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11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SACRAMENTO
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15 **STATE OF CALIFORNIA *ex rel* MELLON**

16 Plaintiff,

17 v.

18 **CITIGROUP, INC., CITICORP, CITIBANK, N.A.,**
19 **CITI CARDS, N.A., CITIBANK (DELAWARE),**
20 **N.A., CITI CARDS, N.A., CITIBANK (SOUTH**
DAKOTA), N.A., CITICORP CREDIT SERVICES,
INC., and DOES 1 through 20 inclusive,

21 Defendants;

22 **THE PEOPLE OF THE STATE OF CALIFORNIA**
23 **and THE CONTROLLER OF THE STATE OF**
CALIFORNIA

24 Interveners
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Case No. 05AS02954

**STIPULATED FINAL
JUDGMENT AND
PERMANENT INJUNCTION**

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Based on a review of the Complaint in Intervention in this action, the Stipulation for Entry of Final Judgment and Permanent Injunction, and this Final Judgment and Permanent Injunction (“Judgment”), the Court finds that:

1. Plaintiffs the People of the State of California by and through California Attorney General Edmund G. Brown Jr. (“People”), California State Controller John Chiang (“Controller”), and *qui tam* plaintiff Albert Z. Mellon IV (*Qui Tam* Plaintiff, collectively “Plaintiffs”), on the one hand; and Citibank (South Dakota), N.A., and Citicorp Credit Services, Inc. (USA) (collectively “Defendants”), by and through their counsel; on the other hand, have resolved the matters in controversy between them, including all claims asserted against Defendants and all other defendants named in the Complaint and Complaint in Intervention;

2. Plaintiffs and Defendants have jointly signed a stipulation for entry of this Judgment, which is filed concurrently herewith and which is incorporated herein as if fully set forth;

3. Consistent with the stipulation of the parties, this Judgment, including the injunctive relief ordered pursuant to paragraphs 7 and 8 herein, is entered without trial, without the taking of evidence, without the adjudication of any issue of law or fact, without any admission by Defendants as to any fact or issue of law raised by the Complaint or the Complaint in Intervention, and without a waiver of any argument, contention, or defense Defendants may wish to raise in any other proceeding;

4. By stipulating to the entry of this Judgment, Defendants do not concede (and nothing herein shall be construed as conceding) that the Attorney General of California can exercise visitorial powers over Defendants, and nothing herein shall constitute or be deemed a waiver of any such defense or any other defense in any other pending or later-filed action against Defendants; and

5. Good cause therefore exists to enter this Judgment.

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1 Therefore, the Court **ORDERS, ADJUDGES** and **DECREES**:

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3 **PERMANENT INUNCTION REGARDING**
4 **DEFENDANTS' BUSINESS PRACTICES**

5 6. The injunctive provisions of paragraphs 7 and 8 this Judgment apply to Defendants, to
6 all entities that perform credit card servicing functions on California Accounts (as defined
7 below) for or on behalf of Defendants, and to their agents, employees, representatives,
8 successors, assigns, and to all persons acting by, through, under or on behalf of them, and to all
9 persons acting in concert with or participating with any of them with knowledge of this
10 Judgment, all of whom shall be collectively and individually referred to as the “Enjoined
11 Parties.” Defendants, entities performing servicing functions on California Accounts for or on
12 behalf of Defendants, and their successors and assigns (collectively the “Responsible Enjoined
13 Parties”) shall be responsible and liable for any violation of these injunctive provisions by any
14 agent, employee, representative or person acting by, through, under or on behalf of them, or by
15 any person acting in concert with or participating with any of them with knowledge of this
16 Judgment (collectively the “Assisting Enjoined Parties”). An Assisting Enjoined Party, which is
17 not also a Responsible Enjoined Party, shall not be held individually liable for a violation of
18 these injunctive provisions.

19 7. Pursuant to California Business & Professions Code § 17203, the Enjoined Parties are
20 hereby permanently enjoined and restrained from directly or indirectly doing any of the
21 following:

22 A. Using an Automated Sweep Process to transfer Credit Balances from California
23 Accounts, other than Litigation Accounts, to Defendants.

24 B. Using an Automated Sweep Process to transfer Credit Balances from California
25 Litigation Accounts to Defendants, unless Defendants reasonably believe that the funds to be
26 transferred belong in their entirety to Defendants.

27 8. As used herein: (A) an Automated Sweep Process is a process, designed to be run
28 periodically, that automatically debits Credit Balance funds from customer credit card accounts

1 without determining whether such Credit Balances should be refunded to a customer; (B) Credit
2 Balances are negative account balances resulting from the application of payments or credits in
3 excess of the account balance; (C) California Accounts are credit card accounts in a Recovery
4 Status with a customer address in the State of California at the time that an Automated Sweep
5 Process is run on the account; (D) California Litigation Accounts are Litigation Accounts in a
6 Recovery Status with a customer address in the State of California at the time that an Automated
7 Sweep Process is run on the account; (E) a credit card account is in Recovery Status if the
8 customer has died, filed for bankruptcy, is the subject of collection efforts, or is or has been
9 involved in civil litigation initiated by or on behalf of Defendants as a result of the customer's
10 non-payment, or if the account is otherwise classified by Defendants as in "Recovery Status" or
11 "Status 34"; and (F) Litigation Accounts are credit card accounts that are in Recovery Status
12 solely because the customer is or has been involved in civil litigation (other than Probate or
13 Bankruptcy proceedings) initiated by or on behalf of Defendants due to the customer's non-
14 payment.

15
16 **RESTITUTION AND COMPLIANCE WITH THE**
17 **UNCLAIMED PROPERTY LAW**

18 9. Pursuant to Business & Professions Code section 17200, *et seq.*, and the Unclaimed
19 Property Law, Code of Civil Procedure section 1500, *et seq.*, Defendants shall jointly and
20 severally pay restitution and comply with the Unclaimed Property Law as follows:

21 **Identification and Review of Swept Accounts**

22 A. Using credit card statement data in their possession for the period January 1,
23 1992, through July 31, 2003, Defendants shall identify all credit card accounts that were in a
24 "Status 34" or "Recovery" status and which had a Credit Balance in a billing cycle and a
25 subsequent reverse settlement in that same billing cycle. Accounts with these characteristics that
26 have a reverse settlement of \$1 or more shall be known as the "Identified Accounts."

27 B. Defendants shall refund (as described below) the full amount of all reverse
28 settlements from Identified Accounts coded as Probate.

1 C. Defendants shall refund (as described below) the full amount of all reverse
2 settlements of less than \$10 from Identified Accounts that are not coded as Litigation.

3 D. Defendants shall manually review all other Identified Accounts, other than
4 accounts coded as Litigation, to determine whether the funds removed through reverse
5 settlement were owed to Defendants or to the customer. Following this review Defendants shall
6 refund (as described below) any amounts removed from the Identified Accounts through reverse
7 settlement unless Defendants can establish that they are entitled as a matter of law to retain the
8 funds. If Defendants can establish that they are entitled to only a portion of the funds removed
9 from the account, then they shall refund the remainder. Any doubts or uncertainties shall be
10 resolved in favor of refunding, rather than retaining, the funds.

11 E. Notwithstanding subparagraph D of paragraph 9, Defendants may refund (as
12 described below) the full amount of any reverse settlement without conducting a manual review
13 to determine whether the funds removed through reverse settlement were owed to Defendants or
14 to the customer.

15 F. Defendants shall pay interest at a rate of 10% per annum on all refunds made on
16 California Accounts. Interest shall be calculated, at Defendant's discretion, from the date of the
17 reverse settlement or from the first day of the month in which the reverse settlement occurred. If
18 the month of the reverse settlement cannot be determined, Defendants shall pay interest from the
19 first day of the year in which the settlement occurred.

20 **Refund Mechanism**

21 G. Defendants shall issue refunds as follows:

22 1. Within thirty days of determining that funds are to be refunded on a given
23 account, Defendants shall send a letter (the "Contact Letter") stating that Defendants are holding
24 an amount due to the customer. The Contact Letter shall be mailed via first class mail to the last
25 known address for the customer in Defendants' records for the account.

26 2. The Contact Letter sent for accounts coded as Probate shall be in the form
27 attached hereto as Exhibit 1, and shall be accompanied by a form, Exhibit 2, for the estate or
28 customers' representative to complete and sign and return to Defendants. The letter sent for all

1 other accounts shall be in the form attached hereto as Exhibit 3, which the customer is asked to
2 complete and sign and return to Defendants.

3 3. Except where the information provided is incomplete or requires
4 clarification, Defendants shall not require any person to complete any other forms solely to
5 receive the refunds described herein. Moreover, Defendants shall not require any person to pay
6 any charge, or to waive or compromise any claim or cause of action solely to receive a refund as
7 provided herein.

8 4. If Defendants receive a properly completed form within 60 days of mailing
9 the Contact Letter, then Defendants shall issue a check to the customer, the estate, or the
10 customers' representative.

11 5. If Defendants do not receive a properly completed form within 60 days of
12 mailing the Contact Letter, then Defendants shall escheat the amount to be refunded to the state
13 of the customer's last known address as reflected in Defendants' records for the account.
14 Defendants shall escheat these funds in accordance with the procedures established by that
15 state's unclaimed property and escheat laws. Defendants shall begin this process for each given
16 refund within 90 days of mailing the Contact Letter.

17 6. If Defendants receive a properly completed form more than 60 days after
18 mailing the Contact Letter, then Defendants will act in accordance with the unclaimed property
19 laws of the state of the customer's last known address as reflected in Defendants' records for the
20 account. If authorized by the applicable unclaimed property law Defendants may issue a refund
21 directly to the customer, the customer's estate, or the customers's representative, or refer the
22 customer to the appropriate state agency.

23 7. With respect to the refunds to be made pursuant to this Judgment,
24 Defendants shall fully and completely comply with the escheat and unclaimed property laws of
25 the state of the customer's last known address as reflected in Defendants' records for the account.

26 H. Defendants are not required to reissue a refund for an amount refunded in the
27 ordinary course of business within 180 days following the initial credit sweep, or for an amount
28 refunded prior to the entry of this Judgment if the prior refund satisfies paragraph 9 of this

1 Judgment. If a prior refund was made in an amount less than the amount to be refunded pursuant
2 to paragraph 9 of this Judgment, Defendants shall issue a refund, if required, only for the amount
3 of the difference.

4 **Missing or Incomplete Data**

5 I. In the event that credit card statement data is missing or incomplete for any period
6 of time between January 1, 1992, through July 31, 2003, Defendants shall estimate the aggregate
7 amount that should have been refunded to customers for each such period of time (the Estimated
8 Refund). Each Estimated Refund shall be calculated based on the average refund amounts for
9 the first twelve months for which data is available following each period of time for which data
10 is missing or incomplete. Defendants shall escheat the Estimated Refund as unclaimed property
11 in accordance with the laws of the holder's state of domicile.

12 J. If Defendants cannot determine the last known address for a given account then
13 Defendants shall escheat such funds in accordance with the laws of the holder's state of
14 domicile.

15 **Completion and Reporting**

16 K. Defendants shall keep records sufficient to demonstrate compliance with the
17 provisions set forth in subparagraphs A through J of paragraph 9, and they shall provide access
18 to those records to the California Attorney General's Office and to the California State
19 Controller upon reasonable request.

20 L. Defendants shall complete the process described in subparagraphs A through J of
21 paragraph 9 no later than June 1, 2009. Defendants shall then retain an independent third party
22 auditor acceptable (which acceptance shall not be unreasonably withheld) to the California
23 Attorney General's Office to audit a statistically valid sample of the Identified Accounts to
24 confirm that Defendants have complied with the requirements of subparagraphs A through J of
25 paragraph 9. The auditor shall prepare an audit report regarding its findings and provide a copy
26 of its report to the California Attorney General's Office and to the California State Controller's
27 Office. The auditor shall redact personal identifying information regarding non-California
28 customers from its report. This audit shall be completed within 180 days. If the audit identifies

1 refunds that were not made but should have been made, Defendants shall, within 90 days of
2 receipt of such report, initiate such refunds. The People and the Controller shall have 180 days
3 following their receipt of the report to request that Defendants take further action with regard to
4 such refunds.

5 M. Defendants shall prepare periodic reports showing the total amount refunded and
6 the total number of refunds issued for California and nationwide. This data shall be broken
7 down by the month in which the reverse settlement occurred. These reports shall be prepared
8 and delivered to the California Attorney General's Office and California State Controller's
9 Office six months from the date of entry of this Judgment, and every six months thereafter until
10 the refund process is complete. With each such report, Defendants shall also provide any and all
11 data and calculations that it used to calculate estimates pursuant to subparagraph I of paragraph
12 9.

13 N. Defendants shall provide the California Attorney General's Office and California
14 State Controller's Office with copies of all unclaimed property or holder reports submitted to the
15 California State Controller that include refunds made pursuant to this Judgment. The reports
16 submitted pursuant to this subparagraph shall be clearly marked to show the entries on the
17 reports that constitute refunds made pursuant to this Judgment.

18 O. Defendants shall, within six months of entry of this Judgment and every six
19 months thereafter, until all refunds due California customers have been made or escheated,
20 provide the California Attorney General's Office and California State Controller's Office with a
21 list showing the customer name, address, date of refund, amount refunded, and date of reverse
22 settlement (to the extent known) for all refunds made directly to a customer whose last known
23 address was in the State of California, or to the representative of the customer or the customers'
24 estate. The California Attorney General's Office and California State Controller's Office shall
25 maintain this information in accordance with applicable privacy laws.

26
27 **MONETARY JUDGMENT**

28 10. The People and the Controller shall and hereby do have judgment against Defendants,

1 jointly and severally, in the total amount of \$ 3,500,000.

2 11. The Qui Tam Plaintiff shall and hereby does have judgment against Defendants in the
3 total amount of \$ 300,000 for costs and fees pursuant to California Government Code section
4 12652, subdivision (g)(8).

5 12. Plaintiffs and Defendants shall otherwise bear their own litigation costs and attorneys
6 fees.

7
8 **OTHER PROVISIONS**

9 13. The settlement set forth in the Stipulation for Entry of Judgment and in this Judgment
10 is fair, adequate and reasonable under all of the circumstances for purposes of Government Code
11 section 12652, subdivision (e)(2)(B).

12
13 **JURISDICTION**

14 14. This Court has jurisdiction to enter this Judgment and it shall retain jurisdiction over
15 this matter for the purpose of enabling the People, the Controller, or Defendants to apply to the
16 Court at any time for any further orders or directions as may be necessary or appropriate, for the
17 construction or carrying out of this Judgment, for the allocation of the monetary judgment in this
18 action, for the modification or termination of the injunctive provisions of this Judgment, and for
19 the People or the Controller to apply at any time for the enforcement of any provisions of this
20 Judgment and for punishment of any violations of this Judgment.

21 15. This Judgment shall take effect immediately upon its entry.

22 16. The clerk is ordered to enter this judgment forthwith.

23
24 **IT IS SO ORDERED**

25 AUG 25 2008

26 SHELLEYANNE W.L. CHANG
27 JUDGE OF THE SUPERIOR COURT

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