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

NOEL FREDERICK, MICHELLE)
PINGOL, and KEN ADLER, on behalf)
of themselves and all others similarly)
situated,)
Plaintiffs,)
vs.)
FIA CARD SERVICES, N.A., and)
DOES 1 through 10 inclusive,)
inclusive,)
Defendants.)

Case No. CV 09-03419 AG (RNBx)
**FINAL JUDGMENT
AND ORDER OF DISMISSAL
WITH PREJUDICE**

1 THIS MATTER came before the Court for final approval of the proposed
2 class settlement. The Court has considered all papers filed and proceedings in this
3 matter and held a hearing on June 6, 2011, at which time the parties and all other
4 interested persons were afforded the opportunity to be heard in support of and in
5 opposition to the proposed Settlement. Due and adequate notice having been given
6 to the Settlement Class as required by the Court's October 18, 2010, Preliminary
7 Approval Order, and based on the papers filed with the Court and presentations
8 made to the Court at the final approval hearing, and good cause appearing therefor,
9 it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

10 1. The definitions and provisions of the Settlement Agreement are
11 hereby incorporated as though fully set forth herein. For purposes of this Order,
12 capitalized terms shall have the meaning ascribed to them in the Settlement
13 Agreement.

14 2. This Court has jurisdiction over the subject matter of the Settlement
15 Agreement, and personal jurisdiction over all parties to the Settlement Agreement,
16 including all members of the Settlement Class.

17 3. Pursuant to Federal Rule of Civil Procedure 23(e), the Court hereby
18 approves the Settlement, including, without limitation, the plan of distribution of
19 the settlement relief and the proposed recipients of the Cy Pres Fund, and finds that
20 the Settlement is, in all respects, fair, reasonable and adequate to the Settlement
21 Class Members, within the authority of the parties and the result of extensive arm's
22 length negotiations.

23 4. Pursuant to Federal Rule of Civil Procedure 23(c), the Court certifies,
24 for purposes of effectuating the Settlement, the following Settlement Class:

25 All persons who, between July 27, 2002 and October 18, 2010,
26 had a credit card account with FIA Card Services, N.A. or its
27 predecessors Bank of America, N.A. (USA) and MBNA
28 America Bank, N.A., and who, after a default or delinquency,

1 were assessed and paid a higher rate of interest on their credit
2 card account, which higher rate of interest was calculated as of
3 the beginning of the billing cycle in which the default or
4 delinquency occurred.

5 The definition of the proposed class in paragraph 24 of the Second Amended
6 Complaint in this Action was previously amended by the Preliminary Approval
7 Order to conform to the Settlement Class defined above. The Court finds and
8 concludes that: (a) the Settlement Class is so numerous that joinder of all
9 Settlement Class Members in the Action is impracticable; (b) questions of law and
10 fact common to the Settlement Class predominate over questions affecting only
11 individual Settlement Class Members; (c) the claims of Plaintiffs are typical of the
12 claims of the Settlement Class; (d) Plaintiffs and Class Counsel have fairly and
13 adequately represented and protected the interests of the Settlement Class; and (e) a
14 class action is superior to other available methods for a fair and efficient
15 adjudication of the controversy.

16 5. This Final Judgment and Order of Dismissal with Prejudice does not
17 constitute an expression by the Court of any opinion, position or determination as
18 to the merit or lack of merit of any of the claims or defenses of plaintiffs Noel
19 Frederick, Michelle Pingol, and Ken Adler in this Action or Plaintiff-Appellant
20 Mary Jane Augustine (in Ninth Circuit Case No. 07-16751) (collectively,
21 “Plaintiffs”), the Settlement Class Members, or defendant FIA Card Services, N.A.
22 (successor by merger and/or change of name to MBNA America Bank, N.A. and
23 Bank of America, N.A. (USA)) (“FIA”). Neither this Final Judgment and Order of
24 Dismissal with Prejudice nor the Settlement Agreement is an admission or
25 indication by FIA of the validity of any claims in this action or of any liability or
26 wrongdoing or of any violation of law. This Final Judgment and Order of
27 Dismissal with Prejudice and the Settlement Agreement do not constitute a
28 concession and shall not be used as an admission or indication of any wrongdoing,

1 fault or omission by FIA or any other person in connection with any transaction,
2 event or occurrence, and neither this Final Judgment and Order of Dismissal with
3 Prejudice nor the Settlement Agreement nor any related documents in this
4 proceeding, nor any reports or accounts thereof, shall be offered or received in
5 evidence in any civil, criminal or administrative action or proceeding, other than
6 such proceedings as may be necessary to consummate or enforce this Final
7 Judgment and Order of Dismissal with Prejudice, the Settlement Agreement and all
8 releases given thereunder, or to establish any affirmative defenses based upon this
9 Final Judgment and Order of Dismissal with Prejudice or the Settlement
10 Agreement and releases, including, without limitation, affirmative defenses of res
11 judicata or collateral estoppel.

12 6. This Court hereby dismisses this action with prejudice as to Plaintiffs
13 and all Settlement Class Members except those who have timely and properly
14 excluded themselves from the Settlement Class. Exhibit A, attached hereto, sets
15 forth the names of those individuals who have timely and properly excluded
16 themselves from the Settlement Class. The Parties will bear their own fees and
17 costs, except as otherwise expressly provided in the Settlement Agreement.

18 7. (a) Upon the date that this Final Judgment and Order of Dismissal
19 with Prejudice becomes Final, Plaintiffs, for themselves and on behalf of their
20 heirs, executors, administrators, representatives, agents, attorneys, insurers,
21 partners, successors, predecessors in interest, assigns and any authorized users of
22 their accounts will fully release and forever discharge FIA (including, without
23 limitation, Bank of America, N.A. (USA) and MBNA America Bank, N.A.) and
24 each and all of its present, former and future direct and indirect parent companies,
25 affiliates, subsidiaries, agents, successors, predecessors in interest, and/or any
26 financial institutions, corporations, trusts, or other entities that may hold or have
27 held any interest in any account or any receivables relating to any account, or any
28 receivables or group of receivables, or any interest in the operation or ownership of

1 FIA, and all of the aforementioned's respective officers, directors, employees,
2 attorneys, shareholders, agents, vendors (including, without limitation, processing
3 facilities), attorneys, insurers and assigns, from any and all rights, duties, debts,
4 obligations, claims, actions, causes of action, remedies or liabilities, whether
5 arising under local, state or federal law (including, without limitation, under any
6 state consumer-protection and/or unfair and deceptive practices acts, the Truth in
7 Lending Act, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.F.R. pt. 226),
8 whether by Constitution, statute, contract, common law or equity, whether known
9 or unknown, suspected or unsuspected, asserted or unasserted, foreseen or
10 unforeseen, actual or contingent, liquidated or unliquidated, that they have or may
11 have as of the date of entry of the Final Judgment in this Action, including, without
12 limitation, any claims relating to, resulting from, arising out of, or based upon the
13 handling or maintenance of any FIA credit card account; any interest, finance
14 charges or fees assessed on or in connection with any FIA credit card account; or
15 any action, conduct or omission with respect to any FIA credit card account.

16 (b) Upon the date that this Final Judgment and Order of Dismissal with
17 Prejudice becomes Final, each and all Settlement Class Members, for themselves
18 and their respective heirs, executors, administrators, representatives, agents,
19 attorneys, insurers, partners, successors, predecessors in interest, assigns and any
20 authorized users of their accounts, will be deemed to have fully released and
21 forever discharged FIA (including, without limitation, Bank of America, N.A.
22 (USA) and MBNA America Bank, N.A.) and each and all of its present, former
23 and future direct and indirect parent companies, affiliates, subsidiaries, agents,
24 successors, predecessors in interest, and/or any financial institutions, corporations,
25 trusts, or other entities that may hold or have held any interest in any account or
26 any receivables relating to any account, or any receivables or group of receivables,
27 or any interest in the operation or ownership of FIA, and all of the
28 aforementioned's respective officers, directors, employees, attorneys, shareholders,

1 agents, vendors (including, without limitation, processing facilities), attorneys,
2 insurers and assigns, from any and all rights, duties, debts, obligations, claims,
3 actions, causes of action, remedies or liabilities, whether arising under local, state
4 or federal law (including without limitation under any state consumer-protection
5 and/or unfair and deceptive practices acts, the Truth in Lending Act, 15 U.S.C. §
6 1601 et seq., and Regulation Z, 12 C.F.R. pt. 226), whether by Constitution,
7 statute, contract, common law or equity, whether known or unknown, suspected or
8 unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent,
9 liquidated or unliquidated, that they have or may have, as of the date of entry of the
10 Final Judgment in this Action: (1) that arise out of or relate in any way to any or all
11 of the acts, omissions, facts, business practices, matters, transactions or
12 occurrences that were or could have been directly or indirectly alleged, asserted,
13 described, set forth or referred to in this Action (or in the above-referenced appeal
14 of Mary Jane Augustine) and are related to the allegations therein; or (2) that arise
15 out of or relate in any way to the calculation, assessment, amount, notice or
16 disclosure of increased interest rates or finance charges imposed following a
17 default or delinquency (including, without limitation, the effective date of such
18 increased interest rates or finance charges) on or in connection with any FIA credit
19 card account; or (3) that arise out of or relate in any way to the administration of
20 the Settlement.

21 (c) Without in any way limiting the foregoing, the Released Claims
22 specifically extend to and include claims that Plaintiffs and the Settlement Class
23 Members do not know or suspect to exist in their favor at the time this Final
24 Judgment and Order of Dismissal with Prejudice becomes Final. The Court finds
25 that Plaintiffs have, and the Settlement Class Members are deemed to have,
26 knowingly released and waived California Civil Code section 1542 and any and all
27 similar laws of other states.

28 8. In aid to this Court's jurisdiction to implement and enforce the

1 Settlement, Plaintiffs and all Settlement Class Members and all persons purporting
2 to act on behalf of Settlement Class Members are enjoined from (whether directly,
3 on a representative basis, or in any other capacity) asserting, commencing,
4 prosecuting or continuing any of the Released Claims against FIA or any of the
5 other Released Parties in any action, arbitration or proceeding in any court, arbitral
6 forum or tribunal.

7 9. The Court finds that the program of Class Notice set forth in the
8 Settlement Agreement and preliminarily approved by the Court was the best
9 practicable notice under the circumstances. The Class Notice provided due and
10 adequate notice of these proceedings and of the matters set forth therein, including
11 the Settlement Agreement, to all parties entitled to such notice and satisfied the
12 requirements of Federal Rule of Civil Procedure 23 and the requirements of
13 constitutional due process. The Court further finds that Class Notice has been
14 given timely and in the manner prescribed in the Preliminary Approval Order and
15 the Settlement Agreement.

16 10. Without affecting the finality of this Final Judgment and Order of
17 Dismissal with Prejudice in any way, the Court retains continuing jurisdiction
18 over: (a) implementation of the Settlement Agreement and distribution of the
19 Settlement payments contemplated by the Settlement Agreement, until all acts
20 agreed to be performed pursuant to the Settlement Agreement have been
21 performed; and (b) all parties to this action and members of the Settlement Class
22 for the purpose of enforcing and administering the Settlement.

23 11. In accordance with California Code of Civil Procedure Section
24 384(b), the Parties shall notify the Court, within 230 days of the Effective Date, of
25 the total amount distributed to Settlement Class Members and the total of the
26 unpaid residue of the Settlement Amount, if any, that shall constitute the Cy Pres
27 Fund.

28 12. Neither this Final Judgment and Order of Dismissal with Prejudice

1 nor the Settlement Agreement constitutes an admission or concession by FIA of
2 any fault, omission, liability or wrongdoing. This Final Judgment and Order of
3 Dismissal with Prejudice is not a finding of the validity or invalidity of any claims
4 in this action or a determination of any wrongdoing by the defendant. The final
5 approval of the Settlement Agreement does not constitute any opinion, position or
6 determination of this Court, one way or the other, as to the merits of the claims and
7 defenses of Plaintiffs, FIA or the Settlement Class members.

8 13. In the event that the Settlement Agreement does not become effective
9 in accordance with its terms, then this Final Judgment and Order of Dismissal with
10 Prejudice shall be vacated, the Settlement Class shall be decertified (without
11 affecting Plaintiffs' right subsequently to seek certification and FIA's right to
12 oppose any such certification), and the Settlement Agreement and all orders
13 entered in connection therewith shall become null and void and of no further force
14 and effect.

15
16 **IT IS SO ORDERED.**

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18 Dated: August 23, 2011



19 The Honorable Andrew J. Guilford
20 United States District Judge
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EXHIBIT A

Individuals excluded from the Settlement Class (38)

- 1
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- 3 KIMBERLY BLANKENSHIP
- 4 RICHARD BONELL
- 5 ANTHONY BRUSCHI
- 6 FRANCINE CUDDEMI
- 7 JAMES DAUGHTRY
- 8 MARY ELLEN DAVIS
- 9 MAVIS DOUGHTY
- 10 MICHAEL DOWNING
- 11 DAVID FLEMING
- 12 SCOTT FOSTER
- 13 SCOTT FURGESON
- 14 DAVID GURA
- 15 LYNDI GURA
- 16 CHARLES HARRILL
- 17 VANDA HARRILL
- 18 GINGER HENSON
- 19 NATHAN HENSON
- 20 TWYLA HINTON
- 21 JANET KING
- 22 PAUL KING
- 23 WILLIAM M. LADD
- 24 LYNETTE LETHRIDGE
- 25 CECILLE LEWIS
- 26 RONALD LUCAS
- 27 MATTHEW MARXKORS
- 28 ALICE MCCARTHY
- MILDRED MITCHELL
- JOSEPHINE PALIOTTA
- JOICEL PEDRAJA
- MELANIE PENTZ
- BRANDON PERRY
- GINA RAFFEL
- CONSUELO RODRIGUEZ
- CHUCK SCHULER
- KATHERYN SHEPPARD
- DOROTHY STEELE
- JAMES WILSON
- TAUHEEDAH YASIN