

TERMS OF SETTLEMENT

Jiang v Amex Bank of Canada et al. (B.C. Supreme Court File No. S147229)

The below outlines the terms of a proposed settlement agreement between Ying Jiang, as representative plaintiff (the “Plaintiff”), and Amex Bank of Canada (“Amex”, and collectively with the Plaintiff, the “Parties”) regarding Jiang’s class action instituted in the Supreme Court of British Columbia (*Jiang v. Amex Bank of Canada et al.*, Court File No. S147229) (the “Action”).

No Admission or Prejudice

1. The proposed settlement is made without any admission by or prejudice against Amex and Amex reserves its rights to contest certification of identical or similar allegations in other jurisdictions.

Settlement Payment

2. Amex will pay an amount (the “Settlement Payment”) to settle the Action, which Settlement Payment is comprised of the following components:

- (a) \$142,792, representing 50% of activation fees charged to consumers in British Columbia in excess of the maximum fee permitted under the *Prepaid Purchase Card Regulation*; and
- (b) An amount representing 50% of monthly maintenance fees charged in excess of the maximum monthly maintenance fee permitted under the *Prepaid Purchase Card Regulation*, on Amex Reward Cards (as defined in the 1st affidavit of Stephen A. Grivakes, affirmed May 27, 2015) issued to businesses and distributed to consumers in British Columbia (and for greater certainty shall only relate to monthly maintenance fees charged in months 13-15 from the date on which the card was issued).

3. The Settlement Payment will be paid to class counsel, to be held in trust for the benefit of the Amex Settlement Class (as defined below), within fifteen business days of the expiry of any appeal period of the Court Order approving the settlement.

4. Amex shall not be required to pay any further amount to the Amex Settlement Class (as defined below) on account of class counsel fees, administration costs, or costs for issuance of notices.

Distribution and Claims Administration

5. The net amounts remaining in the Settlement Payment after deduction of any court-approved expenses, including legal fees and disbursements (if any are sought), notice costs and administration costs (the "Net Settlement Payment"), shall be distributed to or for the benefit of members of the Amex Settlement Class (as defined below) at a time and in a manner to be determined by class counsel in consultation with the Plaintiff, and approved by the Court.

6. Amex shall provide any available data and cooperate in good faith for purposes of claims administration and notice.

7. Amex acknowledges and agrees that class counsel may engage the services of a claims administrator to assist with the eventual distribution of the Net Settlement Payment, and to the extent that any data is available, Amex agrees to the delivery of such data to the claims administrator for the sole and exclusive purpose of designing and implementing the distribution process.

8. To the extent that there are any undistributed amounts following conclusion of a distribution process, those amounts will be distributed in accordance with Division 4 of Part 4 of the *Class Proceedings Act*, RSBC 1996, c. 50 as it reads on the date these terms are signed.

Amex Settlement Class

9. The class for purposes of this settlement (the “Amex Settlement Class”) is “all individuals resident in British Columbia, who purchased, received, or acquired one or more Prepaid Cards issued or sold by Amex, for primarily personal, family or household purposes, from November 1, 2008 until July 18, 2016”.

10. Amex Settlement Class members who opt out shall be excluded from the proposed settlement. Amex Settlement Class members who do not opt out shall be deemed to have elected to participate in the proposed settlement and be bound by the proposed settlement and all related releases and court orders.

11. There will be no minimum opt-out threshold.

Release

12. The proposed settlement will include a release of all claims asserted or that could have been asserted by the Amex Settlement Class in the Action in favour of Amex, in a form to be agreed upon by counsel, and a bar order in Amex’s favour.

Court Approval

13. The proposed settlement is conditional on court approval being granted by the Supreme Court of British Columbia.

14. Class counsel in the Action will take all steps necessary to seek in good faith and obtain court approval of the proposed settlement, including:

- (a) Providing necessary affidavit evidence that supports the court's approval of the settlement, including that it is fair and reasonable; and
- (b) Appearing as class counsel at the settlement hearing.

15. Amex and class counsel will cooperate on the preparation of the materials referred to above, and will consent to disclosure of information that is reasonably necessary to support the determination that the Settlement Payment is fair and reasonable.

Notice

16. Notice of settlement approval shall be published on class counsel's website, prominently on Amex's website for the Amex Gift Cards and Reward Cards, and sent to the Amex Settlement Class via e-mail (Amex to provide, if available). For greater certainty, notice of settlement approval may also be given in various forms of advertisements (costs to be paid from the Settlement Payment) and deferred until such time as the notice of certification is ordered to be given in the Action for the remaining parties.

17. Notices for distribution of monetary relief shall be distributed at a time and in the manner to be ordered by the Court at the conclusion of the Action against all parties, in accordance with the *Class Proceedings Act*. For greater certainty, Amex shall not be liable to pay further costs for such distribution of notices.

18. The Parties will cooperate in the preparation of any written communication in relation to the proposed settlement or the Action.

Dispute Resolution

19. Any dispute in connection with or arising out of the proposed settlement shall be referred to binding arbitration before a single arbitrator in accordance with the *BC Arbitration Act*. The arbitrator's award shall be final and binding on the Parties, with no appeal from the arbitrator's award.

Confidentiality

20. Nothing in the proposed settlement will require any of the Parties to provide any other Party with information of a confidential nature without first obtaining a confidentiality undertaking satisfactory to the Party providing the confidential information.

21. The terms and existence of this term sheet shall remain confidential until such time as a formal settlement agreement has been executed by the Parties.

April 8, 2019



Name: Luciana Brasil and Avichay Sharon
Branch MacMaster LLP

Solicitors for the Plaintiff, Ying Jiang

April 8, 2019



Name: Simon Lin
Evolink Law Group

Solicitors for the Plaintiff, Ying Jiang

April 8, 2019

A handwritten signature in blue ink, appearing to read 'MSJL', is positioned above a horizontal line.

Name: Mahmud Jamal and Mark Sheeley
Osler, Hoskin & Harcourt LLP

Solicitors for Amex Bank of Canada