

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STEVEN ANTHONY, individually and on)	
behalf of all others similarly situated,)	
)	
Plaintiff,)	No. 08 C 4359
)	
v.)	Magistrate Judge Schenkier
)	(consent filed)
FIFTH THIRD BANK (CHICAGO),)	
)	
Defendant.)	

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

IT IS HEREBY STIPULATED AND AGREED by and between Steven Anthony (“Plaintiff” or “Class Representative”), individually and on behalf of all others similarly situated, with the assistance and approval of Class Counsel, on the one hand, and Fifth Third Bank, a Michigan banking corporation (“Defendant” or “Fifth Third”), 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 the 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 must receive preliminary and final approval by the Court. Accordingly, the Settling Parties enter into this Settlement Agreement on a conditional basis only. In the event that 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), 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).

Defendant denies all of Plaintiff's claims, allegations and contentions as to liability, damages, penalties, interest, fees, restitution and all other forms of relief, and the class action allegations asserted in the Lawsuit. Defendant has concluded that further conduct of the Lawsuit may be protracted and expensive, and that it is desirable that the Lawsuit be fully and finally resolved in the manner and upon the terms and conditions set forth in this Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY FURTHER STIPULATED AND AGREED by and among the Class Representative (for himself and the Class Members) and Defendant, with the assistance of their counsel or attorneys of record, that, as among 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 Settling 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, Defendant denies Plaintiff's claims, denies any liability to Plaintiff or the proposed class, and denies any wrongdoing of any kind;

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 Settlement Class;

WHEREAS, the Settling Parties have engaged in extensive arms-length settlement negotiations, with the assistance of the Court, 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 Settlement 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 Settlement 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 Settlement Class be and are hereby compromised and settled, subject to the 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 “ATMs at Issue” shall mean the following automated teller machines operated by Defendant:

Branch	Address	Type	ATM No.
Brickyard	2710 N. Narragansett Ave, Chicago, IL	Drive-up	3677
Brickyard	2710 N. Narragansett Ave., Chicago, IL	Walk-Up	3676
Avondale	2934 N. Milwaukee Ave., Chicago, IL	Walk-Up	1525
Merchandise Mart	222 Merchandise Mart Place, Chicago, IL	Walk-Up	909
Merchandise Mart	222 Merchandise Mart Place, Chicago, IL	Walk-Up	910

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

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

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

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

1.6 “Class Period” means July 31, 2007 through July 31, 2008.

1.7 “Court” means the United States District Court for the Northern District of Illinois, Eastern Division.

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

1.9 “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.

1.10 “Fifth Third” means Fifth Third Bank, a Michigan banking corporation.

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

1.12 “Final” means the later of (i) the date of expiration for the time for noticing an appeal from the Final Approval Order; or (ii) 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 *Steven Anthony v. Fifth Third Bank (Chicago)*, currently pending in the Court as case no. 08 C 4359.

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 Fifth Third 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 any of the ATMs 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 Settling 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 Class Settlement Administrator, postmarked within ninety (90) days after the Preliminary Approval Order. Upon its receipt of any Claim Form, the Class Settlement Administrator shall promptly provide a copy thereof to Fifth Third's counsel. Plaintiff and Defendant shall have the right to verify, prior to any payment to the Claimant, that each Claim Form submitted is valid in that it reflects use of one of the ATMs 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 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 Settling Parties stipulate to certification of the following class for settlement purposes only:

All persons who, from July 31, 2007 to July 31, 2008, were charged a transaction fee for the use of any of the following automated teller machines operated by Fifth Third Bank (Chicago):

Branch	Address	Type	ATM No.
Brickyard	2710 N. Narragansett Ave., Chicago, IL	Drive-Up	3677
Brickyard	2710 N. Narragansett Ave., Chicago, IL	Walk-Up	3676
Avondale	2934 N. Milwaukee Ave., Chicago, IL	Walk-Up	1525
Merchandise Mart	222 Merchandise Mart Place, Chicago, IL	Walk-Up	909
Merchandise Mart	222 Merchandise Mart Place, Chicago, IL	Walk-Up	910

2.1A. Plaintiffs’ counsel warrant and represent that they are not aware of any clients or potential clients, and do not have any clients or potential clients, with current claims against Fifth Third with regard to any ATM disclosure claims, other than clients or potential clients which would be members of the instant proposed Settlement Class.

2.2 **Settlement Fund.** Within 14 days after a Preliminary Approval Order is entered, Defendant shall pay \$190,000 to the Settlement Class Administrator (see paragraph 2.8 below), which will be deposited into an escrow account for the benefit of Plaintiff, the Settlement Class and Class Counsel, which will constitute the Settlement Fund. Fifth Third shall not be required to pay any amounts pursuant to this Agreement other than the Settlement Fund. The Settlement Fund shall be disbursed as follows:

A. **Class Notice.** Costs of notice (see paragraph 2.4 below) and settlement administration (see paragraph 2.8 below) shall be paid from the Settlement Fund at the time such expenses are incurred.

B. **Remainder of Settlement Fund.** After the Effective Date, the amount remaining in the Settlement Fund after costs of notice and administration are deducted shall be disbursed as follows:

1. **Payment to Class Representative.** Class Representative shall receive \$2,000 for his individual claim and as an incentive award for his services as Class Representative. Defendant agrees not to object to the Court awarding this amount to Class Representative.

2. **Payment to Class Counsel.** Class Counsel shall receive \$57,000 (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 to Class Counsel.

3. **Class Recovery.** The amount remaining in the Settlement Fund after deducting the amount set forth in paragraphs 2.2(A), 2.2(B)(1) and 2.2(B)(2) above shall be divided *pro rata* among Participating Claimants who are entitled to payment pursuant to paragraph 1.23 above; provided, however, that no Class Member shall receive payment from the Settlement Fund in an amount to exceed \$1,000. Each Class Member shall be eligible to receive one *pro rata* payment, regardless of whether that Class Member used any ATM at Issue multiple times or used multiple ATMs at Issue.

4. **Reverter.** The lesser of (a) \$15,000 or (b) any money remaining in the Settlement Fund, if any, after payments are made pursuant to paragraphs 2.2(A), 2.2(B)(1), 2.2(B)(2) and 2.2(B)(3) above, shall be returned to Defendant.

5. **Cy Pres.** Any money remaining in the Settlement Fund, if any, after payments are made pursuant to paragraphs 2.2(A), 2.2(B)(1), 2.2(B)(2), 2.2(B)(3) and 2.2(B)(4) above, shall be paid as a *cy pres* award, (1) 50% to The Posse Foundation, Inc. and (2) 50% to United Way of America.

C. Refund of Settlement Fund In the Event the Settlement Agreement Is Not Implemented. In the event that this Agreement does not receive final approval from the Court, or if an entered Final Approval Order does not become "Final" as defined in paragraph 1.12, or if Fifth Third exercises its right to rescind this Agreement pursuant to paragraph 2.5A below, then the amount remaining in the Settlement Fund at the time the Agreement is rejected by the court, or at the time Fifth Third rescinds the Agreement, less any accrued but unpaid fees relating to Class Notice and administration, shall be refunded to Fifth Third.

2.3 Release.

A. General Release by Plaintiff to Fifth Third. Except for the obligations created by this Settlement Agreement, upon the Effective Date, Plaintiff, for himself and his heirs, executors, administrators, and assigns, hereby remises, releases and forever discharges the Fifth Third 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 whatsoever in law or equity, arising out of agreement or imposed by statute, common law or otherwise, from the beginning of time to the date this Agreement is signed.

B. Limited Release by Class to Fifth Third. Except for the obligations created by this Settlement Agreement, upon the Effective Date, 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 Fifth Third 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 Fifth Third 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 any of the ATMs at Issue.

C. Limited Release by Fifth Third to Plaintiff and Class. Except for the obligations created by this Settlement Agreement, upon the Effective Date, Fifth Third (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 provide the Class Notice to Class Members, the Settling Parties will cause Class Notice to be given as follows:

A. **Publication.** Notice to the Settlement Class shall be published, within 21 days after entry of a Preliminary Approval Order and in the form and substance set forth in Exhibit B hereto, once in the Chicago Tribune City Zone Edition or the Sunday SunTimes and once in Hoy. The publication notice shall be a display ad of at least one-quarter (1/4) page in size.

B. **Posted Notice.** Notice to the Settlement Class shall be posted, starting no later than 21 days after the date a Preliminary Approval Order is entered and continuing for a period of 30 days, but no more than 30 days after initial posting, on each of the ATMs at Issue in the form and substance set forth in Exhibit C hereto. Class Counsel or their designee shall be responsible for posting and monitoring the Posted Notice on the ATMs at Issue; Defendant shall not interfere in any manner with such posting and monitoring by Class Counsel or their designee.

C. **Website.** Notice to the Settlement Class shall be posted, starting no later than 21 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 in the form and substance set forth in Exhibit D hereto.

D. **Costs.** Costs of notice set forth in this paragraph 2.4 shall be paid from the Settlement Fund; provided, however, that if this Agreement is terminated pursuant to its terms or if the Court does not approve this Agreement, the costs of notice already incurred shall not be refunded to Defendant.

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. If more than 10 class members opt out/exclude themselves from this Agreement, Fifth Third shall have the right, in its sole discretion, to rescind this Agreement and to demand the return of the remaining Settlement Fund pursuant to paragraph 2.2C.

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 Settlement 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 by the Court; 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 Rules 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.

2.7 **Final Approval Order.** At the conclusion of, or as soon as practicable after, the close of the Fairness Hearing, Class 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; and retaining exclusive jurisdiction to enforce the terms and provisions of this Settlement Agreement. The Settling 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. Class Counsel shall designate a third-party class settlement administrator ("Class Settlement Administrator") to process

Claim Forms and to distribute the Settlement Fund as described in paragraph 2.2 above, which Class Settlement Administrator shall be subject to the approval of Fifth Third. In the event that the parties cannot agree upon a Class Settlement Administrator, they shall present that issue to the Court for final determination. 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 Class 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 designated for such Participating Claimant(s).

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

2.9 Release of Attorney's Lien. In consideration of this Settlement Agreement, Class 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 Class 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
Fax: 312-377-9930

Notices to Defendant shall be sent to:

Steven A. Levy
Roger A. Lewis
GOLDBERG KOHN BELL BLACK
ROSENBLUM & MORITZ, LTD.
55 E. Monroe St., Ste. 3300
Chicago, IL 60603
Fax: 312-332-2196

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 Illinois, and the rights and obligations of the Settling 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 Illinois 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 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 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 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.

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

STEVEN ANTHONY
Plaintiff and Class Representative
By: Steven Anthony
Steven Anthony

4/24/09
Date

Approved as to form:

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

4/24/09
Date

Counsel for Plaintiff and the Class Members

FIFTH THIRD BANK, Michigan banking corporation Defendant

By: _____

/ /
Date

Its: _____

Approved as to form:

Steven A. Levy
Roger A. Lewis
Goldberg Kohn Bell Black
Rosenbloom & Moritz, Ltd.
55 E. Monroe St., Ste. 3300
Chicago, IL 60603

/ /
Date

Counsel for Defendant Fifth Third Bank

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

STEVEN ANTHONY
Plaintiff and Class Representative

By: _____ / /
Steven Anthony Date

Approved as to form:

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

Counsel for Plaintiff and the Class Members

FIFTH THIRD BANK, Michigan banking corporation Defendant

By: Cherise Paul 4/24/09
Date

Its: COUNSEL

Approved as to form: _____ 4/24/09
Date

Steven A. Levy
Roger A. Lewis
Goldberg Kohn Bell Black
Rosenbloom & Moritz, Ltd.
55 E. Monroe St., Ste. 3300
Chicago, IL 60603

Counsel for Defendant Fifth Third Bank