

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

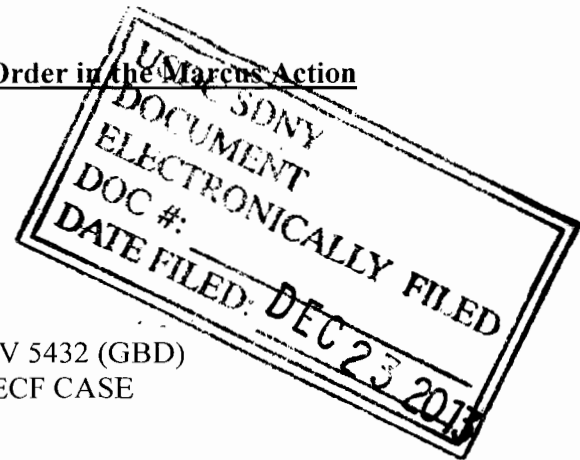
THE MARCUS CORPORATION,
on behalf of itself and all similarly situated
persons,

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 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 December 23 2013 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: DEC 23 2013



THE HONORABLE GEORGE DANIELS