

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into this 26th day of July, 2004 ("Effective Date") by and between the following parties: Lillian Scaife, Don Brown, Kathy Martinez, Kelly Pierce and the California Council of the Blind (collectively, "Claimants") and American Express ATM Holdings, Inc. ("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:

A.

Each of the individual Claimants is an individual who is blind or vision-impaired and who has used, has been deterred from using, or would like to use American Express ATMs. Each of the individual 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. Claimants Martinez, Scaife and Brown are residents of the State of California and each is an individual with a disability within the meaning of the laws of the State of California, including the Unruh Civil Rights Act and Disabled Persons Act (Cal. Civil Code §§ 51, 54.1). Claimant Pierce is a resident of the State of Illinois and is an individual with a disability within the meaning of the Illinois Human Rights Act (775 ILCS § 5/5-102).

B.

The California Council of the Blind ("CCB"), an affiliate of the American Council of the Blind, is a non-profit corporation that provides advocacy services on behalf of individuals who are blind or have vision impairments. The CCB is dedicated to promoting the full integration into all aspects of society of persons who are blind or have vision impairments, and provides information to the general public about the accomplishments, needs and contributions of persons who are blind or vision-impaired. Among CCB's members, and those on whose behalf it advocates and provides services, are many individuals with disabilities within the meaning of state and federal law who have used, have been deterred from using, or would like to use American Express ATMs both in California and in other states to which they travel. CCB is incorporated and has its place of business in the State of California.

C.

American Express does business, and owns, operates or leases ATMs in California, Illinois and other states across the United States.

D.

A dispute has arisen between Claimants on one side and American Express on the other side, concerning whether American Express provides Claimants with legally required access to its ATMs ("the ATM Dispute").

E.

The parties enter into this Agreement in order to resolve the ATM Dispute and to avoid the burden, expense, and risk of potential litigation. It is the intention of the parties that that actions required by American Express under this Agreement satisfy any currently applicable ADA access requirements, or similar state requirements, relating to access by Persons with Vision Impairments to American Express ATMs; provided, however, that, by entering into this Agreement, American Express does not admit, and specifically denies, that it 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.

American Express ATM means a self-service, card-accessed electronic information processing device that dispenses cash and/or accepts deposits, is owned, leased or operated by American Express and is installed in public locations for the primary purpose of conducting certain financial transactions directly through the device. Excluded from the foregoing definition are financial service kiosks in 7-Eleven stores, known as of the Effective Date as Vcoms, for which American Express provides ATM services.

1.2.

American Express Talking ATM means an American Express ATM that enables Persons with Vision Impairments to independently access all Functions on the ATM that are available to sighted persons and are required to be accessible pursuant to this Agreement. An American Express Talking ATM has the following features: (1) speech output with volume control; (2) Tactilely Discernible Controls; (3) private audible output of information; (4) the same degree of privacy of user input as is provided to sighted users; (5) ability for the user to review and correct entries without canceling the entire transaction to the same extent that sighted users of the ATM can so review and correct entries for the particular transaction; (6) audible transaction prompts to enable completion of each Function; (7) audible operating instructions and orientation to machine

- layout; (8) ability for the user to interrupt (bypass) audible instructions; (9) repeat of audible instructions; (10) audible verifications for all inputs, except entry of the personal identification number need not be verified audibly with numbers; and (11) speech output in all languages in which the ATM presents text on the ATM screen. When the method for ensuring privacy is an earphone, the earphone jack will be placed in an easily locatable position, which shall be, where physically practical, in a similar location on each American Express Talking ATM and will be a standard, 3.5 millimeter size.
- 1.3. 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.
- 1.4. Counsel means Goldstein, Demchak, Baller, Borgen & Dardarian and The Law Office of Elaine B. Feingold, and the attorneys practicing law therein.
- 1.5. Function means a task or transaction that an American Express ATM is capable of performing. Examples of ATM Functions as of the Effective Date include the ability to dispense cash, provide account balance information before and after a transaction, and order Western Union money transfers.
- 1.6. 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.
- 1.7. Tactilely Discernible Controls means operating mechanisms used in conjunction with speech output that can be located and operated by feel. When a numeric keypad is part of the Tactilely Discernible Controls used on a American Express Talking ATM, all Function keys will be mapped to the numeric keypad and the numeric keypad will have an “echo” effect such that the user’s numeric entries are repeated in voice form, except for the entry of a personal identification number.

2. Duration and Geographic Scope of Agreement.

This Agreement shall apply to all American Express ATMs in the United States of America, Puerto Rico, Guam and the Virgin Islands (“Geographic Area”). The terms of this Agreement shall remain in effect from the Effective Date to six months after the completion of the Installation schedule described in section 3.2(a) and Schedule A below (the “Duration”) or in any Addendum hereto, subject to the exception set forth in section 3.2(c) below. Should American Express sell, transfer or assign ownership and control of all of its ATMs to a third party that is not an entity controlled by American Express Company or by one of American Express Company’s direct or indirect wholly-owned subsidiaries, this

Agreement shall terminate upon Claimants' receipt of written notice from American Express of the completion of such transaction.

3. American Express Talking ATMs.

3.1 Development and Testing Phase.

American Express has been, and currently is, engaged in the process of developing and testing American Express Talking ATMs. Claimants and Counsel previously have provided comments and suggestions in connection with the development and testing of American Express Talking ATMs.

3.2 Installation of American Express Talking ATMs.

3.2(a) American Express will install American Express Talking ATMs (and/or modify already installed ATMs so that they become Talking ATMs), pursuant to Schedule A attached to this Agreement. To the extent that American Express installs more American Express Talking ATMs than the number specified in any specific time period set forth in Schedule A, the excess number of American Express Talking ATMs shall be applied to the next successive time period for purposes of compliance with this section.

3.2(b) In the event American Express cannot comply with any part or portion of Schedule A, American Express may, prior to the expiration of the specific time period at issue set forth in Schedule A, notify Claimants in writing explaining the inability to comply with Schedule A, specifying the reason(s) for its inability to comply and advising a specific date as to when compliance shall be completed. Notification in this regard shall suspend American Express's compliance deadline for a period of sixty (60) days (the "Cure Period"). Compliance within the Cure Period shall be deemed full compliance with section 3.2(a) and the effected portion of Schedule A and shall not be deemed a breach of this Agreement. To the extent American Express reasonably believes that it cannot comply within the Cure Period, American Express shall provide Claimants with a Notice of Modification and proceed pursuant to Sections 4 and 5 below; provided, however, that the parties may agree in writing to extend the compliance date at any time.

3.2(c) In the event that (i) American Express completes the installation of American Express Talking ATMs for 100% of its ATMs prior to the date specified for such completion in Schedule A, and (ii) American Express notifies Claimants in writing of its completion of such installation, then the Duration of this Agreement, as defined in section 2 above, shall be based on the new completion date specified by American Express, provided that Claimants shall have thirty (30) days to confirm that the installation has been completed. In the event Claimants dispute in good faith that the installation has been completed as represented by American Express, Claimants shall proceed pursuant to section 5.1 below.

3.3 American Express Talking ATM Functionality.

3.3(a) Functions Existing as of the Effective Date. Functions that are available on an American Express ATM as of the Effective Date will be available on American Express Talking ATMs installed pursuant to the schedule set forth in Schedule A provided that Function is offered to sighted persons on the particular

ATM. These Functions are the following: (i) withdrawal from multiple accounts; (ii) account balance from multiple accounts; and (iii) Western Union money transfers.

3.3(b) New Functions Available to Sighted Persons After the Effective Date. New Functions, other than advertising or marketing, that become available on an American Express ATM after the Effective Date will be available on American Express Talking ATMs pursuant to the schedule set forth in Schedule A, provided that the Function is offered to sighted persons on the particular ATM. If American Express reasonably believes that a Function other than those Functions listed in section 3.3(a) above cannot be made part of the American Express Talking ATM, American Express will notify Claimants in writing and proceed pursuant to sections 4 and 5.2.

3.4 Visual and Tactile Signage and Labels.

3.4(a) American Express shall use best efforts to ensure that each American Express Talking ATM installed pursuant to this Agreement has a decal placed on it that identifies the machine as a Talking ATM ("Talking ATM Sign"). Any text in that decal shall be in large print and Braille. Any non-text symbol on the decal shall be tactile. The decal shall include a toll-free 800 number that persons can call to report any problem with the American Express Talking ATM. The toll-free 800 number shall be staffed or shall provide recorded information, at American Express' discretion.

3.4(b) Each American Express Talking ATM installed on or after January 1, 2005, or sooner if practicable, shall also have Braille labels (hereafter referred to as "Component Labels") identifying the following components: (i) the earphone jack; (ii) deposit slot (if applicable); (iii) card slot; (iv) cash dispenser; and (v) receipt dispenser. By no later than June 30, 2005, such Component Labels shall be placed on American Express Talking ATMs that were installed in 2003 and 2004.

3.5 Availability of Private Listening Devices.

Persons with Vision Impairments may request private listening devices by calling a toll-free number established by American Express. Within a reasonable time period after such request, American Express will provide the private listening device, free of charge, to the individual making the request.

3.6 Maintenance of American Express Talking ATMs.

American Express will maintain its Talking ATMs in operable working condition at all times except for isolated or temporary interruptions in service due to maintenance or repairs. Should an American Express Talking ATM malfunction, American Express will use best efforts to correct the problem in the normal course of business as it would an American Express ATM as of the Effective Date.

3.7 Information Regarding American Express Talking ATMs.

3.7(a) Provision of Information to Claimants and Counsel. Once every three months throughout the Duration of this Agreement, on a schedule established by American Express, American Express will notify Claimants' Counsel in writing or electronically of the addresses of all Talking ATMs that American Express has installed or upgraded.

3.7(b) Information Available on the American Express Website. By no later than July 31, 2004, the American Express website (currently located at <http://www.americanexpress.com/talkingatm>) shall inform users about the locations of American Express Talking ATMs. Talking ATM information will be updated in the same manner and on the same schedule as other ATM information on the site, where applicable. In addition, on or before December 31, 2004, the website shall provide general information and instructions regarding use of the American Express Talking ATM, including but not limited to the method by which the Talking ATM audio program is activated (e.g., upon earphone insertion); and the method by which Persons with Vision Impairments can report problems with the audio program or seek further assistance.

3.8

If the ADA or its implementing regulations change during the Duration of the Agreement and either party contends that such change affects or could affect the terms of this Agreement, that party may seek a Modification of the Agreement related to such changes of law or regulations, provided that the party seeking modification complies with the Modification procedures set forth in section 5 of this Agreement.

4. Right to Seek Modification of Terms.

4.1

Pursuant to the terms of section 5 below, American Express may seek to modify sections 2 or 3 of 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 individual performance of a substantial number of Talking ATMs or the overall performance or security of American Express's ATM operations. In addition, American Express may seek to modify the schedule for installing Talking ATMs after December 31, 2006 if meeting the schedule set forth in Exhibit A would be an undue burden within the meaning of 42 U.S.C. §12111(10)(A) and 28 C.F.R. § 36.104. American Express may also seek to modify section 3.3(b) if adding a new Function to the American Express Talking ATM would be an undue burden within the meaning of 42 U.S.C. § 12111(10)(a) and 28 C.F.R. § 36.104.

4.2

Delivery by American Express to Claimants of a Notice of Proposed Modification pursuant to section 5.2, based upon the conditions stated in section 4.1 shall suspend for sixty (60) days American Express's performance of its obligations under the portion of sections 2 or 3 of the Agreement that American Express seeks to modify. Any such suspension shall not constitute a breach of sections 2 or 3 of this Agreement; 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 3.2(a) and Schedule A, the

sixty day suspension described herein shall be concurrent with the 60 day Cure Period set forth in section 3.2(b).

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

5.1 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.

5.2 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 4.1, or, if either party reasonably believes that the terms of this Agreement should be modified based on the conditions set forth in section 3.8, the party seeking modification shall provide the other party 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 the position of the initiating party.

5.3 Meet and Confer.

Within thirty (30) days of receipt of a Notice provided pursuant to sections 5.1 or 5.2, Claimants and American Express shall informally meet and confer and attempt to resolve the issues raised in the Notice.

5.4 Submission to Mediation Prior to Court Action.

5.4(a) If the matters raised in a Notice provided pursuant to section 5.1 or 5.2 herein are not resolved within thirty (30) days of the initial meet and confer required by section 5.3, either party may submit the unresolved matters to private mediation as set forth herein.

5.4(b) Mediation shall be held before a mutually agreed upon mediator from the San Francisco office of JAMS 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.

5.4(c) Any party seeking to enforce the terms of this Agreement shall, prior to filing a court action, comply with sections 5.1 and 5.2 above and shall participate in mediation pursuant to sections 5.4(a) and (b). The parties agree that any court action filed prior to the completion of the procedures set forth in sections 5.2, 5.3, and 5.4(a) and (b) is premature and shall be stayed in all respects (including discovery) pending completion of these procedures. Any court action brought to enforce the terms of this Agreement shall be filed in a state or federal court in California.

5.5 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.

6. 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
[email address omitted]

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

To: American Express

Sharon DesJarlais
American Express Travel Related Services Company, Inc.
200 Vesey Street , 34th Floor
Mail Drop 01-34-10
New York, New York 10285

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, New York 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
[email address omitted]

7. Publicity Regarding This Agreement and Its Terms.

7.1

The parties will negotiate an initial joint press release to be issued following execution of this Agreement, but no earlier than August 31, 2004. If the parties cannot agree on an initial joint press release, either party may send their own initial press release, provided that: (i) the content is consistent with this Agreement; (ii) a copy of the release is provided to all parties and their counsel at least three (3) business days before it is sent to the press; and (iii) the initial press release is not issued until after August 31, 2004.

7.2

If Claimants or their Counsel desire that any press release be issued regarding American Express Talking ATMs and any other subject matter covered by this Agreement following the initial press release described above and within the Term of this Agreement, the following shall apply: (i) the content of the press release shall be consistent with this Agreement; and (ii) a copy of the press release shall be forwarded to all parties and their counsel at least three (3) business days before it is sent to the press.

7.3

Except as provided in sections 7.1 and 7.2, 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 Talking ATMs or the subject matter covered by this Agreement absent the express written consent of American Express.

8. 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.

9. Agreement Not Binding on Assigns and Successors; No Third Party Beneficiaries.

9.1 Assigns and Successors.

This Agreement shall not bind any assigns and successors of American Express, provided, however that should American Express transfer or assign ownership interest of its ATMs to an entity controlled by American Express Company or by one of American Express Company's direct or indirect wholly-owned subsidiaries, the Agreement shall remain in force and effect. 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.

9.2 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, including, without limitation,

the members of the CCB or persons other than Claimants who are Persons with Vision Impairments.

10. 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 5 of this Agreement.

11. Claimants' Representation and Warranty.

Claimants and their Counsel represent and warrant that, other than the instant ATM 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 ATM Dispute.

12. 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.

13. 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.

14. 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 ATM HOLDINGS, INC.**
- **CALIFORNIA COUNCIL OF THE BLIND**

By: Jeff Thom, President

By: Lillian Scaife

By: Kathy Martinez

By: Don Brown

By: Kelly Pierce

APPROVED AS TO FORM:

- **AMERICAN EXPRESS ATM HOLDINGS, INC.**
- **GOLDSTEIN, DEMCHAK, BALLER, BORGEN & DARDARIAN**

By: Linda M. Dardarian, Esq.

- **LAW OFFICE OF ELAINE B. FEINGOLD**

By: Lainey Feingold, Esq.

SCHEDULE A

ATM Rollout Dates/Location Schedule

ATM Rollout Dates/Location Schedule

Date (No Later Than) Number of American Express Talking ATMS Installed

June 30, 2004 500

December 31, 2004 1500

December 31, 2005 2750

December 31, 2006 4000

December 31, 2008 100% of American Express ATMS