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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANDREW STEINFELD, on behalf of himself)
and all others similarly situated,)

Plaintiff,)

vs.)

DISCOVER FINANCIAL SERVICES, DFS)
SERVICES LLC, and DISCOVER BANK,)

Defendants.)

Case No. 3:12-cv-01118-JSW
[Assigned to the Hon. Jeffrey S. White]

REVISED ~~PROPOSED~~ ORDER
(1) CONDITIONALLY CERTIFYING A
SETTLEMENT CLASS,
(2) PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT,
(3) APPROVING NOTICE PLAN, AND
(4) SETTING FINAL APPROVAL
HEARING

PROPOSED ORDER

1
2 Subject to Court approval, Plaintiffs Andrew Steinfeld and Walter Bradley (“Plaintiffs” or
3 “Settlement Class Representatives”), on the one hand, and Discover Financial Services, DFS
4 Services LLC and Discover Bank, acting on behalf of themselves, their affiliated persons and
5 entities and all persons and entities acting for or on its or their behalf (collectively, “Discover”) on
6 the other hand, entered into a Settlement Agreement dated May 17, 2013 and a First Amendment to
7 the Settlement Agreement dated July 18, 2013 in proposed settlement of the actions entitled Walter
8 Bradley v. Discover Financial Services, U.S.D.C., Northern District of California Case No. 4:11-
9 cv-5746-YGR (“Bradley”), and Andrew Steinfeld v. Discover Financial Services, et al., U.S.D.C.,
10 Northern District of California Case No. 3:12-cv-01118-JSW (“Steinfeld”) (Bradley and Steinfeld
11 are collectively referred to herein as the “Actions”) (together with its exhibits, the “Agreement”).

12 Application has been made for preliminary approval of the settlement set forth in the
13 Agreement (the “Settlement”), upon the terms and conditions in the Agreement. The Court has
14 received and reviewed (1) the Agreement and all exhibits attached thereto; (2) Plaintiffs’
15 Memorandum in Support of the Motion for Preliminary Approval of Settlement, Conditional
16 Certification of the Settlement Class, Approval of Notice Plan, and Setting of Final Approval
17 Hearing and all exhibits attached thereto; and (3) all other pleadings and matters of record.

18 The Court preliminarily considered the Settlement to determine, among other things,
19 whether the Settlement is sufficient to warrant the issuance of notice to members of the Settlement
20 Class (as defined below). Upon review of the Agreement, it is hereby ORDERED as follows:

21 1. The Court has jurisdiction over the subject matter of the Actions, the Parties and all
22 Settlement Class Members.

23 2. The definitions and terms set forth in the Agreement are hereby adopted and
24 incorporated into this Preliminary Approval Order.

25 3. Subject to this Court’s authority to determine whether to finally approve the
26 Settlement at the final approval hearing (“Final Approval Hearing”) described in Paragraph 21 of
27 this Preliminary Approval Order:

1 (a) The Court hereby preliminarily approves the Agreement and the Settlement
2 contemplated thereby, as being a fair, reasonable and adequate settlement as to all members of the
3 Settlement Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure, and as
4 being the product of informed, arm's length negotiation by counsel, and directs the Parties to
5 proceed with the Settlement pursuant to the terms and conditions of the Agreement and exhibits
6 thereto.

7 (b) The terms of the Agreement are preliminarily approved for the purpose of providing
8 Class Notice to the Settlement Class.

9 4. The Court, pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil
10 Procedure, conditionally certifies, for purposes of this Settlement only, the following Settlement
11 Class in Steinfeld, subject to further consideration at the Final Approval Hearing:

12 All persons to whom, on or after November 30, 2007 through the
13 date of this Preliminary Approval Order, Discover Financial Services
14 or any of its affiliates or subsidiaries placed a non-emergency
15 telephone call to a cellular telephone through the use of an automatic
16 telephone dialing system and/or an artificial or prerecorded voice.
17 Excluded from the Settlement Class are the Judges to whom the
18 Actions are assigned and any member of the Judges' staff and
19 immediate family, as well as all persons who validly request
20 exclusion from the Settlement Class.

21 5. The Court hereby approves Plaintiffs as representatives of the Settlement Class
22 pursuant to Rule 23 of the Federal Rules of Civil Procedure, and finds that, for settlement purposes
23 only, these representative plaintiffs have and will fairly and adequately protect the interests of the
24 Settlement Class.

25 6. The Court hereby also approves Lief Cabraser Heimann & Bernstein, LLP, Meyer
26 Wilson Co., LPA, Casey Gerry Schenk Francavilla Blatt & Penfield LLP and Terrell Marshall
27 Daudt & Willie PLLC, as Class Counsel pursuant to Rule 23 of the Federal Rules of Civil
28 Procedure, and finds that for settlement purposes, Class Counsel have and will fairly and
adequately protect the interests of the Settlement Class.

1 7. Class Counsel are authorized to act on behalf of the Settlement Class with respect to
2 all acts required by the Agreement or such other acts which are reasonably necessary to
3 consummate the proposed Settlement set forth in the Agreement.

4 8. Neither certification of the Settlement Class for settlement purposes only, nor any
5 other act relating to the negotiation, execution or implementation of the Agreement, shall be
6 considered as a factor in connection with any class certification issue(s) if the Agreement
7 terminates or final approval does not occur.

8 9. Pending final approval of the Settlement, Discover shall advance the amounts
9 necessary to pay for costs of Class Notice and settlement administration; these advances shall be
10 credited against the Settlement Amount. Prior to the Final Approval Hearing, the Settling Parties
11 shall select the Escrow Agent and negotiate with the Escrow Agent a mutually acceptable escrow
12 agreement (the "Escrow Agreement") that shall provide the terms and conditions governing the
13 Fund to be established if the Settlement receives final approval. Notwithstanding any deadlines to
14 the contrary in the Agreement, Discover shall not be required to make any payment into the Fund
15 until the Escrow Agreement has been executed.

16 10. The Fund shall be subject to the continuing jurisdiction of the Court. The Escrow
17 Agent shall not disburse any portion of the Fund except as provided in the Agreement and with the
18 written agreement of Class Counsel and counsel for Discover or by order of the Court.

19 11. The Court hereby finds and orders that the proposed Class Notice program set forth
20 in Section III.F of the Agreement, and the claims submission plan set forth in Section III.G of the
21 Agreement, fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of
22 due process, provide the best notice practicable under the circumstances to the members of the
23 Settlement Class, provide individual notice to all members of the Settlement Class who or which
24 can be identified through reasonable effort, and provide publication notice to members of the
25 Settlement Class.

26 12. The Court hereby approves the form and substance of the Claim Form (attached to
27 the Agreement as Exhibit B); the E-mail Notice, Mail and Website Notice (attached to the
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1 Agreement as Exhibit C); the Publication Notice (attached to the Agreement as Exhibit F); and the
2 Revocation Request Form (attached to the Agreement as Exhibit G). The Court hereby instructs
3 the Parties to proceed with Class Notice in the manner and on the schedule set forth in Sections
4 III.F of the Agreement, provided that the Parties, by agreement, may revise the E-Mail Notice, the
5 Mail Notice, the Website Notice, the Publication Notice, the Claim Form and/or the Revocation
6 Request Form in ways that are not material, or in ways that are appropriate to update those
7 documents for purposes of accuracy and clarity and may adjust the layout of those documents for
8 efficient mailing and/or electronic presentation.

9 13. Discover and/or the Claims Administrator shall be responsible for providing Class
10 Notice of the preliminarily approved Settlement to the Settlement Class in accordance with the
11 provisions of the Agreement and this Preliminary Approval Order.

12 14. The Class Notice will inform members of the Settlement Class of their right to
13 submit a request for exclusion, or "opt-out," from the conditionally certified Settlement Class. The
14 Class Notice will inform members of the Settlement Class that they may opt out of the Settlement
15 by sending a written request ("Exclusion Request") to the Claims Administrator at the address
16 designated in the Class Notice by the Opt-Out and Objection Deadline.

17 15. Exclusion requests must: (i) be signed by the Settlement Class Member for whose
18 account(s) exclusion is requested; (ii) include the full name, address and account number(s) (if
19 known) of the Settlement Class Member requesting exclusion; and (iii) include the following
20 statement: "I/we request to be excluded from the settlement in the Steinfeld action." No Exclusion
21 Request will be valid unless all of the information described above is included. For any Settlement
22 Class Member who has more than one account, the Exclusion Request must specify each separate
23 account. No Settlement Class Member, or any person acting on behalf of or in concert or
24 participation with that Settlement Class Member, may exclude any other Settlement Class Member
25 from the Settlement Class.

STROOCK & STROOCK & LAVAN LLP
 2029 Century Park East
 Los Angeles, California 90067-3086

1 16. If a timely and valid Exclusion Request is made by a member of the Settlement
 2 Class, then that person shall not be a Settlement Class Member, and the Agreement and any
 3 determinations, judgments, and/or orders concerning it shall not bind the excluded person.

4 17. All Settlement Class Members who do not opt out in accordance with the terms set
 5 forth in the Agreement shall be bound by all determinations and judgments concerning the
 6 Agreement and the Settlement contemplated thereby. In the event that the number of accounts
 7 which are opted out of the Settlement Class exceeds 500, Discover may terminate the Settlement.

8 18. The Court's preliminary approval of the Settlement shall be subject to further
 9 consideration at the Final Approval Hearing. The Court will determine at or following the Final
 10 Approval Hearing whether the proposed settlement is fair, reasonable, and adequate and should be
 11 finally approved by the Court, the amount of attorneys' fees and costs that should be awarded to
 12 Class Counsel, and any amounts to be awarded to the Settlement Class Representatives for their
 13 contributions to the Settlement Class. The date and time of the Final Approval Hearing shall be set
 14 forth in the Class Notice. The Court retains jurisdiction to consider all further applications arising
 15 out of or in connection with the Agreement.

16 19. The following are the deadlines by which certain events must occur:

17	November 27, 2013	Deadline to Provide Class Notice
18	December 23, 2013	Deadline for Plaintiffs' Motion for Attorneys' Fees and Incentive Awards
19	January 10, 2014	Deadlines to File the Following: (1) Motion in Support of Final Approval; (2) Proof of CAFA Notice; and (3) Proof from the Claims Administrator that Class Notice was Provided in Accordance with the Agreement
20		
21	January 13, 2014	Deadline for Class Members to Object or Opt-Out
22	January 31, 2014	Deadline for Parties to File the Following: (1) List of Class Members who Made Timely and Proper Requests to Opt- Out; and (2) Responses to any Objections
23		
24	February 14, 2014 9:00am	Final Approval Hearing
25	February 25, 2014	Deadline for Class Members to Submit a Claim Form
26	30 days after Final Approval Order	Deadline for Class Members to Submit a Revocation Request Form
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1 20. Any member of the Settlement Class may appear at the Final Approval Hearing, in
2 person or by counsel (if an appearance is filed and served), and may be heard, to the extent allowed
3 by the Court in support of, or in opposition to, the fairness, reasonableness, and adequacy of the
4 Settlement, the application for an award of attorney's fees, costs, and expenses to Class Counsel,
5 and any compensation to be awarded to the Settlement Class Representatives. Unless such
6 requirement is excused by the Court, no person shall be heard in opposition to the Settlement, the
7 application for an award of attorneys' fees and costs to Settlement Class Counsel, or to any
8 compensation to be awarded to the Settlement Class Representatives unless, no later than the Opt-
9 Out and Objection Deadline, such member of the Settlement Class files with the Clerk of the Court
10 a notice of an intention to appear together with a statement that indicates all bases for such
11 opposition along with any supporting documentation, including proof of membership in the
12 Settlement Class, and legal authority, if any, supporting the objection. Copies of such notice,
13 statement, and documentation, together with copies of any other papers or briefs filed with the
14 Court, must be simultaneously delivered to Class Counsel and counsel for Discover. Any
15 Settlement Class Member who does not object in the foregoing manner shall be deemed to have
16 waived all objections and shall be foreclosed from making any objections to the Agreement.

17 21. The Court reserves the right to adjourn and/or reschedule the Final Approval
18 Hearing without further notice of any kind; therefore, any Settlement Class Member intending to
19 attend the Final Approval Hearing should (in addition to complying with all instructions and
20 requirements above) confirm the date, time, and location of the Final Approval Hearing with Class
21 Counsel.

22 22. All members of the Settlement Class, except those members of the Settlement Class
23 who validly opt-out and submit timely Exclusion Requests, shall be bound by all determinations
24 and judgments in the Actions, whether favorable or unfavorable to the Settlement Class.

25 23. Pending the final determination of whether the Settlement should be approved, all
26 pre-trial proceedings and briefing schedules in the Steinfeld are stayed. If the Settlement is
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1 terminated or final approval does not for any reason occur, the stay shall be immediately
2 terminated.

3 24. Pending the final determination of whether the Settlement should be approved, the
4 Settlement Class Representatives and each Settlement Class Member is hereby stayed and enjoined
5 from commencing, pursuing, maintaining, enforcing, or prosecuting, either directly or indirectly,
6 any Released Claims in any judicial, administrative, arbitral, or other forum, against any of the
7 Released Parties; provided, that this injunction shall not apply to individual claims of any member
8 of the Settlement Class who has timely and properly opted out from the Settlement Class as
9 permitted by the Court. Such injunction shall remain in force until Final Approval or until such
10 time as the Settling Parties notify the Court that the Settlement has been terminated. Nothing
11 herein shall prevent any Settlement Class Member, or any person actually or purportedly acting on
12 behalf of any Settlement Class Member(s), from taking any actions to stay and/or dismiss any
13 Released Claim(s). This injunction is necessary to protect and effectuate the Agreement, and the
14 Settlement contemplated thereby, this Preliminary Approval Order, and the Court's flexibility and
15 authority to effectuate the Agreement and to enter Judgment when appropriate, and is ordered in
16 aid of this Court's jurisdiction and to protect its judgments.

17 25. If the Settlement is not approved or consummated for any reason whatsoever, the
18 Settlement and all proceedings in connection with the Settlement shall be without prejudice to the
19 right of Discover or the Settlement Class Representatives to assert any right or position that could
20 have been asserted if this Agreement had never been reached or proposed to the Court, except
21 insofar as the Agreement expressly provides to the contrary. In such an event, the Parties shall
22 return to the *status quo ante* in the Actions and the certification of the Settlement Class shall be
23 deemed vacated. The certification of the Settlement Class for settlement purposes shall not be
24 considered as a factor in connection with any subsequent class certification issues.

25 26. If the Settlement is finally approved by the Court, the Court shall retain jurisdiction
26 over the Parties and the Settlement Class Members with respect to all matters arising out of, or
27 connected with, the Settlement, and may issue such orders as necessary to implement the terms of

1 the Settlement. The Court may approve the Settlement, with such modifications as may be agreed
2 to by the Parties, without further notice to the Settlement Class Members.

3 27. In the event that any of the provisions of this Preliminary Approval Order is asserted
4 by Discover as a defense in whole or in part to any Released Claim or otherwise asserted in any
5 other suit, action or proceeding by a Settlement Class Member, that suit, action or other proceeding
6 shall be immediately stayed and enjoined until this Court or the court or tribunal in which the claim
7 is pending has determined any issues related to such defense or assertion. Solely for purposes of
8 such suit, action, or other proceeding, to the fullest extent they may effectively do so under
9 applicable law, the Parties irrevocably waive and agree not to assert, by way of motion, as a
10 defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the
11 Court, or that the Court is, in any way, an improper venue or an inconvenient forum. These
12 provisions are necessary to protect the Agreement, this Order and this Court's flexibility and
13 authority to effectuate the Agreement, and are ordered in aid of this Court's jurisdiction and to
14 protect its judgment.

15 28. The Agreement (including, without limitation, its exhibits), and any and all
16 negotiations, documents and discussions associated with it, shall not be deemed or construed to be
17 an admission or evidence of any violation of any statute, law, rule, regulation or principle of
18 common law or equity, of any liability or wrongdoing, by Discover, or the truth of any of the
19 claims, and evidence relating to the Agreement shall not be discoverable or used, directly or
20 indirectly, in any way, whether in the Actions or in any other action or proceeding, except for
21 purposes of demonstrating, describing, implementing or enforcing the terms and conditions of the
22 Agreement, this Order and/or the Final Judgment and Order of Dismissal.

23 SO ORDERED.

24 Dated: 9/10/13



25 Hon. Jeffrey S. White
26 United States District Court Judge
27 by Judge Susan Y. Illston

STROOCK & STROOCK & LAVAN LLP
2029 Century Park East
Los Angeles, California 90067-3086