

**To all individuals and businesses that accept  
American Express cards:  
Notice of a class action settlement.**

*A federal court directed this Notice. This is not a solicitation from a lawyer.*

- The Court has preliminarily approved a proposed settlement over allegations that certain rules applicable to individuals and businesses (“merchants”) that accept American Express Cards in payment for goods or services violate the antitrust laws resulting in merchants paying excessive fees for accepting American Express cards.
- The settlement applies to a class comprised of all merchants that accept American Express cards at any location in the United States (including at a physical merchant location, online or mobile application), as of or after February 12, 2014, onward.
- The settlement will require American Express to change its merchant rules to allow merchants who accept American Express cards (i) to charge customers an extra fee or “surcharge” if they pay with an American Express credit or charge card, under certain conditions including that any such surcharge apply to all credit and charge card transactions and (ii) to decline acceptance of American Express traditional debit cards, if American Express decides in the future to issue a traditional debit card in the United States.
- If the settlement is approved and American Express changes its rules, any surcharge on American Express credit or charge cards must not be any higher, after accounting for any discounts offered at the point of sale, than any surcharge imposed on transactions made with other credit cards, payment cards, payment methods, products or services accepted by the merchant except for debit cards, cash, checks, wire or ACH transfers or proprietary store cards.
- The rule changes are explained in greater detail below and in the Class Settlement Agreement. A full copy of the Class Settlement Agreement is available on the case website at [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) or by calling 1-866-686-8694.
- Class members do not need to file a claim to receive the benefits of the settlement.
- No money will be distributed to the class. Any class member that wants to seek monetary damages related to American Express’s existing merchant rules can pursue those claims consistent with the dispute resolution provisions contained in the merchant’s card acceptance agreement and provisions have been made for access to the extensive evidentiary and litigation record that has been created by the attorneys for the class.
- This Notice explains the settlement and the class members’ rights and options—**and the deadlines to exercise them.**
- If you are a member of the class your legal rights are affected whether you act or not. Read this Notice carefully.

<b>LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>OBJECT</b>	Write to the Court about why you do not like any part of the settlement. To find out how to object, please read Question 9, below.
<b>GO TO A HEARING</b>	Ask to speak in court about the fairness of the settlement. To find out how to speak at the Fairness Hearing, please read Question 16, below.
<b>DO NOTHING</b>	You are not required to take any action to receive the benefits of the settlement.

- The Court in charge of this case still has to decide whether to approve the settlement.
- Regardless of whether you object, go to a hearing or do nothing, if the settlement is finally approved, you will be bound by the Court's final judgment and the releases explained in the Class Settlement Agreement.
- For the full terms of the settlement, you should review the Class Settlement Agreement, which is available on the case website at [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) or by calling 1-866-686-8694. In the event of any conflict between the terms of this Notice and the Class Settlement Agreement, the terms of the Class Settlement Agreement shall control.
- Please check [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) for updates relating to the settlement and/or the settlement approval process.

**QUESTIONS? CALL 1-866-686-8694 OR VISIT [WWW.AMEXMERCHANTSETTLEMENT.COM](http://WWW.AMEXMERCHANTSETTLEMENT.COM)**

**WHAT THIS NOTICE CONTAINS**

**BASIC INFORMATION..... PAGE 4**

- 1. Why is this Notice being provided?
- 2. What is this lawsuit about?
- 3. Why is this a class action?
- 4. What is “injunctive relief”?
- 5. Why is there a settlement?

**WHO IS IN THE SETTLEMENT ..... PAGE 5**

- 6. How do I know if I am part of the settlement?
- 7. What if I am still not sure whether I am included?

**SETTLEMENT BENEFITS ..... PAGE 6**

- 8. What are the benefits of the settlement?

**OBJECTING TO THE SETTLEMENT ..... PAGE 7**

- 9. How do I tell the Court if I do not like the settlement?
- 10. How does the proposed settlement affect my rights?
- 11. Can I get out of the settlement?

**THE LAWYERS REPRESENTING YOU ..... PAGE 9**

- 12. Do I have a lawyer in this case?
- 13. How will the lawyers be paid?

**THE COURT’S FAIRNESS HEARING ..... PAGE 9**

- 14. When and where will the Court decide whether to approve the Settlement?
- 15. Do I have to come to the Fairness Hearing?
- 16. May I speak at the Fairness Hearing?

**IF YOU DO NOTHING ..... PAGE 10**

- 17. What happens if I do nothing?

**GETTING MORE INFORMATION ..... PAGE 10**

- 18. How do I get more information?

## BASIC INFORMATION

### 1. Why is this Notice being provided?

You have a right to know about the proposed settlement of this class action lawsuit and about your options relating to the settlement. This Notice explains the litigation, the settlement, your legal rights and what benefits are available.

Judge Nicholas Garaufis of the United States District Court for the Eastern District of New York is overseeing the settlement of the case known as *In re American Express Anti-Steering Rules Antitrust Litigation (II)*, No. 11-MD-2221 (NGG) (RER), along with the case known as *The Marcus Corporation v American Express Co. et al.*, 13-cv-07355 (NGG)(RER), which was transferred to Judge Garaufis in connection with the settlement approval process. For a complete procedural history of the cases included in the settlement, please read the Class Settlement Agreement posted on the case website.

The Court has preliminarily approved the settlement; certified an “injunctive” class under Fed. R. Civ. P. 23(b)(2); approved a plan for notifying class members of the settlement and the opportunity to file objections; and created a mechanism for granting final approval of all terms of the Class Settlement Agreement. As part of the final approval process for the settlement, the Court will also be asked to award attorneys’ fees and expenses covering the litigation and related activities of counsel, as well as service awards to the merchants that brought the litigation.

This case has been brought on behalf of merchants. The specific merchants that filed the cases are the “Class Plaintiffs” and the Court has authorized them to act on behalf of all merchants in the class in connection with the proposed settlement of the litigation. The Class Plaintiffs are: The Marcus Corporation, Animal Land, Inc., Firefly Air Solutions, LLC, Il Forno, Inc., Italian Colors Restaurant, Jasa Inc., Lopez-Dejonge, Inc., and Plymouth Oil Corp.

The Class Plaintiffs sued American Express Company and American Express Travel Related Services, Inc., which are referred to together in this Notice as “American Express” or “Defendants.”

### 2. What is this lawsuit about?

The lawsuit is about American Express’s rules for merchants that accept American Express cards as payment for goods and/or services and the fees paid by merchants for accepting American Express cards. Class Plaintiffs claim that American Express violated the antitrust laws by imposing rules that limited merchants from steering their customers to other payment methods and requiring merchants that want to accept any American Express cards to accept all American Express cards. The Class Plaintiffs claim that doing so insulated American Express from competitive pressure to lower merchant fees and caused an upward spiral in merchant fees for American Express, Visa and MasterCard.

American Express denies Class Plaintiffs’ claims and says it has done nothing wrong. American Express says that the challenged conduct was lawful, justified, and benefited competition, merchants, and consumers.

**QUESTIONS? CALL 1-866-686-8694 OR VISIT [WWW.AMEXMERCHANTSETTLEMENT.COM](http://WWW.AMEXMERCHANTSETTLEMENT.COM)**

### 3. Why is this a class action?

In a class action, one or more individuals or businesses sue on behalf of people or businesses with similar claims. Together all of these people or businesses with similar claims and interests form a class, and are class members.

When a court decides a case or approves a settlement in a class action, that decision is applicable to all members of the class. In this case, the Court has created a class and given its preliminary approval to the settlement. The class that the court created is comprised of all merchants that accept American Express cards at any location in the United States (including at a physical merchant location, online or mobile application), as of or after February 12, 2014, onward.

The class is a mandatory class meaning that all members of the class will be bound by the settlement and that no class member can opt out of the class.

### 4. What is “injunctive relief”?

The settlement benefits for class members fall under the category of “injunctive relief.” An injunction is when a court orders a person or a business to do or not to do something. In this case, American Express has agreed to certain changes to its merchant rules related to card acceptance. The changes to American Express’s merchant rules are the benefit the class is receiving in this settlement. The settlement does not offer payments to class members or adjust any merchant’s fees for accepting American Express cards. If a merchant wants to seek monetary damages related to American Express’s merchant rules as they exist prior to the changes brought about by this settlement, the merchant remains free to pursue that claim consistent with the dispute resolution provisions of the merchant’s card acceptance agreement.

### 5. Why is there a settlement?

The Court did not decide which side was wrong or if any laws were violated. Instead, both sides agreed to settle the litigation to avoid the cost and risk of trial and of appeals that would follow a trial.

The parties agreed to settle this case after close to eleven years of extensive litigation, including a decision by the United States Supreme Court upholding a provision in American Express’s merchant card acceptance agreements requiring merchants to pursue claims against American Express on an individual basis in arbitration. The settlement is the product of extensive negotiations, including mediation with an experienced mediator. Class Plaintiffs and their counsel believe that settling this case is in the best interests of all class members because it allows class members to receive the benefit of the rules changes.

The settlement does not mean that any law was broken or that American Express did anything wrong.

## WHO IS IN THE SETTLEMENT

To see if you will be affected by the settlement, you first have to determine if you are a class member.

## 6. How do I know if I am part of the settlement?

**If you received a Postcard Notice in the mail, American Express' records show that you may be a class member.**

The class includes all merchants that accept American Express cards in payment for goods or services at any location in the United States (including at a physical merchant location, online or mobile application) as of or after February 12, 2014, and onward. The class does not include the named Defendants, their directors, officers, or members of their families.

## 7. What if I am still not sure whether I am included?

If you are still not sure whether you are included, or have any other questions about the settlement, call 1-866-686-8694 or visit the case website [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com). You also may write with questions to Amex Merchant Settlement Administrator, PO Box 4349, Portland, OR 97208-4349.

## SETTLEMENT BENEFITS

### 8. What are the benefits of the settlement?

American Express will amend its rules for merchants that accept American Express cards at any location in the United States (including at a physical merchant location, online or mobile application) to provide for the following:

- a) Merchants will be able to charge a surcharge to customers who pay with an American Express credit or charge card, provided that:
  - (i) any surcharge on American Express credit or charge cards must not be any higher, after accounting for any discounts offered at the point of sale, than any surcharge imposed on transactions made with other credit cards, payment cards, payment methods, products or services accepted by the merchant except for: (a) debit cards; (b) cash; (c) checks; (d) wire or ACH transfers; or (e) proprietary store cards.
  - (ii) the amount of the surcharge does not exceed the American Express merchant discount rate applicable to that transaction and the amount of the surcharge the merchant is permitted to impose on any other credit card brand;
  - (iii) the surcharge is fully disclosed to customers on the same terms that the merchant is required to disclose Visa and MasterCard surcharges; and
  - (iv) the merchant provides 30 days notice to American Express that it intends to surcharge.
- b) American Express debit cards, including pre-paid or gift cards, may not be surcharged unless or until similar cards on competitors' brands are subject to surcharging.
- c) If American Express offers a traditional debit card in the United States, American Express may not make that card subject to its Honor All Cards policy. All existing cards

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remain subject to the Honor All Cards policy, which require merchants to accept all American Express-branded cards.

- d) *Exception:* A merchant may individually negotiate an agreement with American Express to waive or limit its rights to surcharge American Express cards if that agreement satisfies certain terms set forth in the Class Settlement Agreement.
- e) Under the settlement, American Express will amend its rules no later than forty-five (45) days after the approval of the settlement becomes final. If the Court's approval of the settlement is appealed, the settlement will not become final until forty-five (45) days after that appeal is resolved.

For the full terms of the settlement, including the benefits to the class, you should review the Class Settlement Agreement, which is available on the case website at [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) or by calling 1-866-686-8694. In the event of any conflict between the terms of this Notice and the Class Settlement Agreement, the terms of the Class Settlement Agreement shall control.

## OBJECTING TO THE SETTLEMENT

### 9. How do I tell the Court if I do not like the Settlement?

You can tell the Court that you object to (disagree with) the terms of the Class Settlement Agreement. You can give reasons why the Court should not approve the settlement. You can also give reasons why the Court should not approve the petition for attorneys' fees and expenses or the service awards to the Class Plaintiffs that is detailed below in Question 13. The Court will consider your views.

To object, you must file your Statement of Objection. It must include the following:

- a) The words "American Express Class Action Settlement";
- b) State each and every objection you are making to the Settlement;
- c) The specific reasons for each objection;
- d) Legal support and evidence, if any, for each objection that you want to bring to the Court's attention;
- e) Your name, address and phone number;
- f) Information sufficient to establish that you are a member of the Settlement Class, such as your business name and address, and how long you have accepted American Express Cards; and
- g) The full name, mail address, email address, and phone number of any counsel representing you in connection with the objections.

Your Statement of Objection must be filed by no later than **June 6, 2014** (the "Class Objection Period") at the following address:

Clerk of the Court  
United States Courthouse  
225 Cadman Plaza East  
Brooklyn, New York 11201

**QUESTIONS? CALL 1-866-686-8694 OR VISIT [WWW.AMEXMERCHANTSETTLEMENT.COM](http://WWW.AMEXMERCHANTSETTLEMENT.COM)**

You must also send a copy of your Statement of Objection to the following addresses postmarked by no later than **June 6, 2014**:

<b>CLASS COUNSEL</b>	<b>DEFENDANTS' COUNSEL</b>
Mark Reinhardt Reinhardt, Wendorf & Blanchfield E-1250 First National Bank Bldg. 332 Minnesota St. St. Paul, MN 55101	John F. LaSalle Boies, Schiller & Flexner LLP 575 Lexington Avenue, 7th Floor New York, New York 10022

**Do not call the Court or any Judge's office to object to the Settlement.** If you have questions, please visit [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) or call 1-866-686-8694.

#### 10. How does the proposed settlement affect my rights?

If the settlement becomes final, all class members will benefit from the changes to the American Express Rules. In addition, if the settlement becomes final, all class members will be releasing Defendants (American Express Company and American Express Travel Related Services Company, Inc.) and other released parties from all claims that are identified and described in paragraphs 24-41 of the Class Settlement Agreement. The Class Settlement Agreement may be viewed on the case website at [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) or you can receive a copy by mail by calling 1-866-686-8694.

The Class Settlement Agreement describes the released claims in necessary, accurate, legal terminology, so read it carefully. In the event of any conflict between the terms of this Notice and the Class Settlement Agreement, the terms of the Class Settlement Agreement shall control. You can talk to the law firms representing the class listed in Question 12 for free; or you can, at your own expense, talk to your own lawyer if you have questions about the released claims or what they mean.

#### 11. Can I get out of the settlement?

No. The settlement requires American Express to make changes to its rules for merchants that accept American Express cards at any location in the United States (including at a physical merchant location, online or via mobile application), in ways that benefit all class members equally. As explained above, this type of remedy is "injunctive." Therefore, under this type of class action, you cannot exclude yourself from the class or this settlement. However, as explained above, you can still object to the settlement. If the settlement is finally approved, it will be applicable to all merchants regardless of whether or not they object.

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## THE LAWYERS REPRESENTING YOU

### 12. Do I have a lawyer in this case?

Yes. The law firms identified below represent you and other class members:

Gary B. Friedman Tracey Kitzman Friedman Law Group LLP 270 Lafayette Street New York, NY 10012	Read K. McCaffrey Patton Boggs LLP 2550 M Street, NW Washington, DC 20037	Mark Reinhardt Mark A. Wendorf Reinhardt Wendorf & Blanchfield 1250 East First National Bank Bldg 332 Minnesota Street St. Paul, MN 55101
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These lawyers are called “Class Counsel.” You will not be charged for these lawyers or for other counsel involved in the settlement. Any attorneys’ fees, reimbursement of expenses and service awards to the Class Plaintiffs that are awarded by the Court will be paid directly by American Express. If you want to be represented by your own lawyer, you may hire one at your own expense. If you want to be represented by your own counsel in connection with an objection to this settlement, you must tell the Court of your request and send a copy of your request to Class Counsel.

### 13. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys’ fees and expense reimbursement for all counsel involved in the litigation, as well as service awards for the Class Plaintiffs. American Express agrees it will pay for any such attorneys’ fees, expenses, and service awards ordered by the Court up to a maximum of \$75 million.

American Express will also pay up to \$2 million in costs associated with providing notice of the settlement to the class. It will also set up a \$2 million fund to be used by Class Counsel to educate merchants about the changes to American Express’s rules due to the settlement.

The amounts to be awarded as attorneys’ fees, reimbursement of expenses, and service awards are all subject to approval by the Court. Class Counsel will submit motions and petitions to the Court for that purpose no later than April 15, 2014. Those motions and petitions and all supporting papers will be available at [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com) shortly after they are filed.

## THE COURT’S FAIRNESS HEARING

### 14. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at **10:00 a.m. on September 17, 2014**, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201. At this hearing, the Court will hear arguments and consider whether the settlement should be approved as fair, adequate and reasonable. The Court will also hear arguments and consider whether to approve Class Counsel’s requests for attorneys’ fees and expenses, and service awards. If there are objections, the Court will hear and consider them. The Court will also listen to any class members who have asked to be heard at the hearing. We do not know how long the Court will take to decide these matters.

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The Fairness Hearing may be moved to a different date, time, or location without additional notice, so it is recommended that you periodically check the case website for updated information.

#### 15. Do I have to come to the Fairness Hearing?

No. Class Counsel will answer the questions the Court may have concerning the settlement. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

#### 16. May I speak at the Fairness Hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter that it is your “notice of intention to appear in American Express Class Action Settlement.” Your notice of intention to appear must include your name, address and phone number, and the name, position, address and phone number of each person who intends to appear at the final approval hearing on your behalf. Your notice of intention to appear must be filed with the Clerk of Court and mailed, postmarked no later than June 6, 2014 (the “Class Objection Period”). You must also send a copy of your notice of intention to appear to the addresses for Class Counsel and Defendants’ Counsel listed in Question 9 above.

### **IF YOU DO NOTHING**

#### 17. What happens if I do nothing?

You are not required to take any action to receive the benefits of the settlement. If the settlement is finally approved, you will be bound by the Court's Final Judgment and the release explained in the Class Settlement Agreement.

### **GETTING MORE INFORMATION**

#### 18. How do I get more information?

This Notice summarizes the proposed settlement and the benefits available. More details are in the Class Settlement Agreement, which is available on the case website at [www.AmexMerchantSettlement.com](http://www.AmexMerchantSettlement.com). The website also contains the filings related to approval of the settlement and other case-related documents.

You also may call the toll-free number below or write with questions to Amex Merchant Settlement Administrator, PO Box 4349, Portland, OR 97208-4349.

**Do not call the Court or any Judge’s office to get more information about the settlement.**