

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into this 25th day of March, 2005 ("Effective Date") by and between the following parties: Paul Parravano and Clarence Whaley (collectively, "Claimants") and American Express Travel Related Services Company, Inc., American Express Centurion Bank and American Express Bank, FSB (hereafter collectively "American Express") for the purposes and on the terms specified herein and operates in conjunction with the Confidential Addendum to this Agreement.

RECITALS

This Agreement is based on the following facts:

- Each of the Claimants is an individual who is blind or vision-impaired and who currently is, and for many years has been, an American Express Cardholder. Each of the Claimants is an individual with a disability within the meaning of Section 3(2) of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, 12102(2) ("ADA") and the Title III regulations implementing the ADA contained in 28 C.F.R. § 36.101, et seq. American Express issues credit and charge cards, and provides Monthly Statements to cardmembers residing in Massachusetts, Tennessee and other states across the United States.
- A dispute has arisen between Claimants on one side and American Express on the other side, concerning whether American Express is legally obliged to provide Claimants with Monthly Statements, Year End Summaries, and information regarding the Membership Rewards Program for American Express Cardmembers in Braille and Large Print ("Alternative Format Dispute").
- The parties enter into this Agreement in order to resolve the Alternative Format Dispute and to avoid the burden, expense, and risk of potential litigation. It is the intention of the parties that the actions required by American Express under this Agreement satisfy Claimants' claims under any currently applicable ADA access requirements, or similar state requirements, relating to access by Persons with Vision Impairments to American Express Monthly Statements and Year End Summaries; provided, however, that, by entering into this Agreement, American Express does not admit, and specifically denies, that it is subject to or has violated or failed to comply with any provisions of the ADA, any applicable laws of any state relating to accessibility for persons with disabilities to public accommodations, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable laws, regulations, or legal requirements. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by American Express of any such violation or failure to comply with any applicable law, or that the ADA or any other state law relating to accessibility applies to American Express. This Agreement and its terms and provisions shall not be offered or received as evidence for any purpose whatsoever against American Express in any action or proceeding, other than a proceeding to enforce the terms of this Agreement.

NOW, THEREFORE, the parties hereby agree to the following provisions:

1. Definitions.

As used only in this Agreement, the following terms shall be as defined below:

1.1. Americans with Disabilities Act or ADA

means the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Title III implementing regulations, 28 C.F.R., Part 36, including Appendix A, the Standards for Accessible Design.

1.2. American Express Card

means a credit or charge card issued by American Express to a cardmember having a billing address in the United States for which American Express generates Monthly Statements. American Express Card as that term is used herein does not include credit or charge cards with the American Express brand or logo that may be issued by entities other than American Express and does not include cards supported by the accounts receivable platform operated by TSYS.

1.3. American Express Card Monthly Statement (or Monthly Statement)

means the periodic billing statement sent to American Express Cardmembers showing, among other things, charges incurred by the cardholder during the previous billing cycle. American Express Card Monthly Statement includes all information printed on the statement itself including charges, customer service phone numbers, legal disclosures, account-specific notices, and certain Membership Rewards Information; provided, however, that the Annual Privacy Notice and other Legal Notices printed on separate pages at the end of the statement shall not be included in this definition until January 1, 2006. Membership Rewards Information, promotional information, and any other information not printed on the statement itself are not subject to this Agreement. Inserts included in an envelope with a Monthly Statement are not part of the American Express Card Monthly Statement for purposes of this Agreement.

1.4. American Express Cardmember (or Cardmember)

means an individual for whom American Express has opened an American Express Card account as defined in this Agreement. This term does not include supplemental cardmembers of such an account, but such supplemental cardmembers may receive Braille or Large Print Statements or Year End Summaries as otherwise set forth in this Agreement and as part of the primary Cardmember's Monthly Statement.

1.5. American Express Card Customer Service Phone Line

means a toll free telephone line on which customers can request Monthly Statements in Braille or Large Print under the terms of this Agreement, and is one that otherwise exists for cardholders for their particular card product.

1.6. American Express Card Year End Account Summary (or Year End Summary)

means, for certain American Express Card products, the summary of all charges incurred on such an American Express Card during the calendar year, categorized by type of expenditure, and all other information printed on such Summary. The Year End Summary is not available with all American Express Card products.

1.7. Counsel

means Goldstein, Demchak, Baller, Borgen & Dardarian and The Law Office of Elaine B. Feingold, and the attorneys practicing law therein.

1.8. Persons with Vision Impairments

means individuals who are blind or have central visual acuity not to exceed 20/200 in the better eye, with corrected lenses, as measured by the Snellen test, or visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle not greater than 20 degrees.

1.9. Reasonable Customer Request

means a request made by an American Express Cardmember who is a Person with Vision Impairment, or on behalf of a supplemental cardmember who is a Person with a Vision Impairment for a Braille or Large Print American Express Card Monthly Statement utilizing any of the methods set forth in section 3.4 below, which will commence systematic provision of the customer's Monthly Statements in either Braille or Large Print, as requested.

2. Duration of Agreement.

The terms of this Agreement shall remain in effect for three years from the Effective Date.

3. American Express Card Monthly Statements and Year End Account Summaries in Braille and Large Print.

3.1.

American Express will use good faith efforts to launch, by no later than March 31, 2005, a program in which an American Express Cardmember who is a Person with Vision Impairments can make a Reasonable Customer Request for Braille and Large Print American Express Card Monthly Statements and Year End Account Summaries, if applicable, for themselves or a supplemental cardmember who is a Person with Vision Impairments, as part of the primary Cardmember's Monthly Statement, as set forth herein. The following provisions shall apply if such a program is not launched by March 31, 2005:

- **3.1.1.** No later than April 18, 2005, American Express will provide Claimants the following information in writing: (i) the reason(s) that the program for Braille and Large Print Monthly Statements and Year End Summaries has not been launched; (ii) a proposed date by which the program will be launched and the reason(s) why American Express believes it can meet the proposed date.
- **3.1.2.** No later than May 2, 2005, at the request of Claimants, a telephone conference will be held with Claimants, Counsel and appropriate American Express counsel and staff to discuss the content of all information provided pursuant to section 3.1.1 above. At Claimants'

request, American Express will use good faith efforts to encourage its alternate format vendor to participate in the conference.

- **3.1.3.** If the parties have not reached agreement by May 16, 2005 on the date by which the program for Braille and Large Print Monthly Statements and Year End Summaries will be launched, and if the parties have not agreed to an extension of the May 16 date, the issue of an appropriate date for American Express to launch the program will be subject to the provisions of Section 7.3 through 7.5 below.

3.2. Timeliness of Individual Braille and Large Print Statements and Year End Account Summaries.

- **3.2.1.** First Statement after a Reasonable Customer Request. For each Reasonable Customer Request received at least 14 days prior to the close of the billing cycle for monthly statements, American Express will provide Braille and Large Print Statements for American Express Card Monthly Statements issued during the next billing cycle. A Reasonable Customer Request received less than 14 days prior to the close of the billing cycle will be processed so that the Braille or Large Print statement is provided for the second billing cycle following the request.
- **3.2.2.** Subsequent Statements. Braille and Large Print Monthly Statements will be produced and sent to the American Express Cardmember in the requested format within a reasonable time period after the date that print statements are regularly sent to customers in the same billing cycle.
- **3.2.3.** Year End Account Summaries. Persons with Vision Impairments who have received their Monthly Statements in Braille or Large Print for at least one month in any calendar year shall receive the Year End Account Summary in the same format on same terms, and to the same extent, that such Year End Account Summary is available in ordinary printed format. Customers who receive Monthly Statements in Braille or large print will not be required to make an additional request to receive such Year End Account Summaries.

3.3. Methods of Requesting Braille and Large Print Statements.

American Express shall allow Persons with Vision Impairments to request Braille and Large Print Statements over its American Express Card Customer Service Telephone Line during all hours that such Line provides information to the public.

3.4. Standards for Braille Statements and Year End Summaries.

Braille materials provided pursuant to this Agreement shall comply, whenever possible, with the Braille Authority of North America's standards for printing Braille materials, currently found at www.brl.org.

3.5. No Charge for Braille and Large Print Materials.

American Express will not impose any fees or charges on American Express Cardmembers who are Persons with Vision Impairments for providing Braille or Large Print Monthly Statements or Year End Account Summaries pursuant to this Agreement, except that the same fees or charges, if any, that are charged for the

standard printed Monthly Statements or Year End Summaries may be charged for their Braille or Large Print counterparts.

4. Information to the Public Regarding Braille and Large Print Materials.

4.1.

No later than 30 days after the program for Braille and large print Monthly Statements and Year End Summaries is launched, American Express will provide information about the program on a website otherwise containing information for American Express.

4.2.

Once annually for two years following the Effective Date of this Agreement, American Express will, if requested by Claimants, provide information to up to twenty-five (25) blindness and cross-disability organizations whose names and addresses have been provided by Claimants, announcing the availability of Braille and Large Print Statements and Year End Account Summaries as provided in this Agreement.

4.3.

No later than 60 days after the program for Braille and large print Monthly Statements and Year End Summaries is launched American Express will include information about the availability of Braille and Large Print Statements and Year End Account Summaries on the monthly statements of all United States Cardholders.

4.4.

Within ten (10) days of the Effective Date, Claimants will provide American Express with a proposed draft announcement containing the information required by Sections 4.1 and 4.2 American Express will consider in good faith Claimants' draft language, provided that the draft language is consistent with the Terms of this Agreement. American Express will provide Claimants with the final version of the wording within thirty days of receipt of the information.

5. Training.

American Express will provide training to appropriate persons staffing the American Express Card Customer Service Phone Line. Such training will be designed to ensure compliance with this Agreement. At a minimum, training will include information on how Persons with Vision Impairments may request Braille and Large Print Monthly Statements and how to handle customer enrollment and cancellation issues regarding Braille and Large Print Monthly Statements and Year End Statements.

6. Right to Seek Modification of Terms.

6.1.

Pursuant to the terms of section 7 below, American Express may seek to modify this Agreement if, as the result of some unforeseen circumstance, event or other occurrence, American Express reasonably believes that its contemplated

performance would be impossible or impractical based on available technology, or would have a substantial adverse effect on the security or timely delivery of American Express Statements or Year End Summaries. In addition, American Express may seek to modify the schedule for making Braille and Large Print Statements and Year End Summaries available if meeting the schedule would be an undue burden within the meaning of 42 U.S.C. §12111(10)(A) and 28 C.F.R. § 36.104.

6.2.

Delivery by American Express to Claimants of a Notice of Proposed Modification pursuant to section 7.2, based upon the conditions stated in section 6.1 shall suspend for sixty (60) days American Express's performance of its obligations under any portion of this Agreement that American Express seeks to modify. Any such suspension shall not constitute a breach of such section; provided, however, that such suspension shall not excuse American Express's performance during the suspension period of all other portions of the Agreement not affected by the suspension. In the event American Express seeks to modify its compliance with Section 3.1, the obligations of Section 3.1.1 through and including 3.1.3 shall apply during the sixty day suspension described herein.

7. Procedures in the Event of Disputes and Proposed Modifications.

7.1. Notice of Non-Compliance.

If at any time a party reasonably believes that the other party has not complied with any provision of this Agreement, that party shall provide the other party with a written Notice of Non-compliance containing the following information: (i) the alleged act of non-compliance; (ii) a reference to the specific provision(s) of the Agreement that are involved; (iii) a statement of the remedial action sought by the initiating party; and (iv) a brief statement of the specific facts, circumstances and legal argument supporting the position of the initiating party.

7.2. Notice of Proposed Modification.

If at any time American Express reasonably believes that the terms of this Agreement should be modified based on the conditions set forth in section 6.1, it shall provide Claimants with a written Notice of Proposed Modification containing the following information: (i) the section or term of the Agreement proposed to be modified; (ii) the proposed modification or amendment; (iii) the specific reasons underlying and/or supporting the proposed modification, including, if applicable, a brief statement of the specific facts, circumstances and legal argument supporting its position.

7.3. Meet and Confer.

Except for issues subject to section 3.1.1 et seq., within thirty (30) days of receipt of a Notice provided pursuant to sections 7.1 or 7.2 Claimants and American Express shall informally meet and confer and attempt to resolve the issues raised in the Notice.

7.4. Submission to Mediation Prior to Court Action.

- **7.4.1.** Except for issues subject to section 3.1.1 et seq., if the matters raised in a Notice provided pursuant to section 7.1 herein are not resolved within thirty (30) days of the initial meet and confer required by section 7.3, either party may submit the unresolved matters to private mediation as set forth herein.
- **7.4.2.** Mediation shall be held before a mutually agreed upon mediator who is available to schedule a mediation session on the matter within thirty (30) days of a written request to submit the matter to mediation.
- **7.4.3.** Any party seeking to enforce the terms of this Agreement shall, prior to filing a court action, comply with sections 7.1 and 7.3 above and shall participate in mediation pursuant to section 7.4. The parties agree that any court action filed prior to the completion of the procedures set forth in these sections is premature and shall be stayed in all respects (including discovery) pending completion of these procedures.

7.5. Law Governing Interpretation and Application of Agreement.

The terms of this Agreement, and the provisions thereof, shall be interpreted and applied pursuant to the ADA, where applicable.

8. Notice or Communication to Parties.

Any notice or communication required or permitted to be given to the parties hereunder shall be given in writing by facsimile or e-mail and United States mail, addressed as follows:

To Claimants:

Linda M. Dardarian
c/o Goldstein, Demchak, Baller, Borgen & Dardarian
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
Fax No.: (510) 835-1417

Elaine B. Feingold
Law Office of Elaine B. Feingold
1524 Scenic Avenue
Berkeley, CA 94708
Fax No.: (510) 548-5508

To American Express:

General Counsel's Office

Attn: Mark LoSacco, Esq.
American Express Travel Related Services, Inc.
200 Vesey Street, 49th Floor

Mail Drop 01-49-03
New York, NY 10285

Stroock & Stroock & Lavan LLP
c/o Julia B. Strickland, Esq.
2029 Century Park East, Suite 1800
Los Angeles, California 90067
Fax No.: (310) 556-5959

9. Publicity Regarding This Agreement and Its Terms.

9.1.

The parties will issue the press release attached hereto within a reasonable period upon execution of this Agreement.

9.2.

Except as provided in sections 9.1 and subject to the proviso herein, during the Term of this Agreement, neither Claimants nor their Counsel shall issue any press release or schedule their own press conference regarding American Express or the subject matter covered by this Agreement absent the express written consent of American Express. Provided, however, that nothing in this subsection 9.2 shall preclude Claimants or Counsel from issuing any press release that, in regard to American Express, is limited to generally identifying or referencing American Express as a company that provides Braille and Large Print Statements and Year End Summaries.

10. Modification in Writing.

No modification of this Agreement by the parties shall be effective unless it is in writing and signed by authorized representatives of all the parties hereto.

11. Agreement Binding on Assigns and Successors; No Third Party Beneficiaries.

11.1. Assigns and Successors.

This Agreement shall bind any assigns and successors of American Express. Within thirty (30) days of assignment or succession, American Express shall notify Counsel in writing of the existence, name, address and telephone number of any assigns or successors of American Express relating to the subject matters addressed herein.

11.2.

No Third Party Beneficiaries. This Agreement is for the benefit of the parties hereto only and no other person or entity shall be entitled to rely hereon, receive any benefit herefrom, or enforce against either party any provision hereof. The parties specifically intend that there be no third party beneficiaries to this Agreement.

12. Force Majeure.

The performance of American Express under this Agreement shall be excused during the period and to the extent that such performance is rendered impossible, impracticable or unduly burdensome due to acts of God, strikes or lockouts, unavailability of parts, equipment or materials through normal supply sources. If American Express seeks to invoke this section, it shall notify Counsel in writing as soon as reasonably practicable, specifying the particular action(s) that could not be performed and the specific reason for non-performance. Counsel and American Express will thereafter meet and confer regarding an alternative schedule for completion of the action that could not be performed, or an alternative action. Any dispute regarding the applicability of this section, or any future action to be taken, that remains after the meet and confer session will be handled as a dispute pursuant to section 7 of this Agreement.

13. Claimants' Representation and Warranty.

Claimants and their Counsel represent and warrant that, other than the instant Alternative Format Dispute, they do not have any knowledge of any action, arbitration, proceeding or investigation, pending or contemplated, brought or that will be brought against American Express challenging, disputing or involving the Alternative Format Dispute.

14. Integrated Agreement.

This Agreement and the related Confidential Addendum constitute the final, complete and exclusive Agreement between the parties relating to the subject matters addressed herein and supersedes any prior or contemporaneous written or oral agreements between the parties. The terms of this Agreement are contractual and not a mere recital.

15. Rules of Construction.

Each party and its legal counsel have reviewed and participated in the drafting of this Agreement and any rule of construction to the effect that ambiguities are construed against the drafting party shall not apply in the interpretation or construction of this Agreement. Section titles used herein are intended for reference purposes only and are not to be construed as part of the Agreement. The Recitals are integral to the construction and interpretation of this Agreement and are therefore incorporated into this Agreement in their entirety.

16. Effect of Settlement.

Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of the Agreement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any wrongdoing or liability of

American Express; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of American Express in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. American Express may file the Agreement in any action that may be brought against it in order to attempt to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

17. Triplicate Originals/Execution in Counterparts.

All parties and Counsel shall sign three copies of this document and each such copy shall be considered an original. This document may be executed in counterparts.

PARTIES

- **AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.**
- **AMERICAN EXPRESS CENTURION BANK**
- **AMERICAN EXPRESS BANK, FSB**

CLAIMANTS

- By: Paul Parravano
- By: Clarence Whaley

APPROVED AS TO FORM:

- **STROOCK & STROOCK & LAVAN LLP**
- **GOLDSTEIN, DEMCHAK, BALLER, BORGAN & DARDARIAN**
By: Linda M. Dardarian
- **LAW OFFICES OF ELAINE B. FEINGOLD**
By: Lainey Feingold, Esq.