or “Plan”) that follows details the dissemination effort that will be undertaken to provide comprehensive notice to members of the Rule 23(b)(2) Settlement Class (detailed below) in connection with the proposed Settlement in *In re American Express Anti-Steering Rules Antitrust Litigation (II)*, No. 11-MD-2221 (NGG) (RER), along with the case known as *The Marcus Corporation v American Express Co. et al.*, 13-cv-07355(NGG)(RER), which was transferred to Judge Garaufis as part of the Settlement. The Plan is based on meeting key objectives and utilizes extensive and appropriate prior class action notice experience. Hilsoft Notifications designed and implemented the Notice Plan in *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720 (E.D.N.Y.). The media outreach via local and national business publications proposed here mirrors that portion of the outreach to business owners done in the MDL 1720 Notice Plan.

Hilsoft Notifications has designed and will implement this Notice Plan. With experience in more than 200 cases, Hilsoft Notifications’ notices have appeared in 53 languages with distribution in almost every country, territory and dependency in the world. Courts, including in published decisions, have recognized and approved numerous Hilsoft settlement notice plans. Key Hilsoft Notifications principals Cameron Azari, Esq., Director of Legal Noticing, and Luran Schultz, Executive Director, have designed the Plan, and will oversee implementation to successful completion. Hilsoft Notifications’ curriculum vitae, including judicial comments recognizing notice expertise and approved plans, is attached as **Attachment 1**.

The proposed long-form Notice of Settlement of Class Action (“Long-Form Notice”), Publication Notice and Postcard Notice (together, the “Notice” or “Notices”) were drafted pursuant to the Class Settlement Agreement (“Class Settlement Agreement”) by Hilsoft with the assistance of Class Counsel and counsel for American Express. The Notices were written and designed to embody the satisfaction of the plain language requirements of Federal Rule of Civil Procedure 23(c)(2).

## 2. Overview/Summary

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- **Objective.** To appropriately notify Rule 23(b)(2) Settlement Class members and provide them with opportunities to be exposed to the Notice, to see, review, understand, and be reminded about it, and to respond appropriately if they choose.
  
- **Imperatives.** Key factors guide the dissemination methods needed to achieve a reasonable and effective notice effort:
  1. The proposed Rule 23(b)(2) Settlement Class is national in scope and includes business owners/persons of all ages, races and demographic profiles.
  2. Data containing contact information for members of the Settlement Class will be supplied by American Express from its database of current merchants accepting American Expresscards. Because the Settlement creates an injunctive relief class that affects merchants going forward, the current data represents substantially all Settlement Class members.
  3. American Express communicates with all of its merchants in the United States in English, and its Merchant Regulations and card acceptance agreements are provided to merchants in English.
  4. High quality notice methods are needed to convey the importance of information affecting the rights of Rule 23(b)(2) Settlement Class members.
  
- **Target Audience.** We understand that the Class Settlement Agreement defines a “Settlement Class” under Federal Rule of Civil Procedure 23(a) and Federal Rule of Civil Procedure 23(b)(2), from which exclusions shall not be permitted, consisting of all Persons that as of the Settlement Preliminary Approval Date or in the future accept any American Express Branded Cards at any location in the United States (including at a physical merchant location, online and mobile application), except that the Settlement Class shall not include the named Defendants, their directors, officers, or members of their families. For purposes of determining the Settlement Preliminary Approval Date, the parties have agreed that the date should be December 23, 2013, when Judge George B. Daniels granted preliminary approval of the Settlement in *The Marcus Corporation v American Express Co. et al.*, 04-CV- 05432 (GBD).
  
- **Strategies.** The Postcard Notice will be mailed to substantially all Settlement Class members, based on American Express’s list of current merchants. Since American Express maintains such data in the ordinary course of business and

works directly with most merchants that accept American Express cards, the data is up-to-date and a reliable resource for individually notifying Class members of the Settlement. In addition, a schedule of media placements has been developed to reinforce notice to Settlement Class members nationwide. A Publication Notice will appear in national business publications, local business publications, retail trade publications and U.S. Territory newspapers. An informational release and case website will provide additional notice exposures.

- **Notice Tactics.** The following notice tactics have been selected to best reach Class members:

1. **Individual Mailed Notice.** For substantially all Settlement Class members, a summary Postcard Notice will be mailed via first class mail. Appropriate address updating procedures will be implemented pre-mail and on returned undeliverables.
2. **National Business Publications.** To achieve broad, national exposure of the settlement among the professional business community, the Publication Notice will appear once in *Financial Times*, *New York Times* and *Wall Street Journal* for a total of three insertions. These national publications have a combined circulation of over 2,000,000.
3. **Local Business Publications.** In order to reach the general business community through their local business media, the Publication Notice will appear once in 67 different local business publications, targeting business owners and covering major metropolitan areas nationwide. The 67 local business publications include both daily and monthly publications and have a combined total circulation of over 800,000.
4. **Retail Trade Publications.** To reach retail business owners, the Publication Notice will appear once in five selected retail focused publications. The five retail trade publications have a combined circulation of 181,191.
5. **U.S. Territory Newspapers.** The Summary Notice will appear in the following newspapers targeting the U.S. territories—*Caribbean Business*, *El Nuevo Día*, *El Vocero De Puerto Rico*, *Primera Hora*, *Agana Pacific Daily News*, *Saipan Tribune*, *Samoa News*, *St. Croix Avis*, *St. John Trade Winds*, and *The Virgin Islands Daily News*.

6. **Informational Release.** A party-neutral, informational release will be issued to approximately 4,200 print and broadcast and 5,500 online press outlets throughout the United States.
  7. **Case Website.** A neutral case notice website with an easy to remember domain name will be established where Class members can obtain additional information about the case and obtain notice documents, including the Long-Form Notice. The website, including the Long Form Notice will be available in English and Spanish.
  8. **Toll-Free Telephone Support Line and Post-Office Box.** A toll-free telephone line for providing information to Class members and a post office box for receiving requests for information from Class members.
- ***Message Content.*** The Notices have been designed to provide a clear, concise, plain language statement of the legal rights and options of Rule 23(b)(2) Settlement Class members. The Notices alert such Class members that the message may affect them. The Postcard and Publication Notices include a summary of the terms of the Class Settlement Agreement.

### *3. Notice Schedule Flow Chart*

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The chart below shows a hypothetical schedule. This schedule would allow for completion of the Notice Plan within 40 days after the entry of the Class Settlement Preliminary Approval Order in the Eastern District of New York. The website will remain operational beyond the flowchart shown, until requested to be terminated.

<i>Notice Tactic</i>	<i>Week 1</i>	<i>Week 2</i>	<i>Week 3</i>	<i>Week 4</i>	<i>Week 5</i>	<i>Week 6</i>	<i>Week 7</i>	<i>Week 8</i>
<i>Preliminary Approval Granted</i>								
<i>Issue Informational Release</i>								
<i>Individual Notice Mailing</i>								
<i>National Business Publications</i>								
<i>Local Business Publications</i>								
<i>Retail Trade Publications</i>								
<i>U.S. Territory Newspapers</i>								
<i>Case Website</i>								

Note: Print media blocks show when readers first receive publications (the on-sale date). Media selections are subject to change by addition, deletion, or substitution at the time of placement. Appearance dates may vary within the notice period, based on availability at the time of placement.

## ***4. Individual Mailed Notice***

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*Reaches class members directly with notice by mail.*

For substantially all Settlement Class members, a Postcard Notice (4.25 inches x 5.5 inches) will be mailed via first class mail. Settlement Class members will be directed to the settlement website – [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) – and the toll-free number for information regarding the Settlement.

The mailing list will be compiled from American Express’s databases of current merchants who accept American Express cards. Since American Express maintains such data in the ordinary course of business and works directly with most of its current merchants, the data is up to date and a reliable resource for individually notifying Settlement Class members of the Settlement.

Prior to mailing, conservative and reasonable efforts will be used to eliminate exact duplicate entries from the available data. Subsequently, all addresses will be checked against the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“USPS”).<sup>1</sup> If a record is returned by NCOA as invalid, the Class Administrator will update the address through third-party address search services and re-mail as appropriate. Notices returned as undeliverable will be re-mailed to any new address available through postal service information, for example, to the address provided by the postal service on returned pieces for which the automatic forwarding order has expired, but which is still during the period in which the postal service returns the piece with the address indicated, or to better addresses that may be found after reasonable, additional third-party source lookups. Upon successfully locating better addresses, Notices will be promptly re-mailed on an ongoing basis.

Additionally, the Long-Form Notice will be mailed to all persons who request one via the toll-free phone number maintained by the Class Administrator.

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<sup>1</sup> The NCOA database contains records of all permanent changes of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person’s name and known address.

## 5. *Geographic Coverage*

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*Ensuring that class members are not excluded simply because of where they live.*

Settlement Class members may reside anywhere in the U.S. and its territories, therefore, the Notice Plan has been designed to ensure fair and wide geographic coverage.

- The national business publications have distribution and/or subscribers throughout the U.S. among the professional business community.
- Placements of the Publication Notice in local business publications will extend coverage to business owners in major metropolitan areas throughout the U.S.
- Placements of the Publication Notice in retail trade publications will extend coverage to retailers throughout the U.S.
- Placements of the Publication Notice in the largest circulation newspapers in each of the U.S. territories and possessions will extend coverage to Rule 23(b)(3) Settlement Class members and Rule 23(b)(2) Settlement Class members residing outside of the continental U.S.
- The informational release will broaden the geographic coverage further.

Accordingly, the Notice will reach Settlement Class members regardless of where they choose to live.

## ***6. National Business Publications***

*The nationwide business publications in which the notice will appear.*

The Notice Plan includes placements of the Publication Notice in leading national business publications. Combined, the selected publications provide a total circulation of over two million.

<i>Publication</i>	<i>Issuance</i>	<i>Notice Content</i>	<i># of Insertions</i>	<i>Total Circulation</i>
<i>Financial Times</i>	Daily	¼ Page	1	47,748
<i>New York Times</i>	Daily	¼ Page	1	731,395
<i>Wall Street Journal</i>	Daily	¼ Page	1	1,480,725
<b>TOTAL</b>			<b>3</b>	<b>2,259,868</b>

*Source: ABC audit and publisher’s statements.*

Based on GfK Mediamark Research & Intelligence, LCC (“MRI”)<sup>2</sup> readership data, we know that more readers than just those who purchase or otherwise receive circulated issues actually open or read the publication. Many secondary readers will see the Publication Notice away from home: for example, at a subscriber’s house; at a doctor’s office; in an airport; on an airplane; in the reception area of a company; passed around by co-workers at the place of employment; etc.

Exposure in a different environment can increase attentiveness and response potential. It is also beneficial that readership tends to build over a period of time following the publication date. This is evidence that issues can be referred to at any time, thereby providing readers with a longer, sustained opportunity to be exposed to the Notice.

In the chart on the following page, the “Readers Per Copy” calculations set forth the average number of readers-per-copy of each of the selected publications.

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<sup>2</sup> GfK Mediamark Research & Intelligence, LCC (“MRI”) is a leading source of publication readership and product usage data for the communications industry. MRI offers comprehensive demographic, lifestyle, product usage and exposure to all forms of advertising media collected from a single sample. As the leading U.S. supplier of multimedia audience research, MRI provides information to magazines, televisions, radio, Internet, and other media, leading national advertisers, and over 450 advertising agencies—including 90 of the top 100 in the United States. MRI’s national syndicated data is widely used by companies as the basis for the majority of the media and marketing plans that are written for advertised brands in the U.S.

The total Adult audience (readership) for *one insertion* in each of the selected publications is also provided in the chart on the following page. The total audience is based on actual MRI in-depth interview data that tell us how many persons “Opened or Read” a publication.

<i>Publication</i>	<i>Readers Per Copy</i>	<i>Total Adult Audience</i>
<i>Financial Times</i>	3.0	143,244
<i>New York Times</i>	2.92	2,247,000
<i>Wall Street Journal</i>	1.89	2,805,000
<b>TOTAL</b>		<b>5,195,244</b>

*Sources: 2011 MRI Doublebase Study audience numbers and ABC statements.*

## ***7. Local Business Publications***

*The local business publications in which the notice will appear.*

The Publication Notice will appear once in 67 publications targeted to business owners and business financial decision makers covering major metropolitan areas in the U.S. The selected publications, which include all editions of Crain's, include both daily and monthly publications and have a combined circulation of over 800,000. The following provides circulation data for the selected local business publications:

<i><b>Publication</b></i>	<i><b>Distribution</b></i>	<i><b># of Insertions</b></i>	<i><b>Circulation</b></i>
<i>Crain's New York</i>	New York	1	49,583
<i>Crain's Chicago</i>	Chicago	1	49,005
<i>Crain's Detroit</i>	Detroit	1	29,000
<i>Crain's Cleveland</i>	Cleveland	1	19,148
<i>Alaska Journal of Commerce</i>	Anchorage	1	7,500
<i>Albuquerque Business First</i>	Albuquerque	1	5,454
<i>Atlanta Business Chronicle</i>	Atlanta	1	35,029
<i>Austin Business Journal</i>	Austin	1	9,498
<i>Baltimore Business Journal</i>	Baltimore	1	9,206
<i>Birmingham Business Journal</i>	Birmingham	1	6,995
<i>Boston Business Journal</i>	Boston	1	16,242
<i>Buffalo Business First</i>	Buffalo	1	7,498
<i>Business Courier</i>	Cincinnati	1	12,867
<i>Business First (Louisville)</i>	Louisville	1	10,610
<i>Business Journal (Portland)</i>	Portland	1	10,514
<i>Central New York Business Journal</i>	Syracuse	1	8,000
<i>Charlotte Business Journal</i>	Charlotte	1	12,867
<i>Colorado Springs Business Journal</i>	Colorado Springs	1	2,647
<i>Columbus Business First</i>	Columbus	1	11,562
<i>Dallas Business Journal</i>	Dallas	1	15,249
<i>Dayton Business Journal</i>	Dayton	1	5,738
<i>Denver Business Journal</i>	Denver	1	15,124
<i>Des Moines Business Record</i>	Des Moines	1	6,230
<i>El Paso, Inc.</i>	El Paso	1	8,000
<i>Fairfield County Business Journal</i>	Fairfield	1	9,283
<i>Houston Business Journal</i>	Houston	1	16,934
<i>Inside Tucson Business</i>	Tucson	1	5,150
<i>Jacksonville Business Journal</i>	Jacksonville	1	7,946
<i>Kansas City Business Journal</i>	Kansas City	1	11,698

<i>Lehigh Business Journal</i>	Philadelphia	1	9,000
<i>Long Island Business News</i>	Long Island	1	8,867
<i>Los Angeles Business Journal</i>	Los Angeles	1	22,000
<i>Memphis Business Journal</i>	Memphis	1	5,376
<i>Minneapolis/St. Paul Business Journal</i>	Minneapolis	1	12,878
<i>Mississippi Business Journal (Jackson)</i>	Jackson	1	1,000
<i>Nashville Business Journal</i>	Nashville	1	6,250
<i>New Orleans City Business</i>	New Orleans	1	16,500
<i>NJBIZ</i>	New Jersey	1	16,133
<i>Orlando Business Journal</i>	Orlando	1	9,794
<i>Pacific Business News</i>	Honolulu	1	11,305
<i>Pacific Coast Business Times (Santa Barbara)</i>	Santa Barbara	1	3,500
<i>Philadelphia Business Journal</i>	Philadelphia	1	12,178
<i>Phoenix Business Journal</i>	Phoenix	1	13,092
<i>Pittsburgh Business Times</i>	Pittsburgh	1	11,708
<i>Puget Sound Business Journal (Seattle)</i>	Seattle/Tacoma	1	18,566
<i>Rochester Business Journal</i>	Rochester	1	10,000
<i>Sacramento Business Journal</i>	Sacramento	1	11,505
<i>San Antonio Business Journal</i>	San Antonio	1	7,684
<i>San Diego Business Journal</i>	San Diego	1	13,000
<i>San Fernando Valley Business Journal</i>	San Fernando Valley	1	6,250
<i>San Francisco Business Times</i>	San Francisco	1	17,578
<i>Silicon Valley/San Jose Business Journal</i>	San Jose	1	9,643
<i>Sonoma Napa &amp; Marin County Business Journal</i>	North Bay	1	7,602
<i>South Florida Business Journal</i>	Miami	1	9,831
<i>St. Louis Business Journal</i>	St. Louis	1	18,566
<i>Tampa Bay Business Journal</i>	Tampa Bay	1	9,610
<i>The Business Journal</i>	Fresno	1	10,000
<i>The Business Journal (Milwaukee)</i>	Milwaukee	1	12,277
<i>The Business Journal (Triad)</i>	Greensboro	1	6,836
<i>The Business Review</i>	Albany	1	6,864
<i>The Journal Record</i>	Oklahoma City	1	4,000
<i>Triangle Business Journal (Raleigh/Durham)</i>	Raleigh/Durham	1	8,836
<i>VEGAS, INC.</i>	Las Vegas	1	8,500
<i>Washington Business Journal (D.C.)</i>	Washington DC	1	16,199

<i>Washington State Regional Business Journal</i>	Wenatchee	1	4,200
<i>Westchester County Business Journal</i>	Westchester County	1	9,574
<i>Wichita Business Journal</i>	Wichita	1	6,010
<b>TOTAL</b>			<b>807,289</b>

*Source: ABC audit and publisher's statements.*

## ***8. Retail Trade Publications***

*The retail trade publications in which the notice will appear.*

In order to target retail business owners affected by the Settlement, the Publication Notice will appear once in five selected retail focused publications. The five retail trade publications have a combined circulation of 181,191. The following provides circulation data for the selected retail trade publications.

<b><i>Publication</i></b>	<b><i>Distribution</i></b>	<b><i># of Insertions</i></b>	<b><i>Circulation</i></b>
<i>Mass Market Retailers</i>	National	1	20,500
<i>Integrated Solutions for Retailers</i>	National	1	22,500
<i>Convenience Store News</i>	National	1	70,290
<i>Supermarket News</i>	National	1	27,782
<i>Stores</i>	National	1	40,119
<b>TOTAL</b>			<b>181,191</b>

*Source: ABC audit and publisher's statements.*

## ***9. U.S. Territory Newspapers***

*The newspapers in which notice will appear.*

The Plan includes placement of the Publication Notice in leading daily and weekly newspapers in Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the U.S. Virgin Islands. An approximate standard magazine Publication Notice will appear in each of the papers' best circulating day. Combined, the papers offer an estimated best day circulation of 586,760.

<b><i>Territory</i></b>	<b><i>Newspaper</i></b>	<b><i>Language</i></b>	<b><i>Issuance</i></b>	<b><i># of Insertions</i></b>
Guam	<i>Agana Pacific Daily News</i>	English	Daily	1
Puerto Rico	<i>Caribbean Business</i>	English	Weekly	1
Puerto Rico	<i>El Nuevo Día</i>	Spanish	Daily	1
Puerto Rico	<i>El Vocero De Puerto Rico</i>	Spanish	Daily	1
Puerto Rico	<i>Primera Hora</i>	Spanish	Daily	1
Northern Mariana Islands	<i>Saipan Tribune</i>	English	Daily	1
American Samoa	<i>Samoa News</i>	English	Daily	1
U.S. Virgin Islands	<i>St. Croix Avis</i>	English	Daily	1
U.S. Virgin Islands	<i>St. John Trade Winds</i>	English	Weekly	1
U.S. Virgin Islands	<i>Virgin Islands Daily News</i>	English	Daily	1
<b>TOTAL</b>				<b>10</b>

## ***10. Informational Release***

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*Seeking non-paid (and other) exposure of court-approved notice information mainly by way of news articles.*

A party-neutral, informational release will be issued to approximately 4,200 print and broadcast and 5,500 online press outlets throughout the United States. A news release serves a potentially valuable role, providing additional notice exposure beyond that which will be provided through paid media. There is no guarantee that any news stories will result, but if they do, Settlement Class members will have additional opportunities to learn that their rights are at stake in credible news media, adding to their understanding. The release will include the toll-free number and website address.

A list of press outlets receiving the informational release is available upon request.

## ***11. Case Website***

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*Delivery of notice via Internet and online services.*

A neutral, informational, notice website with an easy to remember domain name of ([www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com)) will be set up. By visiting this website, Settlement Class members can view additional information about the Settlement, including: the Complaints, Class Settlement Agreement, Preliminary Approval Order, Long-Form Notice and a list of Frequently Asked Questions.

A Spanish - translated version of the Long-Form Notice will also be available on the website.

The website address will be prominently displayed in all printed Notices, and appear in the informational release.

## ***12. Toll-Free Telephone Support Line and Post Office Box***

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*Access to information via toll-free telephone line.*

Before commencement of the mail and publication notice, a toll-free telephone line for providing information to Class members will be established. That toll-free telephone line will be connected to an automated IVR telephone system. Callers will be able to obtain answers to frequently asked questions and request a copy of the Long-Form Notice in English or Spanish based on the caller's selected language.

Also before commencement of the mail and publication notice, a post office box for receiving requests for information from Settlement Class members will be established.

## *13. Notice Design Strategy*

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The Notices have been designed to motivate Settlement Class members to view and understand the message and carry a clear message outlining Settlement Class members' rights. The strategic approach to content and design is entirely consistent with the illustrative "model" notices developed by the Federal Judicial Center ("FJC").

### *Summary Notice Design Elements:*

- ***Bold headline captures attention.*** The headline immediately alerts even casual readers who may be potential Settlement Class members that they should read the Notice and why they are important. It speaks directly to Class Member.
- ***Notice design alerts readers to the legal significance, lending credibility.*** The Notice design ensures that readers know that the communication carries legitimate, important information, not commercial advertising.
- ***Plain language enhances comprehension.*** The Notice concisely and clearly states the information in plain, easily understandable language so that Class members can comprehend the Notice effectively.
- ***Comprehensive content fulfills legal requirements.*** All critical information about Settlement Class members' rights is included. No key information is omitted.
- ***Toll-free number and website invite response.*** The Notice invites response by providing simple, convenient mechanisms, such as the website, toll-free number and post office box for Settlement Class members to obtain additional information.

# Attachment 1

# HILSOFT NOTIFICATIONS

Hilsoft Notifications is a leading provider of legal notice services for large-scale class action and bankruptcy matters. We specialize in providing quality, expert notice plan development – designing notice programs that satisfy due process requirements and withstand judicial scrutiny. For more than 18 years, Hilsoft Notifications' notice plans have been approved and upheld by courts. Hilsoft Notifications has been retained by defendants and/or plaintiffs on more than 290 cases, including 30 MDL cases and 45 cases since 2009, with notices appearing in more than 53 languages and in almost every country, territory and dependency in the world. Case examples include:

- Landmark \$6.05 billion settlement reached by Visa and MasterCard. The intensive notice program involved over 19.8 million direct mail notices to class members together with insertions in over 1,500 newspapers, consumer magazines, national business publications, trade & specialty publications, and language & ethnic targeted publications. Hilsoft also implemented an extensive online notice campaign with banner notices, which generated more than 770 million adult impressions, a case website in eight languages, and acquisition of sponsored search listings to facilitate locating the website. ***In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation***, MDL No. 1720 (E.D. Ny.).
- BP's \$7.8 billion settlement of claims related to the Deepwater Horizon oil spill emerged from possibly the most complex class action in US history. Hilsoft Notifications drafted and opined on all forms of notice. The 2012 notice program designed by Hilsoft reached at least 95% Gulf Coast region adults via television, radio, newspapers, consumer publications, trade journals, digital media and individual notice. ***In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010***, MDL No. 2179 (E.D. La.).
- Overdraft fee class actions have been brought against nearly every major US commercial bank. For related settlements, Hilsoft Notifications has developed programs that integrate individual notice and paid media efforts. PNC, Citizens, TD Bank, Fifth Third, Harris Bank and M&I are among the nearly 20 banks that have retained Hilsoft. ***In re: Checking Account Overdraft Litigation***, MDL No. 2036 (S.D. Fla.).
- Possibly the largest data breach in U.S. history with approximately 130 million credit and debit card numbers stolen. ***In re Heartland Data Security Breach Litigation***, MDL No. 2046 (S.D. Tex.).
- Largest and most complex class action in Canadian history. Designed and implemented groundbreaking notice to disparate, remote aboriginal people in the multi-billion dollar settlement. ***In re Residential Schools Class Action Litigation***, 00-CV-192059 CPA (Ont. Super. Ct.).
- Extensive point of sale notice program of a settlement providing payments up to \$100,000 related to Chinese drywall – 100 million notices distributed to Lowe's purchasers during a six-week period. ***Vereen v. Lowe's Home Centers***, SU10-CV-2267B (Ga. Super. Ct.).
- Largest discretionary class action notice campaign involving virtually every adult in the United States for the settlement. ***In re Trans Union Corp. Privacy Litigation***, MDL No. 1350 (N.D. Ill.).
- Most complex national data theft class action settlement involving millions of class members. ***Lockwood v. Certegy Check Services, Inc.***, 8:07-cv-1434-T-23TGW (M.D. Fla.).

- Largest combined U.S. and Canadian retail consumer security breach notice program. *In re TJX Companies, Inc., Customer Data Security Breach Litigation*, MDL No. 1838 (D. Mass.).
- Most comprehensive notice ever in a securities class action for the \$1.1 billion settlement of *In re Royal Ahold Securities and ERISA Litigation*, MDL No. 1539 (D. Md.).
- Most complex worldwide notice program in history. Designed and implemented all U.S. and international media notice with 500+ publications in 40 countries and 27 languages for \$1.25 billion settlement. *In re Holocaust Victims Assets, "Swiss Banks,"* No. CV-96-4849 (E.D.N.Y.).
- Largest U.S. claim program to date. Designed and implemented a notice campaign for the \$10 billion. *Tobacco Farmer Transition Program*, (U.S. Dept. of Ag.).
- Multi-national claims bar date notice to asbestos personal injury claimants. Opposing notice expert's reach methodology challenge rejected by court. *In re Babcock & Wilcox Co*, No. 00-10992 (E.D. La.).

## LEGAL NOTICING EXPERTS

### Cameron Azari, Esq., Director of Legal Notice

Cameron Azari, Esq. has more than 12 years experience in the design and implementation of legal notification and claims administration programs. He is a nationally recognized expert in the creation of class action notification campaigns in compliance with Fed R. Civ. P. 23(c)(2) (d)(2) and (e) and similar state class action statutes. Cameron has been responsible for hundreds of legal notice and advertising programs. During his career, he has been involved in an array of high profile class action matters, including *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico*, *Heartland Payment Systems*, *In re: Checking Account Overdraft Litigation*, *Lowe's Home Centers*, *Department of Veterans Affairs (VA)*, *In re Residential Schools Class Action Litigation*, and *In re: Managed Care Litigation*. He is an active author and speaker on a broad range of legal notice and class action topics ranging from amendments to FRCP Rule 23 to email noticing, response rates and optimizing settlement effectiveness. Cameron is an active member of the Oregon State Bar. He received his B.S. from Willamette University and his J.D. from Northwestern School of Law at Lewis and Clark College. Cameron can be reached at [caza@legalnotice.com](mailto:caza@legalnotice.com).

### Lauran Schultz, Executive Director

Lauran Schultz is responsible for overall management of Hilsoft Notifications. He consults extensively with clients on notice adequacy and innovative legal notice programs. Lauran has more than 20 years of experience as a professional in the marketing and advertising field, specializing in legal notice and class action administration for the past seven years. High profile actions he has been involved in include companies such as: BP, Bank of America, Fifth Third Bank, Symantec Corporation, Lowe's Home Centers, First Health, Apple, TJX, CNA and Carrier Corporation. Prior to joining Epiq Systems in 2005, Lauran was a Senior Vice President of Marketing at National City Bank in Cleveland, Ohio. Lauran's education includes advanced study in political science at the University of Wisconsin-Madison along with a Ford Foundation fellowship from the Social Science Research Council and American Council of Learned Societies. Lauran can be reached at [lschultz@hilsoft.com](mailto:lschultz@hilsoft.com).

## ARTICLES AND PRESENTATIONS

- **Cameron Azari** Speaker, "Legal Notice in Building Products Cases." HarrisMartin's Construction Product Litigation Conference, Miami, FL, October 25, 2013.
- **Cameron Azari** Co-Author, "Class Action Legal Noticing: Plain Language Revisited." *Law360*, April 2013.
- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements Getting your Settlement Approved." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 31-February 1, 2013.

- **Cameron Azari** Speaker, “Perspectives from Class Action Claims Administrators: Email Notices and Response Rates.” CLE International’s 8<sup>th</sup> Annual Class Actions Conference, Los Angeles, CA, May 17-18, 2012.
- **Cameron Azari** Speaker, “Class Action Litigation Trends: A Look into New Cases, Theories of Liability & Updates on the Cases to Watch.” ACI’s Consumer Finance Class Actions and Litigation, New York, NY, January 26-27, 2012.
- **Lauran Schultz** Speaker, “Legal Notice Best Practices: Building a Workable Settlement Structure.” CLE International’s 7<sup>th</sup> Annual Class Action Conference, San Francisco, CA, May, 2011.
- **Cameron Azari** Speaker, “Data Breaches Involving Consumer Financial Information: Litigation Exposures and Settlement Considerations.” ACI’s Consumer Finance Class Actions and Litigation, New York, NY, January, 2011.
- **Cameron Azari** Speaker, “Notice in Consumer Class Actions: Adequacy, Efficiency and Best Practices.” CLE International’s 5<sup>th</sup> Annual Class Action Conference: Prosecuting and Defending Complex Litigation, San Francisco, CA, 2009.
- **Lauran Schultz** Speaker, “Efficiency and Adequacy Considerations in Class Action Media Notice Programs.” Chicago Bar Association, Chicago, IL, 2009.
- **Cameron Azari** Author, “Clearing the Five Hurdles of Email - Delivery of Class Action Legal Notices.” Thomson Reuters Class Action Litigation Reporter, June, 2008.
- **Cameron Azari** Speaker, “Planning for a Smooth Settlement.” ACI: Class Action Defense – Complex Settlement Administration for the Class Action Litigator, Phoenix, AZ, 2007.
- **Cameron Azari** Speaker, “Noticing and Response Rates in Class Action Settlements” – Class Action Bar Gathering, Vancouver, British Columbia, 2007.
- **Cameron Azari** Speaker, “Structuring a Litigation Settlement.” CLE International’s 3rd Annual Conference on Class Actions, Los Angeles, CA, 2007.
- **Cameron Azari** Speaker, “Notice and Response Rates in Class Action Settlements” – Skadden Arps Slate Meagher & Flom, LLP, New York, NY, 2006.
- **Cameron Azari** Speaker, “Notice and Response Rates in Class Action Settlements” – Bridgeport Continuing Legal Education, Class Action and the UCL, San Diego, CA, 2006.
- **Cameron Azari** Speaker, “Notice and Response Rates in Class Action Settlements” – Stoel Rives litigation group, Portland/Seattle/Boise/Salt Lake City, UT, 2005.
- **Cameron Azari** Speaker, “Notice and Response Rates in Class Action Settlements” – Stroock & Stroock & Lavan litigation group, Los Angeles, CA, 2005.
- **Cameron Azari** Author, “Twice the Notice or No Settlement.” Current Developments – Issue II, August, 2003.
- **Cameron Azari** Speaker, “A Scientific Approach to Legal Notice Communication” – Weil Gotshal litigation group, New York, 2003.

## JUDICIAL COMMENTS

**Judge John Gleeson, *In Re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation***, (December 13, 2013) No. 1:05-cv-03800 (E.D. Ny.):

*"The Class Administrator notified class members of the terms of the proposed settlement through a mailed notice and publication campaign that included more than 20 million mailings and publication in more than 400 publications. The notice here meets the requirements of due process and notice standards... The objectors' complaints provide no reason to conclude that the purposes and requirements of a notice to a class were not met here."*

**Judge Lance M. Africk, *Evans, et al v. TIN, Inc., et al***, (July 7, 2013) No. 2:11-cv-02067 (E.D.La.):

*The Court finds that the dissemination of the Class Notice... as described in Notice Agent Lauran Schultz's Declaration: (a) constituted the best practicable notice to Class Members under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances...; (c) constituted notice that was reasonable, due, adequate, and sufficient; and (d) constituted notice that fully satisfied all applicable legal requirements, including Rules 23(c)(2)(B) and (e)(1) of the Federal Rules of Civil Procedure, the United States Constitution (including Due Process Clause), the Rules of this Court, and any other applicable law, as well as complied with the Federal Judicial Center's illustrative class action notices.*

**Judge James B. Zagel, *Saltzman v. Pella Corporation***, (May 24, 2013) No. 06-cv-4481 (N.D. Ill.):

*The Class Notice and Notice Plan implemented for the Settlement Class Members were performed in a reasonable manner, constituted the best notice practicable under the circumstances, constituted due and sufficient notice of the Lawsuit and the Settlement, and fully satisfied the requirements of due process and Fed. R. Civ. P. 23.*

**Judge Edward M. Chen, *Marolda v. Symantec Corporation***, (April 5, 2013) No. 08-cv-05701 (N.D. Cal.):

*Approximately 3.9 million notices were delivered by email to class members, but only a very small percentage objected or opted out . . . The Court . . . concludes that notice of settlement to the class was adequate and satisfied all requirements of Federal Rule of Civil Procedure 23(e) and due process. Class members received direct notice by email, and additional notice was given by publication in numerous widely circulated publications as well as in numerous targeted publications. These were the best practicable means of informing class members of their rights and of the settlement's terms.*

**Judge Ann D. Montgomery, *In Re: Zurn Pex Plumbing Products Liability Litigation***, (February 27, 2013) No. 0:08cv01958 (D. Minn.):

*The parties retained Hilsoft Notifications ("Hilsoft"), an experienced class-notice consultant, to design and carry out the notice plan. The form and content of the notices provided to the class were direct, understandable, and consistent with the "plain language" principles advanced by the Federal Judicial Center.*

*The notice plan's multi-faceted approach to providing notice to settlement class members whose identity is not known to the settling parties constitutes "the best notice [\*26] that is practicable under the circumstances" consistent with Rule 23(c)(2)(B).*

**Magistrate Judge Stewart, *Gessele et al. v. Jack in the Box, Inc.***, (January 28, 2013) No. 3:10-cv-960 (D. Or.):

*Moreover, plaintiffs have submitted [a] declaration from Cameron Azari (docket #129), a nationally recognized notice expert, who attests that fashioning an effective joint notice is not unworkable or unduly confusing. Azari also provides a detailed analysis of how he would approach fashioning an effective notice in this case.*

**Judge Carl J. Barbier, In Re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010 (Medical Benefits Settlement),** (January 11, 2013) MDL No. 2179 (E.D. La.):

*Through August 9, 2012, 366,242 individual notices had been sent to potential [Medical Benefits] Settlement Class Members by postal mail and 56,136 individual notices had been e-mailed. Only 10,700 mailings—or 3.3%—were known to be undeliverable. (Azari Decl. ¶¶ 8, 9.) Notice was also provided through an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, highly-trafficked websites, and Sunday local newspapers (via newspaper supplements). Notice was also provided in non-measured trade, business and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The combined measurable paid print, television, radio, and Internet effort reached an estimated 95% of adults aged 18+ in the Gulf Coast region an average of 10.3 times each, and an estimated 83% of all adults in the United States aged 18+ an average of 4 times each. (Id. ¶¶ 8, 10.) All notice documents were designed to be clear, substantive, and informative. (Id. ¶ 5.)*

*The Court received no objections to the scope or content of the [Medical Benefits] Notice Program. (Azari Supp. Decl. ¶ 12.) The Court finds that the Notice and Notice Plan as implemented satisfied the best notice practicable standard of Rule 23(c) and, in accordance with Rule 23(e)(1), provided notice in a reasonable manner to Class Members who would be bound by the Settlement, including individual notice to all Class Members who could be identified through reasonable effort. Likewise, the Notice and Notice Plan satisfied the requirements of Due Process. The Court also finds the Notice and Notice Plan satisfied the requirements of CAFA.*

**Judge Carl J. Barbier, In Re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010 (Economic and Property Damages Settlement),** (December 21, 2012) MDL No. 2179 (E.D. La.):

*The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation.*

*The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.*

*The Notice Program, as duly implemented, surpasses other notice programs that Hilsoft Notifications has designed and executed with court approval. The Notice Program included notification to known or potential Class Members via postal mail and e-mail; an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, and Sunday local newspapers. Notice placements also appeared in non-measured trade, business, and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The Notice Program met the objective of reaching the greatest possible number of class members and providing them with every reasonable opportunity to understand their legal rights. See Azari Decl. ¶¶ 8, 15, 68. The Notice Program was substantially completed on July 15, 2012, allowing class members adequate time to make decisions before the opt-out and objections deadlines.*

*The media notice effort alone reached an estimated 95% of adults in the Gulf region an average of 10.3 times each, and an estimated 83% of all adults in the United States an average of 4 times each. These figures do not include notice efforts that cannot be measured, such as advertisements in trade publications and sponsored search engine listings. The Notice Program fairly and adequately covered and notified the class without excluding any demographic group or geographic area, and it exceeded the reach percentage achieved in most other court-approved notice programs.*

**Judge Alonzo Harris, Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and Arklamiss Surgery Center, L.L.C. v. FairPay Solutions, Inc.,** (August 17, 2012) No. 12-C-1599 (27<sup>th</sup> Jud. D. Ct. La.):

*Notice given to Class Members and all other interested parties pursuant to this Court's order of April 18, 2012, was reasonably calculated to apprise interested parties of the pendency of the action, the*

*certification of the Class as Defined for settlement purposes only, the terms of the Settlement Agreement, Class Members rights to be represented by private counsel, at their own costs, and Class Members rights to appear in Court to have their objections heard, and to afford persons or entities within the Class Definition an opportunity to exclude themselves from the Class. Such notice complied with all requirements of the federal and state constitutions, including the Due Process Clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Class as Defined.*

**Judge James Lawrence King, *In re: Checking Account Overdraft Litigation (IBERIABANK)***, (April 26, 2012) MDL No. 2036 (S.D. Fla):

*The Court finds that the Notice previously approved was fully and properly effectuated and was sufficient to satisfy the requirements of due process because it described “the substantive claims . . . [and] contained information reasonably necessary to [allow Settlement Class Members to] make a decision to remain a class member and be bound by the final judgment.” In re Nissan Motor Corp. Antitrust Litig., 552 F.2d 1088, 1104-05 (5th Cir. 1977). The Notice, among other things, defined the Settlement Class, described the release as well as the amount and method and manner of proposed distribution of the Settlement proceeds, and informed Settlement Class Members of their rights to opt-out or object, the procedures for doing so, and the time and place of the Final Approval Hearing. The Notice also informed Settlement Class Members that a class judgment would bind them unless they opted out, and told them where they could obtain more information, such as access to a full copy of the Agreement. Further, the Notice described in summary form the fact that Class Counsel would be seeking attorneys' fees of up to 30 percent of the Settlement. Settlement Class Members were provided with the best practicable notice “reasonably calculated, under [the] circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections.” Mullane, 339 U.S. at 314. The content of the Notice fully complied with the requirements of Rule 23.*

**Judge Bobby Peters, *Vereen v. Lowe’s Home Centers***, (April 13, 2012) SU10-CV-2267B (Ga. Super. Ct.):

*The Court finds that the Notice and the Notice Plan was fulfilled, in accordance with the terms of the Settlement Agreement, the Amendment, and this Court’s Preliminary Approval Order and that this Notice and Notice Plan constituted the best practicable notice to Class Members under the circumstances of this action, constituted due and sufficient Notice of the proposed Settlement to all persons entitled to participate in the proposed Settlement, and was in full compliance with Ga. Code Ann § 9-11-23 and the constitutional requirements of due process. Extensive notice was provided to the class, including point of sale notification, publication notice and notice by first-class mail for certain potential Class Members.*

*The affidavit of the notice expert conclusively supports this Court’s finding that the notice program was adequate, appropriate, and comported with Georgia Code Ann. § 9-11-23(b)(2), the Due Process Clause of the Constitution, and the guidance for effective notice articulate in the FJC’s Manual for Complex Litigation, 4<sup>th</sup>.*

**Judge Lee Rosenthal, *In re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation***, (March 2, 2012) MDL No. 2046 (S.D. Tex.):

*The notice that has been given clearly complies with Rule 23(e)(1)’s reasonableness requirement... Hilsoft Notifications analyzed the notice plan after its implementation and conservatively estimated that notice reached 81.4 percent of the class members. (Docket Entry No. 106, ¶ 32). Both the summary notice and the detailed notice provided the information reasonably necessary for the presumptive class members to determine whether to object to the proposed settlement. See Katrina Canal Breaches, 628 F.3d at 197. Both the summary notice and the detailed notice “were written in easy-to-understand plain English.” In re Black Farmers Discrimination Litig., — F. Supp. 2d —, 2011 WL 5117058, at \*23 (D.D.C. 2011); accord AGGREGATE LITIGATION § 3.04(c).15 The notice provided “satisf[ies] the broad reasonableness standards imposed by due process” and Rule 23. Katrina Canal Breaches, 628 F.3d at 197 (internal quotation marks omitted).*

**Judge John D. Bates, *Trombley v. National City Bank***, (December 1, 2011) 1:10-CV-00232 (D. D.C.)

*The form, content, and method of dissemination of Notice given to the Settlement Class were in full compliance with the Court's January 11, 2011 Order, the requirements of Fed. R. Civ. P. 23(e), and due process. The notice was adequate and reasonable, and constituted the best notice practicable under the circumstances. In addition, adequate notice of the proceedings and an opportunity to participate in the final fairness hearing were provided to the Settlement Class.*

**Judge Robert M. Dow, Jr., *Schulte v. Fifth Third Bank***, (July 29, 2011) No. 1:09-cv-6655 (N.D. Ill.):

*The Court has reviewed the content of all of the various notices, as well as the manner in which Notice was disseminated, and concludes that the Notice given to the Class fully complied with Federal Rule of Civil Procedure 23, as it was the best notice practicable, satisfied all constitutional due process concerns, and provided the Court with jurisdiction over the absent Class Members.*

**Judge Ellis J. Daigle, *Williams v. Hammerman & Gainer Inc.***, (June 30, 2011) No. 11-C-3187-B (27th Jud. D. Ct. La.):

*Notices given to Settlement Class members and all other interested parties throughout this proceeding with respect to the certification of the Settlement Class, the proposed settlement, and all related procedures and hearings—including, without limitation, the notice to putative Settlement Class members and others more fully described in this Court's order of 30<sup>th</sup> day of March 2011 were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination, to apprise interested parties and members of the Settlement Class of the pendency of the action, the certification of the Settlement Class, the Settlement Agreement and its contents, Settlement Class members' right to be represented by private counsel, at their own cost, and Settlement Class members' right to appear in Court to have their objections heard, and to afford Settlement Class members an opportunity to exclude themselves from the Settlement Class. Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedures, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.*

**Judge Stefan R. Underhill, *Mathena v. Webster Bank, N.A.***, (March 24, 2011) No. 3:10-cv-1448 (D. Conn.):

*The form, content, and method of dissemination of Notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.*

**Judge Ted Stewart, *Miller v. Basic Research, LLC***, (September 2, 2010) No. 2:07-cv-871 (D. Utah):

*Plaintiffs state that they have hired a firm specializing in designing and implementing large scale, unbiased, legal notification plans.<sup>69</sup> Plaintiffs represent to the Court that such notice will include: 1) individual notice by electronic mail and/or first-class mail sent to all reasonably identifiable Class members; 2) nationwide paid media notice through a combination of print publications, including newspapers, consumer magazines, newspaper supplements and the Internet; 3) a neutral, Court-approved, informational press release; 4) a neutral, Court-approved Internet website; and 5) a toll-free telephone number. Similar mixed media plans have been approved by other district courts post class certification. The Court finds this plan is sufficient to meet the notice requirement.*

**Judge Sara Loi, *Pavlov v. Continental Casualty Co.***, (October 7, 2009) No. 5:07cv2580 (N.D. Ohio):

*As previously set forth in this Memorandum Opinion, the elaborate notice program contained in the Settlement Agreement provides for notice through a variety of means, including direct mail to each class member, notice to the United States Attorney General and each State, a toll free number, and a website designed to provide information about the settlement and instructions on submitting claims. With a 99.9% effective rate, the Court finds that the notice program constituted the "best notice that is practicable under the circumstances," Fed. R. Civ. P. 23(c)(2)(B), and clearly satisfies the requirements of Rule 23(c)(2)(B).*

**Judge James Robertson, *In re: Department of Veterans Affairs (VA) Data Theft Litigation***, (September 23, 2009) MDL No. 1796 (D. D.C.):

*The Notice Plan, as implemented, satisfied the requirements of due process and was the best notice practicable under the circumstances. The Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the action, the terms of the Settlement, and their right to appear, object to or exclude themselves from the Settlement. Further, the notice was reasonable and constituted due, adequate and sufficient notice to all person entitled to receive notice.*

**Judge Lisa F. Chrystal, *Little v. Kia Motors America, Inc.***, (August 27, 2009) No. UNN-L-0800-01 (N.J. Super. Ct.):

*The Court finds that the manner and content of the notices for direct mailing and for publication notice, as specified in the Notice Plan (Exhibit 2 to the Affidavit of Lauran R. Schultz), provides the best practicable notice of judgment to members of the Plaintiff Class.*

**Judge Barbara Crowder, *Dolen v. ABN AMRO Bank N.V.***, (March 23, 2009) No. 01-L-454, 01-L-493, (3rd Jud. Cir. Ill.):

*The Court finds that the Notice Plan is the best notice practicable under the circumstances and provides the Eligible Members of the Settlement Class sufficient information to make informed and meaningful decisions regarding their options in this Litigation and the effect of the Settlement on their rights. The Notice Plan further satisfies the requirements of due process and 735 ILCS 5/2-803. That Notice Plan is approved and accepted. This Court further finds that the Notice of Settlement and Claim Form comply with 735 ILCS 5/2-803 and are appropriate as part of the Notice Plan and the Settlement, and thus they are hereby approved and adopted. This Court further finds that no other notice other than that identified in the Notice Plan is reasonably necessary in this Litigation.*

**Judge Robert W. Gettleman, *In re Trans Union Corp.***, (September 17, 2008) MDL No. 1350 (N.D. Ill.):

*The Court finds that the dissemination of the Class Notice under the terms and in the format provided for in its Preliminary Approval Order constitutes the best notice practicable under the circumstances, is due and sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the requirements of the Federal Rules of Civil Procedure, the requirements of due process under the Constitution of the United States, and any other applicable law... Accordingly, all objections are hereby OVERRULED.*

**Judge Steven D. Merryday, *Lockwood v. Certegy Check Services, Inc.***, (September 3, 2008) No. 8:07-cv-1434-T-23TGW (M.D. Fla.):

*The form, content, and method of dissemination of the notice given to the Settlement Class were adequate and reasonable and constituted the best notice practicable in the circumstances. The notice as given provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions of the Settlement Agreement, and these proceedings to all persons entitled to such notice, and the notice satisfied the requirements of Rule 23, Federal Rules of Civil Procedure, and due process.*

**Judge William G. Young, *In re TJX Companies***, (September 2, 2008) MDL No. 1838 (D. Mass.):

*The form, content, and method of dissemination of notice provided to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Persons entitled to such notice, and said Notice fully satisfied the requirements of Fed. R. Civ. P. 23 and due process.*

**Judge Philip S. Gutierrez, *Shaffer v. Continental Casualty Co.***, (June 11, 2008) SACV-06-2235-PSG (PJWx) (C.D. Cal.):

*...was reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and met all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clauses), the Rules of the Court, and any other applicable law.*

**Judge Robert L. Wyatt, *Gunderson v. AIG Claim Services, Inc.***, (May 29, 2008) No. 2004-002417 (14th Jud. D. Ct. La.):

*Notices given to Settlement Class members...were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination...Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.*

**Judge Mary Anne Mason, *Palace v. DaimlerChrysler Corp.***, (May 29, 2008) No. 01-CH-13168 (Ill. Cir. Ct.):

*The form, content, and method of dissemination of the notice given to the Illinois class and to the Illinois Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed Settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings, to all Persons entitled to such notice, and said notice fully satisfied the requirements of due process and complied with 735 ILCS §§5/2-803 and 5/2-806.*

**Judge David De Alba, *Ford Explorer Cases***, (May 29, 2008) JCCP Nos. 4226 & 4270 (Cal. Super. Ct.):

*[T]he Court is satisfied that the notice plan, design, implementation, costs, reach, were all reasonable, and has no reservations about the notice to those in this state and those in other states as well, including Texas, Connecticut, and Illinois; that the plan that was approved—submitted and approved, comports with the fundamentals of due process as described in the case law that was offered by counsel.*

**Judge Kirk D. Johnson, *Webb v. Liberty Mutual Ins. Co.***, (March 3, 2008) No. CV-2007-418-3 (Ark. Cir. Ct.):

*The Court finds that there was minimal opposition to the settlement. After undertaking an extensive notice campaign to Class members of approximately 10,707 persons, mailed notice reached 92.5% of potential Class members.*

**Judge Carol Crafton Anthony, *Johnson v. Progressive Casualty Ins. Co.***, (December 6, 2007) No. CV-2003-513 (Ark. Cir. Ct.):

*Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated...Notice was direct mailed to all Class members whose current whereabouts could be identified by reasonable effort. Notice reached a large majority of the Class members. The Court finds that such notice constitutes the best notice practicable...The forms of Notice and Notice Plan satisfy all of the requirements of Arkansas law and due process.*

**Judge Kirk D. Johnson, *Sweeten v. American Empire Insurance Co.***, (August 20, 2007) No. CV-2007-154-3 (Ark. Cir. Ct.):

*The Court does find that all notices required by the Court to be given to class members was done within the time allowed and the manner best calculated to give notice and apprise all the interested parties of the litigation. It was done through individual notice, first class mail, through internet website and the toll-free telephone call center...The Court does find that these methods were the best possible methods to advise the class members of the pendency of the action and opportunity to present their objections and finds that these notices do comply with all the provisions of Rule 23 and the Arkansas and United States Constitutions.*

**Judge Robert Wyatt, *Gunderson v. F.A. Richard & Associates, Inc.***, (July 19, 2007) No. 2004-2417-D (14th Jud. D. Ct. La.):

*Okay. Let me sign this one. This is the final Order and Judgment regarding the fairness, reasonableness and adequacy. And I am satisfied in all respects regarding the presentation that's been made to the Court this morning in the Class memberships, the representation, the notice, and all other aspects and I'm signing that Order at this time. Congratulations, gentlemen.*

**Judge Lewis A. Kaplan, *In re Parmalat Securities Litigation***, (July 19, 2007) MDL No. 1653-LAK (S.D. N.Y.):

*The Court finds that the distribution of the Notice, the publication of the Publication Notice, and the notice methodology...met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution, (including the Due Process clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. 78u-4, et seq.) (the "PSLRA"), the Rules of the Court, and any other applicable law.*

**Judge Joe Griffin, *Beasley v. The Reliable Life Insurance Co.***, (March 29, 2007) No. CV-2005-58-1 (Ark. Cir. Ct.):

*[T]he Court has, pursuant to the testimony regarding the notification requirements, that were specified and adopted by this Court, has been satisfied and that they meet the requirements of due process. They are fair, reasonable, and adequate. I think the method of notification certainly meets the requirements of due process...So the Court finds that the notification that was used for making the potential class members aware of this litigation and the method of filing their claims, if they chose to do so, all those are clear and concise and meet the plain language requirements and those are completely satisfied as far as this Court is concerned in this matter.*

**Judge Lewis A. Kaplan, *In re Parmalat Securities Litigation***, (March 1, 2007) MDL No. 1653-LAK (S.D. N.Y.):

*The court approves, as to form and content, the Notice and the Publication Notice, attached hereto as Exhibits 1 and 2, respectively, and finds that the mailing and distribution of the Notice and the publication of the Publication Notice in the manner and the form set forth in Paragraph 6 of this Order...meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Securities Exchange Act of 1934, as amended by Section 21D(a)(7) of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7), and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons and entities entitled thereto.*

**Judge Anna J. Brown, *Reynolds v. The Hartford Financial Services Group, Inc.***, (February 27, 2007) No. CV-01-1529-BR (D. Ore):

*[T]he court finds that the Notice Program fairly, fully, accurately, and adequately advised members of the Settlement Class and each Settlement Subclass of all relevant and material information concerning the proposed settlement of this action, their rights under Rule 23 of the Federal Rules of Civil Procedure, and related matters, and afforded the Settlement Class with adequate time and an opportunity to file objections to the Settlement or request exclusion from the Settlement Class. The court finds that the Notice Program constituted the best notice practicable under the circumstances and fully satisfied the requirements of Rule 23 and due process.*

**Judge Kirk D. Johnson, *Zarebski v. Hartford Insurance Company of the Midwest***, (February 13, 2007) No. CV-2006-409-3 (Ark. Cir. Ct.):

*Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Class Notice, as disseminated to members of the Settlement Class in accordance with provisions of the Preliminary Approval Order, was the best notice practicable under the circumstances to all members of the Settlement Class. Accordingly, the Class Notice and Claim Form as disseminated are finally approved as fair, reasonable, and adequate notice under the circumstances. The Court finds and concludes that due and adequate notice of the pendency of this Action, the Stipulation, and the Final Settlement Hearing has been provided to members of the Settlement Class, and the Court further finds and concludes that the notice campaign described in the Preliminary Approval Order and completed by the parties complied fully with the requirements of Arkansas Rule of Civil Procedure 23 and the requirements of due process under the Arkansas and United States Constitutions.*

**Judge Richard J. Holwell, *In re Vivendi Universal, S.A. Securities Litigation***, 2007 WL 1490466, at \*34 (S.D.N.Y.):

*In response to defendants' manageability concerns, plaintiffs have filed a comprehensive affidavit outlining the effectiveness of its proposed method of providing notice in foreign countries. According to this...the Court is satisfied that plaintiffs intend to provide individual notice to those class members whose names and addresses are ascertainable, and that plaintiffs' proposed form of publication notice, while complex, will prove both manageable and the best means practicable of providing notice.*

**Judge Samuel Conti, *Ciabattari v. Toyota Motor Sales, U.S.A., Inc.***, (November 17, 2006) No. C-05-04289-SC (N.D. Cal.):

*After reviewing the evidence and arguments presented by the parties...the Court finds as follows...The class members were given the best notice practicable under the circumstances, and that such notice meets the requirements of the Due Process Clause of the U.S. Constitution, and all applicable statutes and rules of court.*

**Judge Ivan L.R. Lemelle, *In re High Sulfur Content Gasoline Prods. Liability Litigation***, (November 8, 2006) MDL No. 1632 (E.D. La.):

*This Court approved a carefully-worded Notice Plan, which was developed with the assistance of a nationally-recognized notice expert, Hilsoft Notifications...The Notice Plan for this Class Settlement was consistent with the best practices developed for modern-style "plain English" class notices; the Court and Settling Parties invested substantial effort to ensure notice to persons displaced by the Hurricanes of 2005; and as this Court has already determined, the Notice Plan met the requirements of Rule 23 and constitutional due process.*

**Judge Catherine C. Blake, *In re Royal Ahold Securities and "ERISA" Litigation***, (November 2, 2006) MDL No. 1539 (D. Md.):

*The global aspect of the case raised additional practical and legal complexities, as did the parallel criminal proceedings in another district. The settlement obtained is among the largest cash settlements ever in a securities class action case and represents an estimated 40% recovery of possible provable damages. The notice process appears to have been very successful not only in reaching but also in eliciting claims from a substantial percentage of those eligible for recovery.*

**Judge Elaine E. Bucklo, *Carnegie v. Household International***, (August 28, 2006) No. 98 C 2178 (N.D. Ill.):

*[T]he Notice was disseminated pursuant to a plan consisting of first class mail and publication developed by Plaintiff's notice consultant, Hilsoft Notification[s]...who the Court recognized as experts in the design of notice plans in class actions. The Notice by first-class mail and publication was provided in an adequate and sufficient manner; constitutes the best notice practicable under the circumstances; and satisfies all requirements of Rule 23(e) and due process.*

**Judge Joe E. Griffin, *Beasley v. Hartford Insurance Company of the Midwest***, (June 13, 2006) No. CV-2005-58-1 (Ark. Cir. Ct.):

*Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Individual Notice and the Publication Notice, as disseminated to members of the Settlement Class in accordance with provisions of the Preliminarily Approval Order, was the best notice practicable under the circumstances...and the requirements of due process under the Arkansas and United States Constitutions.*

**Judge Norma L. Shapiro, *First State Orthopedics et al. v. Concentra, Inc., et al.***, (May 1, 2006) No. 2:05-CV-04951-NS (E.D. Pa.):

*The Court finds that dissemination of the Mailed Notice, Published Notice and Full Notice in the manner set forth here and in the Settlement Agreement meets the requirements of due process and Pennsylvania law. The Court further finds that the notice is reasonable, and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, is the best practicable notice; and is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Lawsuit and of their right to object or to exclude themselves from the proposed settlement.*

**Judge Thomas M. Hart, *Froeber v. Liberty Mutual Fire Ins. Co.***, (April 19, 2006) No. 00C15234 (Ore. Cir. Ct.):

*The court has found and now reaffirms that dissemination and publication of the Class Notice in accordance with the terms of the Third Amended Order constitutes the best notice practicable under the circumstances.*

**Judge Catherine C. Blake, *In re Royal Ahold Securities and "ERISA" Litigation***, (January 6, 2006) MDL No. 1539 (D. Md.):

*I think it's remarkable, as I indicated briefly before, given the breadth and scope of the proposed Class, the global nature of the Class, frankly, that again, at least on a preliminary basis, and I will be getting a final report on this, that the Notice Plan that has been proposed seems very well, very well suited, both in terms of its plain language and in terms of its international reach, to do what I hope will be a very thorough and broad-ranging job of reaching as many of the shareholders, whether individual or institutional, as possibly can be done to participate in what I also preliminarily believe to be a fair, adequate and reasonable settlement.*

**Judge Catherine C. Blake, *In re Royal Ahold Securities & "ERISA" Litigation***, 437 F.Supp.2d 467, 472 (D. Md. 2006):

*The court hereby finds that the Notice and Notice Plan described herein and in the Order dated January 9, 2006 provided Class Members with the best notice practicable under the circumstances. The Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation, to all persons entitled to such notice, and the Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.*

**Judge Robert H. Wyatt, Jr., *Gray v. New Hampshire Indemnity Co., Inc.***, (December 19, 2005) No. CV-2002-952-2-3 (Ark. Cir. Ct.):

*Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The Notice contained the essential elements necessary to satisfy due process, including the Settlement Class definition, the identities of the Parties and of their counsel, a summary of the terms of the proposed settlement, Class Counsel's intent to apply for fees, information regarding the manner in which objections could be submitted, and requests for exclusions could be filed. The Notice properly informed Class members of the formula for the distribution of benefits under the settlement...Notice was direct mailed to all Class members whose current whereabouts could be identified by reasonable effort. Notice was also effected by publication in many newspapers and magazines throughout the nation, reaching a large majority of the Class members multiple times. The Court finds that such notice constitutes the best notice practicable.*

**Judge Michael J. O'Malley, *Defrates v. Hollywood Entm't Corp.***, (June 24, 2005) No. 02 L 707 (Ill. Cir. Ct.):

*[T]his Court hereby finds that the notice program described in the Preliminary Approval Order and completed by HEC complied fully with the requirements of due process, the Federal Rules of Civil Procedure and all other applicable laws.*

**Judge Wilford D. Carter, *Thibodeaux v. Conoco Phillips Co.***, (May 26, 2005) No. 2003-481 F (14<sup>th</sup> J.D. Ct. La.):

*Notice given to Class Members...were reasonably calculated under all the circumstances and have been sufficient, both as to the form and content...Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due process and sufficient notice to all potential members of the Class as Defined.*

**Judge Michael Canaday, *Morrow v. Conoco Inc.***, (May 25, 2005) No. 2002-3860 G (14<sup>th</sup> J.D. Ct. La.):

*The objections, if any, made to due process, constitutionality, procedures, and compliance with law, including, but not limited to, the adequacy of notice and the fairness of the proposed Settlement Agreement, lack merit and are hereby overruled.*

**Judge John R. Padova, *Nichols v. SmithKline Beecham Corp.***, (April 22, 2005) No. 00-6222 (E.D. Pa.):

*Pursuant to the Order dated October 18, 2004, End-Payor Plaintiffs employed Hilsoft Notifications to design and oversee Notice to the End-Payor Class. Hilsoft Notifications has extensive experience in class action notice situations relating to prescription drugs and cases in which unknown class members need to receive notice...After reviewing the individual mailed Notice, the publication Notices, the PSAs and the*

*informational release, the Court concludes that the substance of the Notice provided to members of the End-Payor Class in this case was adequate to satisfy the concerns of due process and the Federal Rules.*

**Judge Douglas L. Combs, *Morris v. Liberty Mutual Fire Ins. Co.***, (February 22, 2005) No. CJ-03-714 (D. Okla.):

*I am very impressed that the notice was able to reach – be delivered to 97 ½ percent members of the class. That, to me, is admirable. And I'm also – at the time that this was initially entered, I was concerned about the ability of notice to be understood by a common, nonlawyer person, when we talk about legalese in a court setting. In this particular notice, not only the summary notice but even the long form of the notice were easily understandable, for somebody who could read the English language, to tell them whether or not they had the opportunity to file a claim.*

**Judge Joseph R. Goodwin, *In re Serzone Products Liability Litigation***, 231 F.R.D. 221, 231 (S.D. W. Va. 2005):

*The Notice Plan was drafted by Hilsoft Notifications, a Pennsylvania firm specializing in designing, developing, analyzing and implementing large-scale, unbiased legal notification plans. Hilsoft has disseminated class action notices in more than 150 cases, and it designed the model notices currently displayed on the Federal Judicial Center's website as a template for others to follow...To enhance consumer exposure, Hilsoft studied the demographics and readership of publications among adults who used a prescription drug for depression in the last twelve months. Consequently, Hilsoft chose to utilize media particularly targeting women due to their greater incidence of depression and heavy usage of the medication.*

**Judge Richard G. Stearns, *In re Lupron® Marketing and Sales Practice Litigation***, (November 24, 2004) MDL No. 1430 (D. Mass.):

*After review of the proposed Notice Plan designed by Hilsoft Notifications...is hereby found to be the best practicable notice under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Fairness Hearing to all persons and entities affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Rule 23 the Federal Rules of Civil Procedure and due process.*

**Judge Richard G. Stearns, *In re Lupron Marketing and Sales Practice Litigation***, (November 23, 2004) MDL No. 1430 (D. Mass.):

*I actually find the [notice] plan as proposed to be comprehensive and extremely sophisticated and very likely be as comprehensive as any plan of its kind could be in reaching those most directly affected.*

**Judge James S. Moody, Jr., *Mantzouris v. Scarritt Motor Group Inc.***, (August 10, 2004) No. 8:03 CV- 0015-T-30 MSS (M.D. Fla.):

*Due and adequate notice of the proceedings having been given and a full opportunity having been offered to the members of the Class to participate in the Settlement Hearing, or object to the certification of the Class and the Agreement, it is hereby determined that all members of the Class, except for Ms. Gwendolyn Thompson, who was the sole person opting out of the Settlement Agreement, are bound by this Order and Final Judgment entered herein.*

**Judge Robert E. Payne, *Fisher v. Virginia Electric & Power Co.***, (July 1, 2004) No. 3:02CV431 (E.D. Va.):

*The record here shows that the class members have been fully and fairly notified of the existence of the class action, of the issues in it, of the approaches taken by each side in it in such a way as to inform meaningfully those whose rights are affected and to thereby enable them to exercise their rights intelligently...The success rate in notifying the class is, I believe, at least in my experience, I share Ms. Kauffman's experience, it is as great as I have ever seen in practicing or serving in this job...So I don't believe we could have had any more effective notice.*

**Judge John Kraetzer, *Baiz v. Mountain View Cemetery***, (April 14, 2004) No. 809869-2 (Cal. Super. Ct.):

*The notice program was timely completed, complied with California Government Code section 6064, and provided the best practicable notice to all members of the Settlement Class under the circumstances. The Court finds that the notice program provided class members with adequate instructions and a variety of means to obtain information pertaining to their rights and obligations under the settlement so that a full opportunity has been afforded to class members and all other persons wishing to be heard...The Court has determined that the Notice given to potential members of the Settlement Class fully and accurately informed potential Members of the Settlement Class of all material elements of the proposed settlement and constituted valid, due, and sufficient notice to all potential members of the Settlement Class, and that it constituted the best practicable notice under the circumstances.*

**Hospitality Mgmt. Assoc., Inc. v. Shell Oil Co.**, 356 S.C. 644, 663, 591 S.E.2d 611, 621 (Sup. Ct. S.C. 2004):

*Clearly, the Cox court designed and utilized various procedural safeguards to guarantee sufficient notice under the circumstances. Pursuant to a limited scope of review, we need go no further in deciding the Cox court's findings that notice met due process are entitled to deference.*

**Judge Joseph R. Goodwin, *In re Serzone Prods. Liability Litigation***, 2004 U.S. Dist. LEXIS 28297, at \*10 (S.D. W. Va.):

*The Court has considered the Notice Plan and proposed forms of Notice and Summary Notice submitted with the Memorandum for Preliminary Approval and finds that the forms and manner of notice proposed by Plaintiffs and approved herein meet the requirements of due process and Fed.R.Civ.P. 23(c) and (e), are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the Constitutional requirements of notice.*

**Judge James D. Arnold, *Cotten v. Ferman Mgmt. Servs. Corp.***, (November 26, 2003) No. 02-08115 (Fla. Cir. Ct.):

*Due and adequate notice of the proceedings having been given and a full opportunity having been offered to the member of the Class to participate in the Settlement Hearing, or object to the certification of the Class and the Agreement...*

**Judge Judith K. Fitzgerald, *In re Pittsburgh Corning Corp.***, (November 26, 2003) No. 00-22876-JKF (Bankr. W.D. Pa.):

*The procedures and form of notice for notifying the holders of Asbestos PI Trust Claims, as described in the Motion, adequately protect the interests of the holders of Asbestos PI Trust Claims in a manner consistent with the principles of due process, and satisfy the applicable requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.*

**Judge Carter Holly, *Richison v. American Cemwood Corp.***, (November 18, 2003) No. 005532 (Cal. Super. Ct.):

*As to the forms of Notice, the Court finds and concludes that they fully apprised the Class members of the pendency of the litigation, the terms of the Phase 2 Settlement, and Class members' rights and options...Not a single Class member—out of an estimated 30,000—objected to the terms of the Phase 2 Settlement Agreement, notwithstanding a comprehensive national Notice campaign, via direct mail and publication Notice...The notice was reasonable and the best notice practicable under the circumstances, was due, adequate, and sufficient notice to all Class members, and complied fully with the laws of the State of California, the Code of Civil Procedure, due process, and California Rules of Court 1859 and 1860.*

**Judge Thomas A. Higgins, *In re Columbia/HCA Healthcare Corp.***, (June 13, 2003) MDL No. 1227 (M.D. Tenn.):

*Notice of the settlement has been given in an adequate and sufficient manner. The notice provided by mailing the settlement notice to certain class members and publishing notice in the manner described in the settlement was the best practicable notice, complying in all respects with the requirements of due process.*

**Judge Harold Baer, Jr., *Thompson v. Metropolitan Life Ins. Co.***, 216 F.R.D. 55, 68 (S.D.N.Y. 2003):

*In view of the extensive notice campaign waged by the defendant, the extremely small number of class members objecting or requesting exclusion from the settlement is a clear sign of strong support for the settlement...The notice provides, in language easily understandable to a lay person, the essential terms of the settlement, including the claims asserted...who would be covered by the settlement...[T]he notice campaign that defendant agreed to undertake was extensive...I am satisfied, having reviewed the contents of the notice package, and the extensive steps taken to disseminate notice of the settlement, that the class notice complies with the requirements of Rule 23 (c)(2) and 23(e). In summary, I have reviewed all of the objections, and none persuade me to conclude that the proposed settlement is unfair, inadequate or unreasonable.*

**Judge Edgar E. Bayley, *Dimitrios v. CVS, Inc.***, (November 27, 2002) No. 99-6209; ***Walker v. Rite Aid Corp.***, No. 99-6210; and ***Myers v. Rite Aid Corp.***, No. 01-2771 (Pa. Ct. C.P.):

*The Court specifically finds that: fair and adequate notice has been given to the class, which comports with due process of law.*

**Judge Dewey C. Whitenton, *Ervin v. Movie Gallery, Inc.***, (November 22, 2002) No. 13007 (Tenn. Ch.):

*The content of the class notice also satisfied all due process standards and state law requirements...The content of the notice was more than adequate to enable class members to make an informed and intelligent choice about remaining in the class or opting out of the class.*

**Judge James R. Williamson, *Kline v. The Progressive Corp.***, (November 14, 2002) No. 01-L-6 (Ill. Cir. Ct.):

*Notice to the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The notice contained the essential elements necessary to satisfy due process...*

**Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.***, (September 13, 2002) No. L-008830.00 (N.J. Super. Ct.):

*Here, the comprehensive bilingual, English and Spanish, court-approved Notice Plan provided by the terms of the settlement meets due process requirements. The Notice Plan used a variety of methods to reach potential class members. For example, short form notices for print media were placed...throughout the United States and in major national consumer publications which include the most widely read publications among Cooper Tire owner demographic groups.*

**Judge Harold Baer, Jr., *Thompson v. Metropolitan Life Ins. Co.***, (September 3, 2002) No. 00 Civ. 5071-HB (S.D. N.y.):

*The Court further finds that the Class Notice and Publication Notice provided in the Settlement Agreement are written in plain English and are readily understandable by Class Members. In sum, the Court finds that the proposed notice texts and methodology are reasonable, that they constitute due, adequate and sufficient notice to all persons entitled to be provided with notice, and that they meet the requirements of the Federal Rules of Civil Procedure (including Fed. R. Civ. P. 23(c)(2) and (e)), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law.*

**Judge Milton Gunn Shuffield, *Scott v. Blockbuster Inc.***, (January 22, 2002) No. D 162-535 (Tex. Jud. Dist. Ct.) Ultimately withstood challenge to Court of Appeals of Texas. *Peters v. Blockbuster* 65 S.W.3d 295, 307 (Tex. App.-Beaumont, 2001):

*In order to maximize the efficiency of the notice, a professional concern, Hilsoft Notifications, was retained. This Court concludes that the notice campaign was the best practicable, reasonably calculated, under all the circumstances, to apprise interested parties of the settlement and afford them an opportunity to present their objections...The notice campaign was highly successful and effective, and it more than satisfied the due process and state law requirements for class notice.*

**Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.***, (October 30, 2001) No. MID-L-8839-00-MT (N.J. Super. Ct.):

*The parties have crafted a notice program which satisfies due process requirements without reliance on an unreasonably burdensome direct notification process...The form of the notice is reasonably calculated to apprise class members of their rights. The notice program is specifically designed to reach a substantial percentage of the putative settlement class members.*

**Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.***, (October 29, 2001) No. L-8830-00-MT (N.J. Super. Ct.):

*I saw the various bar graphs for the different publications and the different media dissemination, and I think that was actually the clearest bar graph I've ever seen in my life...it was very clear of the time periods that you were doing as to each publication and which media you were doing over what market time, so I think that was very clear.*

**Judge Stuart R. Pollak, *Microsoft I-V Cases***, (April 1, 2001) J.C.C.P. No. CJC-00-004106 (Cal. Super. Ct.):

*[C]oncerning dissemination of class notice; and I have reviewed the materials that have been submitted on that subject and basically I'm satisfied. I think it's amazing if you're really getting 80 percent coverage. That's very reassuring. And the papers that you submitted responded to a couple things that had been mentioned before and I am satisfied with all that.*

**Judge Stuart R. Pollak, *Microsoft I-V Cases***, (March 30, 2001) J.C.C.P. No. 4106 (Cal. Super. Ct.):

*Plaintiffs and Defendant Microsoft Corporation have submitted a joint statement in support of their request that the Court approve the plan for dissemination of class action notice and proposed forms of notice, and amend the class definition. The Court finds that the forms of notice to Class members attached hereto as Exhibits A and B fairly and adequately inform the Class members of their rights concerning this litigation. The Court further finds that the methods for dissemination of notice are the fairest and best practicable under the circumstances, and comport with due process requirements.*

**LEGAL NOTICE CASES**

Hilsoft Notifications has served as a notice expert for planning, implementation and/or analysis in the following partial listing of cases:

<b><i>Andrews v. MCI (900 Number Litigation)</i></b>	S.D. Ga., CV 191-175
<b><i>Harper v. MCI (900 Number Litigation)</i></b>	S.D. Ga., CV 192-134
<b><i>In re Bausch &amp; Lomb Contact Lens Litigation</i></b>	N.D. Ala., 94-C-1144-WW
<b><i>In re Ford Motor Co. Vehicle Paint Litigation</i></b>	E.D. La., MDL No. 1063
<b><i>Castano v. Am. Tobacco</i></b>	E.D. La., CV 94-1044
<b><i>Cox v. Shell Oil (Polybutylene Pipe Litigation)</i></b>	Tenn. Ch., 18,844
<b><i>In re Amino Acid Lysine Antitrust Litigation</i></b>	N.D. Ill., MDL No. 1083
<b><i>In re Dow Corning Corp. (Breast Implant Bankruptcy)</i></b>	E.D. Mich., 95-20512-11-AJS
<b><i>Kunhel v. CNA Ins. Companies</i></b>	N.J. Super. Ct., ATL-C-0184-94
<b><i>In re Factor Concentrate Blood Prods. Litigation (Hemophiliac HIV)</i></b>	N.D. Ill., MDL No. 986

<b><i>In re Ford Ignition Switch Prods. Liability Litigation</i></b>	D. N.J., 96-CV-3125
<b><i>Jordan v. A.A. Friedman (Non-Filing Ins. Litigation)</i></b>	M.D. Ga., 95-52-COL
<b><i>Kalhammer v. First USA (Credit Card Litigation)</i></b>	Cal. Cir. Ct., C96-45632010-CAL
<b><i>Navarro-Rice v. First USA (Credit Card Litigation)</i></b>	Ore. Cir. Ct., 9709-06901
<b><i>Spitzfaden v. Dow Corning (Breast Implant Litigation)</i></b>	La. D. Ct., 92-2589
<b><i>Robinson v. Marine Midland (Finance Charge Litigation)</i></b>	N.D. Ill., 95 C 5635
<b><i>McCurdy v. Norwest Fin. Alabama</i></b>	Ala. Cir. Ct., CV-95-2601
<b><i>Johnson v. Norwest Fin. Alabama</i></b>	Ala. Cir. Ct., CV-93-PT-962-S
<b><i>In re Residential Doors Antitrust Litigation</i></b>	E.D. Pa., MDL No. 1039
<b><i>Barnes v. Am. Tobacco Co. Inc.</i></b>	E.D. Pa., 96-5903
<b><i>Small v. Lorillard Tobacco Co. Inc.</i></b>	N.Y. Super. Ct., 110949/96
<b><i>Naef v. Masonite Corp (Hardboard Siding Litigation)</i></b>	Ala. Cir. Ct., CV-94-4033
<b><i>In re Synthroid Mktg. Litigation</i></b>	N.D. Ill., MDL No. 1182
<b><i>Raysick v. Quaker State Slick 50 Inc.</i></b>	D. Tex., 96-12610
<b><i>Castillo v. Mike Tyson (Tyson v. Holyfield Bout)</i></b>	N.Y. Super. Ct., 114044/97
<b><i>Avery v. State Farm Auto. Ins. (Non-OEM Auto Parts Litigation)</i></b>	Ill. Cir. Ct., 97-L-114
<b><i>Walls v. The Am. Tobacco Co. Inc.</i></b>	N.D. Okla., 97-CV-218-H
<b><i>Tempest v. Rainforest Café (Securities Litigation)</i></b>	D. Minn., 98-CV-608
<b><i>Stewart v. Avon Prods. (Securities Litigation)</i></b>	E.D. Pa., 98-CV-4135
<b><i>Goldenberg v. Marriott PLC Corp (Securities Litigation)</i></b>	D. Md., PJM 95-3461
<b><i>Delay v. Hurd Millwork (Building Products Litigation)</i></b>	Wash. Super. Ct., 97-2-07371-0
<b><i>Gutterman v. Am. Airlines (Frequent Flyer Litigation)</i></b>	Ill. Cir. Ct., 95CH982
<b><i>Hoeffner v. The Estate of Alan Kenneth Vieira (Un-scattered Cremated Remains Litigation)</i></b>	Cal. Super. Ct., 97-AS 02993
<b><i>In re Graphite Electrodes Antitrust Litigation</i></b>	E.D. Pa., MDL No. 1244
<b><i>In re Silicone Gel Breast Implant Prods. Liability Litigation, Altrichter v. INAMED</i></b>	N.D. Ala., MDL No. 926
<b><i>St. John v. Am. Home Prods. Corp. (Fen/Phen Litigation)</i></b>	Wash. Super. Ct., 97-2-06368
<b><i>Crane v. Hackett Assocs. (Securities Litigation)</i></b>	E.D. Pa., 98-5504

<b><i>In re Holocaust Victims Assets Litigation (Swiss Banks Litigation)</i></b>	E.D. N.Y., CV-96-4849
<b><i>McCall v. John Hancock (Settlement Death Benefits)</i></b>	N.M. Cir. Ct., CV-2000-2818
<b><i>Williams v. Weyerhaeuser Co. (Hardboard Siding Litigation)</i></b>	Cal. Super. Ct., CV-995787
<b><i>Kapustin v. YBM Magnex Int'l Inc. (Securities Litigation)</i></b>	E.D. Pa., 98-CV-6599
<b><i>Leff v. YBM Magnex Int'l Inc. (Securities Litigation)</i></b>	E.D. Pa., 95-CV-89
<b><i>In re PRK/LASIK Consumer Litigation</i></b>	Cal. Super. Ct., CV-772894
<b><i>Hill v. Galaxy Cablevision</i></b>	N.D. Miss., 1:98CV51-D-D
<b><i>Scott v. Am. Tobacco Co. Inc.</i></b>	La. D. Ct., 96-8461
<b><i>Jacobs v. Winthrop Fin. Assocs. (Securities Litigation)</i></b>	D. Mass., 99-CV-11363
<b><i>Int'l Comm'n on Holocaust Era Ins. Claims – Worldwide Outreach Program</i></b>	Former Secretary of State Lawrence Eagleburger Commission
<b><i>Bownes v. First USA Bank (Credit Card Litigation)</i></b>	Ala. Cir. Ct., CV-99-2479-PR
<b><i>Whetman v. IKON (ERISA Litigation)</i></b>	E.D. Pa., 00-87
<b><i>Mangone v. First USA Bank (Credit Card Litigation)</i></b>	Ill. Cir. Ct., 99AR672a
<b><i>In re Babcock and Wilcox Co. (Asbestos Related Bankruptcy)</i></b>	E.D. La., 00-10992
<b><i>Barbanti v. W.R. Grace and Co. (Zonolite / Asbestos Litigation)</i></b>	Wash. Super. Ct., 00201756-6
<b><i>Brown v. Am. Tobacco</i></b>	Cal. Super. Ct., J.C.C.P. 4042, 711400
<b><i>Wilson v. Servier Canada Inc. (Canadian Fen/Phen Litigation)</i></b>	Ont. Super. Ct., 98-CV-158832
<b><i>In re Texaco Inc. (Bankruptcy)</i></b>	S.D. N.Y. 87 B 20142, 87 B 20143, 87 B 20144.
<b><i>Olinde v. Texaco (Bankruptcy, Oil Lease Litigation)</i></b>	M.D. La., 96-390
<b><i>Gustafson v. Bridgestone/Firestone, Inc. (Recall Related Litigation)</i></b>	S.D. Ill., 00-612-DRH
<b><i>In re Bridgestone/Firestone Tires Prods. Liability Litigation</i></b>	S.D. Ind., MDL No. 1373
<b><i>Gaynoe v. First Union Corp. (Credit Card Litigation)</i></b>	N.C. Super. Ct., 97-CVS-16536
<b><i>Carson v. Daimler Chrysler Corp. (Fuel O-Rings Litigation)</i></b>	W.D. Tenn., 99-2896 TU A
<b><i>Providian Credit Card Cases</i></b>	Cal. Super. Ct., J.C.C.P. 4085
<b><i>Fields v. Great Spring Waters of Am., Inc. (Bottled Water Litigation)</i></b>	Cal. Super. Ct., 302774

<b>Sanders v. Great Spring Waters of Am., Inc. (Bottled Water Litigation)</b>	Cal. Super. Ct., 303549
<b>Sims v. Allstate Ins. Co. (Diminished Auto Value Litigation)</b>	Ill. Cir. Ct., 99-L-393A
<b>Peterson v. State Farm Mutual Auto. Ins. Co. (Diminished Auto Value Litigation)</b>	Ill. Cir. Ct., 99-L-394A
<b>Microsoft I-V Cases (Antitrust Litigation Mirroring Justice Dept.)</b>	Cal. Super. Ct., J.C.C.P. 4106
<b>Westman v. Rogers Family Funeral Home, Inc. (Remains Handling Litigation)</b>	Cal. Super. Ct., C-98-03165
<b>Rogers v. Clark Equipment Co.</b>	Ill. Cir. Ct., 97-L-20
<b>Garrett v. Hurley State Bank (Credit Card Litigation)</b>	Miss. Cir. Ct., 99-0337
<b>Ragoonanan v. Imperial Tobacco Ltd. (Firesafe Cigarette Litigation)</b>	Ont. Super. Ct., 00-CV-183165 CP
<b>Dietschi v. Am. Home Prods. Corp. (PPA Litigation)</b>	W.D. Wash., C01-0306L
<b>Dimitrios v. CVS, Inc. (PA Act 6 Litigation)</b>	Pa. C.P., 99-6209
<b>Jones v. Hewlett-Packard Co. (Inkjet Cartridge Litigation)</b>	Cal. Super. Ct., 302887
<b>In re Tobacco Cases II (California Tobacco Litigation)</b>	Cal. Super. Ct., J.C.C.P. 4042
<b>Scott v. Blockbuster, Inc. (Extended Viewing Fees Litigation)</b>	136 <sup>th</sup> Tex. Jud. Dist., D 162-535
<b>Anesthesia Care Assocs. v. Blue Cross of Cal.</b>	Cal. Super. Ct., 986677
<b>Ting v. AT&amp;T (Mandatory Arbitration Litigation)</b>	N.D. Cal., C-01-2969-BZ
<b>In re W.R. Grace &amp; Co. (Asbestos Related Bankruptcy)</b>	Bankr. D. Del., 01-01139-JJF
<b>Talalai v. Cooper Tire &amp; Rubber Co. (Tire Layer Adhesion Litigation)</b>	N.J. Super. Ct., MID-L-8839-00 MT
<b>Kent v. Daimler Chrysler Corp. (Jeep Grand Cherokee Park-to-Reverse Litigation)</b>	N.D. Cal., C01-3293-JCS
<b>Int'l Org. of Migration – German Forced Labour Compensation Programme</b>	Geneva, Switzerland
<b>Madsen v. Prudential Federal Savings &amp; Loan (Homeowner's Loan Account Litigation)</b>	3 <sup>rd</sup> Jud. Dist. Ct. Utah, C79-8404
<b>Bryant v. Wyndham Int'l., Inc. (Energy Surcharge Litigation)</b>	Cal. Super. Ct., GIC 765441, GIC 777547
<b>In re USG Corp. (Asbestos Related Bankruptcy)</b>	Bankr. D. Del., 01-02094-RJN
<b>Thompson v. Metropolitan Life Ins. Co. (Race Related Sales Practices Litigation)</b>	S.D. N.Y., 00-CIV-5071 HB
<b>Ervin v. Movie Gallery Inc. (Extended Viewing Fees)</b>	Tenn. Ch., CV-13007
<b>Peters v. First Union Direct Bank (Credit Card Litigation)</b>	M.D. Fla., 8:01-CV-958-T-26 TBM

<b>National Socialist Era Compensation Fund</b>	Republic of Austria
<b>In re Baycol Litigation</b>	D. Minn., MDL No. 1431
<b>Claims Conference–Jewish Slave Labour Outreach Program</b>	German Government Initiative
<b>Wells v. Chevy Chase Bank (Credit Card Litigation)</b>	Md. Cir. Ct., C-99-000202
<b>Walker v. Rite Aid of PA, Inc. (PA Act 6 Litigation)</b>	C.P. Pa., 99-6210
<b>Myers v. Rite Aid of PA, Inc. (PA Act 6 Litigation)</b>	C.P. Pa., 01-2771
<b>In re PA Diet Drugs Litigation</b>	C.P. Pa., 9709-3162
<b>Harp v. Qwest Communications (Mandatory Arbitration Lit.)</b>	Ore. Circ. Ct., 0110-10986
<b>Tuck v. Whirlpool Corp. &amp; Sears, Roebuck &amp; Co. (Microwave Recall Litigation)</b>	Ind. Cir. Ct., 49C01-0111-CP-002701
<b>Allison v. AT&amp;T Corp. (Mandatory Arbitration Litigation)</b>	1 <sup>st</sup> Jud. D.C. N.M., D-0101-CV-20020041
<b>Kline v. The Progressive Corp.</b>	Ill. Cir. Ct., 01-L-6
<b>Baker v. Jewel Food Stores, Inc. &amp; Dominick’s Finer Foods, Inc. (Milk Price Fixing)</b>	Ill. Cir. Ct., 00-L-9664
<b>In re Columbia/HCA Healthcare Corp. (Billing Practices Litigation)</b>	M.D. Tenn., MDL No. 1227
<b>Foultz v. Erie Ins. Exchange (Auto Parts Litigation)</b>	C.P. Pa., 000203053
<b>Soders v. General Motors Corp. (Marketing Initiative Litigation)</b>	C.P. Pa., CI-00-04255
<b>Nature Guard Cement Roofing Shingles Cases</b>	Cal. Super. Ct., J.C.C.P. 4215
<b>Curtis v. Hollywood Entm’t Corp. (Additional Rental Charges)</b>	Wash. Super. Ct., 01-2-36007-8 SEA
<b>Defrates v. Hollywood Entm’t Corp.</b>	Ill. Cir. Ct., 02L707
<b>Pease v. Jasper Wyman &amp; Son, Merrill Blueberry Farms Inc., Allen’s Blueberry Freezer Inc. &amp; Cherryfield Foods Inc.</b>	Me. Super. Ct., CV-00-015
<b>West v. G&amp;H Seed Co. (Crawfish Farmers Litigation)</b>	27 <sup>th</sup> Jud. D. Ct. La., 99-C-4984-A
<b>Linn v. Roto-Rooter Inc. (Miscellaneous Supplies Charge)</b>	C.P. Ohio, CV-467403
<b>McManus v. Fleetwood Enter., Inc. (RV Brake Litigation)</b>	D. Ct. Tex., SA-99-CA-464-FB
<b>Baiz v. Mountain View Cemetery (Burial Practices)</b>	Cal. Super. Ct., 809869-2
<b>Stetser v. TAP Pharm. Prods, Inc. &amp; Abbott Laboratories (Lupron Price Litigation)</b>	N.C. Super. Ct., 01-CVS-5268
<b>Richison v. Am. Cemwood Corp. (Roofing Durability Settlement)</b>	Cal. Super. Ct., 005532

<b>Cotten v. Ferman Mgmt. Servs. Corp.</b>	13 <sup>th</sup> Jud. Cir. Fla., 02-08115
<b>In re Pittsburgh Corning Corp. (Asbestos Related Bankruptcy)</b>	Bankr. W.D. Pa., 00-22876-JKF
<b>Mostajo v. Coast Nat'l Ins. Co.</b>	Cal. Super. Ct., 00 CC 15165
<b>Friedman v. Microsoft Corp. (Antitrust Litigation)</b>	Ariz. Super. Ct., CV 2000-000722
<b>Multinational Outreach - East Germany Property Claims</b>	Claims Conference
<b>Davis v. Am. Home Prods. Corp. (Norplant Contraceptive Litigation)</b>	D. La., 94-11684
<b>Walker v. Tap Pharmaceutical Prods., Inc. (Lupron Price Litigation)</b>	N.J. Super. Ct., CV CPM-L-682-01
<b>Munsey v. Cox Communications (Late Fee Litigation)</b>	D. La., Sec. 9, 97 19571
<b>Gordon v. Microsoft Corp. (Antitrust Litigation)</b>	4 <sup>th</sup> Jud. D. Ct. Minn., 00-5994
<b>Clark v. Tap Pharmaceutical Prods., Inc.</b>	5 <sup>th</sup> Dist. App. Ct. Ill., 5-02-0316
<b>Fisher v. Virginia Electric &amp; Power Co.</b>	E.D. Va., 3:02-CV-431
<b>Mantzouris v. Scarritt Motor Group, Inc.</b>	M.D. Fla., 8:03-CV-0015-T-30-MSS
<b>Johnson v. Ethicon, Inc. (Product Liability Litigation)</b>	W. Va. Cir. Ct., 01-C-1530, 1531, 1533, 01-C-2491 to 2500
<b>Schlink v. Edina Realty Title</b>	4 <sup>th</sup> Jud. D. Ct. Minn., 02-018380
<b>Tawney v. Columbia Natural Res. (Oil &amp; Gas Lease Litigation)</b>	W. Va. Cir. Ct., 03-C-10E
<b>White v. Washington Mutual, Inc. (Pre-Payment Penalty Litigation)</b>	4 <sup>th</sup> Jud. D. Ct. Minn., CT 03-1282
<b>Acacia Media Techs. Corp. v. Cybernet Ventures Inc, (Patent Infringement Litigation)</b>	C.D. Cal., SACV03-1803 GLT (Anx)
<b>Bardessono v. Ford Motor Co. (15 Passenger Vans)</b>	Wash. Super. Ct., 32494
<b>Gardner v. Stimson Lumber Co. (Forestex Siding Litigation)</b>	Wash. Super. Ct., 00-2-17633-3SEA
<b>Poor v. Sprint Corp. (Fiber Optic Cable Litigation)</b>	Ill. Cir. Ct., 99-L-421
<b>Thibodeau v. Comcast Corp.</b>	E.D. Pa., 04-CV-1777
<b>Cazenave v. Sheriff Charles C. Foti (Strip Search Litigation)</b>	E.D. La., 00-CV-1246
<b>National Assoc. of Police Orgs., Inc. v. Second Chance Body Armor, Inc. (Bullet Proof Vest Litigation)</b>	Mich. Cir. Ct., 04-8018-NP
<b>Nichols v. SmithKline Beecham Corp. (Paxil)</b>	E.D. Pa., 00-6222
<b>Yacout v. Federal Pacific Electric Co. (Circuit Breaker)</b>	N.J. Super. Ct., MID-L-2904-97
<b>Lewis v. Bayer AG (Baycol)</b>	1 <sup>st</sup> Jud. Dist. Ct. Pa., 002353

<b><i>In re Educ. Testing Serv. PLT 7-12 Test Scoring Litigation</i></b>	E.D. La., MDL No. 1643
<b><i>Stefanyshyn v. Consol. Indus. Corp. (Heat Exchanger)</i></b>	Ind. Super. Ct., 79 D 01-9712-CT-59
<b><i>Barnett v. Wal-Mart Stores, Inc.</i></b>	Wash. Super. Ct., 01-2-24553-8 SEA
<b><i>In re Serzone Prods. Liability Litigation</i></b>	S.D. W. Va., MDL No. 1477
<b><i>Ford Explorer Cases</i></b>	Cal. Super. Ct., J.C.C.P. 4226 & 4270
<b><i>In re Solutia Inc. (Bankruptcy)</i></b>	S.D. N.Y., 03-17949-PCB
<b><i>In re Lupron Marketing &amp; Sales Practices Litigation</i></b>	D. Mass., MDL No. 1430
<b><i>Morris v. Liberty Mutual Fire Ins. Co.</i></b>	D. Okla., CJ-03-714
<b><i>Bowling, et al. v. Pfizer Inc. (Bjork-Shiley Convexo-Concave Heart Valve)</i></b>	S.D. Ohio, C-1-91-256
<b><i>Thibodeaux v. Conoco Philips Co.</i></b>	D. La., 2003-481
<b><i>Morrow v. Conoco Inc.</i></b>	D. La., 2002-3860
<b><i>Tobacco Farmer Transition Program</i></b>	U.S. Dept. of Agric.
<b><i>Perry v. Mastercard Int'l Inc.</i></b>	Ariz. Super. Ct., CV2003-007154
<b><i>Brown v. Credit Suisse First Boston Corp.</i></b>	C.D. La., 02-13738
<b><i>In re Unum Provident Corp.</i></b>	D. Tenn., 1:03-CV-1000
<b><i>In re Ephedra Prods. Liability Litigation</i></b>	D. N.Y., MDL No. 1598
<b><i>Chesnut v. Progressive Casualty Ins. Co.</i></b>	Ohio C.P., 460971
<b><i>Froeber v. Liberty Mutual Fire Ins. Co.</i></b>	Ore. Cir. Ct., 00C15234
<b><i>Luikart v. Wyeth Am. Home Prods. (Hormone Replacement)</i></b>	W. Va. Cir. Ct., 04-C-127
<b><i>Salkin v. MasterCard Int'l Inc. (Pennsylvania)</i></b>	Pa. C.P., 2648
<b><i>Rolnik v. AT&amp;T Wireless Servs., Inc.</i></b>	N.J. Super. Ct., L-180-04
<b><i>Singleton v. Hornell Brewing Co. Inc. (Arizona Ice Tea)</i></b>	Cal. Super. Ct., BC 288 754
<b><i>Becherer v. Qwest Commc'ns Int'l, Inc.</i></b>	Ill. Cir. Ct., 02-L140
<b><i>Clearview Imaging v. Progressive Consumers Ins. Co.</i></b>	Fla. Cir. Ct., 03-4174
<b><i>Mehl v. Canadian Pacific Railway, Ltd</i></b>	D. N.D., A4-02-009
<b><i>Murray v. IndyMac Bank. F.S.B</i></b>	N.D. Ill., 04 C 7669
<b><i>Gray v. New Hampshire Indemnity Co., Inc.</i></b>	Ark. Cir. Ct., CV-2002-952-2-3

<b>George v. Ford Motor Co.</b>	M.D. Tenn., 3:04-0783
<b>Allen v. Monsanto Co.</b>	W. Va. Cir. Ct., 041465
<b>Carter v. Monsanto Co.</b>	W. Va. Cir. Ct., 00-C-300
<b>Carnegie v. Household Int'l, Inc.</b>	N. D. Ill., 98-C-2178
<b>Daniel v. AON Corp.</b>	Ill. Cir. Ct., 99 CH 11893
<b>In re Royal Ahold Securities and "ERISA" Litigation</b>	D. Md., MDL No. 1539
<b>In re Pharmaceutical Industry Average Wholesale Price Litigation</b>	D. Mass., MDL No. 1456
<b>Meckstroth v. Toyota Motor Sales, U.S.A., Inc.</b>	24 <sup>th</sup> Jud. D. Ct. La., 583-318
<b>Walton v. Ford Motor Co.</b>	Cal. Super. Ct., SCVSS 126737
<b>Hill v. State Farm Mutual Auto Ins. Co.</b>	Cal. Super. Ct., BC 194491
<b>First State Orthopaedics et al. v. Concentra, Inc., et al.</b>	E.D. Pa. 2:05-CV-04951-AB
<b>Sauro v. Murphy Oil USA, Inc.</b>	E.D. La., 05-4427
<b>In re High Sulfur Content Gasoline Prods. Liability Litigation</b>	E.D. La., MDL No. 1632
<b>Homeless Shelter Compensation Program</b>	City of New York
<b>Rosenberg v. Academy Collection Service, Inc.</b>	E.D. Pa., 04-CV-5585
<b>Chapman v. Butler &amp; Hosch, P.A.</b>	2 <sup>nd</sup> Jud. Cir. Fla., 2000-2879
<b>In re Vivendi Universal, S.A. Securities Litigation</b>	S.D. N.Y., 02-CIV-5571 RJH
<b>Desportes v. American General Assurance Co.</b>	Ga. Super. Ct., SU-04-CV-3637
<b>In re: Propulsid Products Liability Litigation</b>	E.D. La., MDL No. 1355
<b>Baxter v. The Attorney General of Canada (In re Residential Schools Class Action Litigation)</b>	Ont. Super. Ct., 00-CV-192059 CPA
<b>McNall v. Mastercard Int'l, Inc. (Currency Conversion Fees)</b>	13 <sup>th</sup> Tenn. Jud. Dist. Ct.
<b>Lee v. Allstate</b>	Ill. Cir. Ct., 03 LK 127
<b>Turner v. Murphy Oil USA, Inc.</b>	E.D. La., 2:05-CV-04206-EEF-JCW
<b>Carter v. North Central Life Ins. Co.</b>	Ga. Super. Ct., SU-2006-CV-3764-6
<b>Harper v. Equifax</b>	E.D. Pa., 2:04-CV-03584-TON
<b>Beasley v. Hartford Insurance Co. of the Midwest</b>	Ark. Cir. Ct., CV-2005-58-1
<b>Springer v. Biomedical Tissue Services, LTD (Human Tissue Litigation)</b>	Ind. Cir. Ct., 1:06-CV-00332-SEB-VSS

<b><i>Spence v. Microsoft Corp. (Antitrust Litigation)</i></b>	Wis. Cir. Ct., 00-CV-003042
<b><i>Pennington v. The Coca Cola Co. (Diet Coke)</i></b>	Mo. Cir. Ct., 04-CV-208580
<b><i>Sunderman v. Regeneration Technologies, Inc. (Human Tissue Litigation)</i></b>	S.D. Ohio, 1:06-CV-075-MHW
<b><i>Splater v. Thermal Ease Hydronic Systems, Inc.</i></b>	Wash. Super. Ct., 03-2-33553-3-SEA
<b><i>Peyroux v. The United States of America (New Orleans Levee Breach)</i></b>	E.D. La., 06-2317
<b><i>Chambers v. DaimlerChrysler Corp. (Neon Head Gaskets)</i></b>	N.C. Super. Ct., 01:CVS-1555
<b><i>Ciabattari v. Toyota Motor Sales, U.S.A., Inc. (Sienna Run Flat Tires)</i></b>	N.D. Cal., C-05-04289-BZ
<b><i>In re Bridgestone Securities Litigation</i></b>	M.D. Tenn., 3:01-CV-0017
<b><i>In re Mutual Funds Investment Litigation (Market Timing)</i></b>	D. Md., MDL No. 1586
<b><i>Accounting Outsourcing v. Verizon Wireless</i></b>	M.D. La., 03-CV-161
<b><i>Hensley v. Computer Sciences Corp.</i></b>	Ark. Cir. Ct., CV-2005-59-3
<b><i>Peek v. Microsoft Corporation</i></b>	Ark. Cir. Ct., CV-2006-2612
<b><i>Reynolds v. The Hartford Financial Services Group, Inc.</i></b>	D. Ore., CV-01-1529 BR
<b><i>Schwab v. Philip Morris USA, Inc.</i></b>	E.D. N.Y., CV-04-1945
<b><i>Zarebski v. Hartford Insurance Co. of the Midwest</i></b>	Ark. Cir. Ct., CV-2006-409-3
<b><i>In re Parmalat Securities Litigation</i></b>	S.D. N.Y., MDL No. 1653 (LAK)
<b><i>Beasley v. The Reliable Life Insurance Co.</i></b>	Ark. Cir. Ct., CV-2005-58-1
<b><i>Sweeten v. American Empire Insurance Company</i></b>	Ark. Cir. Ct., 2007-154-3
<b><i>Govt. Employees Hospital Assoc. v. Serono Int., S.A.</i></b>	D. Mass., 06-CA-10613-PBS
<b><i>Gunderson v. Focus Healthcare Management, Inc.</i></b>	14 <sup>th</sup> Jud. D. Ct. La., 2004-2417-D
<b><i>Gunderson v. F.A. Richard &amp; Associates, Inc., et al.</i></b>	14 <sup>th</sup> Jud. D. Ct. La., 2004-2417-D
<b><i>Perez v. Manor Care of Carrollwood</i></b>	13 <sup>th</sup> Jud. Cir. Fla., 06-00574-E
<b><i>Pope v. Manor Care of Carrollwood</i></b>	13 <sup>th</sup> Jud. Cir. Fla., 06-01451-B
<b><i>West v. Carfax, Inc.</i></b>	Ohio C.P., 04-CV-1898 (ADL)
<b><i>Hunsucker v. American Standard Ins. Co. of Wisconsin</i></b>	Ark. Cir. Ct., CV-2007-155-3
<b><i>In re Conagra Peanut Butter Products Liability Litigation</i></b>	N.D. Ga., MDL No. 1845 (TWT)
<b><i>The People of the State of CA v. Universal Life Resources (Cal DOI v. CIGNA)</i></b>	Cal. Super. Ct., GIC838913

<b><i>Burgess v. Farmers Insurance Co., Inc.</i></b>	D. Okla., CJ-2001-292
<b><i>Grays Harbor v. Carrier Corporation</i></b>	W.D. Wash., 05-05437-RBL
<b><i>Perrine v. E.I. Du Pont De Nemours &amp; Co.</i></b>	W. Va. Cir. Ct., 04-C-296-2
<b><i>In re Alstom SA Securities Litigation</i></b>	S.D. N.Y., 03-CV-6595 VM
<b><i>Brookshire Bros. v. Chiquita (Antitrust)</i></b>	S.D. Fla., 05-CIV-21962
<b><i>Hoorman v. SmithKline Beecham</i></b>	Ill. Cir. Ct., 04-L-715
<b><i>Santos v. Government of Guam (Earned Income Tax Credit)</i></b>	D. Guam, 04-00049
<b><i>Johnson v. Progressive</i></b>	Ark. Cir. Ct., CV-2003-513
<b><i>Bond v. American Family Insurance Co.</i></b>	D. Ariz., CV06-01249-PXH-DGC
<b><i>In re SCOR Holding (Switzerland) AG Litigation (Securities)</i></b>	S.D. N.Y., 04-cv-7897
<b><i>Shoukry v. Fisher-Price, Inc. (Toy Safety)</i></b>	S.D. N.Y., 07-cv-7182
<b><i>In re: Guidant Corp. Plantable Defibrillators Prod's Liab. Litigation</i></b>	D. Minn., MDL No. 1708
<b><i>Clark v. Pfizer, Inc (Neurontin)</i></b>	C.P. Pa., 9709-3162
<b><i>Angel v. U.S. Tire Recovery (Tire Fire)</i></b>	W. Va. Cir. Ct., 06-C-855
<b><i>In re TJX Companies Retail Security Breach Litigation</i></b>	D. Mass., MDL No. 1838
<b><i>Webb v. Liberty Mutual Insurance Co.</i></b>	Ark. Cir. Ct., CV-2007-418-3
<b><i>Shaffer v. Continental Casualty Co. (Long Term Care Ins.)</i></b>	C.D. Cal., SACV06-2235-PSG
<b><i>Palace v. DaimlerChrysler (Defective Neon Head Gaskets)</i></b>	Ill. Cir. Ct., 01-CH-13168
<b><i>Lockwood v. Certegy Check Services, Inc. (Stolen Financial Data)</i></b>	M.D. Fla., 8:07-cv-1434-T-23TGW
<b><i>Sherrill v. Progressive Northwestern Ins. Co.</i></b>	18 <sup>th</sup> D. Ct. Mont., DV-03-220
<b><i>Gunderson v. F.A. Richard &amp; Assocs., Inc. (AIG)</i></b>	14 <sup>th</sup> Jud. D. Ct. La., 2004-2417-D
<b><i>Jones v. Dominion Resources Services, Inc.</i></b>	S.D. W. Va., 2:06-cv-00671
<b><i>Gunderson v. F.A. Richard &amp; Assocs., Inc. (Wal-Mart)</i></b>	14 <sup>th</sup> Jud. D. Ct. La., 2004-2417-D
<b><i>In re Trans Union Corp. Privacy Litigation</i></b>	N.D. Ill., MDL No. 350
<b><i>Gudo v. The Administrator of the Tulane Ed. Fund</i></b>	La. D. Ct., 2007-C-1959
<b><i>Guidry v. American Public Life Insurance Co.</i></b>	14 <sup>th</sup> Jud. D. Ct. La., 2008-3465
<b><i>McGee v. Continental Tire North America</i></b>	D. N.J., 2:06-CV-06234 (GEB)

<b><i>Sims v. Rosedale Cemetery Co.</i></b>	W. Va. Cir. Ct., 03-C-506
<b><i>Gunderson v. F.A. Richard &amp; Assocs., Inc. (Amerisafe)</i></b>	14 <sup>th</sup> Jud. D. Ct. La., 2004-002417
<b><i>In Re Katrina Canal Breaches Consolidated Litigation</i></b>	E.D. La., 05-4182
<b><i>In re Department of Veterans Affairs (VA) Data Theft Litigation</i></b>	D. D.C., MDL No. 1796
<b><i>Dolen v. ABN AMRO Bank N.V. (Callable CD's)</i></b>	Ill. Cir. Ct., 01-L-454 and 01-L-493
<b><i>Pavlov v. CNA (Long Term Care Insurance)</i></b>	N.D. Ohio, 5:07cv2580
<b><i>Steele v. Pergo( Flooring Products)</i></b>	D. Ore., 07-CV-01493-BR
<b><i>Opelousas Trust Authority v. Summit Consulting</i></b>	27 <sup>th</sup> Jud. D. Ct. La., 07-C-3737-B
<b><i>Little v. Kia Motors America, Inc. (Braking Systems)</i></b>	N.J. Super. Ct., UNN-L-0800-01
<b><i>Boone v. City of Philadelphia (Prisoner Strip Search)</i></b>	E.D. Pa., 05-CV-1851
<b><i>In Re Countrywide Customer Data Breach Litigation</i></b>	W.D. Ky., MDL No.1998
<b><i>Miller v. Basic Research (Weight-loss Supplement)</i></b>	D. Utah, 2:07-cv-00871-TS
<b><i>Gunderson v. F.A. Richard &amp; Assocs., Inc. (Cambridge)</i></b>	14 <sup>th</sup> Jud. D. Ct. La., 2004-002417
<b><i>Weiner v. Snapple Beverage Corporation</i></b>	S.D. N.Y., No. 07-CV-08742
<b><i>Holk v. Snapple Beverage Corporation</i></b>	D. N.J., No 3:07-CV-03018-MJC-JJH
<b><i>Coyle v. Hornell Brewing Co. (Arizona Iced Tea)</i></b>	D. N.J., No. 08-CV-2797-JBS-JS
<b><i>In Re: Heartland Data Security Breach Litigation</i></b>	S.D. Tex., MDL No. 2046
<b><i>Satterfield v. Simon &amp; Schuster, Inc. (Text Messaging)</i></b>	N.D. Cal., No. 06-CV-2893 CW
<b><i>Schulte v. Fifth Third Bank (Overdraft Fees)</i></b>	N.D. Ill., No. 1:09-CV-06655
<b><i>Trombley v. National City Bank (Overdraft Fees)</i></b>	D. D.C., No. 1:10-CV-00232
<b><i>Vereen v. Lowe's Home Centers (Defective Drywall)</i></b>	Ga. Super. Ct., SU10-CV-2267B
<b><i>Mathena v. Webster Bank, N.A. (Overdraft Fees)</i></b>	D. Conn, No. 3:10-cv-01448
<b><i>Delandro v. County of Allegheny (Prisoner Strip Search)</i></b>	W.D. Pa., No. 2:06-cv-00927
<b><i>Gunderson v. F.A. Richard &amp; Assocs., Inc. (First Health)</i></b>	14 <sup>th</sup> Jud. D. Ct. La., 2004-002417
<b><i>Williams v. Hammerman &amp; Gainer, Inc. (Hammerman)</i></b>	27 <sup>th</sup> Jud. D. Ct. La., No. 11-C-3187-B
<b><i>Williams v. Hammerman &amp; Gainer, Inc. (Risk Management)</i></b>	27 <sup>th</sup> Jud. D. Ct. La., No. 11-C-3187-B
<b><i>Williams v. Hammerman &amp; Gainer, Inc. (SIF Consultants)</i></b>	27 <sup>th</sup> Jud. D. Ct. La., No. 11-C-3187-B
<b><i>Gwiazdowski v. County of Chester (Prisoner Strip Search)</i></b>	E.D. Pa., No. 2:08cv4463

<b>Williams v. S.I.F. Consultants (CorVel Corporation)</b>	27 <sup>th</sup> Jud. D. Ct. La., No. 09-C-5244-C
<b>Sachar v. Iberiabank Corporation (Overdraft Fees)</b>	S.D. Fla., MDL No. 2036
<b>LaCour v. Whitney Bank (Overdraft Fees)</b>	M.D. Fla., No. 8:11cv1896
<b>Lawson v. BancorpSouth (Overdraft Fees)</b>	W.D. Ark., No. 1:12cv1016
<b>McKinley v. Great Western Bank (Overdraft Fees)</b>	S.D. Fla., MDL No. 2036
<b>Wolfgeher v. Commerce Bank (Overdraft Fees)</b>	S.D. Fla., MDL No. 2036
<b>Harris v. Associated Bank (Overdraft Fees)</b>	S.D. Fla., MDL No. 2036
<b>Case v. Bank of Oklahoma (Overdraft Fees)</b>	S.D. Fla., MDL No. 2036
<b>Nelson v. Rabobank, N.A. (Overdraft Fees)</b>	Cal. Super. Ct., No. RIC 1101391
<b>Fontaine v. Attorney General of Canada (Stirland Lake and Cristal Lake residential schools)</b>	Ont. Super. Ct., 00-CV-192059 CP
<b>Opelousas General Hospital Authority v. FairPay Solutions</b>	27 <sup>th</sup> Jud. D. Ct. La., 12-C-1599-C
<b>Marolda v. Symantec Corporation (Software Upgrades)</b>	N.D. Cal., No. 3:08-cv-05701
<b>In Re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010—Economic and Property Damages Settlement</b>	E.D. La., MDL No. 2179
<b>In Re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010—Medical Benefits Settlement</b>	E.D. La., MDL No. 2179
<b>Vodanovich v. Boh Brothers Construction (Hurricane Katrina Levee Breaches)</b>	E.D. La., 05-cv-4191
<b>Gessele et al. v. Jack in the Box, Inc.</b>	D.Or., No. 3:10-cv-960
<b>Duval v. Citizens Financial Group, Inc. (Overdraft Fees)</b>	S.D. Fla., MDL No. 2036
<b>Mosser v. TD Bank, N.A. (Overdraft Fees)</b>	S.D. Fla., MDL No. 2036
<b>In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation</b>	E.D. N.Y., MDL No. 1720
<b>Saltzman v. Pella Corporation (Building Products)</b>	N.D. Ill., No. 06-cv-4481
<b>In Re: Zurn Pex Plumbing, Products Liability Litigation</b>	D. Minn., MDL No. 1958
<b>Blahut v. Harris, N.A. (Overdraft Fees)</b>	S.D. Fla., MDL No. 2036
<b>Eno v. M &amp; I Marshall &amp; Ilsley Bank (Overdraft Fees)</b>	S.D. Fla., MDL No. 2036
<b>Casayuran v. PNC Bank (Overdraft Fees)</b>	S.D. Fla., MDL No. 2036
<b>Anderson v. Compass Bank (Overdraft Fees)</b>	S.D. Fla., MDL No. 2036
<b>Evans, et al. v. TIN, Inc. (Environmental)</b>	E.D. La., No. 2:11-cv-02067

<b><i>Opelousas General Hospital Authority v. Qmedtrix Systems, Inc.</i></b>	27 <sup>th</sup> Jud. D. Ct. La., No. 12-C-1599-C
<b><i>Williams v. SIF Consultants of Louisiana, Inc. et al.</i></b>	27 <sup>th</sup> Jud. D. Ct. La., No. 09-C-5244-C
<b><i>Miner v. Philip Morris Companies, Inc. et al.</i></b>	Ark. Cir. Ct., No. 60CV03-4661
<b><i>Fontaine v. Attorney General of Canada (Mistassini Hostels Residential Schools)</i></b>	Qué. Super. Ct., No. 500-06-000293-056 & No. 550-06-000021-056 (Hull)
<b><i>Glube et al. v. Pella Corporation et al. (Building Products)</i></b>	Ont. Super. Ct., No. CV-11-4322294-00CP
<b><i>Yarger v. ING Bank</i></b>	D. Del., No. 11-154-LPS
<b><i>Price v. BP Products North America</i></b>	N.D. Ill, No. 12-cv-06799
<b><i>National Trucking Financial Reclamation Services, LLC et al. v. Pilot Corporation et al.</i></b>	E.D. Ark., No. 4:13-cv-00250-JMM
<b><i>Johnson v. Community Bank, N.A. et al. (Overdraft Fees)</i></b>	M.D. Pa., No. 3:12-cv-01405-RDM
<b><i>Rose v. Bank of America Corporation, et al. (TCPA)</i></b>	N.D. Cal., No. 11-cv-02390-EJD
<b><i>McGann, et al., v. Schnuck Markets, Inc. (Data Breach)</i></b>	Mo. Cir. Ct., No. 1322-CC00800
<b><i>Simmons v. Comerica Bank, N.A. (Overdraft Fees)</i></b>	S.D. Fla., MDL No. 2036
<b><i>George Raymond Williams, M.D., Orthopedic Surgery, a Professional Medical, LLC, et al. v. Bestcomp, Inc., et al.</i></b>	27 <sup>th</sup> Jud. D. Ct. La., No. 09-C-5242-B
<b><i>Simpson v. Citizens Bank (Overdraft Fees)</i></b>	E.D. Mich, No. 2:12-cv-10267
<b><i>In re: Plasma-Derivative Protein Therapies Antitrust Litigation</i></b>	N.D. Ill, No. 09-CV-7666
<b><i>In re: Dow Corning Corporation (Breast Implants)</i></b>	E.D. Mich., No. 00-X-0005
<b><i>Mello et al v. Susquehanna Bank (Overdraft Fees)</i></b>	S.D. Fla., MDL No. 2036

Hilsoft-cv-130

**APPENDIX F — SETTLEMENT CLASS NOTICES**

**APPENDIX F1**

**POST CARD NOTICE**

## **To all individuals and businesses that accept American Express cards: Notice of a class action settlement**

*Si desea recibir esta notificación en español, llámenos o visite nuestra página web.*

This notice is authorized by the U.S. District Court, Eastern District of New York to inform you about a proposed settlement in *In re American Express Anti-Steering Rules Antitrust Litigation (II)*, No. 11-MD-2221 and *Marcus Corp. v American Express Co. et al.*, 13-CV-07355. These cases allege that certain rules applicable to merchants that accept American Express cards violate antitrust laws and result in merchants paying excessive fees. American Express denies the claims and says it has done nothing wrong. The Court has not decided which side is right because the parties agreed to settle.

**American Express's records show that you are included in the settlement.** The settlement applies to all merchants that accept American Express cards at any location in the United States (including at a physical merchant location, online or via a mobile application) as of or after December 23, 2013, onward.

**The Settlement Terms.** The settlement will require American Express to change its rules to allow merchants who accept American Express cards to charge customers an extra fee or "surcharge" if they pay with an American Express credit or charge card, under certain conditions including that any such surcharge apply to all credit and charge card transactions. **The specific rule changes and terms of the settlement are explained in detail on the case website ([www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com)) in the Court-approved, long-form notice ("Notice") and Class Settlement Agreement. You should review these documents carefully.** Your legal rights are affected even if you do nothing. You can also obtain copies of the Notice and Class Settlement Agreement by calling the toll-free number below.

If you want to seek monetary damages related to American Express's existing merchant rules, you can pursue those claims consistent with the dispute resolution provisions contained in your card acceptance agreement. No money will be distributed to the class.

**Your Options.** You may object to the settlement by **Month/Date, 2014**. The Notice available at the case website ([www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com)) explains how to object. The Court will hold a hearing on **Month/Date, 2014** to consider whether to approve the settlement and the request by the attorneys for the class for fees, expenses, and service awards up to a maximum total of \$75 million. You do not need to appear at the hearing or hire your own attorney, although you have the right to do so at your own expense. Regardless of whether you object, if the settlement is finally approved, you will be bound by the Court's final judgment, and the releases explained in the Class Settlement Agreement.

**Questions? Visit [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) or call 1-866-686-8694**

**APPENDIX F — SETTLEMENT CLASS NOTICES**

**APPENDIX F2**

**PUBLICATION NOTICE**

## **To all individuals and businesses that accept American Express cards: Notice of a class action settlement.**

*Si desea recibir esta notificación en español, llámenos o visite nuestra página web.*

Notice of a class action settlement authorized by the U.S. District Court, Eastern District of New York.

This notice is authorized by the Court to inform you about an agreement to settle two class action lawsuits that may affect you. The cases - *In re American Express Anti-Steering Rules Antitrust Litigation (II)*, No. 11-MD-2221 and *Marcus Corp. v American Express Co. et al.*, 13-CV-07355 - are in the U.S. District for the Eastern District of New York. These cases allege that certain rules applicable to merchants that accept American Express cards violate antitrust laws and resulted in merchants paying excessive fees. The Court has not decided which side is right because the parties agreed to settle.

**Who's included?** The settlement applies to a class comprised of all merchants that accept American Express cards at any location in the United States (including at a physical merchant location, online or via a mobile application) as of or after December 23, 2013, onward.

**What are the Settlement terms?** The settlement will require American Express to change its rules to allow merchants who accept American Express cards to charge customers an extra fee or "surcharge" if they pay with an American Express credit or charge card under certain conditions including that any such surcharge apply to all credit and charge card transactions." to the end of the first sentence. **The specific rule changes and terms of the settlement are explained in detail on the case website ([www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com)) in the Court-approved, long-form notice ("Notice") and Class Settlement Agreement. You should review these documents carefully.** Your legal rights are affected even if you do nothing. You can also obtain copies of the Notice and Class Settlement Agreement by calling the toll-free number below.

You do not need to file a claim to receive the benefits of the rule changes provided for by the settlement. If you want to seek monetary damages related to American Express's existing merchant rules, you can pursue those claims consistent with the dispute resolution provisions contained in your card acceptance agreement. No money will be distributed to the class.

**Your options.** You may object to the settlement by **Month/Date, 2014**. The Notice available at the website ([www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com)) explains how to object. Regardless of whether you object, if the settlement is finally approved, you will be bound by the Court's final judgment and the releases explained in the Class Settlement Agreement, which is available at the website ([www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com)).

**Court hearing about the Settlement.** The Court will hold a hearing on **Month/Date, 2014** to consider whether to approve the settlement and the request by the attorneys for the class for attorneys' fees, expenses, and service awards up to a maximum total of \$75 million. You do not need to appear at the hearing or hire your own attorney. But you can if you want to, at your own cost. The Court has appointed Friedman Law Group, LLP, Reinhardt, Wendorf & Blanchfield, and Patton Boggs LLP to represent the class.

**Questions?** For more information about the settlement you should visit the website ([www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com)), email [info@AmexMerchantSettlement.com](mailto:info@AmexMerchantSettlement.com), or call 1-866-686-8694

**APPENDIX F — SETTLEMENT CLASS NOTICES**

**APPENDIX F3**

**LONG FORM/WEBSITE NOTICE**

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

## **To all individuals and businesses that accept American Express cards: Notice of a class action settlement.**

*A federal court directed this Notice. This is not a solicitation from a lawyer.*

- The Court has preliminarily approved a proposed settlement over allegations that certain rules applicable to individuals and businesses (“merchants”) that accept American Express Cards in payment for goods or services violate the antitrust laws resulting in merchants paying excessive fees for accepting American Express cards.
- The settlement applies to a class comprised of all merchants that accept American Express cards at any location in the United States (including at a physical merchant location, online or mobile application), as of or after December 23, 2013, onward.
- The settlement will require American Express to change its merchant rules to allow merchants who accept American Express cards (i) to charge customers an extra fee or “surcharge” if they pay with an American Express credit or charge card, under certain conditions including that any such surcharge apply to all credit and charge card transactions and (ii) to decline acceptance of American Express traditional debit cards, if American Express decides in the future to issue a traditional debit card in the United States.
- If the settlement is approved and American Express changes its rules, any surcharge on American Express credit or charge cards must not be any higher, after accounting for any discounts offered at the point of sale, than any surcharge imposed on transactions made with other credit cards, payment cards, payment methods, products or services accepted by the merchant except for debit cards, cash, checks, wire or ACH transfers or proprietary store cards.
- The rule changes are explained in greater detail below and in the Class Settlement Agreement. A full copy of the Class Settlement Agreement is available on the case website at [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) or by calling 1-866-686-8694.
- Class members do not need to file a claim to receive the benefits of the settlement.
- No money will be distributed to the class. Any class member that wants to seek monetary damages related to American Express’s existing merchant rules can pursue those claims consistent with the dispute resolution provisions contained in the merchant’s card acceptance agreements and provisions have been made for access to the extensive evidentiary and litigation record that has been created by the attorneys for the class.
- This Notice explains the settlement and the class members’ rights and options—and the **deadlines to exercise them**.
- If you are a member of the class your legal rights are affected whether you act or not. Read this Notice carefully.

**QUESTIONS? CALL 1-866-686-8694 OR VISIT [WWW.AMEXMERCHANTSETTLEMENT.COM](http://WWW.AMEXMERCHANTSETTLEMENT.COM)**  
**SI DESEA RECIBIR ESTA NOTIFICACIÓN EN ESPAÑOL, LLÁMENOS O VISITE NUESTRA PÁGINA WEB.**

<b>LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>OBJECT</b>	Write to the Court about why you do not like any part of the settlement. To find out how to object, please read Question 9, below.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the settlement.
<b>DO NOTHING</b>	You are not required to take any action to receive the benefits of the settlement.

- The Court in charge of this case still has to decide whether to approve the settlement.
- Regardless of whether you object, go to a hearing or do nothing, if the settlement is finally approved, you will be bound by the Court's final judgment and the releases explained in the Class Settlement Agreement.
- For the full terms of the settlement, you should review the Class Settlement Agreement, which is available on the case website at [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) or by calling 1-866-686-8694. In the event of any conflict between the terms of this Notice and the Class Settlement Agreement, the terms of the Class Settlement Agreement shall control.
- Please check [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) for updates relating to the settlement or the settlement approval process.

**QUESTIONS? CALL 1-866-686-8694 OR VISIT [WWW.AMEXMERCHANTSETTLEMENT.COM](http://WWW.AMEXMERCHANTSETTLEMENT.COM)**

**WHAT THIS NOTICE CONTAINS**

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## BASIC INFORMATION

### 1. Why is this Notice being provided?

You have a right to know about the proposed settlement of this class action lawsuit and about your options relating to the settlement. This Notice explains the litigation, the settlement, your legal rights and what benefits are available.

Judge Nicholas Garaufis of the United States District Court for the Eastern District of New York is overseeing the settlement of the case known as *In re American Express Anti-Steering Rules Antitrust Litigation (II)*, No. 11-MD-2221 (NGG) (RER), along with the case known as *The Marcus Corporation v American Express Co. et al.*, 13-cv-07355 (NGG)(RER), which was transferred to Judge Garaufis in connection with the settlement approval process. For a complete procedural history of the cases included in the settlement, please read the Class Settlement Agreement posted on the case website.

The Court has preliminarily approved the settlement; certified an “injunctive” class under Fed. R. Civ. P. 23(b)(2); approved a plan for notifying Class members of the settlement and the opportunity to file objections; and created a mechanism for granting final approval of all terms of the Class Settlement Agreement. As part of the final approval process for the settlement, the Court will also be asked to award attorneys’ fees and expenses covering the litigation and related activities of counsel and service awards to the merchants that brought the litigation.

This case has been brought on behalf of merchants. The specific merchants that filed the cases are the “Class Plaintiffs” and the Court has authorized them to act on behalf of all merchants in the class in connection with the proposed settlement of the litigation. The Class Plaintiffs are: The Marcus Corporation; Animal Land, Inc., Firefly Air Solutions, LLC, Il Forno, Inc., Italian Colors Restaurant, Jasa Inc., Lopez-Dejonge, Inc., and Plymouth Oil Corp.

The Class Plaintiffs sued American Express Company and American Express Travel Related Services, Inc., which are referred to together in this Notice as “American Express” or “Defendants.”

### 2. What is this lawsuit about?

The lawsuit is about American Express’s rules for merchants that accept American Express cards as payment for goods and/or services and the fees paid by merchants for accepting American Express cards. Class Plaintiffs claim that American Express violated the antitrust laws by imposing rules that limited merchants from steering their customers to other payment methods and requiring merchants that want to accept any American Express cards to accept all American Express cards. The Class Plaintiffs claim that doing so insulated American Express from competitive pressure to lower merchant fees and caused an upward spiral in merchant fees for American Express, Visa and MasterCard.

American Express denies Class Plaintiffs’ claims and says it has done nothing wrong. American Express says that the challenged conduct was lawful, justified, and benefited competition, merchants, and consumers.

**QUESTIONS? CALL 1-866-686-8694 OR VISIT [WWW.AMEXMERCHANTSETTLEMENT.COM](http://WWW.AMEXMERCHANTSETTLEMENT.COM)**

### 3. Why is this a class action?

In a class action, one or more individuals or businesses sue on behalf of people or businesses with similar claims. Together all of these people or businesses with similar claims and interests form a class, and are class members.

When a court decides a case or approves a settlement in a class action, that decision is applicable to all members of the class. In this case, the Court has created a class and given its preliminary approval to the settlement. The class that the court created is comprised of all merchants that accept American Express cards at any location in the United States (including at a physical merchant location, online or mobile application), as of or after December 23, 2013, onward.

The class is a mandatory class meaning that all members of the class will be bound by the settlement and that no class member can opt out of the class.

### 4. What is “injunctive relief”?

The settlement benefits for class members fall under the category of “injunctive relief.” An injunction is when a court orders a person or a business to do or not to do something. In this case, American Express has agreed to certain changes to its merchant rules related to card acceptance. The changes to American Express’s merchant rules are the benefit the class is receiving in this settlement. The settlement does not offer payments to class members or adjust any merchant’s fees for accepting American Express cards. If a merchant wants to seek monetary damages related to American Express’s merchant rules as they exist prior to the changes brought about by this settlement, the merchant remains free to pursue that claim consistent with the dispute resolution provisions of the merchant’s card acceptance agreement.

### 5. Why is there a settlement?

The Court did not decide which side was wrong or if any laws were violated. Instead, both sides agreed to settle the litigation to avoid the cost and risk of trial and of appeals that would follow a trial.

The parties agreed to settle this case after close to eleven years of extensive litigation, including a decision by the United States Supreme Court upholding a provision in American Express’s merchant card acceptance agreements requiring merchants to pursue claims against American Express on an individual basis in arbitration. The settlement is the product of extensive negotiations, including mediation with an experienced mediator. Class Plaintiffs and their counsel believe that settling this case is in the best interests of all class members because it allows class members to receive the benefit of the rules changes.

The settlement does not mean that any law was broken or that American Express did anything wrong.

## WHO IS IN THE SETTLEMENT

To see if you will be affected by the settlement, you first have to determine if you are a class member.

**6. How do I know if I am part of the settlement?**

**If you received a Postcard Notice in the mail, American Express' records show that you may be a class member.**

The class includes all merchants that accept American Express cards in payment for goods or services at any location in the United States (including at a physical merchant location, online or mobile application) as of or after December 23, 2013, and onward. The class shall not include the named Defendants, their directors, officers, or members of their families.

**7. What if I am still not sure whether I am included?**

If you are still not sure whether you are included, or have any other questions about the settlement, call 1-866-686-8694 or visit the case website [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com). You also may write with questions to Amex Merchant Settlement Administrator, PO Box 4349, Portland, OR 97208-4349 or send an e-mail to [questions@AmexMerchantSettlement.com](mailto:questions@AmexMerchantSettlement.com).

**SETTLEMENT BENEFITS**

**8. What are the benefits of the settlement?**

American Express will amend its rules for merchants that accept American Express cards at any location in the United States (including at a physical merchant location, online or mobile application) to provide for the following:

- a) Merchants will be able to charge a surcharge to customers who pay with an American Express credit or charge card, provided that:
  - (i) any surcharge on American Express credit or charge cards must not be any higher, after accounting for any discounts offered at the point of sale, than any surcharge imposed on transactions made with other credit cards, payment cards, payment methods, products or services accepted by the merchant except for: (a) debit cards; (b) cash; (c) checks; (d) wire or ACH transfers; or (e) proprietary store cards.
  - (ii) the amount of the surcharge does not exceed the American Express merchant discount rate applicable to that transaction and the amount of the surcharge the merchant is permitted to impose on any other credit card brand;
  - (iii) the surcharge is fully disclosed to customers on the same terms that the merchant is required to disclose Visa and MasterCard surcharges; and
  - (iv) the merchant provides 30 days notice to American Express that it intends to surcharge.
- b) American Express debit cards, including pre-paid or gift cards, may not be surcharged unless or until similar cards on competitors' brands are subject to surcharging.
- c) If American Express offers a traditional debit card in the United States, American Express may not make that card subject to its Honor All Cards policy. All existing cards

**QUESTIONS? CALL 1-866-686-8694 OR VISIT [WWW.AMEXMERCHANTSETTLEMENT.COM](http://WWW.AMEXMERCHANTSETTLEMENT.COM)**

remain subject to the Honor All Cards policy, which require merchants to accept all American Express-branded cards.

- d) *Exception:* A merchant may individually negotiate an agreement with American Express to waive or limit its rights to surcharge American Express cards if that agreement satisfies certain terms set forth in the Class Settlement Agreement.
- e) Under the settlement, American Express will amend its rules no later than forty-five (45) days after the approval of the settlement becomes final. If the Court's approval of the settlement is appealed, the settlement will not become final until forty-five (45) days after that appeal is resolved.

For the full terms of the settlement, including the benefits to the class, you should review the Class Settlement Agreement, which is available on the case website at [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) or by calling 1-866-686-8694. In the event of any conflict between the terms of this Notice and the Class Settlement Agreement, the terms of the Class Settlement Agreement shall control.

## OBJECTING TO THE SETTLEMENT

### 9. How do I tell the Court if I do not like the settlement?

You can tell the Court that you object to (disagree with) the terms of the Class Settlement Agreement. You can give reasons why the Court should not approve the settlement. You can also give reasons why the Court should not approve the petition for attorneys' fees and expenses or the service awards to the Class Plaintiffs that is detailed below in Question 13. The Court will consider your views.

To object, you must file your Statement of Objection. It must include the following:

- a) The words "American Express Class Action Settlement";
- b) State each and every objection you are making to the Settlement;
- c) The specific reasons for each objection;
- d) Legal support and evidence, if any, for each objection that you want to bring to the Court's attention;
- e) Your name, address and phone number;
- f) Information sufficient to establish that you are a member of the Settlement Class, such as your business name and address, and how long you have accepted American Express Cards; and
- g) The full name, mail address, email address, and phone number of any counsel representing you in connection with the objections.

Your Statement of Objection must be filed by no later than April 11, 2014 (the "Class Objection Period") at the following address:

Clerk of the Court

**QUESTIONS? CALL 1-866-686-8694 OR VISIT [WWW.AMEXMERCHANTSETTLEMENT.COM](http://WWW.AMEXMERCHANTSETTLEMENT.COM)**

United States Courthouse  
225 Cadman Plaza East  
Brooklyn, New York 11201

You must also send a copy of your Statement of Objection to the following addresses postmarked by no later than April 11, 2014:

CLASS COUNSEL	DEFENDANTS' COUNSEL
Mark Reinhardt Reinhardt, Wendorf & Blanchfield E-1250 First National Bank Bldg. 332 Minnesota St. St. Paul, MN 55101	John F. LaSalle Boies, Schiller & Flexner LLP 575 Lexington Avenue, 7th Floor New York, New York 10022

**Do not call the Court or any Judge's office to object to the Settlement.** If you have questions, please visit [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) or call 1-866-686-8694.

**10. How does the proposed settlement affect my rights?**

If the settlement becomes final, all class members will benefit from the changes to the American Express Rules. In addition, if the settlement becomes final, all class members will be releasing Defendants (American Express Company and American Express Travel Related Services Company, Inc.) and other released parties from all claims that are identified and described in paragraphs 24-41 of the Class Settlement Agreement. The Class Settlement Agreement may be viewed on the case website at [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) or you can receive a copy by mail by calling 1-866-686-8694.

The Class Settlement Agreement describes the released claims in necessary, accurate, legal terminology, so read it carefully. In the event of any conflict between the terms of this Notice and the Class Settlement Agreement, the terms of the Class Settlement Agreement shall control. You can talk to the law firms representing the class listed in Question 12 for free; or you can, at your own expense, talk to your own lawyer if you have questions about the released claims or what they mean.

**11. Can I get out of the settlement?**

No. The settlement requires American Express to make changes to its rules for merchants that accept American Express cards at any location in the United States (including at a physical merchant location, online or via mobile application), in ways that benefit all class members equally. As explained above, this type of remedy is "injunctive." Therefore, under this type of class action, you cannot exclude yourself from the class or this settlement. However, as explained above, you can still object to the settlement. If the settlement is finally approved, it will be applicable to all merchants regardless of whether or not they object.

**QUESTIONS? CALL 1-866-686-8694 OR VISIT [WWW.AMEXMERCHANTSETTLEMENT.COM](http://WWW.AMEXMERCHANTSETTLEMENT.COM)**

## THE LAWYERS REPRESENTING YOU

### 12. Do I have a lawyer in this case?

Yes. The law firms identified below represent you and other class members:

Gary B. Friedman Tracey Kitzman Friedman Law Group LLP 270 Lafayette Street New York, NY 10012	Read K. McCaffrey Patton Boggs LLP 2550 M Street, NW Washington, DC 20037	Mark Reinhardt Mark A. Wendorf Reinhardt Wendorf & Blanchfield 1250 East First National Bank Bldg 332 Minnesota Street St. Paul, MN 55101
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These lawyers are called “Class Counsel.” You will not be charged for these lawyers or for other counsel involved in the settlement. Any attorneys’ fees, reimbursement of expenses and service awards to the Class Plaintiffs that are awarded by the Court will be paid directly by American Express. If you want to be represented by your own lawyer, you may hire one at your own expense. If you want to be represented by your own counsel in connection with an objection to this settlement, you must tell the Court of your request and send a copy of your request to Class Counsel.

### 13. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys’ fees and expense reimbursement for all counsel involved in the litigation, as well as service awards for the Class Plaintiffs. American Express agrees it will pay for any such attorneys’ fees, expenses, and service awards ordered by the Court up to a maximum of \$75 million.

American Express will also pay up to \$2 million in costs associated with providing notice of the settlement to the class. It will also set up a \$2 million fund to be used by Class Counsel to educate merchants about the changes to American Express’s rules due to the settlement.

The amounts to be awarded as attorneys’ fees, reimbursement of expenses, and service awards are all subject to approval by the Court. Class Counsel will submit motions and petitions to the Court for that purpose no later than March 7, 2014. Those motions and petitions and all supporting papers will be available at [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) shortly after they are filed.

## THE COURT’S FAIRNESS HEARING

### 14. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at \_\_:\_\_ .m. on **Month Day, 2014**, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201. At this hearing, the Court will hear arguments and consider whether the settlement should be approved as fair, adequate and reasonable. The Court will also hear arguments and consider whether to approve Class Counsel’s requests for attorneys’ fees and expenses, and service awards. If there are objections, the Court will hear and consider them. The Court will also listen to any class members who have asked to be heard at the hearing. We do not know how long the Court will take to decide these matters.

**QUESTIONS? CALL 1-866-686-8694 OR VISIT [WWW.AMEXMERCHANTSETTLEMENT.COM](http://WWW.AMEXMERCHANTSETTLEMENT.COM)**

The Fairness Hearing may be moved to a different date, time, or location without additional notice, so it is recommended that you periodically check the case website for updated information.

**15. Do I have to come to the Fairness Hearing?**

No. Class Counsel will answer the questions the Court may have concerning the settlement. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**16. May I speak at the Fairness Hearing?**

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter that it is your “notice of intention to appear in American Express Class Action Settlement.” Your notice of intention to appear must include your name, address and phone number, and the name, position, address and phone number of each person who intends to appear at the final approval hearing on your behalf. Your notice of intention to appear must be filed with the Clerk of Court and mailed, postmarked no later than April 11, 2014 (the “Class Objection Period”). You must also send a copy of your notice of intention to appear to the addresses for Class Counsel and Defendants’ Counsel listed in Question 9 above.

**IF YOU DO NOTHING**

**17. What happens if I do nothing?**

You are not required to take any action to receive the benefits of the settlement. If the settlement is finally approved, you will be bound by the Court's Final Judgment and the release explained in the Class Settlement Agreement.

**GETTING MORE INFORMATION**

**18. How do I get more information?**

This Notice summarizes the proposed settlement and the benefits available. More details are in the Class Settlement Agreement, which is available on the case website at [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com). The website also contains the filings related to approval of the settlement and other case-related documents.

You also may call the toll-free number below or write with questions to Amex Merchant Settlement Administrator, PO Box 4349, Portland, OR 97208-4349 or send an e-mail to [info@AmexMerchantSettlement.com](mailto:info@AmexMerchantSettlement.com).

**Do not call the Court or any Judge’s office to get more information about the settlement.**

**APPENDIX G — Class Settlement Order and Final Judgment**

**[Caption for either Animal Land Consolidated Action or the Marcus Action]**

**CLASS SETTLEMENT ORDER AND FINAL JUDGMENT**

On \_\_\_\_\_, 2014, the Court held a final approval hearing on (1) whether the terms and conditions of the Definitive Class Settlement Agreement, including all its Appendices, entered into as of December 19, 2013 (the “Class Settlement Agreement”) are fair, reasonable, and adequate for the settlement of the claims released against the Defendants in the Class Actions by Class Plaintiffs and the Settlement Class provisionally certified by the Court pursuant to the Class Settlement Agreement; and (2) whether judgment should be entered dismissing all causes of action against the Defendants seeking injunctive relief in those Class Actions with prejudice and all causes of action against the Defendants seeking damages in those Class Actions without prejudice.

The Court, having considered all papers filed concerning the Class Settlement Agreement, and all matters submitted to the Court at the final approval hearing and otherwise, hereby FINDS, with all terms used herein having the same meanings set forth and defined in the Class Settlement Agreement, that:

A. This Court has jurisdiction over the Class Plaintiffs, the Settlement Class, and the Defendants, and jurisdiction to finally approve the Class Settlement Agreement.

B. The notice procedures provided to the Settlement Class, including but not limited to the methods of identifying and notifying members of the Settlement Class, were fair, adequate, and sufficient, constituted the best practicable notice under the circumstances, and were reasonably calculated to apprise members of the Settlement Class that would be bound by the Class Settlement Agreement of the Action, the Class Settlement Agreement, and their

objection rights, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, any other applicable laws or rules of the Court, and due process.

C. The notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, have been met.

D. The Court has held a final approval hearing to consider the fairness, reasonableness, and adequacy of the Class Settlement Agreement, and has been advised of all objections to the Class Settlement Agreement and has given due consideration thereto.

E. The Class Settlement Agreement, including its consideration and release provisions:

(1) was entered into in good faith, following arm's-length negotiations, and was not collusive;

(2) is fair, reasonable, and adequate, and is in the best interests of the Settlement Class;

(3) is consistent with the requirements of federal law and all applicable court rules, including Federal Rule of Civil Procedure 23; and

(4) was entered into at a time when the record was sufficiently developed and complete to enable the Class Plaintiffs and the Defendants to have adequately evaluated and considered all terms of the Class Settlement Agreement.

ACCORDINGLY, pursuant to Federal Rule of Civil Procedure 23(e), the Class Settlement Agreement, the terms and conditions of which are hereby incorporated by reference, are hereby fully and finally APPROVED by the Court.

NOW, THEREFORE, based on good cause appearing therefor, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. Based on and pursuant to the class action criteria of Federal Rules of Civil Procedure 23(a) and 23(b)(2), the Court hereby finally certifies, for settlement purposes only, a Settlement Class, from which exclusion were not and shall not be permitted, consisting of all Persons that as of the Settlement Preliminary Approval Date or in the future accept any American Express-Branded Cards at any location in the United States (including at a physical merchant location, online and mobile application), except that the Settlement Class shall not include the named Defendants, their directors, officers, or members of their families.

2. The Settlement Class shall include all Persons, described in Paragraph 1 above, regardless of whether such Persons have restricted, in any way, the means by which they can resolve disputes against the Defendants or the procedural mechanisms available for the resolution of disputes against the Defendants. Such restrictions include, without limitation, restrictions regarding or requiring arbitration, jury trials, participation in dispute resolution in a representative capacity, participation in dispute resolution as a member of a class or on a consolidated basis, or any other rights that may be available in court that are not available in arbitration.

3. In the event of termination of the Class Settlement Agreement as provided therein, certification of the Settlement Class shall automatically be vacated and each Defendant may fully contest certification of any class as if no Settlement Class had been certified.

4. The Class Plaintiffs shall continue to serve as representatives of the Settlement Class. The law firms of Friedman Law Group LLP, Patton Boggs LLP, and Reinhardt, Wendorf & Blanchfield shall continue to serve as Class Counsel.

5. The definition of the proposed injunctive relief classes in the Operative Class Action Complaints are hereby amended to be the same as the Settlement Class finally certified above.

6. Subject to Paragraphs 7–23 and the other terms of the Class Settlement Agreement, as consideration for the release of their claims, members of the Settlement Class will receive benefits from modifications of the American Express Merchant Regulations and/or American Express card acceptance agreements applicable to United States Merchant Locations, including the following.

a. The American Express NDPs shall remain unchanged and shall continue to prohibit discrimination against the use of American Express-Branded Cards, except as expressly set forth in the Class Settlement Agreement.

b. Any surcharge, whether expressed as a percentage or flat fee, that a merchant imposes on American Express-Branded Credit Card transactions must not be any higher than any surcharge imposed on transactions effected with any other Credit Card, payment card, payment method, products, or services accepted by the merchant, after accounting for any discounts or rebates offered at the point of sale, except for (i) Debit Cards; (ii) cash; (iii) checks; (iv) transfer of funds to merchants via bank wire transfer or via the Automated Clearing House of the Federal Reserve System; and (v) Proprietary Store Cards. The phrase “after accounting for any discounts or rebates at the point of sale” shall mean that to the extent the merchant offers a rebate or discount at the point of sale for the use of any other Credit Card, payment card, payment service or payment method (except for Debit Cards, cash, checks, funds transfers as described above or Proprietary Store Cards), any surcharge, whether expressed as a percentage or flat fee, that the merchant imposes on American Express-Branded Credit Card transactions must not be higher than the net amount of (x) the surcharge imposed on transactions effected using such other Credit Card, payment card, payment service or payment method, offset by (y) such rebate or discount.

c. In addition, no surcharge imposed on an American Express-Branded Credit Card, whether expressed as a percentage or flat fee, may be higher than the lowest of (i) the amount of the American Express Merchant Discount Rate charged to that merchant for American Express acceptance for the specific transaction; and (ii) any surcharge that the merchant is permitted to impose (which may be zero) on transactions effected with any other Credit Card, regardless of whether the merchant actually surcharges transactions effected on such other Credit Card in excess of the permitted amount..

d. The American Express NDPs shall continue to prohibit any discrimination against American Express-Branded Debit Card transactions (including without limitation

American Express-Branded Traditional Debit Card transactions) as compared to any Other Payment Network's Debit Card transactions.

e. Consistent with this Class Settlement Agreement, a merchant may impose a surcharge on Credit Card transactions, including without limitation American Express-Branded Credit Card transactions, without imposing any surcharge upon any transactions made directly with a Debit Card.

f. The American Express HAC Provisions remain unchanged and continue to require that merchants agreeing to accept American Express-Branded Cards must accept all American Express-Branded Cards, except that in the event that there is an American Express-Branded Traditional Debit Card, merchants can choose not to accept such American Express-Branded Traditional Debit Cards.

g. For the sake of clarity, the foregoing change to the American Express HAC Provisions would only permit a merchant that accepts American Express-Branded Cards to choose not to accept an American Express-Branded Traditional Debit Card.

h. The parties understand that (a) there currently are no American Express-Branded Traditional Debit Cards; and (b) American Express's HAC provisions will continue to require merchants that accept any American Express-Branded Cards to accept all currently existing American Express-Branded Cards.

i. Nothing in the Class Settlement Agreement or this Class Settlement Order and Final Judgment shall prevent Defendants from having a provision in the American Express Merchant Regulations or American Express card acceptance agreements that prevents merchants that charge a convenience fee from also charging a surcharge.

j. The foregoing amendments described above shall remain in effect until the Release Termination Date.

7. The Court orders Defendants to modify the American Express NDPs and American Express HAC Provisions in conformity with the Class Settlement Agreement.

8. Each member of the Settlement Class and each Settlement Class Releasing Party unconditionally, fully, and finally releases and forever discharges the Defendants and each of the other Settlement Class Released Parties from all released claims, and waives any rights to the protections afforded under California Civil Code Section 1542, South Dakota Codified Laws Section 20-7-11 and/or any other similar, comparable, or equivalent laws.

9. Specifically, the members of the Settlement Class provide the following release and covenant not to sue:

a. The “Settlement Class Releasing Parties” are the Class Plaintiffs, each and every member of the Settlement Class, and any of their respective past, present or future: officers and directors; stockholders, agents, employees, legal representatives, partners and associates (in their capacities as stockholders, agents, employees, legal representatives, partners, and associates of a member of the Settlement Class only); and trustees, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns—whether or not they object to this Class Settlement Agreement, and whether or not they exercise any benefit provided under the Class Settlement Agreement, whether directly, representatively, derivatively, or in any other capacity.

b. The “Settlement Class Released Parties” are all of the following:

i. American Express Company and American Express Travel Related Services Company, Inc.

ii. For each of the entities in Paragraph (i) above, each of their respective past, present, and future, direct and indirect, parents (including holding companies), subsidiaries, affiliates, and associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934, as amended), or any other entities in which more than 50% of the equity interests are held, and any unaffiliated entities that are licensed to issue American Express-Branded Cards or are authorized or required to enforce the American Express HAC Provisions or the American Express NDPs.

iii. For each of the entities in Paragraphs (9)(b)(i)-(ii) above, each of their respective past, present, and future principals, trustees, partners, officers, directors, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, shareholders, advisors, predecessors, successors, purchasers, and assigns (including acquirers of all or substantially all of the assets, stock, or other ownership interests of each of the foregoing entities to the extent a successor’s, purchaser’s, or acquirer’s liability is based on the actions of the Settlement Class Released Parties as defined in Paragraphs (9)(b)(i)-(ii) above).

c. In addition to the effect of the Class Settlement Order and Final Judgment entered in accordance with this Class Settlement Agreement, including but not limited to any *res judicata* effect, the Settlement Class Releasing Parties (i) hereby expressly and irrevocably waive, and fully, finally, and forever settle, discharge, and release the Settlement Class Released Parties from any and all manner of claims, demands, actions, suits, and causes of action, whether individual, class, representative, or otherwise in nature, for any form of declaratory, injunctive, or equitable relief and (ii) hereby expressly and irrevocably waive any and all defenses relating to any form of declaratory, injunctive, or equitable relief, in each case relating to the period from the beginning of time to and including the Release Termination Date, regardless of when such claims or defenses accrue, whether known or unknown, suspected or unsuspected, in law or in equity that any Settlement Class Releasing Party now has, or hereafter can, shall, or may in the

future have, arising out of or relating in any way to any conduct, acts, transactions, events, occurrences, statements, omissions, or failures to act of any Settlement Class Released Party that fall within the identical factual predicate doctrine as applied to the Marcus Action and the Animal Land Consolidated Action, including but not limited to any claims based on or relating to:

i. Any actual or alleged rules or provisions that limit merchants, in any way, from engaging in any of the following (except as explicitly provided by applicable law): indicating or implying a preference, directly or indirectly for any payment product or method of payment; dissuading customers from using American Express-Branded Cards; criticizing or mischaracterizing American Express-Branded Cards or any services or programs of American Express; persuading or prompting customers to use other payment products or methods of payment; imposing any restriction, conditions, or disadvantages on American Express-Branded Cards that are not imposed equally on all other payment products; engaging in activities that harm American Express's business or brand; promoting any payment products or methods of payment more actively than American Express-Branded Cards; communicating with customers about the cost of acceptance of payment cards, payment products, or methods of payments; displaying signs or decals of other payment products, payment cards, or methods of payment more prominently than signs or decals for American Express-Branded Cards; and any other conduct inconsistent with the American Express NDPs;

ii. Any actual or alleged "no surcharge" rules or provisions, "no discounting" rules or provisions, "non-discrimination" rules or provisions, "anti-steering" rules or provisions, rules or provisions that limit merchants in favoring or steering customers to use certain payment forms, or any point of sale practices relating to any American Express-Branded Cards;

iii. In any proceeding related to the American Express NDPs or American Express HAC Provisions, any claims or defenses that have been raised or could have been raised in these Actions concerning the enforceability or legality of any rules or provisions (as they currently exist or as they exist in the future in substantially similar form) that limit merchants, in any way, from consolidating or aggregating any claim with another claim asserted by any other Person; acting as a representative plaintiff in any class action; or participating in any class action as a non-representative member of the class.

iv. Any actual or alleged rules or provisions that require merchants to accept all American Express-Branded Cards, including but not limited to charge cards, credit cards, corporate cards, debit cards, prepaid cards, reloadable prepaid cards, Bluebird® cards, Serve® cards, and gift cards, as a condition of accepting any American Express-Branded Card;

v. Any actual or alleged rules or provisions that tie acceptance by merchants of any type of American Express-Branded Card to any other type of American Express-Branded Card;

vi. The future effect in the United States of the continued imposition of or adherence to any rule or provision identified above, any rule or provision as modified by this Class Settlement Agreement, and any rule or provision that is substantially similar; and

vii. Any conduct in these Actions, including the negotiation and execution of this Class Settlement Agreement.

And it is expressly agreed, for purposes of clarity, without expanding or limiting the foregoing, that any claims based on or relating to (i)-(vii) above are claims that fall within the identical factual predicate doctrine as applied to the Marcus Action and the Animal Land Consolidated Action.

d. In addition to the effect of the Class Settlement Order and Final Judgment entered in accordance with this Class Settlement Agreement, including but not limited to any *res judicata* effect, the Settlement Class Releasing Parties hereby expressly and irrevocably waive, and fully, finally, and forever settle, discharge, and release the Settlement Class Released Parties from any and all manner of claims, demands, actions, suits, and causes of action, whether individual, class, representative, or otherwise in nature, for any damages or other monetary relief relating to the period after the Provisions Change Date and continuing to and including the Release Termination Date, regardless of when such claims accrue, whether known or unknown, suspected or unsuspected, in law or in equity that any Settlement Class Releasing Party now has, or hereafter can, shall, or may in the future have, arising out of or relating in any way to any conduct, acts, transactions, events, occurrences, statements, omissions, or failures to act of any Settlement Class Released Party, provided such claims fall within the identical factual predicate doctrine as applied to the Marcus Action and the Animal Land Consolidated Action and provided further that such claims are based on the American Express NDPs or the American Express HAC Provisions (including as amended in connection with this Class Settlement Agreement), including but not limited to any claims based on the following:

i. Any actual or alleged rules or provisions that limit merchants, in any way, from engaging in any of the following (except as explicitly provided by applicable law): indicating or implying a preference, directly or indirectly for any payment product or method of payment; dissuading customers from using American Express-Branded Cards; criticizing or mischaracterizing American Express-Branded Cards or any services or programs of American Express; persuading or prompting customers to use other payment products or methods of payment; imposing any restriction, conditions, or disadvantages on American Express-Branded Cards that are not imposed equally on all other payment products; engaging in activities that harm American Express's business or brand; promoting any payment products or methods of payment more actively than American Express-Branded Cards; communicating with customers about the cost of acceptance of payment cards, payment products, or methods of payments; displaying signs or decals of other payment products, payment cards, or methods of payment more prominently than signs or decals for American Express-Branded Cards; and any other conduct inconsistent with the American Express NDPs;

ii. Any actual or alleged "no surcharge" rules or provisions, "no discounting" rules or provisions, "non-discrimination" rules or provisions, "anti-steering" rules or provisions, rules or provisions that limit merchants in favoring or steering customers to use certain payment forms, or any point of sale practices relating to any American Express-Branded Cards;

iii. Any actual or alleged rules or provisions that require merchants to accept all American Express-Branded Cards, including but not limited to charge cards, credit cards, corporate cards, debit cards, prepaid cards, reloadable prepaid cards, Bluebird® cards, Serve® cards, and gift cards, as a condition of accepting any American Express-Branded Card;

iv. Any actual or alleged rules or provisions that tie acceptance by merchants of any type of American Express-Branded Card to any other type of American Express-Branded Card;

v. The future effect in the United States of the continued imposition of or adherence to any rule or provision identified above, any rule or provision as modified by this Class Settlement Agreement, and any rule or provision that is substantially similar; and

And it is expressly agreed, for purposes of clarity, without expanding or limiting the foregoing, that any claims based on or relating to (i)-(v) above are claims that are based on the American Express NDPs or the American Express HAC Provisions.

e. Each Settlement Class Releasing Party further expressly and irrevocably waives, and fully, finally, and forever settles and releases, any and all defenses, rights, and benefits that the Settlement Class Releasing Party may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in the preceding Paragraphs (9)(a)-(d). Without limiting the generality of the foregoing, each Settlement Class Releasing Party expressly and irrevocably waives and releases any and all defenses, rights, and benefits that the Settlement Class Releasing Party might otherwise have in relation to the release by virtue of the provisions of California Civil Code Section 1542, South Dakota Codified Laws Section 20-7-11, or similar laws of any other state or jurisdiction. CALIFORNIA CIVIL CODE SECTION 1542 PROVIDES: "CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." SECTION 20-7-11 PROVIDES: "UNKNOWN CLAIMS NOT RELEASED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." In addition, although each Settlement Class Releasing Party may hereafter discover facts other than, different from, or in addition to those that it or he or she knows or believes to be true with respect to any claims released in the preceding Paragraphs (9)(a)-(d), each Settlement Class Releasing Party hereby expressly waives, and fully, finally, and forever settles, discharges, and releases, any known or unknown, suspected or unsuspected, contingent or non-contingent claims within the scope of the preceding Paragraphs (9)(a)-(d), whether or not concealed or hidden, and without regard to the subsequent discovery or existence of such other, different, or additional facts. Class Plaintiffs acknowledge, and the members of the Settlement Class shall be deemed by operation of the Class Settlement Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of this Class Settlement Agreement.

f. Each Settlement Class Releasing Party covenants and agrees that it shall not, hereafter, seek to establish, or permit another to act for it in a representative capacity to seek to establish, liability against any of the Settlement Class Released Parties based, in whole or in part, upon any conduct covered by any of the claims released in Paragraphs (9)(a)-(e) above.

g. For purposes of clarity, it is specifically intended for the release and covenant not to sue provisions of Paragraphs (9)(a)-(f) above to preclude all members of the Settlement Class from seeking or obtaining any form of declaratory, injunctive, or equitable relief prior to the Release Termination Date (which date shall be a minimum of ten years following the Provisions Change Date) with respect to any rule or provision that was or could have been challenged in these Actions as it is alleged to exist, now exists, may be modified in the manner provided in Paragraph 8 of the Class Settlement Agreement, subject to Paragraph 10 of the Class Settlement Agreement, or may in the future exist in the same or substantially similar form thereto.

h. For purposes of clarity, it is specifically intended for the release and covenant not to sue provisions of Paragraphs (9)(a)-(f) above to preclude all members of the Settlement Class from seeking or obtaining any form of damages or other monetary relief allegedly arising during the period starting with the Provisions Change Date and ending with the Release Termination Date (which period shall be a minimum of ten years) with respect to any American Express NDPs or the American Express HAC Provisions (including as amended in connection with the Class Settlement Agreement) that was or could have been challenged in these Actions as it is alleged to exist, now exists, may be modified in the manner provided in Paragraph 8 of the Class Settlement Agreement, subject to Paragraph 10 of the Class Settlement Agreement, or may in the future exist in the same or substantially similar form thereto.

i. For purposes of clarity, it is specifically intended for the release and covenant not to sue provisions of Paragraphs (9)(a)-(f) above to preclude all members of the Settlement Class from challenging the American Express NDPs, the American Express HAC Provisions, or the changes to those provisions described in Paragraph 8 of the Class Settlement Agreement, subject to Paragraph 10 of the Class Settlement Agreement (by seeking an injunction, a declaratory judgment, or any other form of equitable relief), or seeking damages associated with the American Express NDPs or the changes to those provisions described in Paragraph 8 of the Class Settlement Agreement, subject to Paragraph 10 of the Class Settlement Agreement, for a period starting with the Provisions Change Date and ending with the Release Termination Date (which period shall be for a minimum of ten years).

j. It is intended for the release and covenant not to sue provisions of Paragraph (9)(a)-(f) to be as broad as legally permissible subject to the identical factual predicate doctrine as applied to the Animal Land Consolidated Action and the Marcus Action.

k. For avoidance of doubt, no provision in this Class Settlement Agreement releases any claim of a Settlement Class Releasing Party that is based on:

i. Breach of this Class Settlement Agreement;

ii. *Parens patriae*, law enforcement, or regulation actions by any government or quasi-governmental entity to enforce sovereign or quasi-sovereign interests;

iii. An action by a competitor except for claims by such competitor in its capacity as a merchant; or

iv. Standard commercial disputes arising in the ordinary course of business regarding individual chargeback disputes, products liability, breach of warranty, misappropriation of cardholder data or invasion of privacy, compliance with technical specifications for a merchant's acceptance of a Credit Card or Debit Card, and any other dispute arising out of a breach of any contract between any of the Settlement Class Releasing Parties and any of the Settlement Class Released Parties; provided, however, that Paragraphs (9)(a)-(j) above and not this Paragraph shall control in the event that any such claim challenges the legality of any American Express HAC Provisions, any American Express NDPs, discrimination rule, provision, or other conduct covered by any of the claims released in Paragraphs (9)(a)-(j) above.

l. The parties recognize that certain provisions or aspects of the American Express NDPs are currently being challenged by the Department of Justice in *United States v. American Express*, 10-cv-4496 (E.D.N.Y.) (NGG) (RER). In the event that such litigation concludes with a judgment, order or consent decree implementing a further revision of American Express's rules, nothing in this release shall be deemed to affect any right that a member of the settlement class may have to seek enforcement of any such judgment, order or consent decree, or to enjoy any benefits or rights to injunctive relief secured by such judgment, order or consent decree.

m. Each Settlement Class Releasing Party further releases each of the named Defendants and their counsel and experts in these Actions from any claims relating to the conduct in these Actions and defense of these Actions, including the negotiation and terms of this Class Settlement Agreement, except for any claims relating to enforcement of this Class Settlement Agreement. Each named Defendant releases the Class Plaintiffs, other plaintiffs in the Class Actions, Class Counsel, and their respective experts in the Class Actions, from any claims relating to their institution or prosecution of the Class Actions, including the negotiation and terms of this Class Settlement Agreement, except for any claims relating to enforcement of this Class Settlement Agreement.

n. In the event that the Class Settlement Agreement is terminated pursuant to Paragraphs 61–63 of the Class Settlement Agreement, or any condition for the Settlement Effective Date is not satisfied, the release and covenant not to sue provisions of Paragraphs (9)(a)-(m) above shall be null and void and unenforceable.

o. Except as expressly set forth in Paragraphs 26 and 27 of the Class Settlement agreement, nothing in this Release shall affect the right of any Settlement Class Member to pursue any action or arbitration for damages for any claim. Subject to the release and covenant not to sue, each of the putative class representatives in the Class Actions, including without limitation The Marcus Corporation, agrees that it can only pursue any damages claims through binding arbitration consistent with its card acceptance agreement with American Express (as amended or modified).

p. The release and covenant not to sue of the Settlement Class shall remain in effect until the Release Termination Date. No member of the Settlement Class can challenge the American Express NDPs or American Express HAC Provisions, or the amendments set forth in Paragraph 8 of the Class Settlement Agreement (by seeking an injunction, declaratory judgment, or any other form of equitable relief) or seek damages associated with the American Express NDPs or American Express HAC Provisions or the amendments set forth in Paragraph 8 of the Class Settlement Agreement relating to the period of time between the Provisions Change Date and the Release Termination Date.

10. All claims for injunctive relief sought in the Class Actions are dismissed with prejudice, with each party to bear its own costs, except as and to the extent provided for in the Class Settlement Agreement.

11. All claims for damages sought in the Class Actions, including without limitation the Marcus Action, are dismissed without prejudice, with each party to bear its own costs, except as and to the extent provided for in the Class Settlement Agreement.

12. All members of the Settlement Class, and those subject to their control, are hereby enjoined and forever barred from commencing, maintaining, or participating in, or permitting another to commence, maintain, or participate in on its behalf, any claims released against Settlement Class Released Parties.

13. Without affecting the finality of this judgment in any way, and as further provide in Paragraphs 64–67 of the Class Settlement Agreement, this Court hereby retains exclusive continuing jurisdiction in the Animal Land Consolidated Action and the Marcus Action over the Class Plaintiffs, the members of the Settlement Class, and the Defendants to implement, administer, consummate, and enforce this Class Settlement Agreement and the Class Settlement Order and Final Judgment, including any disputes relating to, or arising out of, the release and covenant not to sue of the Settlement Class or any claim that was or could have been alleged in these Actions.

14. The Defendants and the Class Plaintiffs agree, and the members of the Settlement Class will be deemed to have agreed, to submit irrevocably to the exclusive jurisdiction of the United States District Court for the Eastern District of New York for the resolution of any matter covered by this Class Settlement Agreement, the Class Settlement Order and Final Judgment, or the applicability of this Class Settlement Agreement or the Class Settlement Order and Final Judgment.

15. All applications to the Court with respect to any aspect of this Class Settlement Agreement or the Class Settlement Order and Final Judgment shall be presented to and be determined by United States District Court Judge Nicholas Garaufis for resolution as a matter within the Actions, or, if he is not available, any other District Court Judge designated by the Eastern District of New York. Without limiting the generality of the foregoing, it is hereby agreed that any suit, action, proceeding, or dispute of a Class Plaintiff or member of the Settlement Class, in which the provisions of this Class Settlement Agreement or the Class Settlement Order and Final Judgment are asserted as a ground for a defense, in whole or in part, to any claim or cause of action, or are otherwise raised as an objection, constitutes a suit, action, proceeding, or dispute arising out of or relating to this Class Settlement Agreement or the Class Settlement Order and Final Judgment.

16. In the event that the provisions of this Class Settlement Agreement or the Class Settlement Order and Final Judgment are asserted by any Defendant or Settlement Class Released Party as a ground for a defense, in whole or in part, to any claim or cause of action, or are otherwise raised as an objection in any other suit, action, or proceeding by a Class Plaintiff or member of the Settlement Class, it is hereby agreed that the Settlement Class Released Parties shall be entitled to an immediate stay of that suit, action, or proceeding until after the Court has

entered an order or judgment determining any issues relating to the defense or objections based on such provisions, and no further judicial review of such order or judgment is possible.

17. In any arbitration proceeding filed by a merchant against American Express asserting a claim solely for damages relating to the American Express NDPs or American Express HAC Provisions where such claim was or could have been asserted in either of these Actions, both American Express and any merchant which has filed such a claim shall be permitted to receive in discovery in connection with such arbitration any court-filed documents in these Actions or any discovery in these Actions (including depositions, documents, interrogatory answers, and expert reports) that Class Counsel actually received or had the right to receive during the pendency of these Actions. The parties agree that all discovery in the Marcus Action and all court-filed documents in the Marcus Action were reproduced or deemed reproduced to Class Counsel in the Animal Land Consolidated Action and are covered by the Animal Land Protective Order. Before any merchant shall be permitted to receive any such documents or discovery, such merchant and its counsel shall agree (a) to be bound by a confidentiality agreement that provides at least the same level of protections as the Animal Land Protective Order and the Marcus Protective Order and (b) to follow substantially the same protections afforded to each such document or discovery as such document or discovery received pursuant to the Animal Land Animal Land Protective Order or Marcus Protective Order when initially produced.

18. The terms and provisions of the Animal Land Protective Order and the Marcus Protective Order shall survive and continue in effect through and after any final adjudication of the Class Actions, except as modified by the Court.

19. Nothing in the Class Settlement Agreement or this Class Settlement Order and Final Judgment is or shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by any of the Defendants, or of the truth or validity or lack of truth or validity of any of the claims or allegations alleged in any of the Class Actions.

20. Nothing in this Class Settlement Order and Final Judgment is intended to or shall modify the terms of the Class Settlement Agreement.

21. Without limiting Paragraph 22 below, nothing in this Class Settlement Order and Final Judgment shall limit the ability of American Express to determine American Express Merchant Discount Rates or other pricing or fees applicable (either by rule or negotiated agreement) to individual merchants or groups of merchants.

22. The parties recognize and agree that this Class Settlement Agreement shall be governed by the good faith and fair dealing obligations applicable to contracts under New York law.

23. This Class Settlement Order and Final Judgment terminates and disposes of all claims against the Defendants in the Class Actions. There is no just reason for delay in entering final judgment. The Court hereby directs the Clerk to enter judgment forthwith in accordance with the terms of this Class Settlement Order and Final Judgment, which judgment shall be final and appealable.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE NICHOLAS GARAUFIS

EXHIBIT 1 TO SETTLEMENT CLASS ORDER AND FINAL JUDGMENT

All putative class actions consolidated in *In re American Express Anti-Steering Rules Antitrust Litigation (II)*, No. 11-MD-2221 (E.D.N.Y.) (NGG)(RER), including but not limited to

*In re American Express Anti-Steering Rules Antitrust Litigation*, No. 06-CV-02974 (NGG) (RER) (E.D.N.Y.), formerly No. 06-CV-02974 (WHP) (S.D.N.Y.)

*Firefly Air Solutions, LLC v. American Express Company, et al.*, No. 10-cv-05200 (NGG) (RER) (E.D.N.Y.)

*Plymouth Oil Corp. v. American Express Company, et al.*, No. 10-cv-05369 (NGG) (RER) (E.D.N.Y.)

*Jasa, Inc. et al. v. American Express Company, et al.*, No. 11-cv-00732 (NGG) (RER) (E.D.N.Y.)

*Nat'l Supermarkets Ass'n, Inc. v American Express Company*, No. 11-cv-01448 (NGG) (RER) (E.D.N.Y.), formerly 10-CV-04551 (WHP) (S.D.N.Y.)

*Treehouse, Inc. v. American Express Company, et al.*, No. 11-cv-00882 (NGG) (RER) (E.D.N.Y.), formerly No. 10-CV-00790 (SLC) (W.D. Wis.)

*Il Forno, Inc. v. American Express Company, et al.*, No. 11-cv-00881 (NGG) (RER) (E.D.N.Y.), formerly No. 11-CV-00306 (AHM) (PJW) (C.D. Cal.)

All putative class actions consolidated in *In re American Express Anti-Steering Rules Antitrust Litigation*, No. 06-CV-02974 (E.D.N.Y.) (NGG)(RER), including but not limited to

*Animal Land, Inc., et al. v. American Express Company, et al.*, No. 09-CV-2291 (S.D.N.Y.) (WHP)

*Performance Labs, Inc. et al. v. American Express Company, et al.*, No. 06-CV-2974 (S.D.N.Y.) (WHP)

*Lopez DeJonge, Inc. et al., v. American Express Company. et al.*, No. 07-CV-1303 (S.D.N.Y.) (WHP)

*Nat'l Supermarkets Ass'n, Inc. v. American Express Company, et al.*, No. 06-CV-4551 (S.D.N.Y.) (WHP)

*The Marcus Corp. v. American Express Co. et al.*, No. 04-CV-05432 (GBD) (S.D.N.Y.)

**APPENDIX H — Counsel Names and Contact Information**

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