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12 **IN THE UNITED STATES DISTRICT COURT**  
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14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
15  
16 **SAN FRANCISCO DIVISION**

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

19 Plaintiff

20 v.

21 BANK OF AMERICA CORPORATION, FIA  
22 CARD SERVICES, N.A., a national banking  
23 association, CARLSON COMPANIES, INC., a  
24 Minnesota corporation, CARLSON TRAVEL  
25 GROUP, INC. a California corporation, and  
26 DOES 1 to 100,

27 Defendants.

No. 07-5892 (SI)

**[PROPOSED] FINAL ORDER  
ENTERING JUDGMENT AND  
DISMISSAL WITH PREJUDICE**

1 This matter came before the Court for a hearing on April 15, 2009 at 4:00 p.m., pursuant  
2 to the Order of this Court entered on November 4, 2008, on the application of the parties for  
3 final approval of the settlement reached between the parties as set forth in the Class Action  
4 Settlement Agreement ("Settlement Agreement"), executed by counsel on October 28, 2008 on  
5 behalf of the parties. Due and adequate notice having been given to the Class as required in  
6 said Order, and the Court having considered the thorough briefing and proceedings had herein  
7 and otherwise being fully informed in the premises and good cause appearing therefore,  
8 IT IS HEREBY ORDERED, ADJUGED AND DECREED as follows:

9 1. This Court has jurisdiction over subject matter of this action and over all parties  
10 to the Action, including all Class Members.

11 2. On November 4, 2008, this Court preliminarily approved the Settlement  
12 Agreement for a Class as defined in the Settlement Agreement. The definitions in the  
13 Settlement Agreement are hereby incorporated as though fully set forth in this Order, and  
14 capitalized terms shall have the meanings attributed to them in the Settlement Agreement.

15 3. The Court hereby confirms and grants final certification to the Class and finds  
16 that the requirements of Rule 23 of the Federal Rule of Civil Procedure, the Class Action  
17 Fairness Act of 2005 ("CAFA") 28 U.S.C. § 1715 and the Due Process Clause of the United  
18 States Constitution for the maintenance of this action as a class action have been satisfied in all  
19 respects.

20 4. Notice was disseminated to the Class under the terms of the Settlement  
21 Agreement via electronic and/or regular mail. Notice was sent to approximately 54,000 current  
22 and former FIA WorldPoints Cardholders via First-Class U.S. Mail. Notice was also provided  
23 on a website maintained by the Claims Administrator.

24 5. The notice fully informed the Class of their rights with respect to the Settlement  
25 Agreement, including the right to be excluded and to object to the Settlement Agreement or the  
26 application for an award of attorneys' fees and reimbursement of expenses and incentive award.

27 6. The notice satisfied the statutory requirements of notice under the circumstances,  
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1 including individual notice to all members of the Class who could be identified through  
2 reasonable effort in Defendants' records.

3 7. The Court finds that Defendants timely and properly notified the appropriate  
4 state and federal officials of the Settlement Agreement, pursuant to 28 U.S.C. § 1715 of CAFA.  
5 The Court has reviewed the Defendants' notices and accompanying materials, and finds that  
6 they complied with any applicable requirements of CAFA. The Court has set aside more than  
7 ninety (90) days to receive and consider any comment or objection by any government entity in  
8 response to the CAFA-required notices provided by Defendants.

9 8. This Action and the Released Claims contained therein, are DISMISSED WITH  
10 PREJUDICE as to the named Plaintiff, the Class Members, and as against the Released Parties.  
11 The Parties are to bear their own costs, except as otherwise provided in the Settlement  
12 Agreement.

13 9. The Court finds that the Settlement Agreement is fundamentally fair, adequate,  
14 and reasonable as to each member of the Class. Specifically, the legal and factual posture of  
15 this case, the discovery conducted, and the fact that the settlement was the result of arms' length  
16 negotiations presided over by a neutral mediator, support this finding. No objector appeared  
17 before the Court at the final approval hearing and no written objections have been filed with the  
18 Court. Accordingly, the Settlement Agreement is hereby finally approved in all respects, and  
19 the parties are hereby directed to perform its terms.

20 10. The Plaintiff, on behalf of himself and the Class, is deemed to have, and by  
21 operation of the Judgment shall have, absolutely and unconditionally released the Released  
22 Parties from each and every Released Claims.

23 11. All Class Members are hereby forever barred and enjoined from prosecuting  
24 each and every Released Claims against the Released Parties.

25 12. The Defendants are deemed to have, and by operation of the judgment have,  
26 absolutely and unconditionally released and forever discharged the Plaintiff, the Class and Class  
27 Counsel from any and all claims relating to, or in connection with the institution or prosecution  
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1 of the Action.

2 13. Class Counsel is hereby awarded attorneys' fees in the amount of \$587,500,  
3 which the Court finds to be fair and reasonable. Defendants pursuant to the terms of the  
4 Settlement Agreement shall pay the attorneys' fees and expenses so awarded.

5 14. The Plaintiff is awarded an incentive award of \$2,500.

6 15. The Court approves Feeding America, a 501(c)(3) non-profit, as the recipient of  
7 the *cy pres* award which shall consist of all monies remaining from the checks for a Settlement  
8 Benefit that are not cashed within ninety (90) days of the date of issuance.

9 16. In making this award of attorneys' fees to Class Counsel and incentive award to  
10 Plaintiff, the Court has considered and finds that:

- 11 (a) The Settlement Agreement obtained as a result of the efforts of  
12 Class Counsel has created relief that will benefit thousands of Class  
13 Members;  
14 (b) Approximately 54,000 copies of the notice were  
15 disseminated directly to the Class indicating the terms of the Settlement  
16 Agreement, that Class Counsel was moving for an award of attorneys'  
17 fees in the amount of \$587,500, and that Plaintiff would seek an incentive  
18 award of \$2,500. No objections were filed challenging the terms of the  
19 Settlement Agreement.  
20 (c) Class Counsel have conducted the litigation and obtained the  
21 Settlement Agreement with skill, perseverance and diligent advocacy;  
22 (d) This Action involves complex factual and legal issues and, in the  
23 absence of a settlement would involve further lengthy proceedings with  
24 uncertain resolution of the issues;  
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- 1 (e) Had Class Counsel not obtained the relief provided for in the Settlement  
2 Agreement, there would remain a significant risk that the Plaintiffs and  
3 the Class Members may have recovered less from the Defendants;  
4 (f) The amount of attorneys' fees awarded are consistent with awards  
5 in similar cases;  
6 (g) The Plaintiff rendered valuable service to the Class. Without  
7 Plaintiff's participation, there would have been no case or settlement.

8 17. Katrina Johnson of Santa Monica, California and Deborah Neese of Candler,  
9 North Carolina have requested exclusion are hereby deemed to have properly opted  
10 out/excluded themselves from the Settlement Agreement and shall not be bound by its terms.

11 18. Without affecting the finality of this Judgment in any way, this Court hereby  
12 retains continuing jurisdiction over (a) implementation of the Settlement Agreement and any  
13 award or distribution of the settlement monies, including attorneys' fees and (b) all Parties  
14 hereto for the purpose of construing, enforcing and administering the Settlement Agreement.

15 19. This matter is set for status and final report and accounting of the administration  
16 of the settlement on 7/31/09 at 9:00 A.m.

17  
18 Date: 4/17/09

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20 IT IS SO ORDERED.

21 By:   
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23 THE HONORABLE SUSAN ILLSTON

24 UNITED STATES DISTRICT COURT JUDGE  
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