

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

ANNA POLEVOY,	)	
	)	
Plaintiff,	)	No. 08 C 4822
	)	
v.	)	Judge Kennelly
	)	
DEVON BANK,	)	Magistrate Judge Ashman
	)	
Defendant.	)	

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is entered into by and between Plaintiff Anna Polevoy ("Plaintiff"), on behalf of herself and a group of all other persons similarly situated, and Defendant Devon Bank ("Defendant") (Plaintiff and Defendant sometimes referred to as "Settling Parties").

**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 Plaintiff on behalf of herself and other similarly-situated individuals and is pending and undetermined between the parties;

WHEREAS, in the Lawsuit, Plaintiff claims 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 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 Plaintiff or the proposed class;

WHEREAS, the parties have engaged in extensive arms-length settlement negotiations, and Plaintiff's 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 Plaintiff 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 Plaintiff and the proposed class members; and

WHEREAS, in consideration of the foregoing and other good and valuable consideration, it is stipulated and agreed by and between Plaintiff and Defendant that the claims of Plaintiff and the proposed 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 (referred to herein as "Class" or "Class Members" or "Settlement Class") on whose behalf this Agreement is entered consists of all persons who, from August 22, 2007 to July 3, 2008, were charged a transaction fee for the use of ATM XE3730, located at Devon Bank, 70 S. Waukegan Rd., Deerfield, IL 60015.

2. Consideration to the Class. Defendant shall pay \$64,500.00 to The Consumer Advocacy Center, P.C. for the establishment of a Settlement Fund. The Settlement Fund shall be divided *pro rata* among those Class Members who return fully-executed Claim Forms (a copy of which Claim Form is attached hereto as Exhibit A), postmarked on or before the 45<sup>th</sup> day after the Preliminary Approval Order (see paragraph 11) is entered, provided, however, that no Class Member shall receive payment from the Settlement Fund in an amount to exceed \$1,000.00. Plaintiff shall be eligible to submit a Claim Form and receive a *pro rata* distribution from the Settlement Fund. If there is any dispute as to the truthfulness of any submitted Claim Form, Plaintiff's attorneys and Defendant's attorneys shall determine whether that Class Member is eligible for payment from the Settlement Fund. If counsel cannot agree on a determination, then the party disputing the submission of the Claim Form shall ask the Court to determine whether a Class Member is eligible for payment. Any payments due under this paragraph shall be paid no later than 14 days after the Effective Date (see paragraph 7 below). All costs incurred in administering the Settlement Fund, including the cost of mailing checks to eligible class members who send in claim forms, shall be borne by The Consumer Advocacy Center, P.C. and shall not be taken from the Settlement Fund. The Consumer Advocacy Center, P.C. shall be responsible for all distributions made from the Settlement Fund and shall provide copies of all claim forms, opt-outs, and objections to Defendant's attorneys.

3. Consideration to the Class Representative. Defendant shall pay \$500.00 to Plaintiff as an incentive award for her services as the Class Representative. As set forth in paragraph 2 above, Plaintiff shall also be eligible to submit a Claim Form. Any payment due under this paragraph shall be paid no later than 14 days after the Effective Date (see paragraph 7 below).

4. Cy Pres. Any money remaining in the Settlement Fund, if any, after payments are made pursuant to paragraph 2 above, shall be paid as a *cy pres* award as follows: (a) 50% to City Year Chicago, 36 South Wabash, Suite 1500, Chicago, IL 60603-2953, and (b) 50% to Family Matters, 7731 North Marshfield Avenue, Chicago, IL 60626.

5. Attorneys' Fees and Costs. In addition to the benefits described above, Defendant shall not object to a request for attorneys' fees and costs in an amount not to exceed \$35,000.00, which amount shall be paid, subject to Court approval, to The Consumer Advocacy Center, P.C. no later than 14 days after the Effective Date (see paragraph 7 below). This payment is based upon arms-length negotiations among the parties. This payment does not reduce the amount of the Settlement Fund and is to be paid separate and apart from the relief to the Class Representative and the Class.

6. Release.

A. Limited Release by Class Members. Except for the obligations created by this Agreement, upon entry by the Court of a Final Approval Order (see paragraph 12 below) approving this Agreement, 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 Defendant (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) 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 facts alleged in this lawsuit and Defendant's alleged failure to provide adequate notice of ATM fees at ATM XE3730, located at Devon Bank, 70 S. Waukegan Rd., Deerfield, IL 60015, prior to the Effective Date (see paragraph 7 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.

B. General Release by Plaintiff. Except for the obligations created by this Agreement, upon entry by the Court of a Final Approval Order (see paragraph 12 below) approving this Agreement, Plaintiff (for herself and each of her respective current and former heirs, executors, administrators, controlled companies, partners, employees, assigns, agents and attorneys) remises, releases and forever discharges Defendant (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) 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.

C. Defendant (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) also agree to release and forever discharge Plaintiff and her attorneys of and from all causes of action, suits, claims and demands whatsoever, at law or in equity, whether now known or unknown, suspected or unsuspected, existing, claimed to exist or which can ever hereinafter exist, arising from the investigation, filing, or prosecution of the Lawsuit.

7. Effective Date. If no appeal is taken from the Final Approval Order (see paragraph 12 below), then the Effective Date of this Agreement is the 35<sup>th</sup> day after the Court's entry of a Final Approval Order. If an appeal is taken from the Final Approval Order (see paragraph 12 below), then the Effective Date is the 35<sup>th</sup> day after the final disposition of any such appeal(s), which disposition affirms the Final Approval Order (see paragraph 12 below), the transactions contemplated herein and the consummation of the settlement in accordance with the terms and provisions of this Agreement.

8. Class Notice. Defendant shall cause notice to be published once in the Pioneer Press Newspapers distributed in the following 2 publishing zones: Lake Shore and North Shore 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 11 below) is entered to the last date for Class Members to Opt-Out (see paragraph 9 below), on ATM XE3730, located at Devon Bank, 70 S. Waukegan Rd., Deerfield, IL 60015, in the form and substance set forth in Exhibit C hereto. Plaintiff's counsel shall also cause notice to be posted, from the date a Preliminary Approval Order (see paragraph 11 below) is entered to the last date for Class Members to Opt-Out (see paragraph 9 below), on the internet at [www.caclawyers.com](http://www.caclawyers.com) in the form and substance set forth in Exhibit D hereto. Defendant shall pay all costs and expenses associated with the publication and posting of the Class Notice in the newspaper, on the ATM and on the Internet. The costs of publishing and posting the Class Notice is to be paid separately and apart from the relief to the Class Representative and the Class and separately and apart from the payment of attorneys' fees and costs set forth in paragraph 5 above.

9. Opt-Out/Exclusion. Any Class Member may seek to be excluded from the Settlement. Any Class Member so excluded shall not be bound by the Settlement nor be entitled to any of its benefits. To be timely, a request for exclusion must be sent to Class Counsel (see paragraph 16 below) and be postmarked no later than the Opt-Out 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 *PQLEVOY V. DEVON BANK*." The request for exclusion must also contain the excluded Class Member's name, address, and signature. Instructions for opting-out will be stated in the Class Notice.

10. Objections. Any Class Member who objects to the Settlement contemplated by this Agreement shall have a right to appear and be heard at the Final Approval Hearing provided that such Class Member files with the Court and delivers to Class Counsel (see paragraph 16

below) and Defendant's Counsel a written notice of objection, together with a statement of reasons for the objection, no later than the Opt-Out Date. Class Counsel and Defendant's Counsel may, but need not, respond to the objections, if any, by means of a memorandum of law filed and served no later than 5 days prior to the Final Approval Hearing. The manner in which a notice of objection should be prepared, filed and delivered shall be stated in detail in the Class Notice. Only Class Members who have filed and delivered valid and timely written notices of objection will be entitled to be heard at the Final Approval Hearing, unless the Court orders otherwise. Any Class Member who does not make his or her objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement or the award of attorneys' fees to Class Counsel, unless otherwise ordered by the Court.

11. Preliminary Approval Order. As soon as practicable after execution of this Agreement, Plaintiff and Defendant shall seek a Court order that:

- a. Grants preliminary approval of this Settlement Agreement and, subject to any objections that may be presented to the Court prior to the Final Approval Hearing, finds that this Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Class; and
- 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 as set forth in paragraph 8 above, and in the forms attached to this Agreement as Exhibits B-D, 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 that the Court enter 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.

12. 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 counsel for Defendant shall request that the Court enter a Final Approval Order finding that:

- a. Distribution of the Class Notice fully and accurately informed all Class Members entitled to notice of the material elements of the Settlement, constituted the best notice practicable under the circumstances, constituted valid, due and sufficient notice, and complied fully with Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution and any other applicable law; and
- b. After proper notice to the Class and after sufficient opportunity to object, no timely objections to this Agreement have been made, or that all timely objections have been considered and denied; and

c. Approval of the settlement, as set forth in this Agreement, as fair, reasonable, adequate, and in the best interests of the Class, under Rule 23 of the Federal Rules of Civil Procedure, finding that the settlement is in good faith, and ordering the Parties to perform the settlement in accordance with the terms of this Agreement; and

d. Neither the Final Judgment nor this Settlement Agreement shall constitute an admission of liability or wrongdoing by the Settling Parties; and

e. Subject to reservation of jurisdiction for matters discussed in subparagraph (h), below, dismisses with prejudice the Complaint; and

f. In accordance with Rule 54(b) of the Federal Rules of Civil Procedure, finds that there is no just reason for delay, and orders the entry of a Final Judgment; and

g. All Class Members shall, as of the entry of the Final Judgment, conclusively be deemed to have released and forever discharged the Defendant according to the terms of the Limited Release defined in paragraph 6A above, and forever enjoining and barring all Class Members from asserting, instituting or prosecuting in any capacity, before any court or governmental agency, any action or proceedings against the Defendant that asserts any Released Claims; and

h. A reservation of exclusive and continuing jurisdiction over the Lawsuit and the Settling Parties for the purposes of, among other things: (i) supervising the implementation, enforcement, construction, and interpretation of this Agreement, the Preliminary Approval Order, and the Final Approval Order; and (ii) supervising the administration and distribution of the relief to the Class and resolving any disputes that may arise with regard to any of the foregoing.

The parties agree to request that the Court enter 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.

13. 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 Defendant of any liability or wrongdoing whatsoever.

14. 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.

15. 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.

16. Notices. Notices regarding this Agreement directed to Plaintiff and/or the Class shall be sent to the following Class Counsel:

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

Notices to Defendant shall be sent to:

Gary S. Caplan  
Reed Smith LLP  
10 S. Wacker Dr.  
Chicago, IL 60606

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

17. 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 instrument. Photocopies, facsimiles or scanned copies of the signature pages of this Agreement may be treated as originals.

18. Binding Agreement. Each and every term of this 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, controlled companies, partners, employees, assigns, agents and attorneys, all of whom/which persons and entities are intended to be beneficiaries of this Agreement.

19. 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.

20. 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.

21. Entire Agreement. This Agreement, with its attached Exhibits A-F, 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,

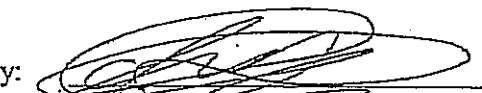
superseded and merge into this Agreement and shall have no effect. This Agreement may not be amended or modified in any respect whatsoever, except by a writing duly executed by all parties hereto.

22. 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.

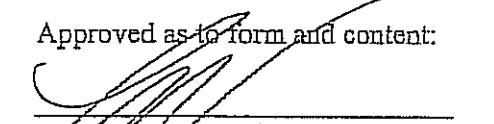
ANNA POLEVOY, Plaintiff

By:

  
Anna Polevoy

1/20/2009  
Date

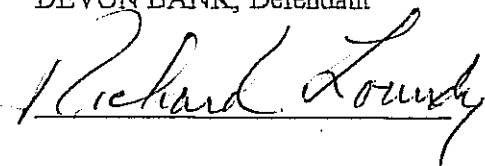
Approved as to form and content:

  
Lance A. Raphael  
The Consumer Advocacy Center, P.C.  
180 W. Washington St., Ste. 700  
Chicago, IL 60602  
*Counsel for Plaintiff and the Class*

1/20/2009  
Date

DEVON BANK, Defendant

By:

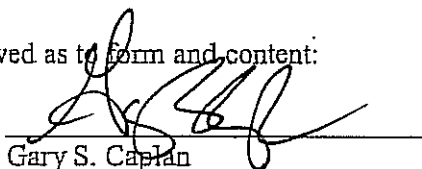
  
Richard Lundy

1/23/09  
Date

Its:

CRM

Approved as to form and content:

  
Gary S. Caplan

1/28/09  
Date

Reed Smith LLP  
10 S. Wacker Dr.  
Chicago, IL 60606  
*Counsel for Defendant*