

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

CARL BOECHERER, individually and on behalf)	
of all others similarly situated,)	
	)	Case No. 08 C 1332
Plaintiff,)	
	)	Magistrate Judge Denlow
v.	)	(consent filed)
)	
BURLING BANK,)	
)	
Defendant.)	

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

IT IS HEREBY STIPULATED AND AGREED by and between Carl Boecherer (“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 Burling Bank (“Defendant” or “Burling”), 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)), 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 between the Class Representative (for himself and the Class Members) and Defendant, with the assistance of their respective 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 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 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 Class Members;

WHEREAS, the Settling Parties have engaged in extensive arms-length settlement negotiations, including 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 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 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 automated teller machine numbers 0522B and 0522C operated by Defendant and located at 141 W. Jackson Blvd., Chicago, IL 60604.

1.2 “Burling” means Burling Bank.

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

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

1.5 “Class Settlement Administrator” means a third party agreed to by Plaintiff and Defendant who shall process Claim Forms and distribute the Settlement Fund, in this case, First Class, Inc. of Chicago, Illinois.

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

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

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

1.9 “Class Period” means August 23, 2007 through February 11, 2008.

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

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

1.12 “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.

1.13 “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.

1.14 “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.

1.15 “Lawsuit” means the lawsuit styled *Carl Boecherer v. Burling Bank*, currently pending in the Court as Case No. 08 C 1332.

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

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

1.18 “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.

1.19 “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 Burling 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 ATMs at Issue.

1.20 “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.

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

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

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

1.24 “Valid Claim Form” means a Claim Form that is completed, signed under penalty of perjury, and timely returned to Class Counsel, 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 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 Parties stipulate to certification of the following class for settlement purposes only:

All persons who, from August 23, 2007 through February 11, 2008, were charged a transaction fee for the use of automated teller machine numbers 0522B and 0522C operated by Burling Bank and located at 141 W. Jackson Blvd., Chicago, IL 60604.

2.2 **Settlement Fund.** Fourteen (14) days after a Preliminary Approval Order is entered, Defendant shall pay \$112,500.00 to the Class Settlement Administrator, which will be deposited into an escrow account for the benefit of Plaintiff, the Class Members and Class Counsel, which will constitute the Settlement Fund. The Settlement Fund shall be disbursed as follows:

A. **Class Notice.** Costs of notice (see paragraph 2.4 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 are deducted shall be disbursed as follows:

1. **Payment to Class Representative.** Class Representative shall receive \$2,500.00 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 \$75,000.00 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 amounts 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; provided, however, that no Class Member shall receive payment from the Settlement Fund in an amount to exceed \$1,000.00. 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. 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) and 2.2(B)(3), shall be paid as a *cy pres* award to The Chicago Bar Foundation.

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 Burling 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 Burling 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 ATMs at Issue.

B. Release by Defendant. Except for the obligations created by this Settlement Agreement, upon the Effective Date, Burling (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, once in the Chicago Sun-Times. 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 each of the ATMs at Issue in the form and substance set forth in Exhibit C hereto.

C. **Website.** Defendant 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/burling in the form and substance set forth in Exhibit D hereto.

D. **Costs.** Defendant shall pay costs of Posted Notice (see paragraph 2.4(B) above), and the remaining costs of notice set forth in this paragraph 2.4 shall be paid from the Settlement Fund; costs of notice, other than Posted Notice, and costs of the Class Settlement Administrator shall not exceed \$10,000 and if this Settlement Agreement is terminated pursuant to its terms or if the Court does not finally approve this Settlement 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.

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.

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 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 retain Class Settlement Administrator First Class, Inc. to process Claim Forms and distribute the Settlement Fund. 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 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, 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
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:

John K. Kneafsey
NISEN & ELLIOTT, LLC
200 W. Adams St., Ste. 2500
Chicago, IL 60606
Fax: 312-346-9316

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 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 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 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.

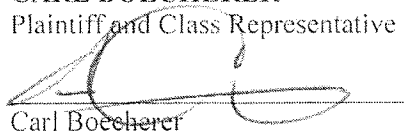
2.20 **Headings.** The headings of the several sections and paragraphs hereof are for convenience only and do not define or limit the contents of such sections or paragraphs.

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.

CARL BOECHERER
Plaintiff and Class Representative


By:



Carl Boecherer

3/8/2010
Date

Approved as to form:

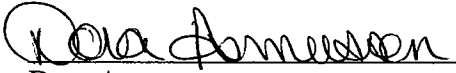


Lance A. Raphael
Stacy M. Bardo
The Consumer Advocacy Center, P.C.
180 W. Washington St., Ste. 700
Chicago, Illinois 60602

3/9/2010
Date

Counsel for Plaintiff and the Class Members

BURLING BANK
Defendant

By: 
Dora Asmussen

2/16/2010
Date

Its: Vice President

Approved as to form:

John K. Kneafsey
Claire E. Gorman
Nisen & Elliott, LLC
200 W. Adams St., Ste. 2500
Chicago, IL 60606

 / /
Date

Counsel for Defendant Burling Bank

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

CARL BOECHERER, individually and on)	
behalf of all others similarly situated,)	
)	
Plaintiff,	)	No. 08 C 1332
)	
v.	)	Magistrate Judge Denlow
	)	(consent filed)
BURLING BANK,)	
)	
Defendant.)	

CLAIM FORM

Note: This Claim Form must be completely filled out and delivered (or post-marked, if mailed) to the Class Settlement Administrator by _____, 2010:

Class Settlement Administrator:
First Class, Inc.
5410 W Roosevelt Rd, Unit 222
Chicago, IL 60644-1478

I affirm under penalties of perjury that I used one of the automated teller machines at Burling Bank, located at 141 W. Jackson Blvd., Chicago, IL 60604 between August 23, 2007 and February 11, 2008 and was charged a transaction fee for the use of that ATM. I therefore believe I am a member of the Settlement Class described in the class notice and want to receive my share of the Settlement Fund.

Signature: _____

Printed Name: _____

Address: _____

Telephone No.: _____

Last 4 Digits of
Card Used in
Transaction: _____

Name of Financial
Institution that Issued
Card Used in
Transaction: _____

NOTICE OF CLASS ACTION SETTLEMENT*Boecherer v. Burling Bank, Case No. 08 C 1332*

IF YOU USED AN ATM AT BURLING BANK, 141 W. JACKSON BLVD., CHICAGO, IL 60604 BETWEEN AUGUST 23, 2007 AND FEBRUARY 11, 2008 (“CLASS PERIOD”), AND WERE CHARGED A FEE FOR THE USE OF THAT ATM, YOU MAY BE A CLASS MEMBER. THIS SETTLEMENT MAY AFFECT YOUR RIGHTS.

This Notice concerns a lawsuit about the charging of ATM fees. Mr. Boecherer sued Burling Bank under a law called the Electronic Funds Transfer Act on the grounds that Burling Bank’s automated teller machines (“ATMs”) did not have fee notices posted on the outside of them advising consumers that a fee may be charged for using the ATMs. Burling Bank denies Mr. Boecherer’s claims but has agreed to a settlement of the case.

The settlement includes everyone who was charged a fee for using the ATMs between August 23, 2007 and February 11, 2008. These people are called “Class Members,” and the time period that is covered is called the “Class Period.” Under the law, the maximum that a group of people may recover in a case like this one is the lesser of 1% of Burling Bank’s net worth or \$500,000, plus any actual damages that Class Members suffered. There are approximately 5,327 Class Members who were charged ATM fees during the Class Period. Burling Bank has agreed to establish a Settlement Fund of \$112,500 to settle the case. Class Members may make a claim on the Settlement Fund to receive a pro rata share, up to a maximum of \$1,000. The most an individual filing his own lawsuit could recover is \$1,000 plus any actual harm suffered, so the attorneys believe that a settlement allowing Class Members to make a claim for up to \$1,000 is fair and reasonable. The Settlement Fund will also be used to pay the lawyers who filed the lawsuit their reasonable attorney fee, not to exceed \$75,000, Mr. Boecherer \$2,500 for his services as class representative and the cost of notifying Class Members of the settlement.

On _____, 2010 at ____ a.m., Magistrate Judge Denlow will hold a hearing to decide whether to finally approve this settlement. **YOU DO NOT NEED TO ATTEND BUT ARE WELCOME TO.** If the settlement is approved, all Class Members will be bound by the resulting judgment and court orders, and eligible Class Members will be entitled to claim benefits under the settlement.

You have three choices:

1) If you want to receive your *pro rata* share of the Settlement Fund, up to a maximum of \$1,000, you must submit a completed Claim Form, postmarked by _____, 2010 to the Settlement Administrator, First Class, Inc., 5410 W. Roosevelt Rd., Unit 222, Chicago, IL 60644. **Failure to submit a Claim Form will mean you receive no money but are still governed by a Release** of your rights to sue Defendant for the ATM fee notice claims raised in this Lawsuit. Download a Claim Form at www.caclawyers.com/burling or call Class Counsel at (312) 782-5808 to request a Claim Form.

2) If you do not want to participate in the Settlement you must write a letter stating, “EXCLUDE ME FROM THE *BOECHERER V. BURLING BANK* SETTLEMENT.” Include your name and address and mail the letter to the Settlement Administrator, First Class, Inc., 5410 W. Roosevelt Rd., Unit 222, Chicago, IL 60644. Your letter must be postmarked by _____, 2010 to be valid.

3) If you think the Settlement is unfair, you may object to it by writing a memo stating the specific reasons for your objection and filing it with the Court at 219 South Dearborn Street, Chicago, Illinois 60604 on or before _____, 2010 and sending a copy to The Consumer Advocacy Center, P.C. at 180 West Washington, Suite 700, Chicago, IL 60602 and to John K. Kneafsey, Nisen & Elliott, LLC, 200 W. Adams St., Ste. 2500, Chicago, IL 60606.

For more information, visit www.caclawyers.com/burling or contact Class Counsel Lance Raphael of The Consumer Advocacy Center, P.C., 180 W. Washington St., Ste. 700, Chicago, IL 60602; phone: (312) 782-5808.

**DO NOT CONTACT THE COURT FOR INFORMATION,
AS IT WILL NOT BE ABLE TO ASSIST YOU**

NOTICE OF CLASS ACTION

If you used this ATM anytime between August 23, 2007 and February 11, 2008 and were charged a transaction fee for use of the machine, you may be entitled to compensation pursuant to a class action settlement in the case of *Boecherer v. Burling Bank*, Case No. 08 C 1332. To find out more, visit

www.caclawyers.com/burling

or call Lance Raphael at 312-782-5808.

Boecherer v. Burling Bank
CLASS ACTION SETTLEMENT INFORMATION

Welcome to the settlement information website for *Boecherer v. Burling Bank*. This website describes the case and the settlement between Plaintiff and Defendant.

We have tried to design this website to help you get information about the proposed settlement of this case. If necessary, however, you can also contact Class Counsel for further information:

Lance A. Raphael
The Consumer Advocacy Center, P.C.
180 W. Washington St., Ste. 700
Chicago, IL 60602
(312) 782-5808

DO NOT CONTACT THE COURT FOR INFORMATION.

This case is currently pending in the United States District Court for the Northern District of Illinois as Case No. 08 C 1332. The judge is Magistrate Judge Morton Denlow. To see a copy of the Complaint, [click here](#).

Plaintiff alleges that Defendant did not post the required fee notices on the outside of its automated teller machines at 141 W. Jackson Blvd., Chicago, IL 60604, thus violating the Electronic Funds Transfer Act, 15 U.S.C. §1693 *et seq.* (“EFTA”). To see a copy of the class action publication notice, [click here](#).

Defendant denies Plaintiff’s claims of wrongdoing but has agreed to settle all claims against it to avoid the expense of continued legal proceedings. To see a copy of the Settlement Agreement, [click here](#).

The Court has certified a class and preliminarily approved a class action settlement of this case. To see a copy of the Preliminary Approval Order, [click here](#).

The links below provide information about who is a Class Member, the terms of the Settlement Agreement and how Class Members can participate in, object to, or exclude themselves from, the class action settlement of this case.

All Potential Class Members

To find out if you are a Class Member, [click here](#).

If you want to receive money from the Settlement Fund, [click here](#).

If you do not want to be a Class Member (or receive any money from the Settlement Fund), [click here](#).

If you want to object to the settlement of this case as a class action or to the terms of the Settlement Agreement, [click here](#).

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

CARL BOECHERER, individually and on behalf)	
of all others similarly situated,)	
	)	Case No. 08 C 1332
Plaintiff,)	
	)	Magistrate Judge Denlow
v.	)	(consent filed)
)	
BURLING BANK,)	
)	
Defendant.)	

[PROPOSED] 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 August 23, 2007 through February 11, 2008, were charged a transaction fee for the use of automated teller machine numbers 0522B and 0522C operated by Burling Bank and located at 141 W. Jackson Blvd., Chicago, IL 60604..

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 ATMs identified above violated the requirements of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*; (C) the claim of Plaintiff Carl Boecherer is typical of the Class Members’ claims; (D) Plaintiff Carl Boecherer 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 notice be implemented in accordance with paragraph 2.4 of the Settlement Agreement. Counsel will file an affidavit with the Court, at least 5 business days prior to the Fairness Hearing, 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 60 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/burling or by contacting Class Counsel. To be timely, a Claim Form must be sent to the Class Settlement Administrator and postmarked within 60 days after today's date.

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 Class Settlement Administrator and postmarked within 60 days of

today's date. 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 *BOECHERER V. BURLING 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 no later than 60 days after today's date. 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 5 days prior to the Fairness Hearing.

10. A Fairness Hearing on the fairness and reasonableness of the Settlement Agreement will be held before this Court on _____ at ____ a.m./p.m.

SO ORDERED:

Honorable Morton Denlow
United States Magistrate Judge

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

CARL BOECHERER, individually and on behalf)	
of all others similarly situated,)	
	)	Case No. 08 C 1332
Plaintiff,)	
	)	Magistrate Judge Denlow
v.	)	(consent filed)
)	
BURLING BANK,)	
)	
Defendant.)	

[PROPOSED] FINAL APPROVAL ORDER

This matter comes before the Court on the joint request of Plaintiff, the Class Members and Defendant for final approval of the Class Action Settlement Agreement and Release (the “Settlement Agreement”), and having considered the papers submitted to the Court and proceedings to date, **THE COURT FINDS AS FOLLOWS:**

1. This Court has jurisdiction over the subject matter of this Lawsuit, the Class Representative, the Class Members and Defendant;
2. Notice was given to the Class pursuant to paragraph 2.4 of the Settlement Agreement in this matter;
3. The dissemination of Notice, as provided for in the Preliminary Approval Order and the Settlement Agreement, constituted the best practicable notice under the circumstances to all Class Members and fully met the requirements of Fed. R. Civ. P. 23, any and all substantive and procedural due process rights guaranteed by the United States Constitution and any other applicable law;
4. _____ Members of the Settlement Class opted out of the Settlement Agreement;
5. _____ Members of the Settlement Class objected to the Settlement Agreement;

6. The Settlement Agreement is fair, reasonable and adequate.

THEREFORE, IT IS HEREBY ORDERED:

A. That all defined terms contained herein shall have the same meanings as set forth in the Settlement Agreement;

B. That the Settlement Agreement is finally approved and the Parties shall implement it pursuant to its terms;

C. That, except as to any person who has timely and effectively requested exclusion from the Settlement Agreement, the Court hereby dismisses with prejudice this Lawsuit, all claims contained therein and all Released Claims;

D. That this Court reserves exclusive and continuing jurisdiction and venue with respect to the consummation, implementation, enforcement, construction, interpretation, performance and administration of the Settlement Agreement or Judgment;

E. That, except as otherwise provided in the Settlement Agreement or herein, the Parties are to bear their own attorneys' fees and costs; and

F. That this Court bars and permanently enjoins all Class Members, except any person who timely and effectively requested exclusion from the Settlement Agreement, from instituting or prosecuting any action or proceeding, whether class or individual, against Defendant for liability based upon the Released Claims.

SO ORDERED this ____ day of _____, 2010.

Honorable Morton Denlow
United States Magistrate Judge