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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

SAUL M. KAUFMAN and KIMBERLY )  
STEGICH, individually and on behalf of all )  
others similarly situated, )

Case No. 1:07-cv-01707

Plaintiffs, )

vs. )

AMERICAN EXPRESS TRAVEL )  
RELATED SERVICES, INC., )

Defendant. )

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**[PROPOSED] ORDER PROVIDING FOR  
SUPPLEMENTAL NOTICE PROCEDURES**

**WHEREAS**, a putative class action is pending in the District Court entitled Saul M. Kaufman, et al. v. American Express Travel Related Services, Inc., Case No. 1:07-cv-01707 (the “Kaufman Action”); and

**WHEREAS**, Plaintiffs made a motion on September 16, 2011, Dkt. No. 312, pursuant to Federal Rule of Civil Procedure 23, for an order preliminarily approving the settlement of the Kaufman Action, in accordance with the Stipulation and Agreement of Settlement (the “Agreement”), signed on September 13, 2011, which, together with the Exhibits attached thereto, set forth the terms and conditions for a proposed settlement of the Kaufman Action and dismissal of the Kaufman Action with prejudice; and

**WHEREAS**, the District Court having read and considered Plaintiffs’ Second Amended Motion for Preliminary Approval of Class Action Settlement and Notice to the Settlement Class the Agreement and the Exhibits attached thereto, dated September 16, 2011, Dkt. No. 312, as well as all arguments and submissions from the Parties and Intervenors at the noticed hearings, inter alia, preliminarily approved the Agreement as being fair, reasonable and adequate on September 21, 2011, Dkt. No. 315; and

**WHEREAS**, the District Court’s Order Preliminarily Approving Class Action Settlement, Providing for Notice and Enjoining Litigation of Released Claims, dated September 21, 2011, Dkt. No. 315 (the “Preliminary Approval Order”), inter alia, approved the form and content of the initial Publication Notice (attached as Exhibit A hereto), the form and content of the initial Direct Mail Notice (attached as Exhibit B hereto) and the content of the initial internet-based Claim Forms (attached as Exhibit C hereto), which were made available on the Administration Site described in paragraph 6.2 of the Agreement; and

**WHEREAS**, the Preliminary Approval Order, inter alia, found that the initial notice plan satisfied Due Process, the Federal and Illinois Rules of Civil

Procedure and any other applicable laws, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all person entitled thereto; and

**WHEREAS**, the approved notice procedure was completed in accordance with the Preliminary Approval Order and the terms of the Agreement; and

**WHEREAS**, Plaintiffs and Defendant moved for approval of the Agreement on February 16, 2012, Dkt. No. 357; and

**WHEREAS**, the District Court held a fairness hearing on February 29, 2012; and

**WHEREAS**, by Memorandum Opinion and Order, dated June 25, 2012, Dkt. No. 387 (the "June 2012 Order"), the District Court noted that the initial notice plan consisted of direct mail notice to potential class members that the Settling Parties could identify from existing records, the establishment of a Administration Site, and notice published in one weekday edition of USA Today; and

**WHEREAS**, the initial direct mail notice consisted of a mailing of 1,279,514 notice postcards; and

**WHEREAS**, the initial publication notice in USA Today had a weekday print circulation for the period in which notice was published of approximately 1.7 million; and

**WHEREAS**, the response rate to the initial notice plan consisted of 3,458 telephone calls, 2,514 pieces of mail pertaining to the Settlement and the Administration Site received 17,528 views; and

**WHEREAS**, total claims of 3,456 benefits of any kind were requested by Class Members, totaling \$41,510.35, which amounted to slightly more than one percent of the \$4 million available in the Settlement Fund; and

**WHEREAS**, the response and claims rate resulting from the initial notice program caused the District Court to reconsider, by the June 2012 Order, the initial notice plan and to order further notice efforts; and

**WHEREAS**, the District Court ordered the appointment of a notice expert in class notification by the June 2012 Order, as suggested by the Federal Judicial Center's Class Action Checklist 2010; and

**WHEREAS**, the District Court considered several notice experts and, on the nomination of Intervenors, by Minute Order, dated August 2, 2012, Dkt. No. 396, appointed Todd B. Hilsee as an independent expert on the subject of class notice pursuant to Federal Rule of Evidence 706 (the "Notice Expert"); and

**WHEREAS**, the Notice Expert submitted an initial report, dated October 15, 2012, Dkt. No. 421, wherein he analyzed the initial notice plan, notice content, and claims process, and estimated the class size; and

**WHEREAS**, the District Court held an in-court conference on October 18, 2012, during which the Court ordered the Notice Expert to provide the parties with a list of suggested supplemental notice tactics, invited the Settling Parties to respond, and required information from American Express as to the availability of email addresses and contact information of potential Class Members; and

**WHEREAS**, the Notice Expert thereafter submitted a second report, dated October 22, 2012, Dkt. No. 420, wherein he presented action steps towards a supplemental notice program; and

**WHEREAS**, the Settling Parties and Intervenors responded to the Notice Expert's first two reports, and proposed supplemental notice procedures for the Notice Expert's and the District Court's consideration on November 20, 2012, Dkt. Nos. 417 and 416, respectively; and

**WHEREAS**, the Notice Expert submitted a third report, dated December 5, 2012; and

**WHEREAS**, the District Court held an in-court conference on December 20, 2012, and ordered American Express to provide certain additional information; and

**WHEREAS**, by letter dated January 18, 2013, the Settling Parties responded and provided the Court with the additional information requested; and

**WHEREAS**, the District Court, upon the Notice Expert's request, ordered the Settling Parties to provide further clarification regarding one aspect of the Settlement Agreement and notice plan by Minute Order, dated January 23, 2013, Dkt. No. 426; and

**WHEREAS**, by letter dated February 4, 2013, the Settling Parties responded; and

**WHEREAS**, the Notice Expert submitted a fourth report, dated February 21, 2013, Dkt. No. 430, and made specific recommendations regarding a supplemental notice plan; and

**WHEREAS**, by submissions dated March 26, 2013, the Settling Parties and Intervenors responded to the Notice Expert's fourth report, Dkt. Nos. 433 and 432, respectively; and

**WHEREAS**, the Notice Expert submitted a fifth report, dated April 8, 2013, wherein the Notice Expert compared his proposed supplemental notice plan with the submissions of the Settling Parties and the Intervenors and made recommendations as to how to reconcile the differences; and

**WHEREAS**, the District Court held an in-court conference on May 10, 2013, and ruled on various matters concerning the scope of the supplemental notice plan, directed all parties to resolve certain outstanding issues and further directed the parties to submit this proposed Order; and

**WHEREAS**, at the in-court conference on May 10, 2013, the District Court considered and rejected the Intervenors' request to include reference to

Intervenors' objections to the Settlement and Intervenors' counsel's contact information in the supplemental notice content; and

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. This Order incorporates by reference the definitions in the Agreement, and all terms used in this Order shall have the same meanings as set forth in the Agreement, unless otherwise stated herein.

2. This Order incorporates by reference all Orders issued by this Court to date, including but not limited to, the Preliminary Approval Order, to the extent not inconsistent with the explicit provisions herein.

3. The Court leaves undisturbed its preliminary approval of the Agreement as being fair, reasonable and adequate and within the range of possible approval, subject to further consideration at the Final Fairness Hearing, and all related findings set forth in the Preliminary Approval Order.

4. The Court approves the form and content of the (i) short form Direct Mail Notice (attached as Exhibit D hereto); (ii) Publication Notice (attached as Exhibit E hereto); (iii) Email Notice (attached as Exhibit F hereto); (iv) Direct Mail Notice Envelope (attached as Exhibit G hereto); (v) Claim Form (attached as Exhibit H hereto), and (vi) Detailed Notice (attached as Exhibit I hereto).

(i) Within 10 days after entry of this Order, the Administration Site shall be updated to reflect the approved form and content of the Publication Notice and Detailed Notice, and the following terms shall be embedded into the code of the Administration Site:

- i. "American Express Gift Card"
- ii. "Amex Gift Card"
- iii. "American Express Gift Card Fee"
- iv. "Amex Gift Card Fee"
- v. "American Express Gift Card Class Action"
- vi. "Amex Gift Card Class Action"
- vii. "American Express Gift Card Settlement"
- viii. "Amex Gift Card Settlement"
- ix. "American Express Gift Card Litigation"
- x. "Amex Gift Card Litigation"

The Administration Site will be further updated to reflect various changes in accordance with the Notice Expert's specific instructions (attached as Exhibit J hereto).

(ii) Within 21 days after entry of this Order, the Settlement Administrator shall use best practices to disseminate the Email Notice to those email addresses reasonably believed to be associated with potential Class Members, including best practices for sending email so as to avoid SPAM filters;

(iii) Within 90 days after entry of this Order, the Publication Notice shall be published and appear on one-half page in People and Better Homes and Gardens. The Publication Notice shall also be published and appear on two-fifths of a page in Parade and USA Weekend, and on a full page in National Geographic.

(iv) Within 35 days after entry of this Order, an internet banner advertisement, designed by the Settlement Administrator, shall appear on the

following networks, which the Settlement Administrator has selected to achieve the Notice Expert's objective that this portion of the supplemental notice program reach 20% of Class Members, and continue for approximately 28 days or until such time as at least 66.3 million impressions are achieved, whichever comes first:

- i. Facebook
- ii. 24/7 Real Media
- iii. Yahoo!
- iv. Microsoft Media Network
- v. AOL Network
- vi. Parade-Newspaper Partner Sites

The internet banner advertisements shall consist of the following headline: "Legal Notice: You may qualify for money from an American Express Gift Card class action."

(v) Within 45 days after entry of this Order, the Notice Expert will determine whether the Administration Site appears as an adequately prominent result when using reasonable search terms in Google. If at that time the Notice Expert concludes that the Administration Site is not adequately prominent, then for a sufficient period of time to be determined by the Notice Expert, but not to exceed 60 days, the Settlement Administrator shall commence a paid Keyword Search Campaign with Google as soon as practicable, such that the Administration Site will appear as the first hit when a search for any of the following search terms is completed:

- i. "American Express Gift Card Fee"
- ii. "Amex Gift Card Fee"
- iii. "American Express Gift Card Class Action"
- iv. "Amex Gift Card Class Action"
- v. "American Express Gift Card Settlement"



- vi. "Amex Gift Card Settlement"
- vii. "American Express Gift Card Litigation"
- viii. "Amex Gift Card Litigation"

(vi) Within 45 days after entry of this Order, American Express shall post links to the Administration Site on gift card-related sub-webpages within its control (a list of the sub-webpages is attached as Exhibit K hereto); the link shall be comparable in size and content to existing links concerning the CARD Act (attached as Exhibit L hereto) appearing on gift card-related sub-webpages.

(vii) Within 21 days after entry of this Order, the Settlement Administrator shall update the Settlement Toll-Free phone number to offer callers eight recorded answers to Frequently Asked Questions No. 3, 7, 11, 13, 14, 19, 23, and 25, consistent with the content of the Detailed Notice (Exhibit I).

(viii) Within the earlier of either 135 days after entry of this Order or 45 days after the last publication, the Settlement Administrator shall provide the Settling Parties with a post-implementation report confirming and detailing (1) the date, size and page number that the Publication Notice appeared in each magazine or newspaper, (2) the internet banner advertisement's ad type and size, and number of actual impressions completed, and (3) the total number of "click thrus" from the internet banner advertisements to the Administration. The Settling Parties shall promptly provide that report to the Notice Expert, counsel of record and the Court.

(ix) Within the earlier of either 135 days after entry of this Order or 45 days after the last publication, the Settlement Administrator shall also report to the Court and to the Parties the response and claims rate resulting from the Supplemental Notice Program to date, including (1) the total number of telephone calls received on the Settlement toll-free phone number, (2) the total number of "click thrus" from email notices to the Administration Site, (3) the total number of unique visits to the Administration Site homepage, (4) the total number of unique

visits to the Claim Form page of the Administration Site, (5) the total number of claims received, (6) the total number of claims accepted, (7) the total value of benefits requested by Class Members, broken down by the type of claim submitted, (8) the total number of deficient claims submitted, (9) the total number of deficient claims and the results of curative efforts with respect to them, and (10) the total amount remaining in the Settlement Fund if the total value of benefits requested by Class Members were paid, and describing any proration required to compensate all benefits requested.

(x) Within 30 days of the submission of the reports detailed in Paragraphs 4(viii) and 4(ix) above, the Court shall hold a conference to determine, inter alia, whether additional forms of notice are necessary and appropriate, and if so, order such notice consistent with the Court's orders at the May 10, 2013 conference.

5. All claims must be submitted by the earlier of either Thursday, March 6, 2014, or 245 days after the entry of this Order.

6. Settlement Class Members that filed valid claims during the initial notice period need not re-submit a claim during the supplemental notice program in order to receive a benefit under the Agreement, but may revise or update a previously filed claim.

7. The name and address of any Class Member who submits an Attestation Claim shall be checked against American Express' records to determine if any such Class Member is entitled to receive a claim of greater value than the value of an Attestation Claim, and if such Class Member is entitled to a higher value award, shall be paid that higher value award.

8. All Settlement Class Members who do not request exclusion ("opt out") from the settlement pursuant to the procedure described in Paragraph 10 below shall be bound by all determinations and judgments in the Kaufman Action

concerning the settlement, including, but not limited to, the validity, binding nature and effectiveness of the Releases set forth in the Agreement.

9. All Settlement Class Members who opted out during the initial notice period may retract their opt out by submitting a valid claim form during the supplemental notice period. All Settlement Class Members who opted out during the initial notice period and who do not so retract the opt out shall be deemed to have opted out.

10. Any Settlement Class Member who wishes to opt out of the Settlement Class shall submit to the Settlement Administrator, Class Counsel, and Defense Counsel by mail or by electronic mail, with a postmark or time stamp no later than the earlier of either Thursday, March 6, 2014, or 245 days after the entry of this Order, an appropriate written request for exclusion, personally signed by the Settlement Class Member, including the Settlement Class Member's name, address, telephone number and clear request to be excluded from the Settlement Class in *Kaufman v. American Express*, No. 07-01707. No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other Settlement Class Member from the Settlement Class.

11. Any Settlement Class Member may appear and show cause if he or she has any reason why the proposed settlement of the Kaufman Action should or should not be approved as fair, adequate and reasonable, why the Judgment should or should not be entered, why attorneys' fees and costs should or should not be awarded to lead Class Counsel and/or additional Class Counsel, or why incentive awards to Plaintiffs should or should not be allowed; provided, however, that no Settlement Class Member shall be heard, and no objection may be considered, unless, postmarked or time stamped no later than the earlier of either Thursday, March 6, 2014, or 245 days after the entry of this Order, the Settlement Class

Member submits to the Settlement Administrator, Class Counsel, and Defense Counsel by mail, with a postmark no later than the earlier of either Thursday, March 6, 2014, or 245 days after the entry of this Order, an appropriate written objection, personally signed by the objector, including: (i) the objector's name, address, telephone number; (ii) the Gift Card number(s) (or a statement that the Gift Card number is unknown and that the Gift Card cannot with reasonable diligence be found); (iii) a statement confirming that the objector is a Settlement Class Member; (iv) whether the objector is represented by counsel, and if so, the name of such counsel; and (v) clearly stated factual basis and legal grounds for the objection to the settlement in *Kaufman v. American Express*, No. 07-01707. If the objector seeks permission to appear at the Final Fairness Hearing, he/she shall state that intention in the submitted written objection, and identify any witnesses the objector may call to testify and provide copies of any exhibits the objector intends to offer into evidence. Any Settlement Class Member who does not make his or her objection within the time and manner set forth in this paragraph shall be deemed to have waived such objection and shall be foreclosed forever from making any objection to the fairness, adequacy or reasonableness of the proposed Settlement, to the award of attorneys' fees and expenses to lead Class Counsel and additional Class Counsel, and to the incentive awards to Plaintiffs.

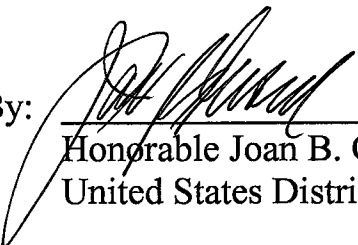
12. The Final Fairness Hearing shall take place before the Honorable Joan B. Gottschall on JUN 11, 2014 at 9:30 a.m./p.m. at the United States District Court, Northern District of Illinois, Courtroom 2325, 219 South Dearborn Street, Chicago, Illinois 60604, to determine: whether the proposed settlement of the Kaufman Action on the terms and conditions provided for in the Agreement remains fair, adequate and reasonable as to the Settlement Class Members and should be approved; whether the Judgment, as provided for in the Agreement, should be entered; the amount of fees and costs that should be awarded to lead Class Counsel and additional Class Counsel, and the amount of the incentive awards to Plaintiffs, as provided for in the Agreement.

13. The District Court reserves the right to adjourn or continue the date of the Final Fairness Hearing without further notice to Settlement Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the settlement. The District Court may approve or modify the settlement without further notice to Settlement Class Members.

DATED:

*August 9, 2013*

By:

  
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Honorable Joan B. Gottschall  
United States District Judge