

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

----- X		
G.R. HOMA, individually and on behalf of	:	
all others similarly situated,	:	
	:	
Plaintiff,	:	Civil Action No. 2:06-cv-02985 (JAP)
	:	
vs.	:	
	:	
AMERICAN EXPRESS COMPANY and	:	DECLARATION OF GARY S.
AMERICAN EXPRESS CENTURION	:	GRAIFMAN IN OPPOSITION
BANK,	:	TO RENEWED MOTION TO
	:	<u>COMPEL ARBITRATION</u>
Defendants.	:	
----- X		

GARY S. GRAIFMAN, under the penalties of perjury, hereby declares as follows:

1. I am an attorney admitted to practice law in the states of New York and New Jersey, in addition to various Federal Courts including the District of New Jersey. A material portion of the my practice involves representing plaintiffs in consumer litigation. I have litigated numerous actions relating to the New Jersey Consumer Fraud Act, as well as the similar act in New York. I frequently speak with the potential clients who have a potential consumer matter which they feel merits review. I have substantial experience with litigating matters involving the New jersey Consumer Fraud Act.

2. When I learned of Mr. Homa's legal claims, I immediately concluded that given the small amount that issue – which is less than \$300.00 – I would not agree to take such a case for litigation on an individual basis. I do not believe that it would have been economically feasible or rational for me to handle this particular case on an individual basis.

3. My normal hourly rate was upwards of \$410 per hour. I do not believe it would have been practical or appropriate to ask Mr. Homa to retain me on an hourly basis to handle this matter.

4. The only reason that I agreed to represent Mr. Homa in this case is because I believed it was an excellent candidate for class action treatment.

5. Annexed hereto as Exhibit "1" is a true and accurate copy of the Amended Class Action Complaint in the above-captioned matter.

6. Annexed hereto as Exhibit "2" are pertinent excerpts of the Deposition Transcript of Plaintiff, G.R. Homa.

7. Annexed hereto as Exhibit "3" is a true and accurate copy of the letter from American Express to G.R. Homa, dated July 22, 2004.

8. Annexed hereto as Exhibit "4" is a true and accurate copy of the letter from G.R. Homa to American Express, dated June 30, 2004.

9. Annexed hereto as Exhibit "5" is a true and accurate copy of the letter from G.R. Homa to American Express, dated September 14, 2004.

10. Annexed hereto as Exhibit "6" is a true and accurate copy of the letter from American Express to G.R. Homa, dated September 28, 2004 together with the handwritten calculations.

11. Annexed hereto as Exhibit "7" is a true and accurate copy of the letter from G.R. Homa to American Express, dated July 14, 2005, together with a 10-page spreadsheet.

12. Annexed hereto as Exhibit "8" is a true and accurate copy of the new advertisement from American Express revising the language of the calculation of Cash Back.

13. Annexed hereto as Exhibit "9" is a true and accurate copy of the Declaration of Christopher J. McGinn, Esq.

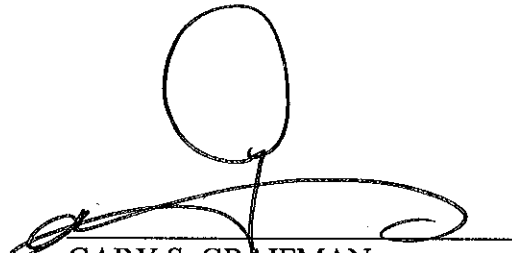
14. Annexed hereto as Exhibit "10" is a true and accurate copy of the Declaration of Andrew R. Wolf, Esq.

15. Annexed hereto as Exhibit "11" is a true and accurate copy of the Declaration

of Mark R. Cuker, Esq.

16. Annexed hereto as Exhibit "12" is a true and accurate copy of the Declaration
of Carrie Ferraro, Esq.

Date: June 27, 2011



GARY S. GRAIFMAN

EXHIBIT 1

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

----- x
G.R. HOMA, individually and on behalf of §
all others similarly situated, §
§
Plaintiff, §
§
vs. §
§
AMERICAN EXPRESS COMPANY and §
AMERICAN EXPRESS CENTURION §
BANK, §
§
Defendants. §
----- x

Civil Action No. 2:06-cv-02985 (JAP)

CLASS ACTION

**AMENDED CLASS
ACTION COMPLAINT**

Jury Trial Demanded

Plaintiff, G.R. Homa, ("Plaintiff" or "G.R. Homa") individually and on behalf of all other similarly situated, by his undersigned counsel, for his Amended Class Action Complaint, alleges on information and belief, including the investigation of his counsel, except as to those allegations relating to himself and his own personal actions which are based upon personal knowledge, as follows:

NATURE OF THE ACTION

1. The American Express Company (hereinafter, "American Express"), world renowned for its universally recognized name and logo and for its marketing success, engaged in a "bait & switch" marketing program, commencing in or about September of 2003, called "Blue Cash," which, in its splashy advertisement, made one offer of financial rebates to consumers which, when accepted, resulted in the imposition of completely different and less favorable terms, the explanation of which were then buried in the "envelope stuffer" form of terms which allegedly accompanied the card. Using its vast data bank of existing and potential customers, American Express embarked upon a combined solicitation, marketing and advertising campaign

to sell this new financial service involving the American Express Blue Cash Card (the "Card") issued by American Express Centurion Bank ("AECB"), a wholly owned subsidiary of American Express Travel Related Services, Inc.

2. American Express sent thousands, or tens of thousands, of solicitations for the Blue Cash Card to residents of New Jersey, including plaintiff, touting it as a method by which cardholders would be "rewarded for their spending by receiving a cash rebate." The offer was, "Earn up to 5% Cash Back." The suggestion was not masked. The more one spends the more one benefits, or so the literature and advertisements made customers believe.

3. The offer, once accepted by a consumer, was confirmed in writing by AECB with a brochure entitled "Welcome to Blue Cash." The Card came with several features to make it attractive. The features were also intended not just to produce and retain customers, but to induce customers to move outstanding credit-card balances and to shift all of their consumer spending to the Blue Cash Card.

4. Perhaps the strongest incentive advertised in defendants' marketing materials to the consumer was the "reward" of "cash back," or, more specifically:

**REWARDS YOU WITH CASH BACK
WHEN YOU USE THE CARD**

Earn up to 5% Cash Back.* Starting today, you can earn cash back on virtually everything you buy. You can earn rewards even faster for the purchases you make every day in supermarkets, gas stations, drugstores, and home improvement stores. There's no minimum spending required, so you can start earning cash back today. The more you use your Card, the faster your earnings can add up.

Pay Bills, Get Cash Back. Pay all your regular monthly bills automatically with Blue Cash from American Express and start earning cash back on everything from

telephone and cable bills to parking and transportation expenses.** Simply contact your merchants and ask to have your bills charged to Blue Cash . . .

* Your annual cash reward for everyday purchases at stand-alone U.S. supermarkets, drugstores, gas stations and home improvement stores is up to 3%. Stand-alone locations do not include the departments of superstores or warehouse clubs where the standard rebate of up to 1.5% applies. Your annual cash reward for all other purchases is up to 1.5% You will receive an additional rebate of up to 2% for purchases in months in which your account carries a balance. Your annual cash rewards are limited to \$50,000 of eligible spending.

** Special payment features may not apply to all long distance calling plans. Not all providers service all markets.

5. The offer was clear and the incentive was compellingly strong that the consumer would receive the stated discount based upon total amount spent but, in fact, this was not true. American Express completely failed to advise its customers of all components of the offer and how the calculations of “up to” a certain percentage was going to be made, as described more fully below at paragraphs 15, 16 and 17.

6. American Express failed to tell its customers the truth when the offer was made, and failed to properly inform those same customers that there were additional restrictions to the Blue Cash program at the time they were made.

JURISDICTION AND VENUE

7. Jurisdiction is based upon diversity of citizenship pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §1332(c) as Plaintiff believes this is a class action in which the matter in controversy exceeds \$5,000,000 and the named Plaintiff is a citizen of a state different from the Defendants.

8. Venue is proper in this district pursuant to 28 U.S.C. §1391, because Defendants either maintain an active place of business, including retail outlets, within this district, or

provided services to Plaintiff and Class members located in this district, and conducted substantial business in this district. Moreover, the Plaintiff resides in the district where he has been subjected to the alleged wrongs complained of.

PARTIES

9. Plaintiff is and was at all times relevant hereto a resident of Essex County, State of New Jersey, and obtained the Card during the Class Period. Plaintiff accepted and relied upon Defendants' offer for the Card through means of interstate commerce including, but not limited to telephone, mail, and on-line computer transactions from and to his home in Essex County, New Jersey. Plaintiff Homa has been damaged as a result of the fraud and deceptive practices of the Defendants. Defendants sent the Card to Plaintiff's New Jersey address.

10. Defendant American Express is, *inter alia*, a national financial services vendor and provider and a New York corporation. Since its founding, American Express has advertised, marketed and provided various credit and other financial services throughout the United States, including New Jersey. In particular, American Express has represented, impliedly and directly, that the Card provides cash benefits to those persons who accepted Defendants' offer to obtain one.

11. Defendant AECB is a wholly owned subsidiary of American Express. AECB issues and services American Express revolving credit cards and charge cards, including American Express' Blue Cash Card. AECB is located at 4315 S. 2700 West, Salt Lake City, Utah. AECB, through American Express, solicited consumers in New Jersey to become Blue Cash cardholders.

FACTUAL ALLEGATIONS

12. Commencing in or about September 2003, Defendants began soliciting members of the Class, including Plaintiff, to apply for the American Express Blue Cash Card.

13. The bait and switch solicitation from Defendants stated that the rebate percentages offered by Defendants were to be applied based on a cardholder's "Total Annual Spend."

14. Based on the bait and switch representation by Defendants, the Plaintiff and other members of the Class accepted Defendants' offer and commenced using the Card.

15. According to the on-line solicitations made to New Jersey consumers during the Class Period, as defined below, Defendants touted, *inter alia*, that Plaintiff would receive the 5% cash back." Defendants in the initial offer stated:

Fundamentals of the Card

Earn up to 5% Cash Back

Blue Cash offers you a great way to earn up to 5% cash back combined with a 0% introductory APR and a smart chip for added online security. You'll earn cash back on virtually everything you buy, and earn cash back even faster at supermarkets, gas stations, drugstores, and home improvement stores. There's no minimum spending required, so you can start earning cash back right away.

16. Footnote 1 in Defendants' offer states in relevant part:

The cash back reward structure is as follows (hereinafter "Chart A"):

Total Annual Spend	Cash Back on Everyday Purchases	Cash Back on Other Purchases
Up to \$2,000	0.50%	0.25%
\$2,001 - \$6,000	1.00%	0.50%
\$6,001 - \$50,000	3.00%	1.50%
Bonus % if you carry a balance	2.00%	0.50%

17. Based on Defendants' representations in paragraphs 2 through 5 and 15 and 16, above (collectively, the "Original Offer"), Plaintiff reasonably believed, and the obvious impact of the statements on members of the class was, that if one spent up to an amount over \$6,000 annually, they would receive a full 3% cash back for their total "Every Day Purchases" along with an additional 2.0% cash bonus on their everyday purchases for carrying a monthly balance, and 1.5% back on all of their other purchases along with an additional 0.5% bonus for carrying a balance. This representation caused Plaintiff and members of the Class to apply, accept, and use the Card. The Original Offer stated that the Card would permit card holders to "Earn up to 5% Cash Back." That statement has a footnote which does not include any statement or explanation of a tiered rebate calculation method to be applied by Defendant, but does state, *inter alia*, "You will receive an additional rebate of up to 2% in months in which your account carries a balance." In fact, the consumer can never receive 5% on their total spend, since from \$1 to \$6000, the total

is a reduced tier amount (.5% from \$0 to \$2000, and 1% from \$2001 to \$6000 on everyday purchases) and under no circumstances could the blended percentage rate equal 5%.

18. During all or part of the Class Period, the Plaintiff and members of the proposed Subclass, as defined below in paragraphs 28-29, carried a balance on the Card, yet did not receive the additional 2% cash bonus which was promised on “Everyday Purchases” or the .5% rebate on “Other Purchases.”

19. After accepting the Original Offer and the Card sent by Defendants, Defendants sent Plaintiff a statement on which Defendants purported to have calculated the rebate due. Upon performing his own calculation, Plaintiff concluded that the rebate being offered to him by Defendants was not in accordance with the Original Offer made to him and members of the Class and Subclass.

20. Before applying for the Card under the Original Offer, Plaintiff and the other members of the Class were never informed of any material change in the terms and conditions for use of the Card from the solicitation’s terms, including that the calculation of the rebate would be based on a “tiered” rebate calculation. Thus, the terms and conditions, which came as an “envelope stuffer” with the Card, were materially different than the terms and conditions advertised by Defendants. That change, provided in an inconspicuous documents in small type print, was a classic “bait and switch” scheme.

21. On or about June 30, 2004, Plaintiff wrote to Defendants stating that the Defendants had not credited him with the correct rebate amount for his "Total Annual Spend" or for the monthly balance he maintained in his Card account. Plaintiff also provided the basis for his calculation.

22. On or about July 8, 2004, Defendants replied in writing to Plaintiff that Defendants were making inquiry as to Plaintiff's claims. On July 22, 2004, Defendant American Express wrote to Plaintiff and for the very first time mentioned that "the calculation of rebates is based on a tier and not a flat 5%." These tiers, or information describing them, had not previously been provided to Plaintiff or the Class. However, this letter still did not actually explain to Plaintiff the truth—that each tier (\$0 to 2,000, \$2,001.00 to \$6,000.00, and \$6,001.00 to \$50,000.00) were calculated incrementally such that, for example, on the first \$2,000 the Plaintiff would only receive .25% instead of 1.5% on "other purchases," even if his "Total Annual Spend" was between \$6,001 and \$50,000.

23. On or about September 28, 2004, Defendants wrote to Plaintiff and for the second time in correspondence after Plaintiff had accepted the Original Offer, informed Plaintiff of a certain tiered system of rebate calculations. Although the July 22, 2004 letter from defendant American Express had mentioned the "tier" system of rebates, only the September 28, 2004 letter was accompanied by Defendants' calculation which explained that an "incremental" tiered system was used in the calculation of the percentage of the rebate.

24. On July 14, 2005, Plaintiff wrote again to Defendants seeking to resolve his dispute with Defendants amicably and based upon the terms of the Original Offer made by Defendants to Plaintiff. However, Defendants never responded.

25. On or before this same day, Defendants modified the Original Offer (the "Modified Offer"). Among other things, Defendants, in further advertising the advantages of "Blue Cash" and the Card, changed some of the language used to describe the Original Offer setting forth the rebate system for purchases using the Card, as follows (hereinafter "Chart B"):

Year to Date Purchases	Cash Back on Everyday Purchases	Cash Back on All Other Purchases
\$0 - \$6,500	1.0%	0.5%
\$6,500.01 - \$50,000	5.0%	1.5%

26. In Chart B the heading which appeared in Chart A in the Original Offer entitled "Total Annual Spend", as set forth in paragraph 16 above, was changed to "Year to Date Purchases." Moreover, in prefatory language in the footnote to Chart B the defendants added language that said the cash rebates would be based on "your prior spend at the time of purchase." Thus, for the first time, Defendants' advertisements gave a hint that the defendants' rebate program was not based on their "total annual spend." It is apparent that based on this "change" Defendants never intended to give the rebate offered in the initial advertisement. Tellingly, the new language was carefully crafted so as not to openly disclose defendants' use of a "tiered" calculation, let alone disclose the specific "tiered" method they actually used and had no trouble describing to the Plaintiff in their September 28, 2004 letter (see paragraph 22 above), but, instead, used confusing and convoluted language that continued to mislead consumers about the amount of the rebates they could expect to receive from the defendants' rebate program. This modification in Defendants' advertising material constituted an admission that Chart A was false and misleading. The Original Offer and the Modified Offer are referred to hereinafter collectively as the "Offer."

27. Subsequent to the commencement of this action, Defendants provided, as an exhibit to a motion to compel arbitration in response to the initial complaint herein which Defendants served on or about September 25, 2006, the alleged form of terms for the Card which purportedly came as an “envelope stuffer” with the Card but which Plaintiff did not have, never recalls receiving and which Plaintiff was never required to sign.

CLASS ACTION ALLEGATIONS

28. Plaintiff brings this class action, pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure (“FRCP”), on behalf of himself and others similarly situated. The proposed class (the “Class”) is comprised of:

All consumers residing in New Jersey, who, while so residing in New Jersey, applied for and received an American Express Blue Cash Card during the period from September 30, 2003 to the present. For purposes of the class definition, the term “residing in New Jersey” as applied to corporate, partnership and other business consumers refers to maintaining a principal place its business in New Jersey or using a New Jersey address when applying for and receiving the Card.

29. Plaintiff also brings this action on behalf of a proposed subclass of New Jersey cardholders in the Class who carried a monthly balance on the Card, yet failed to receive an additional 2% cash rebate on their “Everyday Purchases” or additional .5% cash rebate on “Other Purchases” (the “Subclass”).

30. The Class and Subclass are so numerous and geographically dispersed that joinder of all members is impracticable. While the exact number and identity of Class and Subclass members cannot be ascertained by Plaintiff at this time, it includes thousands, or tens of thousands, of persons throughout the State of New Jersey who were solicited by, and obtained a Card from, Defendants. Thus, the individual joinder of all such persons in a single action is

impracticable. The common disposition of the Class and Subclass members' claim in this case will substantially benefit both the parties and the court. The numerosity requirement of FRCP23(a)(1) is therefore satisfied.

31. FRCP 23(a)(2) and Rule 23(b)(3) are also both satisfied because there are questions of law and fact common to Plaintiff and the Class and Subclass that predominate over any individual questions affecting only individual members. Among those common questions of law and fact are:

1. Whether Defendants misrepresented the terms and conditions of the Card based on the Original Offer and/or the Modified Offer;
2. Whether Defendants misrepresented or failed to adequately disclose the terms of the rebates offered to persons who obtained the Card;
3. Whether Defendants breached their agreements with those who obtained the Card;
4. Whether Defendants should be enjoined from further wrongdoing;
5. Whether the Defendants were negligent in misrepresenting the terms of the Original Offer and/or Modified Offer; and
6. Whether Class and/or Subclass members are entitled to damages and in what amount.

32. Plaintiff satisfies Federal Rule of Civil Procedure 23(a)(3) because Plaintiff's claims are typical of those of the Class and Subclass and do not conflict with the interests of any other members of the Class and/or Subclass because Plaintiff suffered damages as a direct result of the misleading solicitations for the Card as advertised, publicized, marketed, and distributed

by Defendants without knowledge of the actual terms and conditions intended by Defendants to be applied. Plaintiff's damages were directly caused by his acceptance and use of the Card from Defendants for the Plaintiff's consumer purchases. Plaintiff asserts claims that are typical of the claims of the entire Class and Subclass, and all Class and Subclass members have been subjected to the same wrongful conduct.

33. In satisfaction of Federal Rule of Civil Procedure 23(a)(4), Plaintiff will fairly and adequately represent and protect the interests of other Class members and has no interests antagonistic to or which irreconcilably conflict with those of other Class members. Plaintiff is committed to the vigorous prosecution of this action and has retained counsel experienced in litigation of this nature to represent him and the class. Plaintiff anticipates no difficulty in the management of this litigation as a class action.

34. A class action is the only method for the fair and efficient adjudication of this controversy. Class and Subclass members have suffered and will continue to suffer continuing damages as a result of Defendants' wrongful conduct. Because of the nature of the individual class members' claims in this litigation, few, if any, could otherwise afford to seek legal redress against Defendants for the wrongs complained of herein, and a representative class action is therefore appropriate, the superior method of proceeding, and essential to the interests of justice. Absent a representative class action, Class and Subclass members would continue to suffer losses for which they would have no remedy; many Class and/or Subclass members would remain ignorant of the significant violations of law to which they have been exposed and the damages they have suffered or may suffer; the remedial action sought could not be secured or prosecuted. Even if separate actions could be brought by individual members of the Class and Subclass, the

resulting multiplicity of lawsuits would cause undue hardship and expense for both the court and the litigants, as well as create a risk of inconsistent rulings and adjudications which might be dispositive of the interests of the other class members who are not parties to the adjudications and may substantially impede their ability to protect their interest and/or which would establish incompatible standards of conduct for Defendants.

35. Pursuant to Federal Rule of Civil Procedure 23(b)(1) and (b)(2), Defendants have acted or refused to act on grounds generally applicable to the Class, making appropriate injunctive or declaratory relief with respect to the class as a whole.

36. This class action is maintainable under Rule 23(b)(4) of the Federal Rule of Civil Procedure because questions of law and fact common to the Class and/or Subclass predominate over any questions affecting only individual members thus making a class action superior to other available methods for fair and efficient adjudication of this controversy.

FIRST CAUSE OF ACTION

Violation of the New Jersey Consumer Fraud Act

37. Plaintiff incorporates and realleges by reference each and every allegation contained above as if set forth at length herein.

38. Defendants have violated the New Jersey Consumer Fraud Act, N.J.S.A. §56:8-2 (“CFA”), which provides, in relevant part, as follows:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, or omission of any material fact with intent that others rely upon such concealment, suppression or omission in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or

not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice

38. In addition, Defendants' advertisement and scheme violated New Jersey's "bait and switch" statute, N.J.S.A. 56:8-2.2, which states: "The advertisement of merchandise as part of a plan or scheme *not to sell the item or service so advertised* or not to sell the same at the advertised price is an unlawful practice and a violation of the act to which this act is a supplement." (Emphasis added). Defendants advertised, publicized, marketed, and distributed solicitations and agreements for consumers to obtain the Card claiming to knowingly offer a rebate which it never had the intention to actually pay.

39. Defendants composed its advertising and solicitation materials, which they disseminated on the internet, with the intent to obfuscate and deceive.

40. Plaintiff and the other members of the Class and Subclass, in reliance on Defendants' advertisements, written offer, and reputation, accepted the Offer.

41. Even to the extent the terms and conditions were received by Class members, it did not adequately inform Plaintiff and the members of the Class what rights they were giving up, including the rights to seek redress in a class action or in a court of law which the language of the terms and conditions, but not the initial solicitation, banned. This "bait and switch" tactic was inherently deceptive.

42. Defendants' practices, acts, policies and course of conduct violated New Jersey's CFA in that Defendants' sale, distribution and/or marketing of the Card making affirmative misstatements as to a certain percentage of rebate payments by Defendants to card holders and/or knowingly failed to reveal that the actual percentage to be paid by Defendants was materially and

significantly different from apparent percentages stated in Defendants' offering literature. This constituted an unconscionable commercial practice, a deception and/or fraud, a misrepresentation or knowing concealment, suppression or omission of a material fact in connection with the sale, marketing, distribution or advertisement of the Card.

43. Defendants have violated the CFA by engaging in a pattern of unfair, unconscionable and deceptive acts and practices in business, including but not limited to:

A. Soliciting and advertising the Card to consumers, including Plaintiff and members of the Class and Subclass knowing that it would be used by them for their consumer purchases;

B. Concealing the fact that the percentage of rebate to be received by Plaintiff and the members of the Class was based on tier system rather than a straight percentage of the "Total Annual Spend" and failing to disclose to members of the Subclass that even if they maintained a monthly balance, they would not receive an additional 2%;

C. Making false and misleading written statements and advertisements designed to conceal the truth about the percentage rebate calculation and the monthly rebates; and

D. Concealing the truth about the value and merits of Defendants' Blue Cash program.

44. Defendants' unlawful acts caused damages to Plaintiff, the Class and Subclass in that Defendants wrongful acts caused Plaintiff and the Class and/or Subclass to apply for, accept and use the Card of Defendants with an expectation of a monetary rebate which was not in the amount represented to Plaintiffs and the Class.

45. Plaintiff and the members of the Class are entitled to all of the relief, including monetary, equitable, injunctive, declaratory and remedial relief, set forth in the Ad Damnum clause, *infra*, in this Complaint.

46. Plaintiff and the members of the Class have all suffered an ascertainable loss as a result of Defendants violation of the aforestated NJ CFA statutes.

47. By virtue thereof, Defendants violated the NJ CFA and should be required to pay such damages as the statute allows.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for judgment and relief against the Defendants as follows:

A. Declaring this action to be a proper class action maintainable under Rule 23 of the Federal Rules of Civil Procedure, and certifying an appropriate Class and/or Subclass and certifying Plaintiff herein as class representative;

B. Providing a fund for the purposes of dissemination of the information required hereunder; and paying for the monitoring of a corrective campaign;

C. Awarding Plaintiff and members of the Class and Subclass the appropriately calculated amount of their rebates, plus interest, calculated based upon the Offer;

D. Awarding to Plaintiff and the members of the Class and Subclass their attorneys' fees, pre-judgment and post-judgment interest and costs of the suit as provided by law;

E. Awarding to Plaintiff and the members of the Class and Subclass punitive and exemplary damages;

F. Awarding to Plaintiff and the Class and Subclass all other remedies to which they are entitled under the NJ CFA; and

G. Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, individually and on behalf of all others similarly situated, hereby demands trial by jury as a matter of right.

Respectfully submitted,

Dated: December 1, 2006

By: 

**KANTROWITZ, GOLDHAMER &
GRAIFMAN**

Gary S. Graifman, Esq. (GSG-2276)
210 Summit Avenue
Montvale, NJ 07645
Telephone: (201) 391-7000
Facsimile: (201) 307-1086

Howard T. Longman, Esq.
STULL, STULL & BRODY
6 East 45th Street
New York, NY 10017
Telephone: (212) 687-7230
Facsimile: (212) 490-2022

Timothy J. Burke, Esq.
STULL, STULL & BRODY
10940 Wilshire Boulevard
Suite 2300
Los Angeles, CA 90024
Telephone: (310) 209-2468
Facsimile: (310) 209-2087

Abraham Rappaport, Esq.
**THE LAW OFFICE OF ABRAHAM
RAPPAPORT, P.A.**
Florida Bar No. 016321
3774 N.W. 3rd Avenue
Boca Raton, FL 33431
Telephone: (561) 368-9252
Facsimile: (561) 447-9480

Attorneys for Plaintiff

EXHIBIT 2

0001

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL ACTION NO. 3:06-CV-02985-JAP-DEA
4 G.R. HOMA, individually and :
 On behalf of all others :
5 Similarly situated, : DEPOSITION OF:
 :
6 Plaintiffs, :
 : G.R. HOMA
7 Vs. :
 :
8 :
9 AMERICAN EXPRESS COMPANY and :
 AMERICAN EXPRESS CENTURION :
 BANK, :
10 :
11 Defendants :
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14 TRANSCRIPT of the deposition of the Witness,
15 called for Oral Examination in the above-captioned
16 matter, said deposition being taken pursuant to
17 Superior Court Rules of Practice and Procedure by
18 and before JAMES A. KORWAN, Certified Shorthand
19 Reporter, (License No. 1800), and Notary Public of
20 the State of New Jersey, at the offices of
21 GREENBERG TRAURIG, 200 Park Avenue, P.O. Box 677,
22 Florham Park, New Jersey 07932-0677, on Thursday,
23 April 29, 2010, commencing at approximately 9:28
24 a.m..

19
20

21 ESQUIRE DEPOSITION SOLUTIONS
22 90 Woodbridge Center Drive
23 Suite 340
24 Woodbridge, New Jersey 07095
25 Phone (732) 283-1060 - Fax (732) 283-1640

25 Job No. 136812

0002

1 A P P E A R A N C E S:

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3

4 STULL, STULL & BRODY
5 6 East 45th Street
6 New York, New York 10017
7 BY: HOWARD T. LONGMAN, ESQ.
8 Attorneys for the Plaintiff

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KANTROWITZ, GOLDHAMER & GRAIFMAN
210 Summit Avenue
Montvale, New Jersey 07645
BY: GARY S. GRAIFMAN, ESQ.
Attorneys for the Plaintiffs

GREENBERG TRAUERIG
200 Park Avenue
P.O. Box 677
Florham Park, New Jersey 07932-0677
BY: LOUIS SMITH, ESQ.
Attorneys for the Defendants

I N D E X

WITNESS	EXAMINATION BY	PAGE
G.R. HOMA	Mr. Smith	6, 211
	Mr. Longman	211

E X H I B I T S

HOMA NUMBER	DESCRIPTION	MARKED FOR ID
1	Homa Response Doc Demand 000046 Through 000054	53
2	Initial Disclosure Statement Pursuant to Rule 26(a)(1)	54
3	Declaration of Gillen Clements	56
4	Documents Bates AMEX H 0000014 Through 0000019	64
5	Documents Bates AMEX H 0000053 Through 0000059	67
6	Documents Bates AMEX H 0000061 Through 0000070	70

0006

1 G.R. HOMA,
2 7 Countryside Drive, Livingston, New Jersey
3 07039, having been first duly sworn, was examined
4 and testified as follows:

5

6 EXAMINATION

7 BY MR. SMITH:

8 Q. Can you state your full name for the record?

9 A. My name is Gideon Raphael Homa.

10 Q. Have you ever been deposed before?

11 A. No. No.

12 Q. I am going to give you instructions relating
13 to today's deposition. To your left is the court
14 reporter. Everything that is said in the room
15 will be taken down by the court reporter. And at
16 the end of this process, he will produce a
17 transcript. In order for him to do that, we have
18 to speak one at a time. So I am going to wait
19 until you are done answering my questions before I
20 ask another question. And I ask that you wait
21 until I'm done stating my question before you
22 start to answer.

23 Do you understand that?

24 A. Yes.

25 Q. If you don't understand a question that I

0011

1 You might call it a certificate. I obtained
2 whatever the legal document from that system was
3 in Montreal, Quebec. In the Province of Quebec at
4 that time you always, before you went to college,
5 you did two years CGEGP. You graduated from high
6 school. You did two years CGEGP, and then you
7 went to college.

8 Q. So you completed the two years of CGEGP?

9 A. Correct.

10 Q. And you completed that in 1982?

11 A. That sounds right, yes.

12 Q. After you completed that CGEGP, did you then
13 attend college as you've described?

14 A. After that I went to Israel for two years
15 and I studied at the University of Tel Aviv.

16 Q. What did you study?

17 A. Computer science.

18 Q. You got to let me finish. What did you
19 study at the University of Tel Aviv?

20 A. Computer science.

21 Q. Did you obtain a degree from the University
22 of Tel Aviv?

23 A. No.

24 Q. You studied there for, approximately, two
25 years?

0070

1 A. Yes.

2 Q. You never set them up for electronic
3 delivery to an E-mail account?

4 A. I don't recall.

5 Q. Have you done that with any of your card
6 accounts?

7 A. I don't think so.

8 Q. Okay. Did you ever call that customer
9 service Number 1 8 8 blue 7 4 1?

10 A. This specific number?

11 Q. Yes.

12 A. Let me state that I've called American
13 Express customer service. Whether it was this
14 number, probably, but it was, more likely, the
15 number that I read off the back of my card at the
16 time.

17 Q. Okay.

18 A. And it may have been the same number.

19 MR. SMITH: Okay. All right. Let's
20 mark the next document Homa-6.

21 (Whereupon, Homa Deposition Exhibit No.
22 6 was marked for identification.)

23 BY MR. SMITH:

24 Q. Ask you to take a look at that document. Is
25 this the second statement you received from

0071

1 American Express relating to your Blue Cash card
2 product?

3 A. Yes.

4 Q. Do you recall receiving it sometime in or
5 around May of 2004?

6 A. Yes.

7 Q. All right. Let me -- on the Bates number
8 which is, again, the number is printed on the
9 lower right-hand corner, if you go to AMEX-67,
10 see, it says: Cash rewards earnings summary.

11 Do you see that?

12 A. Yes.

13 Q. Do you recall seeing that portion of this
14 statement in or around May 2004?

15 A. Yes.

16 Q. After you reviewed that in or around May of
17 2004, what, if anything, did you do?

18 MR. LONGMAN: Objection to form. Go
19 ahead. You can answer.

20 A. I called American Express for further
21 understanding of how that number was derived.

22 Q. Why did you do that?

23 A. Because it looks low.

24 Q. When did you make that call?

25 A. I don't recall.

0072

1 Q. Was it in May 2004?

2 A. Around that time.

3 Q. Who did you speak with?

4 A. Customer service.

5 Q. You don't recall the exact number that you
6 used, I take it?

7 A. No.

8 Q. Do you recall the person that you spoke
9 with?

10 A. No.

11 Q. What did you say to them and what did they
12 say to you in that call?

13 A. Let me just state, that I had several calls,
14 so I can't specifically tell you the exact
15 conversation that I had on that call. But I could
16 just tell you, generally, the conversations that I
17 had.

18 Q. Okay.

19 A. I asked for an explanation of how the reward
20 was calculated. And the response was always
21 confusion, and I could never get the answer.

22 Q. When you say the response was confusion,
23 what do you mean by that?

24 A. They couldn't explain to me the rewards
25 program. They couldn't explain to me how the

0073

1 number was derived.

2 Q. Were you provided any information that you
3 were able to glean from them relating to how the
4 rewards program worked?

5 A. Define the time period and define, "any
6 information," please.

7 Q. Well, you indicated that you had several
8 calls. During these several calls?

9 A. Well, I'm talking about the span of the
10 whole.

11 Q. Let's break it down this way. You believe
12 that this initial call was sometime in or around
13 May 2004?

14 A. Correct.

15 Q. Did you have any other calls in or around
16 May of 2004?

17 A. It's possible that I had two or three calls.
18 I don't recall, exactly, the number of calls.

19 Q. Okay. If you're talking about two or three
20 calls in the May 2004 time --

21 A. May, June, time frame.

22 Q. Okay. May, June. Okay. What information
23 was conveyed to you -- let's focus on that May
24 June time frame. What information was conveyed to
25 you by the personnel from American Express about

0074

1 the cash rewards?

2 A. They could not give me the breakdown.

3 Q. When you say, "the breakdown," what do you
4 mean?

5 A. The specific breakdown of how the reward was
6 given to me.

7 Q. Did they give you any information?

8 A. At that time, I don't -- beyond if they gave
9 me any information, I would have to on the phones.
10 Certainly, not any information that was of value.

11 Q. Did they explain to you the method by which
12 the cash reward is calculated?

13 A. They were just as confused as I was.

14 Q. Did anybody in this May June time frame
15 indicate to you in words or substance that the
16 cash reward was calculated on a tiered basis and
17 not on a flat basis?

18 A. I believe they used the word, "tiered," but
19 it wasn't interpreted as I now understand it to
20 mean. Then, to me, once I met my \$6,000
21 obligation, I was entitled to one and a half to
22 three percent of my purchases, for the entire
23 year.

24 Q. But the personnel that you spoke with there
25 did use the word, "tier," in the course of your

0075

1 conversations?

2 A. I believe, they mentioned the word, "tier."

3 Q. Did they refer you to your card member
4 agreement at any point?

5 A. During one conversation. I'm sure at some
6 point, multiple times, they had mentioned card
7 member agreements.

8 Q. Okay. This is -- I'm talking about the May
9 June 2004 time frame, did they -- in that time
10 frame did they refer you to your card agreement?

11 A. I don't recall.

12 Q. In the May June 2004 time frame, when you
13 are speaking with personnel from American Express
14 did you review the card member agreement?

15 MR. LONGMAN: Objection. Go ahead. You
16 can answer.

17 A. Again, I don't recall having a card member
18 agreement. I did review everything again on line.

19 Q. Did you ask anyone at American Express for a
20 card member agreement?

21 A. At that time, no.

22 Q. Anyone else that you can recall from these
23 discussions in May or June of 2004?

24 A. Just for clarification, of the rewards
25 program.

1 Q. Taking a look, going back to Page 67 of this
2 document, when you see the cash rewards summary,
3 you see it's being calculated on a monthly basis,
4 correct?

5 A. Repeat the question.

6 Q. Going back to the page with Bates Number 67
7 where it says cash rewards, earning summary --

8 A. Yes.

9 Q. -- you see the total reward. You see it's
10 being calculated on a monthly basis?

11 A. Yes.

12 Q. When you say that, did that indicate to you
13 that the cash reward is going to be calculated on
14 a monthly basis and it's not going to be
15 re-calculated at some later point, depending upon
16 additional spending that you may or may not have?

17 A. That was part of the confusion on American
18 Express. I asked them, I don't understand this
19 number. Is it going to be re-calculated or
20 reconciled at the end of the year, and nobody
21 could give me an answer.

22 Q. And did you ask that because based on your
23 review of this cash rewards earning summary, it
24 indicates that it's calculated on a monthly basis?

25 A. No. I, I -- it just looked low to me. It -

1 cash at that point.

2 Q. The next paragraph begins: First attempt,
3 please, find the internet document that I used to
4 make my decision. Let me direct you to the Bates
5 numbers following two through nine. Is that the
6 document that you attached?

7 A. Yes.

8 Q. Okay. And is that -- so that is the
9 internet document that you used to make your
10 decision?

11 A. Correct.

12 Q. Goes on to say, Page 2 of 8, I interpreted
13 told annual spend to mean that if I spent more
14 than \$6,001 per year, I would receive 3 percent on
15 all every day purchases for that year?

16 A. Correct.

17 Q. That was your understanding?

18 A. Correct.

19 Q. And that was your interpretation based on
20 that language, total annual spend on Page 2 of the
21 attachment?

22 A. Yes, I see.

23 Q. Page 3 of the Bates number, Page 2 of the --

24 A. Yes.

25 Q. Did you discuss that interpretation with

0087

1 anyone before you started using the Blue Cash
2 card?

3 A. Before?

4 Q. Before, yes.

5 A. I don't think so.

6 Q. Okay. Is this the, this document, this
7 internet document that's attached, this is the
8 document, if I understand your testimony, that you
9 used prior to applying for your Blue Cash card?

10 A. This document was printed out in June, so I
11 was looking on line at a similarly worded
12 document, and, I presumed, the identically worded
13 document before I made my decision.

14 Q. Okay. All right. Then that paragraph goes
15 on to say, knowing that I would spend more than
16 \$6,001 a year, this is an easy decision. Now I'm
17 being told that the disbursement is in layers.
18 The first \$2,000 is 50 cents, e-t-c.

19 Were you being told that by the American
20 Express customer service representatives?

21 A. That's what they had said at the time.

22 Q. And then you go on to say, that is not how I
23 interpreted it, and that is not what it says. And
24 when you say not what it says, I take it, you are
25 referring to the total annual spend on AMEX-3?

1 A. Yes.

2 Q. Okay. Is there anything else that you are
3 referring to, other than that?

4 A. Meaning, what?

5 Q. Meaning, when you say it's not what it says?

6 A. That's what I was referring to.

7 Q. You recall referring to the total annual
8 spend on AMEX-3, correct?

9 A. Yes.

10 Q. Okay. All right. And you indicated the
11 attachment you had printed out in June after you
12 already had the card, but you believe this was the
13 same in appearance to what you looked at before
14 you applied?

15 A. Correct.

16 Q. Did you print anything out prior to
17 applying?

18 A. I don't recall.

19 MR. SMITH: Let's just mark this as
20 Homa-9.

21 (Whereupon, Homa Deposition Exhibit No.
22 9 was marked for identification.)

23 BY MR. HOMA:

24 Q. Take a look at what's been marked as Homa-9.
25 And I'm directing you to the first page. You see,

0089

1 it says, June 2nd, 2004, on the lower right-hand
2 corner?

3 A. Yes.

4 Q. So is it your understanding, you printed out
5 this document on June 2nd, 2004?

6 A. That would be my understanding.

7 Q. Okay. Why was it you went and printed out
8 this document on June 2nd, 2004?

9 A. Because I was trying to understand the
10 calculation. I was not getting a satisfactory
11 answer. The people who I spoke to could not give
12 me a satisfactory answer. I felt like I knew more
13 about the program than they did. I was printing
14 it out to show them the terms of the program.

15 Q. Well, did you read this entire attachment?
16 Let's go back to the letter so we have it. So I
17 would say from AMEX-2 to 9, did you read the
18 entire thing?

19 A. Yes.

20 Q. So you read on AMEX-4 under terms and
21 conditions in the first paragraph in that, toward
22 the middle it says: "I agree to be bound by the
23 agreement governing," and there is a word cut off,
24 "account".

25 A. I probably did read that.

0095

1 purchases, were those ever addressed to your
2 satisfaction?

3 A. They -- to this date, they've never been
4 addressed.

5 Q. Okay. What are the outstanding concerns
6 with regard to this point that you still have?

7 A. The concerns were, I wanted to understand
8 how the rewards was calculated based on the
9 purchases. And I wanted a breakdown of those
10 purchases, and the appropriate awards -- rewards.

11 Q. So when you say they refused to send me a
12 breakdown --

13 A. Correct.

14 Q. -- you were requesting a transaction by
15 transaction breakdown?

16 A. Exactly.

17 Q. That level of detail; is that correct?

18 A. Yes. Because nobody could tell me how my
19 reward was generated.

20 Q. Well, when you say no one could tell you how
21 your reward was generated, they were giving you
22 some information about how this program worked,
23 correct?

24 A. They were saying things, but every day they
25 would say things. They were confused, themselves.

1 They couldn't answer -- if everything was being
2 reconciled at the end of the year, they couldn't
3 tell me, you know, what part of the reward was for
4 my carryover versus my total annual spending.
5 Couldn't tell me anything. So the only way I
6 would be able to understand the program and
7 understand how my rewards are being allocated was
8 the detailed breakdown.

9 Q. But they did tell you that your disbursement
10 is in layers, and your response was that that's --
11 now you interpret it and --

12 A. That's not how. I believe they are
13 confused, myself. They couldn't explain it to me.
14 So, now, I had zero confidence in them.

15 Q. And all right. Then at the bottom of your
16 letter you identify three items that you requested
17 that the company provide you; is that correct?

18 A. Correct.

19 Q. Okay. After you sent this letter, did you
20 have further calls with American Express?

21 A. Yes.

22 Q. Okay. And when was the first such call that
23 you had after you sent this letter?

24 A. I don't recall.

25 Q. Do you have calls with American Express in

0097

1 July of 2004?

2 A. I don't recall.

3 MR. SMITH: Let's mark this as the next
4 document, which is Homa-10.

5 (Whereupon, Homa Deposition Exhibit No.
6 10 was marked for identification.)

7 BY MR. SMITH:

8 Q. All right. Just want to direct you to the
9 second-to-last page of the document, which is
10 Bates Number AMEX-74379. Okay. You see there is
11 an entry 7604 CM states that percentage rebate
12 applied to account is incorrect. And CM has not
13 received any rebates.

14 Do you see that entry?

15 A. CM states, which line? The one --

16 Q. Next to 7604. CM states that percentage
17 rate applied to account is incorrect. Do you see
18 that?

19 A. Yep.

20 Q. And CM has not received any rebates?

21 A. Yep.

22 Q. Do you see that? Does that refresh your
23 recollection in any way that you had a call with
24 American Express in or around July 6th, 2004,
25 talking about rebates?

1 MR. LONGMAN: Objection.

2 A. Again --

3 MR. LONGMAN: Never seen this document.

4 Q. I'm not asking him anything about the
5 document. I'm asking, in light of anything that I
6 showed him.

7 A. It doesn't refresh my recollection, but,
8 clearly, there was a conversation.

9 Q. Do you recall talking to American Express
10 about the percentage rate applied to your account?

11 A. I -- yes.

12 Q. What was the issue relating to the
13 percentage rate applied to your account?

14 MR. LONGMAN: Objection. Not his
15 language.

16 A. Again, I am viewing the call in the context
17 of the entire conversation so we did talk about
18 specific things, but the outcome was they could
19 not explain to me the rewards breakdown. They
20 sounded confused to me, themselves.

21 Q. Is there something about a percentage rate,
22 though, that you were talking to them about
23 unrelated to the rebate feature of the card?

24 A. I don't recall at this time.

25 Q. You understand what an annual percentage

0101

1 ahead.

2 A. Again, I have had several conversations with
3 American Express. I don't remember the exact
4 dates and times.

5 MR. SMITH: All right. Let's mark this
6 as Homa-12.

7 (Whereupon, Homa Deposition Exhibit No.
8 12 was marked for identification.)

9 BY MR. SMITH:

10 Q. Please, take a look at what's been marked as
11 Homa-12 for identification. Have you seen this
12 document, previously?

13 A. Yes.

14 Q. And did you receive it in and around July
15 2004?

16 A. I believe so.

17 Q. See in the first paragraph it says: Please,
18 note, we have sent you statement copies from
19 February 2004 to the present under separate cover?

20 A. Yes.

21 Q. Did American Express, in fact, do that?

22 A. They did.

23 Q. Okay. Is that something you would ask for?

24 A. No. I asked for a complete break down of how
25 the rewards were, you say,

1 transaction-by-transaction basis, to use your
2 words and how the rewards were applied.

3 Q. The next paragraph says, the calculation of
4 your rebate is based on a tier and not a flat 5
5 percent. Do you see that? You wrote that in or
6 around July 2004, correct?

7 A. Yes.

8 Q. Is that how you understood the product to
9 work, the rebate feature of the product to work?

10 A. At that time I still understood that the
11 rebate was based on my total annual spend. And,
12 further, if you read the paragraph, fourth
13 paragraph, if at any point during the year you
14 resolved the balance, you can earn additional
15 resolved balance point 5 percent, non-everyday
16 spend rebate and 2 percent for every day spend
17 rebate. It further solidified in my mind the
18 confusion at American Express, because I was
19 either getting rebates on the resolved bonus and,
20 therefore, not adequate rebates on -- even if you
21 wanted to call it a tier, the whole calculation
22 made zero sense. And the proof given to me by
23 American Express made zero sense. And that's why
24 I asked for a complete breakdown. In my mind, I
25 was convinced American Express, the customer

1 service people, had no clue what they were saying.

2 Q. Did you have an understanding of what the
3 term "tier" means?

4 A. I understand what "tier" means. I
5 understand, also, earlier in that previous letter
6 they put the tiers as different rates, but it made
7 no sense to me based on my calculation. They were
8 trying to explain a program they couldn't
9 understand, themselves.

10 Q. Let's go back for a minute to Homa-8, the
11 June 30th letter. And if we could look at the
12 page with Bates number AMEX-3. The page with the
13 grid that has total annual spend cash back on
14 every purchase.

15 A. Yes.

16 Q. Do you have an understanding of how that
17 grid would work if it's being calculated as a tier
18 -- in a tiered method?

19 A. At that point?

20 Q. I'm just talking about -- forget about at
21 that point. I'm just asking you, right now, do
22 you have an understanding how that would be
23 calculated under a tiered method?

24 A. No. Now, I do.

25 Q. How would it be calculated under a tiered

1 method?

2 A. Now my understanding, because I want to be
3 clear, that the word, "tiered," did not mean, to
4 me, the understanding that I'm telling you now.

5 Q. Okay.

6 A. Now, my understanding is that between zero
7 and \$2,000 a reward of point 5 percent or point 25
8 percent would be applied to all expenditures in
9 that tier. Once that tier is met, any
10 expenditures between 2,000 and 6,000, a different
11 and higher percentage would be applied.

12 Q. That would be the one percent to --

13 A. Or the point 5 percent.

14 Q. Okay. And --

15 A. When the second -- third tier is met, then a
16 three percent or one point five percent bonus is
17 applied.

18 Q. Well, what was your understanding of how a
19 tier would operate back in the or around July of
20 2004?

21 A. That when I reached the third tier, I
22 qualified for 3 percent on every day purchases and
23 1.5 percent on other purchases for my entire
24 annual spend.

25 Q. But looking in your June 30th, 2004, letter,

0110

1 And this is why I chose to use your card?

2 A. Yes.

3 Q. Okay. What is the documentation that you
4 were referring to there?

5 A. The internet documentation that I supplied
6 in my first letter.

7 Q. That was an attachment to your June 30th --

8 A. Correct.

9 Q. -- letter. Do you remember any calls with
10 American Express in or around the time period --
11 now we're talking about August/September 2004?

12 A. I, probably, had calls, but I don't
13 recollect any.

14 Q. Do you recall any sort of progression with
15 the calls, with issues being raised and revisited
16 in subsequent calls or points being looked at and
17 addressed in further conversations?

18 A. The only thing I recall was my continued
19 frustration with American Express, because I
20 continued to ask for information. They couldn't
21 give it. They couldn't explain how the rebate
22 rewards worked to my satisfaction.

23 Q. And wanted a complete -- if I understand,
24 you wanted a complete transaction-by-transaction
25 breakdown?

0111

1 A. Correct.

2 Q. Let's go back to the documents previously
3 marked as Homa-10 for identification. And I
4 wanted to direct you to Page AMEX-74377 to 74378.
5 I want to direct your -- it is four pages from the
6 back, entry for 9/17/04.

7 A. Yes.

8 Q. C-M-R-E-Q, full percent rebate on all every
9 day purchases since account was opened. And you
10 see a further description continuing to the second
11 page?

12 A. 22 percent bonus on all charges up to this
13 point. And, also, a basic CM. Is that what --

14 Q. Do you understand, that means card member?
15 Does this refresh your -- I just want you to read
16 that. And then my question is: Does this refresh
17 your recollection in any way about a conversation
18 you had with someone in American Express in or
19 around September 17th, 2004?

20 A. Clearly, I had a conversation. Again, it
21 doesn't necessarily refresh my memory about this
22 particular conversation. But it does bolster what
23 I was saying. I was asking for a breakdown.

24 Q. Does it refresh your recollection that this
25 conversation was prompted by the sending of your

0112

1 September 14th, 2004, letter. Was there a
2 connection between sending the letter and making a
3 follow-up call?

4 A. It's possible.

5 Q. You don't specifically recall, though?

6 A. The only thing I recall is, I probably was
7 very agitated at the time because I wasn't getting
8 an answer.

9 MR. SMITH: Let's mark this as 15.

10 (Whereupon, Homa Deposition Exhibit No.
11 15 was marked for identification.)

12 BY MR. SMITH:

13 Q. Please, take a look at what's been marked as
14 Homa-15 for identification. Have you seen that
15 document before?

16 A. Yes.

17 Q. Did you receive it in or around September
18 2004?

19 A. I think so, yes.

20 Q. Okay. Do you recall speaking with anyone as
21 a result of receiving this letter?

22 A. I don't recall.

23 Q. Do you recall doing anything in response to
24 receiving this letter?

25 A. I believe this letter came with a breakdown,

0113

1 if I'm not mistaken. But, maybe, it wasn't
2 exactly with this. Maybe, it was within a
3 separate letter.

4 Q. You recall, you received a letter with a
5 breakdown?

6 A. I recall I received a breakdown. I don't
7 remember if it was with a letter or separate with
8 -- from a letter, but I think it was around the
9 same time.

10 MR. SMITH: Let's mark this as the next
11 document.

12 (Whereupon, Homa Deposition Exhibit No.
13 16 was marked for identification.)

14 BY MR. SMITH:

15 Q. Please, take a look at what's been marked as
16 Homa-16. Have you seen that document before?

17 A. Yes, I did.

18 Q. Is it a letter you received in or around
19 September 28th, 2004?

20 A. Yes, it was.

21 Q. And did the second page of the document
22 accompany the letter?

23 A. I believe so, yes.

24 Q. Okay. And is that -- is the second page
25 information that was provided to you by American

0114

1 Express?

2 A. Yes.

3 Q. Okay. Again, looking at the second
4 paragraph of the document, it says: The Blue Cash
5 rebate is calculated on a tier and not a flat 5
6 percent. Do you see that?

7 A. I did.

8 Q. And you saw that in and around September
9 2004?

10 A. I did.

11 Q. Okay. And did you read the other paragraphs
12 describing --

13 A. I read everything.

14 Q. You read the entire letter? Okay. You see
15 under the sixth paragraph down, it says, we
16 respectfully suggest you refer to your card member
17 agreement for the full disclosure. Do you see
18 that?

19 A. Yes.

20 Q. Did you do that?

21 A. If I recall, I looked at the documentations
22 that I had at that time.

23 Q. And do you recall, specifically, having the
24 card member agreement at that time?

25 MR. LONGMAN: Asked and answered. Go

0115

1 ahead.

2 Q. We're talking about now in response to this
3 letter in September, late September 2004?

4 A. I'm not sure if I had a card member
5 agreement.

6 Q. Do you remember asking in response to this
7 letter, American Express, for a copy of your card
8 member agreement?

9 A. I probably did.

10 Q. And did you receive one, then, as a result?

11 MR. LONGMAN: Well, I don't want you to
12 speculate.

13 Q. Don't guess or speculate. If you know you
14 did, if you have a reasonable basis to testify,
15 you can do so.

16 A. I'm not sure. That's why you're asking me
17 about that brochure. I may have received that at
18 the time. That's why I'm not sure I received the
19 brochure in the beginning. I don't think I ever
20 received a -- language, specifically, that details
21 the tier system.

22 Q. Okay.

23 MR. LONGMAN: Referring to your answer
24 that you probably --

25 A. I don't recall receiving a card member

0116

1 agreement, no.

2 Q. Okay. So when you said at the beginning --
3 so your testimony is, you may have received that
4 brochure when you got your -- when you received
5 your card?

6 A. I said that again. Yes. I already
7 testified to that.

8 Q. You may have, but you're not sure?

9 A. All right.

10 Q. Okay. And when you looked at the second
11 page of the document, did you perform any analysis
12 of the numbers that American Express had provided
13 to you?

14 A. Yes, I did.

15 Q. And what was the analysis that you
16 performed?

17 A. My analysis was that I took a look at it.
18 And right from the get-go it didn't make sense,
19 which, again, further solidified, in my mind, that
20 American Express was confused and that's why I
21 continued to ask for a detailed breakdown.

22 Q. When you said, "right from the get-go, it
23 didn't make sense," what do you mean by that?

24 A. When I looked at the total that they
25 calculated for the bonus versus the total for the

0117

1 annual spend, it didn't match up. So I couldn't
2 make heads or tails of it.

3 Q. Okay.

4 A. So it completely discredited everything that
5 was discussed on this page, because I carried a
6 bonus every month.

7 Q. In the document, right, they're providing
8 you information by tier, correct? In that column
9 it says, "tier"?

10 A. Tier.

11 Q. One, two, three, correct?

12 A. Yes.

13 Q. Did you perform any analysis, specifically,
14 related to that tier portion of the document?

15 A. I believed that I was confused from the
16 get-go and because I could not make heads or tails
17 from the get-go. And then at that point I
18 couldn't perform analysis, because it didn't make
19 sense to me, in my mind.

20 Q. Do you remember performing any sort of
21 calculation -- I'm just focusing on the tier piece
22 of it, now, the first half of the document. Do
23 you remember performing any calculations to try to
24 verify or understand when, just, for example, on
25 the first entry it indicates Tier 1, the month,

0118

1 the day. You understood ED to be every day?

2 A. I don't recall what I understood at that
3 time. I do recall looking at this and seeing that
4 these numbers were off, so I probably, you know,
5 at that time did recall ED versus NED, but I was
6 very confused by the letter. It just further
7 solidified, in my mind, that American Express and
8 the customer service reps I was talking to had no
9 clue what they were telling me. They couldn't
10 give me the numbers.

11 MR. LONGMAN: When you said, "these
12 numbers," you actually pointed to something.

13 A. I was pointing to -- they don't reconcile.
14 The total numbers was based off of 5 9 4 2, but my
15 spend was 19. It didn't make sense to me.

16 Q. I want to break this down a little bit,
17 though, okay, because I'm not really clear on your
18 testimony at this point. Okay? After you got
19 this letter --

20 A. Yes.

21 Q. -- in or around September 2004, just looking
22 at the first half of the second page where it is
23 headed by tier, it has the column tier, and then
24 it goes 1, 2, 3?

25 A. Yes.

0119

1 Q. Did you perform any calculations simply
2 related to any of the figures in that first half
3 of the document?

4 A. It's possible, but I don't recall.

5 Q. Okay. Do you recall as a result of any
6 calculations that you did developing any source of
7 understanding as to how, just again, related to
8 the Tier 1, 2, 3, how American Express was
9 calculating the tier portion of the rebate, not
10 the revolving bonus portion?

11 A. Yeah. I viewed it in the context of the
12 entire rewards program. I could not make heads or
13 tails out of it, so, no. I don't believe I ever,
14 like, understood it. And that's why I kept asking
15 for the breakdown.

16 Q. When you say, "the breakdown," what are you
17 referring to?

18 A. The transaction-by-transaction breakdown.

19 Q. And what about on the second half of the
20 document? Did you perform -- and you see under,
21 again, that far column to the left, there is BNS?

22 A. Yes.

23 Q. Did you understand that to mean bonus?

24 A. I don't recall at the time.

25 Q. Did you perform any sort of calculations

1 just related to the second half of the document?

2 A. Again, I do recall looking at these numbers
3 and seeing that they didn't add up. And it didn't
4 make sense to me. And I couldn't understand this.
5 And it just further solidified the confusion of
6 American Express.

7 Q. Did you ask yourself at this point in time,
8 maybe, that was why I was having the confusion?

9 A. I was confused.

10 Q. Okay. Did you do anything -- what, if
11 anything, other than what you testified to, did
12 you do further in response to this letter?

13 A. It's possible that I called for further
14 clarification, but I'm not sure if I did.

15 Q. Do you remember actually performing any
16 calculations on a sheet of paper or with a
17 calculator after receiving this document?

18 A. After receiving this document?

19 Q. Yes.

20 A. It's possible, I couldn't -- I don't recall.

21 MR. SMITH: Okay. Let's mark this as
22 the next document. This is Homa-17.

23 (Whereupon, Homa Deposition Exhibit No.
24 17 was marked for identification.)

25 BY MR. SMITH:

0121

1 Q. Please, take a look at what's been marked as
2 Homa-17 for identification.

3 (Pause.)

4 Q. Have you seen this document before?

5 A. Yes.

6 Q. Is this your July 14th, 2005, letter to
7 American Express?

8 A. Yes.

9 Q. And that's your signature on the third page
10 of the document?

11 A. Yes.

12 Q. And the re line now indicates misleading and
13 false advertising?

14 A. Yes.

15 Q. Why did you include that as the re line?

16 A. Well, at this time I understood that the
17 program American Express was offering was not what
18 they advertised it to be.

19 Q. And what do you mean by that? At this time
20 you understood that --

21 A. I mean, at this time it was crystal clear in
22 my mind that I was not going to get the full three
23 percent on my total annual spend.

24 Q. And how did you obtain that level of
25 clarity?

1 A. Probably, after several calls with American
2 Express prior to this letter.

3 Q. Was there a specific date that you recall
4 where you reached that level of clarity?

5 A. No.

6 Q. Was it --

7 A. But it was on or before July 14th.

8 Q. But you don't remember when?

9 A. No.

10 Q. Was there a specific event that happened
11 that resulted in you achieving the level of
12 clarity?

13 A. It was probably based on a phone
14 conversation.

15 Q. What was discussed in that phone
16 conversation?

17 A. I don't know. The only reason why is
18 because I don't see any other way how I would have
19 understood it at that time.

20 Q. Well, do you have a specific recollection of
21 a phone conversation or are you speculating?

22 A. I'm speculating.

23 Q. We don't want you to guess or speculate.

24 A. Okay.

25 Q. Do you have a recollection of a specific

0123

1 telephone conversation of which you spoke to
2 someone at American Express, and after that call
3 any confusion you may have had is abated? I
4 understand how the program works, and now it's
5 clear?

6 A. No, I don't recall.

7 Q. Did you ever get the detailed,
8 transaction-by-transaction breakdown that you had
9 sought?

10 A. No.

11 Q. As this process is going, continuing in
12 September, August, September, October, November,
13 through the end of 2004, were you ever considering
14 stopping use of the Blue Cash credit card in light
15 of this situation?

16 A. I wanted to complete the full year, because
17 I thought there may be a reconciliation at the end
18 of the year, which they couldn't answer me, as
19 well.

20 Q. Did anybody tell you, in words or substance,
21 that there would be reconciliation at the end of
22 the year?

23 A. There was confusion.

24 Q. I'm asking a very specific question. In
25 words or substance, did anybody tell you that

0124

1 there was going to be a reconciliation at the
2 time, at the end of the year?

3 A. I don't recall.

4 Q. Looking at Homa-17 for identification, the
5 first paragraph, you say in the second sentence in
6 your 4/1/05 statement, you indicated on 3/3/05
7 that my cash back award was \$625. Do you see
8 that?

9 A. Yes.

10 Q. And you wrote that sentence?

11 A. Yes.

12 MR. SMITH: Let's mark this as Homa-18,
13 please.

14 (Whereupon, Homa Deposition Exhibit No.
15 18 was marked for identification.)

16 BY MR. SMITH:

17 Q. Is Homa-18 the 4/1/05 statement that you
18 referred to your July 14 letter?

19 A. I believe so.

20 Q. Okay. And you see on the first page, Bates
21 Number AMEX-144, it indicates your annual cash
22 reward is -- and then it says, \$625 credit?

23 A. Correct.

24 Q. And, see, you received a \$625 credit from
25 American Express for the use of your Blue Cash

0125

1 card?

2 A. Correct.

3 Q. Okay. Next, you say, according to my
4 calculation on 3/3/05 you would have owed me
5 \$917.89, which is \$354.89 more than your
6 calculations. Do you see that?

7 A. Correct.

8 Q. Okay. And you are referring to your
9 calculation?

10 A. Correct.

11 Q. All right. Okay. And still on the first
12 page under where you break it down and say
13 calculation Number 1, underneath that you say, I
14 refer you to the ten-page spread sheet I attached.
15 Do you see that?

16 A. Yes.

17 Q. And is the ten-page spread sheet your
18 calculation that you're referring to?

19 A. Yes.

20 MR. SMITH: Let's mark this as Homa-19.

21 (Whereupon, Homa Deposition Exhibit No.
22 19 was marked for identification.)

23 BY MR. SMITH:

24 Q. Please, take a look at what's been marked as
25 Homa-19. Is that the ten-page spread sheet you

0154

1 A. Yes.

2 Q. Okay. Did you authorize the filing of an
3 amended complaint in this case?

4 A. Yes.

5 Q. Are there any other things that you recall
6 authorizing in connection with the case?

7 A. Yes.

8 Q. And what is that?

9 MR. LONGMAN: Go ahead.

10 A. The action that was filed in the Third
11 Circuit Court in Philadelphia, the, the demand
12 that we made.

13 Q. You're talking the settlement context?

14 A. Yes.

15 Q. And anything else that you recall?

16 A. If you ask specific questions, it may
17 refresh my memory.

18 Q. Okay. You also indicated, as part of your
19 responsibilities of filing this case as a class
20 action you would have to notify the class of
21 certain things?

22 A. Yes.

23 Q. Okay. What do you understand, specifically,
24 that responsibility to require?

25 A. That I'm -- that they were certified as a