

1 Abraham J. Colman (SBN 146933)
 Email: acolman@reedsmith.com
 2 Felicia Y. Yu (SBN 193316)
 Email: fyu@reedsmith.com
 3 Jordan Yu (SBN 227341)
 Email: jsyu@reedsmith.com
 4 REED SMITH LLP
 355 South Grand Avenue, Suite 2900
 5 Los Angeles, CA 90071-1514
 Telephone: 213.457.8000
 6 Facsimile: 213.457.8080

7 Attorneys for Defendants
 BANK OF AMERICA CORPORATION and
 8 FIA CARD SERVICES, N.A.

9
 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

REED SMITH LLP
 A limited liability partnership formed in the State of Delaware

14 JOHN LOFTON, an individual, on his own behalf
 and on behalf of all others similarly situated,

15 Plaintiff,

16 vs.

17 BANK OF AMERICA CORPORATION, FIA
 18 CARD SERVICES, N.A., a national banking
 association; CARLSON COMPANIES, INC., a
 19 Minnesota corporation; CARLSON TRAVEL
 NETWORK ASSOCIATES, INC., a Minnesota
 20 corporation; and CARLSON TRAVEL GROUP,
 INC., a California corporation; and DOES 1 to
 21 100,

22 Defendants.

No.: C07-05892 SI

**STIPULATION TO MODIFY CLASS
 ACTION SETTLEMENT AGREEMENT
 AND ORDER PRELIMINARILY
 APPROVING CLASS ACTION
 SETTLEMENT; AND [PROPOSED]
 ORDER THEREON**

The Honorable Susan Illston

1 This Stipulation to Modify Class Action Settlement Agreement and Order Preliminarily
2 Approving Class Action Settlement is made by and between Plaintiff John Lofton (“Plaintiff”) and
3 Defendants Bank of America Corporation, FIA Card Services, N.A., Carlson Companies, Inc., and
4 Carlson Travel Group, Inc. (collectively “Defendants”), through their respective attorneys of record,
5 with reference to the following facts:

6 RECITALS

7 A. On or about October 28, 2008, the parties entered into a Class Action Settlement
8 Agreement (“Agreement”) that was presented to the Court for preliminary approval.

9 B. On November 4, 2008, following a hearing, the Court entered an Order Preliminarily
10 Approving Class Action Settlement, Provisionally Certifying a Nationwide Class, Approving
11 Procedure and Form of Notice and Scheduling Fairness Hearing (“Order”).

12 C. Pursuant to Section 4.2 of the Agreement, and Paragraph 10 of the Order, Defendants
13 were required to include a summary notice of the Agreement, as an *insert to the periodic account*
14 *statement* mailed to *current* FIA WorldPoints Cardholders who are members of the settlement class.
15 In the event a member of the settlement class is a current FIA WorldPoints Cardholder but is not
16 issued a statement during the time period contemplated by the Agreement, summary notice to such
17 member of the class was to be provided via *first class mail*, instead of periodic statement insert.

18 D. Pursuant to Section 4.3 of the Agreement, and Paragraph 10 of the Order, Defendants
19 were required to provide a summary notice of the Agreement to former FIA WorldPoints
20 Cardholders who are members of the settlement class, and a claim form, via *first class mail*.

21 E. The parties now seek to modify the terms of Section 4.2 of the Agreement, and
22 Paragraph 10 of the Order, so that summary notice of the Agreement to *current* FIA WorldPoints
23 Cardholders may be provided via *first class mail*, instead of periodic statement inserts as originally
24 contemplated.

25 F. The parties believe that sending the summary notice to *current* FIA WorldPoints
26 Cardholders via *first class mail* is an equivalent, if not superior means of providing notice, than
27 periodic statement inserts as originally contemplated.
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1 G. The parties also believe that this proposed change in providing summary notice to the
2 *current* FIA WorldPoints Cardholders is a non-material change to the Agreement, in that there will
3 be no delay in the current time schedule set by the Order for providing notice to the settlement class,
4 and any recovery by the settlement class is not affected.

5 H. Section 10.7 of the Agreement permits the parties to amend or modify the Agreement
6 by written instrument signed by, or on behalf of, all the parties.

7 I. By this Stipulation, the parties propose to amend the Agreement and Order only as set
8 forth above.

9 **STIPULATION**

10 NOW, THEREFORE, the parties hereby stipulate and agree that Section 4.2 of the
11 Agreement and Paragraph 10 of the Order may be modified to allow Defendants to provide summary
12 notice of the Agreement to *current* FIA WorldPoints Cardholders who are members of the
13 settlement class via *first class mail*, instead of periodic statement inserts.

14 Respectfully submitted.

15 DATED: December 3, 2008

KAMBER EDELSON LLC

16 By /s/ Ethan Preston

17 Ethan Preston
18 Attorneys for Plaintiff
19 JOHN LOFTON, an individual, on his own behalf
20 and on behalf of all others similarly situated

21 DATED: December 3, 2008

REED SMITH LLP

22 By /s/ Felicia Y. Yu

23 Felicia Y. Yu
24 Attorneys for Defendants
25 BANK OF AMERICA CORPORATION and FIA
26 CARD SERVICES, N.A.

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PROOF OF SERVICE

I, Candice A. Spoon, declare:

I am employed in the County of Los Angeles, State of California. My business address is Reed Smith LLP, 355 South Grand Avenue, Suite 2900, Los Angeles, California 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On December 4, 2008, I served the document(s) described as: **STIPULATION TO MODIFY CLASS ACTION SETTLEMENT AGREEMENT AND ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT; AND [PROPOSED] ORDER THEREON.** on the interested parties in this action by the methods listed below:

SEE ATTACHED SERVICE LIST

BY CM/ECF ELECTRONIC DELIVERY: In accordance with the registered case participants and in accordance with the procedures set forth at the Court's website www.ecf.cand.uscourts.gov.

BY PERSONAL DELIVERY: I personally delivered the document(s) listed above to the person(s) at the address(es) set forth on the attached list.

BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Reed Smith LLP, 355 South Grand Avenue, Suite 2900, Los Angeles, California 90071

BY UPS NEXT DAY AIR FEDERAL EXPRESS OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by UPS FEDERAL EXPRESS Overnight Delivery [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of UPS FEDERAL EXPRESS OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at Reed Smith LLP, 355 South Grand Avenue, Suite 2900, Los Angeles, California 90071 with delivery fees fully provided for.

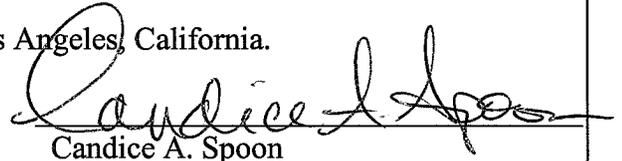
BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s): in accordance with the written confirmation of counsel in this action.

BY EMAIL: I sent via electronic mail a copy of said document(s) to the following addressee(s):

[State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 4, 2008, at Los Angeles, California.


Candice A. Spoon

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Service List
Lofton v. Bank of America Corporation, et al.
Case No.: CV-07-05892-SI

Alan Himmelfarb, Esq. KamberEdelson LLC 2757 Leonis Boulevard Los Angeles, CA 90058 Tel: (323) 585-8696 Email: ahimmelfarb@kamberedelson.com	<i>Attorneys for Plaintiff John Lofton</i>
Jay Edelson, Esq. Ethan Preston, Esq. Ryan D. Andrews, Esq. KamberEdelson LLC 350 North LaSalle Suite 1300 Chicago, IL 60654 Tel: (312) 589-6370 Email: jedelson@kamberedelson.com epreston@kamberedelson.com rdandrews@kamberedelson.com	<i>Attorneys for Plaintiff John Lofton</i>
Scott Kamber, Esq. KamberEdelson LLC 11 Broadway, 22 nd Floor New York, NY 10004 Tel: (212) 920-3072 Fax: (212) 202-6364 Email: skamber@kolaw.com	<i>Attorneys for Plaintiff John Lofton</i>
Daniel J. Bergeson, Esq. Donald P. Gagliardi, Esq. Bergeson, LLP 303 Almaden Boulevard Suite 500 San Jose, CA 95110-2712 Tel: (408) 291-6200 Fax: (408) 297-6000 Email: dbergeson@be-law.com dgagliardi@be-law.com	<i>Attorneys for Carlson Travel Network Associates, Inc. and Carlson Travel Group, Inc.</i>
S. Edward Sarskas, Esq. Michael Best & Friedrich, LLP 100 E. Wisconsin Avenue Suite 3300 Milwaukee, WI 53202-4108 Tel: (414) 271-6560 Fax: Email: searskas@michaelbest.com	<i>Attorneys for Carlson Travel Network Associates, Inc. and Carlson Travel Group, Inc.</i>

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Case No.: CV-07-05892-SI

<p>Martin R. Lueck, Esq. Emmett J. McMahon, Esq. Robins, Kaplan, Miller & Ciresi L.L.P. 2800 LaSalle Plaza 800 La Salle Avenue Minneapolis, MN 55402 Tel: (612) 349-8500 Fax: (612) 339-4181 Email: mrlueck@rkmc.com ejmcmahon@rkmc.com</p>	<p><i>Attorneys for Defendant Carlson Companies, Inc.</i></p>
<p>Elizabeth D. Le, Esq. Robins, Kaplan, Miller & Ciresi L.L.P. 2049 Century Park East, Suite 3400 Los Angeles, CA 90067-3208 Tel: (310) 552-0130 Fax: (310) 229-5800 Email: edle@rkmc.com</p>	<p><i>Attorneys for Defendant Carlson Companies, Inc.</i></p>

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Email: fyu@reedsmith.com
3 Jordan Yu (SBN 227341)
Email: jsyu@reedsmith.com
4 REED SMITH LLP
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No.: C07-05892 SI

**[PROPOSED] ORDER GRANTING
STIPULATION TO MODIFY CLASS
ACTION SETTLEMENT AGREEMENT
AND ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT**

The Honorable Susan Illston

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[PROPOSED] ORDER

On December 4, 2008, the parties entered into a Stipulation to Modify Class Action Settlement Agreement and Order Preliminarily Approving Class Action Settlement (the “Stipulation”), that Section 4.2 of the Agreement and Paragraph 10 of the Order may be modified to allow Defendants to provide summary notice of the Agreement to *current* FIA WorldPoints Cardholders who are members of the settlement class via *first class mail*, instead of periodic statement inserts.

Pursuant to the above Stipulation, and good cause appearing therefor,

IT IS SO ORDERED.



Date: _____

The Honorable Susan Illston
UNITED STATES DISTRICT JUDGE

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