

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

| | | |
|--|---|---------------------------|
| CHARLES W. SIRAGUSA, individually and on |) | |
| behalf of all others similarly situated, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No. 2:09-cv-328 |
| v. |) | |
| |) | Judge Springmann |
| ADVANCE FINANCIAL FEDERAL CREDIT |) | Magistrate Judge Rodovich |
| UNION, |) | |
| |) | |
| Defendant. |) | |

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

IT IS HEREBY STIPULATED AND AGREED by and between Charles Siragusa (“Plaintiff” or “Class Representative”), individually and on behalf of all others similarly situated, with the assistance and approval of Plaintiff’s Counsel, on the one hand, and Advance Financial Federal Credit Union (“Defendant” or “Advance Financial”), with the assistance of its counsel of record, on the other hand, as set forth below:

INTRODUCTION

This Class Action Settlement Agreement and all associated exhibits or attachments is made for the sole purpose of consummating settlement of this Lawsuit on a class basis. The Settlement Agreement is made in full compromise and release of all disputed claims. Because the Lawsuit was pled as a putative class action, this Settlement Agreement must receive preliminary and final approval by the Court. Accordingly, the Settling Parties enter into this Settlement Agreement on a conditional basis only. If the Court does not execute and enter the Final Approval Order or in the event that the Final Approval Order does not become Final for any reason, this Settlement Agreement shall be deemed null and void *ab initio*, it shall be of no

force or effect whatsoever (except as provided in paragraphs 2.4(D) and 2.8(D) below). Further, it shall not be referred to or utilized for any purpose whatsoever, and the negotiation, terms and entry of the Settlement Agreement shall remain subject to the provisions of Federal Rule of Evidence 408 and any applicable state law(s).

NOW, THEREFORE, IT IS HEREBY FURTHER STIPULATED AND AGREED by and between the Class Representative (for himself and the Class Members) and Defendant, with the assistance of their respective counsel, that, as between the Settling Parties, including all Class Members, the Lawsuit and the Released Claims shall be finally and fully compromised, settled and released, and the Lawsuit shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions set forth herein.

RECITALS

WHEREAS, the Lawsuit was commenced by Plaintiff, individually and on behalf of the class of persons defined in the Lawsuit, and is currently pending and unresolved between the Parties;

WHEREAS, in the Lawsuit, Plaintiff alleges that Defendant violated the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*, by failing to provide adequate notice of automated teller machine (“ATM”) fees;

WHEREAS, in the Lawsuit, Plaintiff seeks actual and statutory damages, attorneys’ fees and costs;

WHEREAS, Plaintiff and Defendant agree that it is desirable that the Lawsuit and the claims alleged therein be settled upon the terms and conditions set forth herein to avoid further expense and uncertain, burdensome and potentially protracted litigation, and to resolve all claims that have been or could have been asserted by Plaintiff and the Class Members;

WHEREAS, the Settling Parties have engaged in arms-length settlement negotiations, and Class Counsel represent that they have otherwise conducted a thorough study and investigation of the law and the facts relating to the claims that have been or might have been asserted in the Lawsuit and have concluded, taking into account the benefits that Plaintiff and the Class Members will receive as a result of this Settlement Agreement and the risks and delays of further litigation, that this Settlement Agreement is fair, reasonable and adequate and in the best interests of Plaintiff and the Class Members; and

WHEREAS, in consideration of the foregoing and other good and valuable consideration, it is hereby stipulated and agreed by and between Plaintiff and Defendant that the claims of Plaintiff and the Class Members be and are hereby compromised and settled, subject to approval of the Court, upon the terms and conditions set forth below.

DEFINITIONS

As used in all parts of this Settlement Agreement, the following terms have the meanings specified below:

1.1 “Advance Financial Releasees” means Advance Financial (and each of its current and former officers, directors, managers, shareholders, employees, predecessors, successors, assigns, agents and attorneys).

1.2 “ATM at Issue” shall mean automated teller machine number XE2319 located at 1544 W. 36th Ave., Gary, IN 46408 and operated by Defendant.

1.3 “Claim Form” means the form attached hereto as Exhibit A.

1.4 “Class Counsel” means Lance A. Raphael, Stacy M. Bardo and Allison A. Krumhorn of The Consumer Advocacy Center, P.C.

1.5 “Class Member” means a person who is a member of the Settlement Class.

1.6 “Class Notice” means the notice to be approved by the Court as set forth in paragraph 2.4 below.

1.7 “Class Period” means October 7, 2008 through October 6, 2009.

1.8 “Class Settlement Administrator” means third party First Class, Inc.

1.9 “Court” means the United States District Court for the Northern District of Indiana, Hammond Division.

1.10 “Effective Date” means the date on which the Final Approval Order becomes Final.

1.11 “Fairness Hearing” means a hearing set by the Court for the purpose of: (i) determining the fairness, adequacy and reasonableness of the Settlement Agreement pursuant to class action procedures and requirements; and (ii) entering a Final Approval Order.

1.12 “Final” means the later of: (i) the date a Final Approval Order is entered by the Court if no objection(s) is filed; or (ii) the date of expiration for the time for noticing a valid appeal from the Final Approval Order if an objection(s) is filed and an appeal is not noticed; or (iii) the date of final affirmance or dismissal of the last pending appeal if an appeal is noticed.

1.13 “Final Approval Order” means an order to be entered by the Court entitled “Final Approval Order,” substantially in the form attached hereto as Exhibit F.

1.14 “Lawsuit” means the lawsuit styled *Charles W. Siragusa v. Advance Financial Federal Credit Union*, currently pending in the Court as Case No. 2:09-cv-328.

1.15 “Participating Claimant” means each Class Member who properly and timely submits a Valid Claim Form in response to the Class Notice.

1.16 “Preliminary Approval Date” means the date on which the Court enters a Preliminary Approval Order.

1.17 “Preliminary Approval Order” means an order to be entered by the Court, entitled “Preliminary Approval Order,” substantially in the form attached hereto as Exhibit E.

1.18 “Released Claims” mean, collectively, any and all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, including, without limitation, statutory, constitutional, contractual or common law claims, whether known or unknown, against the Advance Financial Releasees, or any of them, that accrued at any time on or prior to the Preliminary Approval Date for any type of relief, including, without limitation, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys fees, litigation costs, restitution or equitable relief, based on any and all claims in any way related to Defendant’s alleged failure to provide adequate notice of ATM fees at the ATM at Issue.

1.19 “Settlement Agreement” means this Settlement Agreement and all of its attachments and exhibits, which the Settling Parties understand and agree sets forth all material terms and conditions of the Settlement among them and which is subject to Court approval.

1.20 “Settlement Class” means the conditional class that the Parties have consented to for purposes of settlement only, as described in paragraph 2.1 below.

1.21 “Settlement Fund” means the fund described in paragraph 2.2 below.

1.22 “Settling Parties” or “Parties” means Plaintiff and Defendant, their respective representatives and attorneys.

1.23 “Valid Claim Form” means a Claim Form that is completed, signed under penalty of perjury, and timely returned to the Settlement Administrator, postmarked within sixty (60) days after entry of the Preliminary Approval Order. Plaintiff and Defendant shall have the right to verify that each Claim Form submitted is valid in that it reflects use of the ATM at Issue during the Class Period and for which usage the Class Member was charged a usage fee by Defendant. Either Party challenging any claim or denial of claim shall apprise the other Party of the challenge, and the Settling Parties, through their respective counsel, shall meet and confer in good faith in an attempt to resolve any challenged claim. If the Settling Parties are unable to resolve such a challenge, the Settling Parties shall submit the challenge to the Court for

resolution. The Settling Parties shall each bear their own respective costs associated with any such challenge.

TERMS AND CONDITIONS

2.1 **The Settlement Class.** The Parties stipulate to certification of the following class for settlement purposes only:

All persons who, from October 7, 2008 through October 6, 2009, were charged a transaction fee for the use of automated teller machine number XE2319 located at 1544 W. 36th Ave., Gary, IN 46408.

2.2 **Settlement Fund.** Within 7 days after a Preliminary Approval Order is entered, Defendant shall pay \$50,000.00 to the Class Settlement Administrator, which will be deposited into an escrow account for the benefit of Plaintiff, the Class Members and Plaintiff's Counsel, which will constitute the Settlement Fund. The Settlement Fund shall be disbursed as follows:

A. **Payment to Class Representative.** Class Representative shall receive \$1,000.00 as an incentive award for his services as Class Representative. Defendant agrees not to object to the Court awarding this amount to Class Representative. Class Representative shall also be eligible to submit a claim form and participate in the class recovery, as set forth in paragraph 2.2(D).

B. **Payment to Plaintiff's Counsel.** Plaintiff's Counsel shall receive \$15,000.00 (30%) of the Settlement Fund in full satisfaction of all reasonable attorneys' fees and costs. This payment is subject to Court approval and Defendant agrees not to object to the Court awarding this amount.

C. **Class Notice.** Costs of Class Notice and Administration (see Paragraph 2.4 below), except cost of Posted Notice (see Paragraph 2.4(B) below), not to exceed \$10,000.00, shall be paid from the Settlement Fund at the time such expenses are incurred.

D. **Class Recovery.** The amount remaining in the Settlement Fund after deducting the amount set forth in paragraphs 2.2(A), 2.2(B), and 2.2(C) above shall be divided *pro rata* among Participating Claimants; provided, however, that no Class Member shall receive payment from the Settlement Fund in an amount to exceed \$1,000.00.

E. **Cy Pres.** Any money remaining in the Settlement Fund, if any, after payments are made pursuant to paragraphs 2.2(A), 2.2(B), 2.2(C), and 2.2(D) above, shall be paid as a *cy pres* award to the March of Dimes, Northwest Indiana Division, 2612 W. U.S. Highway 30, Merrillville, IN 46410.

2.3 **Release.**

A. Release by Plaintiff and Class. Except for the obligations created by this Settlement Agreement, upon the Effective Date, Plaintiff and each Class Member that has not excluded himself or herself from the Class (for themselves and their respective current and former heirs, executors, administrators, controlled companies, partners, employees, assigns, agents and attorneys) remise, release and forever discharge the Advance Financial Releasees from any and all claims, charges, complaints, demands, judgments, causes of action, rights of contribution and indemnification, attorneys' fees, costs and liabilities of any kind, whether known or unknown that were brought or that could have been brought in the Lawsuit and waive all rights against the Advance Financial Releasees with respect to any and all actions, causes of action, claims, counterclaims, breaches, controversies, demands, damages, expenses, losses, costs, attorneys' fees, court costs, loss of income, loss of value or loss of services of any type whatsoever, known or unknown, past or present, whether under foreign or domestic tort or contract law and/or any other foreign or domestic statute, law, regulation, ordinance, certificate of incorporation or by-law relating in any way to the claims made by Plaintiff in the Lawsuit or in any way related to Defendant's alleged failure to provide adequate notice of ATM fees at the ATM at Issue.

B. Release by Defendant. Except for the obligations created by this Settlement Agreement, upon the Effective Date, Advance Financial (and each of its current and former officers, directors, managers, shareholders, employees, predecessors, successors, assigns, agents and attorneys) remises, releases and forever discharges Plaintiff (and each of his respective current and former heirs, executors, administrators, assigns, agents and attorneys) from any and all claims, charges, complaints, demands, judgments, causes of action, rights of contribution and indemnification, attorneys' fees, costs and liabilities of any kind, whether known or unknown, arising from the investigation, filing or prosecution of the Lawsuit.

2.4 Class Notice. If, by entering the Preliminary Approval Order, the Court provides authorization to publish the Class Notice to Class Members, Defendant will cause Class Notice to be given as follows:

A. Publication. Defendant shall cause notice to the Settlement Class to be published, within 14 days after entry of a Preliminary Approval Order and in the form and substance set forth in Exhibit B hereto, in the Post-Tribune. The publication notice shall be a display ad of at least one-quarter (1/4) page in size.

B. Posted Notice. Defendant shall cause notice to the Settlement Class to be posted, starting no later than 14 days after the date a Preliminary Approval Order is entered and continuing to the last date for Class Members to Opt-Out, on the ATM at Issue in the form and substance set forth in Exhibit C hereto.

C. Website. Plaintiff shall cause notice to the Settlement Class to be posted, starting no later than 14 days after a Preliminary Approval Order is entered and continuing to the last date for Class Members to Opt-Out, on the internet at

www.caclawyers.com/advancefinancial in the form and substance set forth in Exhibit D hereto.

D. Costs. All costs of Class Notice (except the costs of posted notice, which shall be separately borne by Defendant) and the costs associated with hiring the Class Settlement Administrator shall be deducted from the Settlement Fund, but in no event shall such costs exceed \$10,000.00. If this Settlement Agreement is terminated pursuant to its terms or if the Court does not finally approve this Settlement Agreement, the Settlement Fund shall be returned to Defendant, excepting that the Costs of Notice and Administration already incurred shall not be refunded.

2.5 **Opt-Out/Exclusion/Right to Object/Participation.**

A. Opt-Out/Exclusion. Any Class Member, except Plaintiff, may seek to be excluded from this Settlement Agreement and from the Settlement Class as detailed in the Class Notice and within the time and in the manner provided by the Court. Any Class Member so excluded shall not be bound by the terms of this Settlement Agreement nor be entitled to any of its benefits.

B. Objection. Any Class Member, except Plaintiff, may object to the terms of this Settlement Agreement in writing, as detailed in the Class Notice and within the time and in the manner provided by Court order. Any Class Member who exercises his or her right to object to this Settlement Agreement will be responsible for his or her own attorneys' fees and costs. Class Counsel and counsel of record for Defendant must also be served with copies of any objections, postmarked no later than the Opt-Out Deadline. The Class Notice shall advise Class Members of this option. Any objections must be in writing and timely submitted or else they are waived.

C. Participation. Any Class Member may seek to participate in the Lawsuit. Any Class Member who exercises his or her right to participate in the Lawsuit will be responsible for his or her own attorneys' fees and costs.

2.6 **Preliminary Approval Order.** As soon as practicable after execution of this Settlement Agreement, Plaintiff and Defendant shall seek an order from the Court that:

- A. preliminarily approves this Settlement Agreement;
- B. conditionally certifies for purposes of settlement the Settlement Class;
- C. schedules a hearing for final approval of this Settlement Agreement; and

D. approves the form and manner of Class Notice as set forth in paragraph 2.4 herein and finds that such notice satisfies the requirements of due process pursuant to Federal Rule of Civil Procedure 23, the United States Constitution and any other applicable law and finds that no further notice to the Settlement Class is required.

The Settling Parties agree to request the form of Preliminary Approval Order attached hereto as Exhibit E. The fact that the Court may require changes in the Preliminary Approval Order will not invalidate this Settlement Agreement if the changes do not materially modify this Settlement Agreement.

Defendant will provide Class Action Fairness Act of 2005 (CAFA) Notices within ten (10) days of the entry of the Preliminary Approval Order to the appropriate Federal and State officials, and shall allow of period of ninety (90) days after the last date of service on the government officials before submitting the Final Approval Order for entry by the Court.

2.7 **Final Approval Order.** At the conclusion of, or as soon as practicable after, the close of the Fairness Hearing, Plaintiff's Counsel and the attorney(s) of record for Defendant shall jointly request that the Court enter a Final Approval Order approving the terms of this Settlement Agreement as fair, reasonable and adequate; providing for the implementation of its terms and provisions; finding that the Class Notice given to the Settlement Class satisfies the requirements of due process pursuant to Federal Rules of Civil Procedure, the United States Constitution and any other applicable law; dismissing the claims of Plaintiff and the Settlement Class with prejudice and without costs; finding that the CAFA Notice has been given and that 90 days has passed since service on the governmental officials; and retaining exclusive jurisdiction to enforce the terms and provisions of this Settlement Agreement. The Parties agree to jointly request the form of Final Approval Order attached hereto as Exhibit F. The fact that the Court may require changes in the Final Approval Order will not invalidate this Settlement Agreement if the changes do not materially modify this Settlement Agreement.

2.8 **Administration of Class Benefits.**

A. **Class Settlement Administration.** Subject to Court approval, Defendant shall retain Class Settlement Administrator First Class, Inc. to escrow the Settlement Fund, process Claim Forms, and distribute the Settlement Fund as described in Paragraph 2.2 above. The Settlement Fund shall be distributed within 60 days of the Effective Date, subject to any extension allowed by Paragraph 2.8(C) below.

B. **Eligibility.** If the Class Settlement Administrator receives an incomplete or otherwise improperly filled out Claim Form that is otherwise timely submitted, the Class Settlement Administrator shall contact the claimant and seek such information as is needed to correct the deficiency. If the deficiency cannot be corrected by the Class Settlement Administrator, then Plaintiff's Counsel and Defendant's attorneys shall jointly determine whether the claimant is eligible to receive any of the benefits described in Paragraph 2.2, or if they cannot agree upon such a determination in good faith, then the Court shall determine whether the claimant is entitled to the relief requested.

C. **Extension for Distribution.** If the Class Settlement Administrator, in its sole determination, is required to obtain a W-9 form(s) from a Participating Claimant(s), then the Class Settlement Administrator shall have 60 days from the date of receipt of a

completed W-9 form to distribute the portion of the Settlement Fund earmarked for such Participating Claimant(s).

D. Costs. The Class Settlement Administrator shall be paid from the Settlement Fund; provided, however, that if this Settlement Agreement is terminated pursuant to its terms or if the Court does not approve this Settlement Agreement, the amount already paid to the Class Settlement Administrator shall not be refunded to Defendant.

2.9 Release of Attorney's Lien. In consideration of this Settlement Agreement, Plaintiff's Counsel hereby waives, discharges and forever releases Defendant from any and all claims for attorneys' fees, by lien or otherwise, for legal services rendered by Plaintiff's Counsel in connection with the Lawsuit; provided, however, that this release is conditioned upon Final Approval of this Settlement Agreement by the Court and full performance by the Defendant of its obligations under this Settlement Agreement.

2.10 No Admission of Liability. Whether or not this Settlement Agreement is consummated, this Settlement Agreement and all proceedings had in connection herewith shall in no event be construed as, or be deemed to be, evidence of an admission or concession by Defendant of any liability or wrongdoing whatsoever.

2.11 Best Efforts. The Settling Parties and their respective counsel agree to cooperate fully with one another in seeking Court approval of this Settlement Agreement and to use their best efforts to effect the consummation of this Settlement Agreement.

2.12 Notices. Notices regarding this Settlement Agreement directed to Plaintiff and/or the Settlement Class shall be sent to:

Lance A. Raphael
Stacy M. Bardo
Allison A. Krumhorn
The Consumer Advocacy Center, P.C.
180 W. Washington St., Ste. 700
Chicago, IL 60602

Notices to Defendant shall be sent to:

Robert L. Clark
Ogletree Deakins
Two First National Plaza
20 South Clark Street, 25th Floor
Chicago, IL 60603

The persons and addresses designated in this paragraph may be changed with written notice to the other signatories hereto.

2.13 **Counterparts.** This Settlement Agreement may be signed in counterparts, in which case the various counterparts shall constitute one instrument for all purposes. The signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies, facsimiles or scanned copies of the signature pages of this Settlement Agreement may be treated as originals.

2.14 **Binding Agreement.** Each and every term of this Settlement Agreement shall be binding upon and inure to the benefit of Plaintiff and each Class Member and each of their respective current and former heirs, executors, administrators, assigns, agents and attorneys, all of whom/which persons and entities are intended to be beneficiaries of this Settlement Agreement. Each and every term of this Settlement Agreement shall be binding upon and inure to the benefit of Defendant and each of its current and former officers, directors, managers, shareholders, employees, predecessors, successors, assigns, agents and attorneys. There are otherwise no third-party beneficiaries of this Settlement Agreement.

2.15 **Governing Law.** This Settlement Agreement (and any exhibits hereto) shall be considered to have been negotiated, executed and delivered, and to have been wholly performed in the State of Indiana, and the rights and obligations of the Parties to this Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal substantive laws of the State of Illinois without giving effect to Indiana choice of law principles.

2.16 **Retention of Jurisdiction.** The Court shall retain jurisdiction to implement and to enforce the terms of this Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

2.17 **Interpretation.** The Settling Parties acknowledge that they have had an equal opportunity to participate in the drafting of this Settlement Agreement and that each Settling Party and its counsel reviewed and negotiated the terms and provisions of this Settlement Agreement and have contributed to its revisions. Therefore, in any dispute over the construction or interpretation of this Settlement Agreement, the Settling Parties agree and understand that the Settlement Agreement shall be construed fairly as to all Settling Parties and shall not be construed against any Settling Party on the basis of authorship. The Settling Parties further agree that in this Settlement Agreement the singular shall include the plural and vice versa where the content so requires.

2.18 **Entire Agreement.** This Settlement Agreement constitutes the entire agreement of the Settling Parties hereto as to the matters raised herein. The undersigned acknowledge that there are no communications or oral understandings contrary to, in addition to, or different from the terms of this Settlement Agreement and that all prior agreements or understandings within the scope of the subject matter of this Settlement Agreement are, upon execution of this Settlement Agreement, superseded and merge into this Settlement Agreement and shall have no effect. This Settlement Agreement may not be amended or modified in any respect whatsoever, except by a writing duly executed by the Settling Parties and their respective counsel.


2.19 **Authority.** The persons signing this Settlement Agreement hereby represent and warrant that they have read this Settlement Agreement, that they know and understand its terms, that they have consulted with counsel with respect hereto, that they have signed this Settlement Agreement freely, and that they intend that they and/or any person or entity on whose behalf they are signing this Settlement Agreement will be fully bound by all the terms and provisions of this Settlement Agreement. Such persons further represent and warrant that they are competent to sign this Settlement Agreement and that, as necessary, all corporate or other legal formalities have been followed such that they have full authority to execute this Settlement Agreement on behalf of the person or entity for whom or for which they are signing this Settlement Agreement in a representative capacity.

2.20 **Headings.** The headings of the several sections and paragraphs hereof are for convenience only and do not define or limit the contents of such sections or paragraphs.

2.21 **Severability.** In case any one or more of the provisions contained in this Settlement Agreement shall be determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected and/or impaired thereby.

IN WITNESS WHEREOF, the Parties hereto, have so agreed on the dates noted below.

CHARLES SIRAGUSA
Plaintiff and Class Representative

By:  3/4/10
Charles Siragusa Date

Approved as to form:

/s/ Stacy M. Bardo 3/2/2010
Lance A. Raphael Date
Stacy M. Bardo
The Consumer Advocacy Center, P.C.
180 W. Washington St., Ste. 700
Chicago, Illinois 60602
Counsel for Plaintiff and the Class Members

ADVANCE FINANCIAL FEDERAL CREDIT UNION
Defendant

By:  3/18/10
John Wohadlo Date

Its: President/CEO

Approved as to form:

/s/ Robert L. Clark

Robert L. Clark
Ogletree Deakins
Two First National Plaza
20 South Clark Street, 25th Floor
Chicago, IL 60603
Counsel for Defendant Advance Financial Federal Credit Union

3 / 8 / 2010

Date