

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

STEVEN FRUITT and THOMAS BURNS,))	
)	
Plaintiffs,))	Case No. 06-cv-01659
)	
v.))	Judge Virginia M. Kendall
)	
FIRST AMERICAN BANK,))	
)	
Defendant.))	

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and among plaintiffs Steven Fruitt and Thomas Burns (collectively, “Plaintiffs”), suing for themselves and on behalf of all other persons similarly-situated, and Defendant First American Bank (“FAB”).

RECITALS

WHEREAS, the above-captioned lawsuit (the “Lawsuit”) was instituted in the United States District Court for the Northern District of Illinois (the “Court”) by Plaintiffs on behalf of themselves and other similarly-situated individuals and is pending and undetermined among the parties;

WHEREAS, in the Lawsuit, Plaintiffs claim that FAB 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, Plaintiffs seek statutory damages, attorneys’ fees and costs;

WHEREAS, FAB denies Plaintiffs’ claims, denies any liability to Plaintiffs or the putative class, and denies any wrongdoing of any kind;

WHEREAS, Plaintiffs and FAB agree that it is desirable that the Lawsuit and the claims alleged therein be settled upon the terms and conditions set forth in this Agreement, in order to avoid further expense and uncertain, burdensome and protracted litigation, and to resolve all claims that have been or could be asserted by Plaintiffs or the putative class;

WHEREAS, the parties have engaged in extensive arms-length settlement negotiations, including mediation by the Honorable Virginia M. Kendall, and Plaintiffs’ attorneys 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 Plaintiffs and the putative 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 putative 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 putative 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 30, 2005 through March 17, 2006, were charged a transaction fee for use of ATM no. 5464 located at 541 North Fairbanks Court, Chicago, Illinois 60611 ("Class" or "Class Members" or "Settlement Class" or "Settlement Class Members").

2. Consideration to the Class. FAB shall establish a fund totaling \$6,500.00 ("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 to Legal Assistance Foundation of Metropolitan Chicago as a *cy pres* award, with the direction that it be used for the Housing Law Project and/or the Consumer Law for the Elderly Project.

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., \$23,500.00 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 ATM no. 5464 located at 541 North Fairbanks Court, Chicago, Illinois 60611 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 ATM no. 5464 located at 541 North Fairbanks Court, Chicago, Illinois 60611 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. Certifies for purposes of settlement that the Class claims may be maintained on behalf of the Class defined in paragraph 1 above;
- c. Schedules a hearing for final approval of this Agreement by the Court; and
- d. 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.

STEVEN FRUITT

By: 
Steven Fruitt

4/31/07
Date

THOMAS BURNS

By: _____
Thomas Burns

 / /
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

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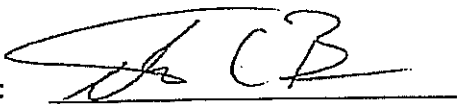
20. Authority. The persons signing this Agreement hereby represent and warrant that they have read this Agreement; that they know and understand its terms; that they have consulted with counsel with respect hereto; that they have signed this Agreement freely; and that they intend that they and/or or 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.

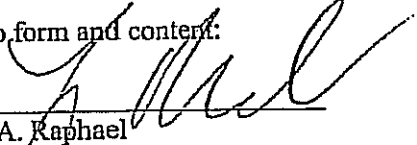
IN WITNESS WHEREOF, the parties hereto, have so agreed on the dates noted below.

STEVEN FRUITT

By: _____ Date 1/1
Steven Fruitt

THOMAS BURNS

By:  _____ Date 3/28/2007
Thomas Burns

Approved as to form and content:  _____ Date 3/28/07

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

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

1/1
Date


FIRST AMERICAN BANK

By: _____
Eduardo Monteagudo

____/____/____
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

3/30/2007
Date