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NO JS-6

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

GARY DAVIS, an individual; on
behalf of himself, and as PRIVATE
ATTORNEY GENERAL, and on
behalf of all others similarly situated,

Plaintiff,

v.

CHASE BANK U.S.A., N.A., a
Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. CV 06-04804 DDP (PJWx)

Honorable Dean D. Pregerson

**AMENDED FINAL APPROVAL
ORDER**

Date: October 27, 2014
Time: 11:00 a.m.
Courtroom: 3

1 Plaintiff Gene Castillo (“Plaintiff”), on his own behalf and on behalf of all
2 others similarly situated, submitted to the District Court a Motion for Final
3 Approval of Settlement (“Motion”) seeking final approval of the Stipulation and
4 Agreement of Settlement (the “Agreement” or the “Settlement”), and the exhibits
5 attached thereto, entered into by and between Plaintiff and Defendant Chase Bank
6 U.S.A., N.A. (“Chase”). Chase does not oppose Plaintiff’s Motion.

7 By Order dated June 5, 2014, the District Court entered an Order that
8 preliminarily approved the Agreement and conditionally certified the Settlement
9 Class for settlement purposes only (the “Preliminary Approval Order”). Due and
10 adequate notice having been given to the Settlement Class in compliance with the
11 procedures set forth in the Agreement and the Preliminary Approval Order, this
12 Court having considered all papers filed and proceedings had herein, and
13 otherwise being fully informed of the premises and good cause appearing
14 therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

15 1. This Final Approval Order incorporates by reference the definitions
16 in the Agreement, and all terms used herein will have the same meanings as set
17 forth in the Agreement.

18 2. This Court has jurisdiction over the subject matter of the above-
19 captioned action (the “Lawsuit”) and, for purposes of this Settlement only,
20 personal jurisdiction over the Parties and all Settlement Class Members.

21 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and
22 consistent with due process, this Court hereby approves the Agreement and finds
23 that the settlement consideration is fair and that said Settlement is, in all respects,
24 fair, reasonable and adequate to the Settlement Class Members, and the Parties are
25 hereby directed to consummate the Settlement in accordance with the terms and
26 provisions of the Agreement.

27 4. Pursuant to Federal Rule of Civil Procedure 23(b)(3), this Court
28 hereby certifies the Settlement Class solely for purposes of effectuating this

1 Settlement.

2 a. The Settlement Class is defined as follows:

3 All Chase Circuit City Rewards Credit Cardmembers with
4 California billing addresses who, between May 26, 2004 and
5 June 5, 2014 (inclusive), made a promotional or deferred-
6 interest purchase at Circuit City and who, as a result of
7 payments or credits being allocated to a regular purchase
8 balance after the promotional or deferred-interest balance, paid
9 more in finance charges than they would have paid if the
10 payments or credits had first been applied to the regular
11 purchase balance.

12 b. Settlement Class Members had the right to exclude themselves
13 by way of the opt-out procedure set forth in the Preliminary Approval Order.
14 Excluded from the Settlement Class are 22 persons who validly and timely
15 requested exclusion from the Settlement Class by way of the opt-out procedure,
16 and 2 persons who submitted an untimely request for exclusion, but for whom
17 Chase is waiving its objection. These 24 individuals are identified in Exhibit 1
18 hereto (the "Opt-Outs").

19 5. For purposes of this Settlement only, this Court finds and concludes
20 that: (a) the Settlement Class Members are so numerous that joinder of all
21 Settlement Class Members is impracticable; (b) there are questions of law and fact
22 common to the Settlement Class which predominate over any individual
23 questions; (c) Plaintiff's claims are typical of the claims of the Settlement Class;
24 (d) Plaintiff and Class Counsel have fairly and adequately represented and
25 protected the interests of all of the Settlement Class Members; and (e) a class
26 action is superior to other available methods for the fair and efficient adjudication
27 of the controversy, considering: (i) the interests of the Settlement Class Members
28 in individually controlling the prosecution of separate actions; (ii) the desirability

1 or undesirability of continuing the litigation of these claims in this particular
2 forum; and (iii) the difficulties likely to be encountered in the management of this
3 class action.

4 6. This Court finds that the notice provided to Settlement Class
5 Members was the best notice practicable and fully satisfied the requirements of
6 due process, the Federal Rules of Civil Procedure, the Class Action Fairness Act
7 of 2005, 28 U.S.C. § 1715, and any other applicable laws, and constituted the best
8 notice practicable under the circumstances and constituted due and sufficient
9 notice to all persons entitled thereto. Class Counsel has filed with the Court proof
10 that notice was provided to Settlement Class Members in compliance with the
11 procedures set forth in the Agreement and the Preliminary Approval Order.
12 Chase's counsel has filed with the Court proof of compliance with the Class
13 Action Fairness Act of 2005.

14 7. There were no objections to the Settlement.

15 8. This Court hereby dismisses with prejudice on the merits and without
16 costs (except as otherwise provided in the Agreement) the above-captioned action
17 (subject to retention of jurisdiction to enforce the Settlement).

18 9. By operation of this Final Approval Order and upon the occurrence
19 of the Effective Date, Plaintiff and each Settlement Class Member, their
20 respective heirs, executors, administrators, representatives, agents, attorneys,
21 partners, successors, predecessors-in-interest, assigns and all persons acting for or
22 on their behalf, are deemed to have fully, finally and forever released the Released
23 Parties (as defined below) from all Claims (as defined below).

24 a. "Released Parties" means Chase, together with its
25 predecessors, successors (including, without limitation, acquirers of all or
26 substantially all of its assets, stock or other ownership interests) and assigns; the
27 past, present, and future, direct and indirect, parents (including but not limited to
28 holding companies and JPMorgan Chase & Co.), subsidiaries and affiliates of any

1 of the above; and the past, present and future principals, trustees, partners, claims
2 administrators (including, without limitation, the Settlement Administrator),
3 officers, directors, employees, agents, attorneys, shareholders, advisors,
4 predecessors, successors, assigns, representatives, heirs, executors, and
5 administrators of any of the above.

6 b. "Claim" and "Claims" mean any and all actual or potential
7 claims, actions, causes of action, suits, counterclaims, cross-claims, third party
8 claims, contentions, allegations, and assertions of wrongdoing, and any demands
9 for any and all debts, obligations, liabilities, damages (whether actual,
10 compensatory, treble, punitive, exemplary, statutory or otherwise), attorneys' fees,
11 costs, expenses, restitution, disgorgement, injunctive relief, any other type of
12 equitable, legal or statutory relief, any other benefits, or any penalties of any type
13 whatsoever, whether known or unknown, suspected or unsuspected, contingent or
14 non-contingent, or discovered or undiscovered, whether asserted in federal court,
15 state court, arbitration or otherwise, and whether triable before a judge or jury or
16 otherwise, including, without limitation, those that were alleged, or that could
17 have been alleged based on the same or similar facts and circumstances, in the
18 Lawsuit.

19 c. Without limiting the foregoing, the claims released pursuant to
20 Paragraph 9b (the "Released Claims") specifically extend to Claims that
21 Settlement Class Members do not know or suspect to exist in their favor as of or
22 prior to the Effective Date.

23 10. The Parties, and all Settlement Class Members, agree that the
24 releases in Paragraph 9 constitute a waiver of Section 1542 of the California Civil
25 Code and any similar or comparable provisions, rights and benefits conferred by
26 the law of any state or territory of the United States or any jurisdiction, and any
27 principle of common law. Section 1542 of the California Civil Code provides:
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1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
2 WHICH THE CREDITOR DOES NOT KNOW OR
3 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE
4 TIME OF EXECUTING THE RELEASE, WHICH IF
5 KNOWN BY HIM OR HER MUST HAVE MATERIALLY
6 AFFECTED HIS OR HER SETTLEMENT WITH THE
7 DEBTOR.

8 Plaintiff and each Settlement Class Member understand and acknowledge
9 the significance of these waivers of California Civil Code Section 1542 and/or of
10 any other applicable law relating to limitations on releases. In connection with
11 such waivers and relinquishment, Plaintiff and each Settlement Class Member
12 acknowledge that they are aware that they may hereafter discover facts in addition
13 to, or different from, those facts which they now know or believe to be true with
14 respect to the subject matter of the Settlement, but that they release fully, finally
15 and forever all Claims, and in furtherance of such intention, the releases will
16 remain in effect notwithstanding the discovery or existence of any such additional
17 or different facts. The Parties acknowledge (and all Settlement Class Members by
18 operation of law are deemed to have acknowledged) that the release of unknown
19 Claims as set forth herein was separately bargained for and was a key element of
20 the Settlement.

21 11. This Final Approval Order, the Preliminary Approval Order, the
22 Agreement, and any act performed or document executed pursuant to or in
23 furtherance thereof:

24 a. Will not be offered or received against the Released Parties as
25 evidence of, or be construed as or deemed to be evidence of, any admission or
26 concession by the Released Parties as to the truth or relevance of any fact alleged
27 by Plaintiff, the existence of any class alleged by Plaintiff, the propriety of class
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1 certification had the Lawsuit been litigated rather than settled, or the validity of
2 any claim that has been or could have been asserted in the Amended Complaint or
3 in any other litigation, or the deficiency of any defense that has been or could have
4 been asserted to the Amended Complaint or in any other litigation, or of any
5 liability, negligence, fault, or wrongdoing of the Released Parties;

6 b. Will not be offered as or received against any of the Released
7 Parties as evidence of, or construed as or deemed to be evidence of, any admission
8 or concession of any liability, negligence, fault or wrongdoing, or in any way
9 referred to for any other reason as against any of the parties to the Agreement, in
10 any other civil, criminal or administrative action or proceeding, other than such
11 proceedings as may be necessary to effectuate the provisions of the Agreement,
12 except that the Released Parties may refer to it to effectuate the liability protection
13 granted them thereunder;

14 c. Will not be deemed an admission by Chase that it is subject to
15 the jurisdiction of any court;

16 d. Will not be construed against Chase as an admission or
17 concession that the consideration to be given under the Agreement represents the
18 amount which could be or would have been recovered after trial.

19 12. The Released Parties may file the Agreement and/or this Final
20 Approval Order in any action that may be brought against them in order to support
21 a defense or counterclaim based on principles of res judicata, collateral estoppel,
22 release, good faith settlement, judgment bar, reduction, set-off or any other theory
23 of claim preclusion or issue preclusion or similar defense or counterclaim.

24 13. Settlement Class Members, and any person or entity allegedly acting
25 on behalf of Settlement Class Members, either directly, representatively or in any
26 other capacity, are enjoined from commencing or prosecuting against the Released
27 Parties any action or proceeding in any court or tribunal asserting any of the
28 Released Claims, provided, however, that this injunction will not apply to non-

1 released claims of Opt-Outs.

2 14. The Court finds that the Parties and their counsel have complied with
3 each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all
4 proceedings herein.

5 15. Class Counsel are hereby awarded the sum of \$1,500,000 in
6 attorneys' fees and costs, which sum the Court finds to be fair and reasonable,
7 which will be paid to Class Counsel from the Settlement Fund. The award of
8 attorneys' fees and costs will be allocated among Class Counsel in a fashion
9 which, in the opinion of Class Counsel, fairly compensates Class Counsel for their
10 respective contributions in the prosecution of the Lawsuit.

11 16. Plaintiff Gene Castillo and Gary Davis are hereby awarded \$5,000
12 each from the Settlement Fund. These service awards are for their time and
13 efforts spent conferring with and assisting Class Counsel to help further the
14 Lawsuit for the benefit of the Settlement Class.

15 17. In making the award of attorneys' fees and costs to Class Counsel
16 and service awards to Plaintiff Gene Castillo and Gary Davis, the Court has
17 considered and found that:

18 a. The Parties entered into arm's-length discussions regarding
19 attorneys' fees for Class Counsel, including extensive discussions through and
20 with the assistance of a third-party mediator, Hon. Edward A. Infante (Ret.);

21 b. The Settlement created a benefit with a substantial value to the
22 Settlement Class and numerous Settlement Class Members.

23 c. 438,969 copies of the Postcard Notice were disseminated to
24 putative Settlement Class Members. No objections were filed against the terms of
25 the proposed Settlement;

26 d. Class Counsel conducted the Lawsuit and achieved the
27 Settlement with skill, perseverance and diligent advocacy;

28 e. The Lawsuit involves complex factual and legal issues and was

1 actively prosecuted over seven years and, in the absence of a settlement, would
2 involve further lengthy proceedings with uncertain resolution of the complex
3 factual and legal issues;

4 f. Had Class Counsel not achieved the Settlement there would
5 remain a significant risk that the Settlement Class may have recovered less or
6 nothing from the defendant;

7 g. The separate declarations submitted by each of the three firms
8 prosecuting this case on behalf of the Class state that, to achieve the Settlement,
9 Roxborough, Pomerance, Nye & Adreani, LLP devoted over 3,152 hours, with a
10 lodestar value of over \$1,440,200.00, Westerman Law Corp. devoted over 33
11 hours, with a lodestar value of over \$26,000, and Milberg LLP devoted over 2,741
12 hours with a lodestar value of over \$1,435,076.00.

13 h. The amount of attorneys' fees and costs awarded and the
14 amount of the service awards are fair and reasonable and consistent with awards
15 in similar cases.

16 18. Without affecting the finality of this Final Approval Order in any
17 way, this Court retains continuing jurisdiction of all matters relating to the
18 modification, interpretation, administration, implementation, effectuation and
19 enforcement of the Settlement. Class Counsel are to continue in their role to
20 oversee all aspects of the Settlement. Upon notice to Class Counsel, Chase may
21 seek from this Court, pursuant to 28 U.S.C. § 1651(a), such further orders or
22 process as may be necessary to prevent or forestall the assertion of any of the
23 Released Claims in any other forum, or as may be necessary to protect and
24 effectuate the Settlement and this Final Approval Order.

25 19. If an appeal, writ proceeding or other challenge is filed as to this
26 Final Approval Order, and if thereafter the Final Approval Order is not ultimately
27 upheld, all orders entered, stipulations made and releases delivered in connection
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1 herewith, or in the Agreement or in connection therewith, will be null and void to
2 the extent provided by and in accordance with the Agreement.

3 20. There is no just reason for delay in the entry of this Final Approval
4 Order and immediate entry by the Clerk of the Court is expressly directed
5 pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

6
7 IT IS SO ORDERED.

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9 Dated: October 29, 2014



10 DEAN D. PREGERSON
11 United States District Judge
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EXHIBIT 1

OPT-OUT LIST

1. Vicky Williams
2. Juanito D. Doce
3. Richard T. Rodarte
4. Clarice Mirzakhanian
5. Genee B. Aleksandrovi
6. Amy L. Norris
7. Pedro Gomez
8. Veronica E. Siy
9. Gordon Tam
10. Thomas Condos, Jr.
11. Robin B. Hansen
12. Sandra Pimentel
13. Thirin Has
14. Lida Salas
15. Edward Sanches
16. Scott A. Bidnick
17. Charla Pinney
18. Charles J. Yi
19. Wayne E. White
20. Geraldin D. Denser
21. Elaine Hanley
22. Joseph Meza
23. Noe Flores
24. Anthony Lewis

CERTIFICATE OF SERVICE

I hereby certify that, on October 23, 2014, a true and correct copy of the foregoing AMENDED [PROPOSED] FINAL APPROVAL ORDER was filed electronically and served by U.S. Mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by facsimile to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

s/ Elia Ramirez
Elia Ramirez