

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

STEVEN ANTHONY,)	
)	
Plaintiff,)	No. 08 C 4359
)	
v.)	Magistrate Judge Schenkier
)	(consent filed)
FIFTH THIRD BANK (CHICAGO),)	
)	
Defendant.)	

PRELIMINARY APPROVAL ORDER

This matter coming before the Court on the joint request of the parties for preliminary approval of a Class Action Settlement Agreement and Release, and based upon the papers submitted to the Court and all of the proceedings had in this matter to date, IT IS HEREBY ORDERED:

1. Solely for purposes of settlement, the following Settlement Class is certified pursuant to Fed. R. Civ. P. 23(b)(3): 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:

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. Based on the parties' stipulations, and for settlement purposes only: (A) the class as defined is sufficiently numerous such that joinder is impracticable; (B) common questions of law and fact predominate over any questions affecting only individual Class Members, and include whether or not the posting of an incorrect notice or absence of a posted notice at the ATM machines

identified above violated the requirements of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*; (C) the claim of Plaintiff Steven Anthony is typical of the Class Members' claims; (D) Plaintiff Steven Anthony is an appropriate and adequate representative for the Class and his attorneys, Lance A. Raphael, Stacy M. Bardo, and Allison A. Krumhorn are hereby appointed as Class Counsel; and (E) a class action is the superior method for the fair and efficient adjudication of the claims of the Class Members.

3. The Court finds that the proposed settlement is within the range of fairness and reasonableness and grants preliminary approval to it. In the event that the proposed settlement is not finally approved for any reason, Defendant shall, pursuant to the Settlement Agreement, retain its right to contest certification of the Class.

4. The Court approves the proposed forms of notice to the Class, and directs that all forms of notice be implemented or commenced by May 19, 2009 (twenty-one (21) days after today's date), in accordance with paragraph 2.4 of the Settlement Agreement. Class Counsel will file an affidavit with the Court, on or before August 10, 2009, attesting that notice has been so given.

5. The Court finds that the notice proposed in paragraph 2.4 of the Settlement Agreement is the only notice to the Class Members that is required and further finds that such notice satisfies the requirements of due process and Fed. R. Civ. P. 23.

6. Class Members shall have until July 27, 2009 (ninety (90) days after today's date) to send in a claim form, opt out or object to the proposed Settlement Agreement.

7. Any Class Member who wants to receive a monetary portion of the Settlement Fund shall file a Claim Form, which will be available for download at www.caclawyers.com or by

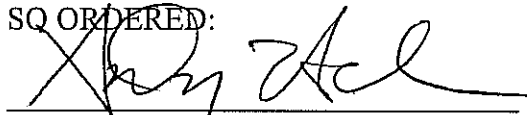
contacting Class Counsel. To be timely, a Claim Form must be sent to the Settlement Administrator and postmarked on or before July 27, 2009.

8. Any Class Member who desires to exclude himself or herself from the Class shall not be bound by the Settlement and shall not be entitled to any of its benefits. To be timely, a request for exclusion must be sent to the Settlement Administrator and postmarked on or before July 27, 2009. To be effective, the request for exclusion must make clear that exclusion is sought by stating: "I WANT TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN *ANTHONY V. FIFTH THIRD BANK*." The request for exclusion must also contain the excluded Class Member's name, address, and signature.

9. Any Class Member who objects to the Settlement contemplated by the Agreement shall have a right to appear and be heard at the Fairness Hearing provided that such Class Member files with the Court and delivers to Class Counsel and Defendant's Counsel a written notice of objection together with a statement of reasons for the objection, postmarked on or before July 27, 2009. Class Counsel and Defendant's Counsel may, but need not, respond to the objections, if any, by means of a memorandum of law no later than August 10, 2009.

10. A Fairness Hearing on the fairness and reasonableness of the Settlement Agreement will be held before this Court on August 18, 2009 at 9:00 a.m.

SQ ORDERED:



SIDNEY I. SCHENKIER
United States Magistrate Judge

DATED: April 28, 2009