

relating to the claims that have been or might have been asserted in the Lawsuit and have concluded, taking into account the benefits that Plaintiffs and the class members will receive as a result of this Agreement and the risks and delays of further litigation, that this Agreement is fair, reasonable and adequate and in the best interests of Plaintiffs and the class members; and

WHEREAS, in consideration of the foregoing and other good and valuable consideration, it is stipulated and agreed by and among Plaintiffs and FAB that the claims of Plaintiffs and the class be and are hereby compromised and settled, subject to the approval of the Court, upon the terms and conditions set forth below.

TERMS AND CONDITIONS

1. The Settlement Class. The class on whose behalf this Agreement is entered consists of all persons nationally who, from November 28, 2003 to December 1, 2004, were charged a transaction fee for use of ATMs nos. S1A5260 and S1A5261 located in the Chicago Hilton and Towers at 720 South Michigan Avenue in Chicago, Illinois in an amount different from the transaction fee disclosed on the fee notice posted on the outside of those ATMs ("Class" or "Class Members" or "Settlement Class" or "Settlement Class Members").

2. Consideration to the Class. FAB shall establish a fund totaling \$113,750.00 ("Settlement Fund"), which shall be distributed *pro rata* among Class Members, including Plaintiffs, who return a fully-executed, complete, timely and truthful Claim Form (attached hereto as **Exhibit A**) within the time set by the Court; provided, however, that no Class Member shall receive payment from the Settlement Fund exceeding \$1,000.00. Failure to return a fully-executed, complete, timely and truthful Claim Form shall bar any Class Member from recovery of any portion of the Settlement Fund. Plaintiffs' attorneys and FAB's attorneys shall determine jointly whether a Class Member is eligible for payment from the Settlement Fund and the amount of such payment, or if they cannot make such a determination, then the Court shall determine whether a Class Member is eligible for payment from the Settlement Fund and the amount of such payment. Any payments due under this paragraph shall be paid not later than 35 days after entry of a Final Approval Order (see paragraph 10 below) unless an appeal has been filed, in which case any payments due under this paragraph shall be paid not later than 30 days after the Effective Date (see paragraph 6 below).

3. Cy Pres. Any money remaining in the Settlement Fund, if any, after payments are made pursuant to paragraph 2 above, shall be paid as follows as *cy pres* awards: (a) 50% to Legal Assistance Foundation of Metropolitan Chicago, with the direction that it be used for the Housing Law Project and/or the Consumer Law for the Elderly Project; (b) 25% to The Allendale Association; and (c) 25% to Neighborhood Housing Services of Chicago, Inc.

4. Attorneys' Fees and Costs. In addition to the benefits described above and subject to Court approval, FAB shall pay attorneys for Plaintiffs and Class Members, The Consumer Advocacy Center, P.C., \$86,250.00 not later than 35 days after entry of a Final Approval Order (see paragraph 10 below) unless an appeal has been filed, in which case any payments due under this paragraph shall be paid not later than 30 days after the Effective Date (see paragraph 6 below) in full satisfaction of all reasonable attorneys' fees and costs. This

payment is based upon arms-length negotiations among the parties based upon Plaintiffs' attorneys' current hourly rate and the time expended through final approval. This payment does not reduce the amount of the Settlement Fund.

5. Release. Except for the obligations created by this Agreement, upon entry by the Court of a Final Approval Order (see paragraph 10 below) approving this Agreement, Plaintiffs (for themselves and each of their respective current and former heirs, executors, administrators, controlled companies, partners, employees, assigns, agents and attorneys) and each Class Member that has not excluded himself/herself from the Class (for himself/herself and each of his/her respective current and former heirs, executors, administrators, controlled companies, partners, employees, assigns, agents and attorneys), remise, release and forever discharge FAB (and each of its current and former parents, subsidiaries, affiliates, controlled companies, officers, directors, managers, shareholders, members, partners, employees, predecessors, successors, assigns, agents and attorneys) and waive all rights against FAB 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, present or future, 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 FAB's alleged failure to provide adequate notice of ATM fees at FAB ATMs nos. S1A5260 and S1A5261 located in the Chicago Hilton and Towers at 720 South Michigan Avenue, Chicago, Illinois 60605 prior to the Effective Date (see paragraph 6 below). The provisions of this release shall be construed to exclude, and shall not impair, any right, cause of action or claim unrelated to the facts alleged in this Lawsuit.

6. Effective Date. If no appeal is taken from the Final Approval Order (see paragraph 10 below), then the Effective Date of this Agreement is the 35th day after the Court's entry of a Final Approval Order. If an appeal is taken from the Final Approval Order (see paragraph 10 below), then the Effective Date is the 35th day after the final disposition of any such appeal(s), which disposition affirms the Final Approval Order (see paragraph 10 below), the transactions contemplated herein and the consummation of the settlement in accordance with the terms and provisions of this Agreement.

7. Class Notice. FAB shall cause notice to be published once in USA Today in the form and substance set forth in **Exhibit B** hereto and shall cause notice to be posted, from the date a Preliminary Approval Order (see paragraph 9 below) is entered to the last date for Class Members to Opt-Out (see paragraph 8 below), on ATMs nos. 5260 and 5261 located in the Chicago Hilton and Towers at 720 South Michigan Avenue, Chicago, Illinois 60605 (which are the same ATMs at issue in this case but with different numbers) in the form and substance set forth in **Exhibit C** hereto. Plaintiffs shall cause notice to be posted, from the date a Preliminary Approval Order (see paragraph 9 below) is entered to the last date for Class Members to Opt-Out (see paragraph 8 below), on the internet in the form and substance set forth in **Exhibit D** hereto.

8. Opt-Out/Exclusion. Any Class Member, except Plaintiffs, may seek to be excluded from this Agreement and from the Class within the time and in the manner provided by

Court order. Any Class Member so excluded shall not be bound by the terms of this Agreement nor be entitled to any of its benefits.

9. Preliminary Approval Order. As soon as practicable after execution of this Agreement, Plaintiffs and FAB shall seek a Court order that

- a. Preliminarily approves this Agreement;
- b. Schedules a hearing for final approval of this Agreement by the Court; and
- c. Approves the form and manner of notice to the Class set forth in paragraph 8 above and finds that such notice satisfies the requirements of due process pursuant to Fed. R. Civ. P. 23, the United States Constitution and any other applicable law and finds that no further notice to the Class is required.

The 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 Agreement if the changes do not materially modify this Agreement.

10. Final Approval Order. At the conclusion of, or as soon as practicable after, the close of the hearing on fairness, reasonableness and adequacy of this Agreement, counsel for the Class and FAB shall request that the Court enter a Final Approval Order approving the terms of this Agreement as fair, reasonable and adequate; providing for the implementation of its terms and provisions; finding that the notice given to the Class satisfies the requirements of due process pursuant to Fed. R. Civ. P. 23, the United States Constitution and any other applicable law; dismissing the claims of the Class with prejudice and without costs; and retaining exclusive jurisdiction to enforce the provisions of this Agreement. The parties agree to 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 Agreement if the changes do not materially modify this Agreement.

11. No Admission of Liability. Whether or not this Agreement is consummated, this Agreement and the proceedings had in connection herewith shall in no event be construed as, or be deemed to be, evidence of an admission or concession on the part of FAB of any liability or wrongdoing whatsoever.

12. Nullification. If this Agreement is not approved by the Court or for any reason does not become effective, it shall be deemed null and void *ab initio* and shall be without prejudice to the rights of the parties hereto and shall not be used in any subsequent proceedings in this or any other litigation or in any manner whatsoever.

13. Best Efforts. The parties and their attorneys agree to cooperate fully with one another in seeking Court approval of this Agreement and to use their best efforts to effect the consummation of this Agreement.

14. Notices. Notices regarding this Agreement directed to Plaintiffs and/or the Class shall be sent to:

Lance A. Raphael
Stacy M. Bardo
Allison A. Krumhorn
The Consumer Advocacy Center, P.C.
180 West Washington
Suite 700
Chicago, Illinois 60602

Notices to FAB shall be sent to:

Paul F. Markoff
Karl G. Leinberger
Crowley Barrett & Karaba, Ltd.
20 South Clark Street
Suite 2310
Chicago, Illinois 60603

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

15. Counterparts. This 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 Agreement may be treated as originals.

16. Binding Agreement. Each and every term of this Agreement shall be binding upon and inure to the benefit of Plaintiffs and each Class Member and each of their respective current and former heirs, executors, administrators, controlled companies, partners, employees, assigns, agents and attorneys, all of whom/which persons and entities are intended to be beneficiaries of this Agreement.

17. Choice of Law. This Agreement and the exhibits annexed hereto shall be governed by and interpreted in accordance with the laws of the State of Illinois, without regard to choice of law principles.

18. Interpretation. All parties have participated in the drafting of this Agreement and, accordingly, any claimed ambiguity shall not be presumptively construed for or against any of the parties hereto.

19. Entire Agreement. This Agreement constitutes the entire agreement of the 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 Agreement and that all prior agreements or understandings within the scope of the subject matter of this Agreement are, upon execution of this Agreement, superseded and merge into this Agreement and shall have no effect. This Agreement may not be amended or modified in any respect whatsoever, except by a writing duly executed by all parties hereto.

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

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

THOMAS BURNS

By:



Thomas Burns

3/28/2007
Date

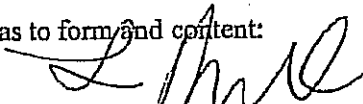
MARK LARSON

By:

Mark Larson

1/1
Date

Approved as to form and content:



Lance A. Raphael
The Consumer Advocacy Center, P.C.
180 West Washington
Suite 700
Chicago, Illinois 60602
312.782.5808 (phone)
312.377.9930 (fax)
Counsel for Plaintiffs and the Class

3/28/07
Date

this Agreement and that all prior agreements or understandings within the scope of the subject matter of this Agreement are, upon execution of this Agreement, superseded and merge into this Agreement and shall have no effect. This Agreement may not be amended or modified in any respect whatsoever, except by a writing duly executed by all parties hereto.

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

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

THOMAS BURNS

By: _____ / /
Thomas Burns Date

MARK LARSON

By: Mark Larson 03/28/2007
Mark Larson Date

Approved as to form and content:

Lance A. Raphael
The Consumer Advocacy Center, P.C.
180 West Washington
Suite 700
Chicago, Illinois 60602
312.782.5808 (phone)
312.377.9930 (fax)
Counsel for Plaintiffs and the Class / /
Date

FIRST AMERICAN BANK

By: *Eduardo Monteagudo*
Eduardo Monteagudo

3/30/2007
Date

Its: Senior Vice President

Approved as to form and content:

Paul F. Markoff
Crowley Barrett & Karaba, Ltd.
20 South Clark Street
Suite 2310
Chicago, Illinois 60603
312.726.2468 (phone)
312.726.2741 (fax)
Counsel for First American Bank

 / /
Date


FIRST AMERICAN BANK

By: _____
Eduardo Monteagudo

 / /
Date

Its: Senior Vice President

Approved as to form and content:



Paul F. Markoff
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20 South Clark Street
Suite 2310
Chicago, Illinois 60603
312.726.2468 (phone)
312.726.2741 (fax)
Counsel for First American Bank

5/30/2007
Date