

MEMORANDUM OF SETTLEMENT WITH NATIONAL ARBITRATION FORUM, INC.

WHEREAS, National Arbitration Forum, Inc. (the "NAF"), on the one hand, and Robert Ross, Andrea Kune, Woodrow Clark, Byron Balbach, Jr., Matthew Grabell, Richard Mandell, and Paul Impellezzeri (together, the "Plaintiffs"), on the other hand, are parties to a class action entitled *Ross, et al. v. Bank of America, N.A. (USA), et al.*, S.D.N.Y. Case No. 05 CV 7116 (WHP) (THK) (the "Litigation");

WHEREAS the Court certified a Class and Subclass with respect to all other defendants in the Litigation on October 6, 2009, and the Class and Subclass include as members business entities that hold cards issued by one or more of the other defendants;

WHEREAS, a motion by the NAF to dismiss the Amended Class Action Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) has been denied by the United States District Court for the Southern District of New York (the "Court");

WHEREAS a motion by the Plaintiffs to certify that Class and Subclass with respect to NAF is now pending;

WHEREAS, the NAF denies all liability with respect to the claims alleged by the Plaintiffs against the NAF in the Litigation;

WHEREAS, the NAF and the Plaintiffs wish to enter into a compromise and settlement to avoid the uncertainty and expense of further litigation and to achieve a fair and reasonable resolution of the claims asserted in the Litigation against the NAF;

WHEREAS, the NAF entered into a Consent Judgment with the State of Minnesota, dated July 28, 2009 (the "Consent Judgment") that precludes it, on or after July 24, 2009, from, *inter alia*, administering or processing any new "Consumer Arbitrations," and attempting to influence the outcome of any arbitration proceeding currently pending before it. "Consumer Arbitrations" are defined in the Consent Judgment as "any arbitrations[s] involving a dispute between a business entity and a private individual" (a copy of that Consent Judgment is annexed hereto as Exhibit A):

NOW THEREFORE, the Plaintiffs, on behalf of themselves and the Class and Subclass (the "Settlement Class"), enter into the following Memorandum of Settlement ("Settlement") with the NAF:

1. The NAF hereby stipulates and agrees that it has no objection to and does not contest the findings contained in the October 6, 2009 Order certifying the Class and Subclass. The NAF joins in the stipulation accompanying that Order as if a full party thereto, agrees to be bound by that Order, and agrees to the certification of the Class and Subclass there defined regarding the claims against it.

2. In addition to abiding by the Consent Judgment requirements (which, *inter alia*, requires that the NAF not administer or process credit card arbitration disputes involving "consumer arbitrations" initiated on or after July 24, 2009), the NAF hereby agrees that it shall not administer or process any new credit card arbitration disputes involving business entities in

their capacity as cardholders (“Business Card Arbitrations”). The NAF agrees to cease administering or processing Business Card Arbitrations commencing on the Court’s preliminary approval of this Settlement and thereafter for a period of three and one-half (3.5) years. Nothing contained in this Settlement shall preclude the NAF from the sale or transfer of any of its assets. Notwithstanding the foregoing, the NAF reserves the right to administer or process Business Card Arbitrations in circumstances where a member of the Settlement Class who, after being offered the choice in writing by the claimant, opts in writing for a Business Card Arbitration to proceed or continue in arbitration rather than in court.

3. Nothing contained herein shall be construed or deemed to be an admission or evidence of any such contract, combination, or conspiracy involving the NAF, or of the violation of any statute, law or legal principle, or of any liability or wrongdoing, by the NAF, or anyone acting on the NAF’s behalf.

4. (a) All members of the Settlement Class shall release and forever discharge the NAF, together with its predecessors, successors, and affiliates, including but not limited to DISPUTE MANAGEMENT SERVICES, LLC, d/b/a Forthright and NATIONAL ARBITRATION FORUM, LLC, and their respective past or present officers, directors, employees, agents, attorneys and representatives, from any and all Released Claims, except for claims described in paragraph 4(b)(ii) below and the Carved Out Claims as described in paragraph 4(c) below.

(b) “Released Claims”

(i) “Released Claims” means any and all actual or potential claims, actions, causes of action, liabilities, damages (whether actual, nominal, punitive, exemplary, or otherwise), injunctive relief, costs, fees, attorneys’ fees, or penalties of any kind that

a. arise out of the adoption or inclusion of an arbitration clause or class action waiver clause in a credit card agreement between any member of the Settling Class and any defendant in this Litigation,

b. arise out of the NAF’s alleged participation in any alleged conspiracy with regard to the adoption or inclusion of an arbitration clause or class action waiver clause in a credit card agreement between any member of the Settling Class and any defendant in this Litigation, and/or

c. are, have been, or could have been asserted by the Settlement Class within the scope of the facts asserted in the Litigation.

(ii) Notwithstanding paragraph 4(b)(i) above, “Released Claims” do not include:

- a. claims arising from acts or omissions occurring on or after the date of preliminary approval of the settlement described herein;
- b. claims arising from any act or omission that is not related to an arbitration clause or class action waiver in a credit card agreement between a member of the Settlement Class and any defendant in this litigation; or
- c. claims by any person who is not a member of the Settlement Class.

(c) “Carved Out Claims”

(i) “Carved Out Claims” are claims against the NAF for relief arising from

- a. any claimed injury allegedly experienced by a member of the Settlement Class as a result of having had his/her claim arbitrated in an NAF-administered proceeding;
- b. any act undertaken or omission made in connection with, or incident to, an arbitration administered, or to be administered, by the NAF;
- c. any act undertaken or omission made, if any, to enforce the results of such NAF-administered proceedings.

(ii) Notwithstanding paragraph 4(c)(i), Carved Out Claims do not include

- a. the claims of Settlement Class members who did not experience the invocation or enforcement of an arbitration clause or a class action waiver clause; and
- b. claims of the named Plaintiffs in the Litigation.

(d) This Settlement is not intended to alter the rights of the parties to, or otherwise affect, any of the following matters currently pending against the NAF:

(i) *In re: National Arbitration Forum Trade Practices Litigation*, MDL No. 10-2122 (PAM/JSM) and the cases coordinated thereunder, namely;

- *Adriane Daniels v. Worldwide Asset Purchasing, LLC, et al.*, C.A. No. 2:09-920 (M.D. Ala.);
- *Reginald Pelletier v. National Arbitration Forum, Inc., et al.*, C.A. No. 8:09-2229 (M.D. Fla.);

- *Laura Siddons v. National Arbitration Forum, Inc., et al.*, C.A. No. 0:09-1939 (D. Minn.);
- *Kelly Marquis, et al. v. National Arbitration Forum, Inc., et al.*, C.A. No. 0:09-1971 (D. Minn.);
- *Tommi Head v. National Arbitration Forum, Inc., et al.*, C.A. No. 0:09-1977 (D. Minn.);
- *Robert Burgi v. National Arbitration Forum, Inc., et al.*, C.A. No. 0:09-2200 (D. Minn.);
- *Peter Kennedy v. National Arbitration Forum, Inc., et al.*, C.A. No. 0:09-2508 (D. Minn.); and
- *Anthony Magnone, et al. v. Accretive, LLC, et al.*, C.A. No. 0:09-3722 (D. Minn)

(ii) *People of the State of California v. National Arbitration Forum, Inc.; FIA Card Services, N.A.; and National Arbitration Forum LLC; Dispute Management Services LLC DBA Forthright*, Case No. CGC-08-473569 (Cal. Super. Ct., S.F. Cty); and

(iii) *Townsend v. National Arbitration Forum, et al.*, Case No. 2:09-CV-09325-VBF-RNB (C.D. Cal.)

(e) The NAF expressly reserves any and all rights, defenses, counterclaims, and third-party claims that it may have with respect to any Carved Out Claims asserted against the NAF or its representatives or affiliates.

5. Subject to the approval of the Court, the NAF will pay Class Counsel \$125,000 in attorneys' fees, costs, and expenses, including the cost of notice. Within seven (7) calendar days of the date of Preliminary Approval, NAF will transfer this amount into the existing escrow account for this Litigation, the Arbitration Antitrust Settlement Escrow Account at The Huntington National Bank. Notice expenses relating to this Settlement may be drawn from the \$125,000 in escrow. On final approval of this Settlement, and if approved by the Court, the remainder shall be paid to Class Counsel as attorneys' fees and for the reimbursement of litigation costs and expenses. Class Counsel shall receive no other compensation from the NAF in connection with the Litigation. Other than as expressly provided in this Settlement, the Plaintiffs and the NAF (as amongst each other) will bear their own attorneys' fees, costs, and expenses in the Litigation.

6. The NAF, Plaintiffs, and Class Counsel (collectively, the "Parties") agree that publication notice is sufficient to satisfy the requirements of due process and Fed. R. Civ. P. 23. The parties shall cooperate to effect notice at a convenient time and in as economical and feasible a manner as possible, subject to the approval of the Court. Notice shall be given when economically optimal to do so. If, as a condition of approval of this Settlement, the Court or a

reviewing court requires individual notice of the Settlement, or requires some other form of notice that would impose additional, unforeseen costs upon the Parties, then the NAF, Class Counsel and the Plaintiffs each will have the option to void this Settlement *ab initio* within twenty one (21) days of such ruling. In the event that this Settlement is not approved or does not become effective following the publication of notice to the Class, the NAF shall not seek to recover the costs of such notice from the Plaintiffs or Class Counsel.

7. This Settlement and all of the commitments and obligations it imposes on the Parties are contingent on preliminary and final approval of the Settlement by the Court and any reviewing courts in a manner satisfactory to the NAF and Plaintiffs. Such final court approval shall include the dismissal with prejudice of the Litigation as against the NAF. If satisfactory approval of this Settlement does not occur, or if the Settlement is voided under paragraph 6 hereof, then the Settlement shall be void *ab initio*, shall have no force and effect, and shall impose no obligations on the Parties, except that the Settlement and all settlement discussions between the Parties shall remain inadmissible, undiscoverable, and strictly confidential to the maximum extent permitted by law.

8. The commitments made by the Parties and on behalf of the Settlement Class in this Settlement are enforceable by the Court as a matter of contract. In the absence of a judicial finding that the NAF has violated the Settlement, the Settlement shall not be enforced against the NAF by injunction, and no injunction will be entered against the NAF as part of judicial approval of the Settlement. In the event of a finding that NAF has violated the Settlement Agreement, the Settlement Agreement may be enforced against NAF by injunction, including one commanding specific performance of this Settlement Agreement, if warranted and available under applicable law. The Court shall retain jurisdiction for purposes of enforcement of this Settlement.

9. The NAF and Plaintiffs shall cooperate with each other in good faith regarding (a) discovery requests from the Plaintiffs relating to the Litigation and (b) limiting the burden that such discovery requests impose on the NAF or any of its present or former subsidiaries or affiliates. Such cooperation shall extend to cooperation regarding the resolution of privilege disputes regarding any documents requested from the NAF, but shall not require the NAF to waive valid claims of privilege or work product. With respect to making witnesses available for deposition or trial in connection with the Litigation, the NAF shall make available without the need for a subpoena then-current employees and any ex-employee who remains within the NAF's control (an "NAF Witness"). An NAF Witness who appears for deposition will not also be required to appear at trial unless the Plaintiffs are unable, despite all good faith efforts, to enter into evidence the relevant portions of the transcript of the deposition testimony given by that witness.

In connection with the duty to cooperate imposed by this Settlement, it is expressly understood that:

- (a) The NAF makes no representations with respect to the degree of cooperation or availability it ultimately can furnish, if any, with respect to the testimony of former employees;

- (b) Plaintiffs and the NAF agree that discovery is limited to matters relevant to the claims or defenses of the parties with respect to the antitrust conspiracy alleged in the Amended Complaint, and that cooperation obligations will be guided, and in any event may not exceed the scope of those prescribed, by the discovery-related provisions of the Federal Rules of Civil Procedure; and
- (c) All documents exchanged and all depositions noticed or given pursuant to this duty to cooperate ("cooperative discovery materials") shall be subject to and governed by the terms of the Stipulated Confidentiality Order entered in this action, dated April 20, 2009. It is expressly understood that such cooperative discovery materials may only be used for purposes of (i) this Litigation, (ii) *Ross, et al. v. American Express Co., et al.*, No. 04-cv-5723 (S.D.N.Y.) (Pauley, J.), and the (iii) *In re Currency Conversion Fee Antitrust Litigation*, Master File No. 95-21, 01-md-1409 (S.D.N.Y.) (Pauley, J.). Any cooperative discovery materials shall not otherwise be disclosed except as required by law (*i.e.*, pursuant to court or government agency order) or as subject to NAF's express, written consent. Plaintiffs also agree, unless the law requires otherwise, that cooperative discovery materials may not be furnished to any person who has not executed and/or agreed to be bound by the terms of the Confidentiality Order and this Paragraph 9(c). If allowed by law, Plaintiffs' shall also provide NAF with prompt notice (*i.e.*, within three (3) business days of a request made by any non-parties to the litigations referenced in this paragraph for the cooperative discovery materials (unless NAF shall already have notice, or unless such notice is precluded by law), such that the NAF has sufficient opportunity to seek an order protecting the cooperative discovery materials from further disclosure or potential use.

10. The Parties waive the application of any applicable law, regulation, holding or rule of construction providing that ambiguities in an agreement shall be construed against the party drafting such agreement.

11. The Parties shall cooperate with respect to any public statements regarding this Settlement.

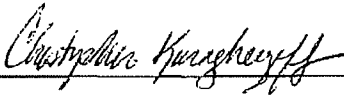
12. Each of the undersigned representatives of the Parties represents that he/she is fully authorized to enter into, and to execute, this Settlement on behalf of that Party or Parties.

13. This Settlement is binding and effective as of the date that the Settlement has been executed by each of the representatives of the Parties for whom a signature line is provided below. The parties will use their best efforts to obtain preliminary and final approval and otherwise effectuate this Settlement.

14. Except for (a) the NAF's obligations under paragraph 2 of this Settlement, (b) the NAF's obligations under paragraphs 5 and 6, which are intended to be permanent, and (c) the NAF's obligations under paragraph 9, which are intended to expire at the conclusion of the Litigation, the NAF's obligations under this Settlement will expire five (5) years after the date of execution of this Settlement. All releases granted herein are intended to be permanent.

15. This Settlement may be signed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

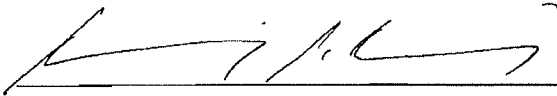
For the National Arbitration Forum, Inc.



Dated 5/19/10

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Dated May 19, 2010

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