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

JS - 6

SMARTMETRIC, INC., a Nevada Corporation,

Plaintiff,

vs.

AMERICAN EXPRESS COMPANY, a New York Corporation,

Defendant.

CASE NO. 2:10-cv-09371-JHN-FMOx

~~PROPOSED~~ JUDGMENT

AND RELATED COUNTERCLAIMS

Upon due consideration of the parties' written submissions, and in light of the Court's claim constructions and the parties' subsequent stipulations and joint request for entry of judgment, the Court hereby **Orders, Adjudges, and Rules** as follows:

1. The Clerk is directed to enter judgment of non-infringement in this action for Defendant American Express Company and against Plaintiff SmartMetric, Inc.
2. This judgment of non-infringement is based on the Court's construction of certain of the disputed phrases of the asserted claims of the '464 patent, namely "insertion of said data card into said data card reader," or "plurality of network service providers," or both, and the parties' stipulation that Defendant's ExpressPay system and/or methods of using this system have not infringed and do not infringe the '464 patent under the Court's construction.
3. All of Defendant American Express Company's defenses and counterclaims are hereby dismissed, without prejudice.
4. The parties shall bear their own fees and costs in connection with this action, including attorney fees.

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5. The Clerk shall promptly enter this final judgment and close the case.

SO ORDERED, this 20th day of June, 2011



Honorable Jacqueline H. Nguyen
United States District Judge