

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

_____	:	Civil Action No.
IN RE NETBANK, INC.	:	1:07-cv-2298-TCB
SECURITIES LITIGATION	:	
_____	:	

ORDER AND FINAL JUDGMENT

WHEREAS, a consolidated class action is currently pending before the Court captioned *In re NetBank, Inc. Securities Litigation*, No. 1:07-cv-2298-TCB (the “Action”);

WHEREAS, the Court has received and reviewed the Stipulation and Agreement of Settlement dated as of July 8, 2011 (the “Stipulation”), along with the exhibits to the Stipulation, entered into by Lead Plaintiff and Class Representative Robert A. Brown (“Lead Plaintiff”), by and through his undersigned counsel of record, Berger & Montague, P.C. (“Lead Counsel”) and Gorby Peters & Associates, LLC (“Local Counsel”) (collectively, “Plaintiff’s Counsel”), in the above-captioned class action litigation (the “Action”), on behalf of himself and the members of the Class certified by Order of this Court dated August 7, 2009 (Dkt. 106), on the one hand; and defendants Douglas K. Freeman, James P. Gross, Thomas H. Muller, Jr., Eula L. Adams and David W. Johnson, Jr.

(collectively, the “Settling Defendants”),¹ by and through their counsel of record, King & Spalding, LLP (“Defendants’ Counsel”), on the other;

WHEREAS, by Order dated August 7, 2009 (Dkt. 106), the Court granted Lead Plaintiff’s Motion for Class Certification, and certified a Class in this Action consisting of all persons and entities who:

during the period March 16, 2005 through and including May 21, 2007 (the “Class Period”), purchased or otherwise acquired the publicly-registered common stock of NetBank, Inc. (“NetBank” or the “Company”), and held such stock as of May 21, 2007, and were damaged as a result (the “Class”).

WHEREAS, on July 21, 2011 (Dkt. 217), Lead Plaintiff made an unopposed motion, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the settlement of this Action on behalf of the Class, in accordance with the Stipulation and attached exhibits, which sets forth the terms and conditions for a proposed settlement of the Action and for dismissal of the Action with prejudice (the “Settlement”);

WHEREAS, on July 27, 2011 (Dkt. 218), the Court entered an Order preliminarily approving the proposed Class Settlement and for providing Notice to the Class;

WHEREAS, on November 9, 2011, following notice to all parties and notice

¹ Lead Plaintiff and the Settling Defendants, as defined in this Order, are collectively referred to as the “Parties.”

to the Class, a hearing (the “Settlement Fairness Hearing” or the “Hearing”) was held before this Court to consider, pursuant to Rules 23(e), 23(h), 54(b) and 54(d) of the Federal Rules of Civil Procedure, *inter alia*: (1) whether the terms and conditions of the Settlement embodied in the Stipulation are fair, reasonable and adequate for the settlement of all claims asserted by the Class in the Action now pending in this Court under the above caption, including the release and bar orders in favor of the Released Persons, and should be approved; (2) whether judgment should be entered dismissing the Complaint on the merits and with prejudice as against the Defendants and as against all persons who are members of the Class who have not requested exclusion; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the Settlement proceeds among the members of the Class; (4) whether and in what amount to award Plaintiff’s Counsel attorneys’ fees and reimbursement of costs and expenses; and (5) whether and in what amount to reimburse Lead Plaintiff Robert A. Brown for his costs and expenses;

WHEREAS, the Court having considered all matters submitted to it at the Settlement Fairness Hearing and otherwise; (1) and it appearing that the Notice of the Settlement Fairness Hearing, substantially in the form approved by the Court

was mailed to all persons reasonably identifiable who purchased the publicly-registered common stock of NetBank during the Class Period, and were damaged thereby; (2) and it appearing that a Summary Notice of the Hearing substantially in the form approved by the Court was published in *Investor's Business Daily*, *The Atlanta Journal-Constitution* and over *PR Newswire* pursuant to the specifications of the Court; (3) and it appearing that the Printed Notice and Summary Notice were posted to the websites of Plaintiff's Counsel and the Court-appointed Claims Administrator, Heffler, Radetich & Saitta LLP ("Claims Administrator") for the Settlement; (4) and it appearing that the Settlement is fair, adequate and reasonable; (5) the fairness and reasonableness of the award of attorneys' fees and reimbursement of costs and expenses; and (6) whether the reimbursement for Lead Plaintiff Robert A. Brown's costs and expenses is fair and reasonable;

WHEREAS, all defined/capitalized terms contained in this Order shall have the same meanings as set forth in the Stipulation; and

WHEREAS, Lead Plaintiff has made a motion, pursuant to Federal Rule of Civil Procedure 54 for dismissal of the Action with prejudice upon the terms and conditions set forth in the Stipulation,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has jurisdiction over the subject matter of the Action, the Lead Plaintiff and the Defendants.

2. As defined in the Stipulation, Released Persons include Defendants (Steven F. Herbert, Douglas K. Freeman, James P. Gross, Thomas H. Muller, Jr., Eula L. Adams and David W. Johnson, Jr.), Defendants' Counsel (King & Spalding, LLP), Lead Plaintiff (Robert A. Brown), and Plaintiff's Counsel (Berger & Montague, P.C. and Gorby Peters & Associates, LLC); and Released Claims are any and all claims, demands, rights, causes of action or liabilities, of every nature and description whatsoever, whether based in law or equity, on federal, state, local, statutory or common law, or any other law, rule or regulation, including both known claims and Unknown Claims (as defined in the Stipulation) that have been or could have been asserted in any forum by the Class Members, or any of them, or the successors or assigns of any of them, whether directly, indirectly, derivatively, representatively or in any other capacity, against any of the Released Persons, which arise out of, or relate in any way, directly or indirectly, to the allegations, transactions, facts, events, matters, occurrences, acts, representations or omissions involved, set forth, referred to, or that could have been asserted, in this Action,

including without limitation, claims for violation of federal or state securities laws, negligence, gross negligence, breach of duty of care, breach of duty of loyalty, breach of duty of candor, fraud, negligent misrepresentation, and breach of fiduciary duty arising out of, based upon, in connection with, or related in any way to the purchase, acquisition, sale, distribution, transfer or holding of the common stock of NetBank, Inc.

3. Upon the Effective Date (as defined by the Stipulation), the Class (and such person's "affiliates" or "associates" or other entities "controlled" by them as defined in SEC Rule 12b-2), except those who timely and validly exclude themselves from the Settlement, who have already excluded themselves from the Class or who do not participate in the Settlement, shall hereby be deemed to have, and by operation of this Order and Final Judgment shall have, fully, finally and forever released, relinquished and discharged the Released Persons from the Released Claims, whether or not any of the Class Members execute, deliver or file the Proof of Claim and release contained in the Proof of Claim.

4. Upon the Effective Date (as defined by the Stipulation), the Class (and such person's "affiliates" or "associates" or other entities "controlled" by them as defined in SEC Rule 12b-2), and anyone claiming through or on behalf of any of

them, except those who timely and validly exclude themselves from the Class or this Settlement, are barred and enjoined forever from commencing, instituting, prosecuting or continuing to prosecute any claim or proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind, asserting any Released Claim against any Released Person.

5. Upon the Effective Date (as defined by the Stipulation), each of the Settling Defendants and Defendants' Counsel shall hereby be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally and forever released, relinquished and discharged the Lead Plaintiff, the Class Members (and such Class Member's "affiliates" or "associates" or other entities "controlled" by them as defined in SEC Rule 12b-2), and Plaintiff's Counsel, from all claims arising out of, relating to, or in connection with the institution, prosecution, assertion, resolution or settlement of the Action under any state, federal or foreign statutory rule or common law; provided, however, that nothing in the Stipulation shall bar any action or release any claim to enforce the terms of the Stipulation and Order and Final Judgment.

6. Upon the Effective Date (as defined by the Stipulation), each of the Settling Defendants and Defendants' Counsel are barred and enjoined forever from

commencing, instituting, prosecuting or continuing to prosecute any claim or proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind, asserting any Released Claim against Lead Plaintiff or other Class Member or Plaintiff's Counsel.

7. This litigation as well as all of the Released Claims against the Released Persons are dismissed with prejudice. The parties to the Action are to bear their own costs, except as otherwise provided in the Stipulation.

8. Any Plan of Allocation submitted by Plaintiff's Lead Counsel, any order entered regarding any attorneys' fees, expenses, or costs, or the reimbursement of Lead Plaintiff, shall in no way disturb or affect the Final Judgment and shall be considered separate from this Order and Final Judgment.

9. Neither this Order and Final Judgment, the Stipulation, the Settlement, the Plan of Allocation, nor any act performed or document executed pursuant to or in furtherance of the Stipulation, the Settlement, the Plan of Allocation, or any of their terms and provisions, nor any of the negotiations or proceedings, nor any of the documents or statements referred to therein:

(a) shall be offered or received against the Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or

admission by any of the Defendants with respect to the truth of any fact alleged by Lead Plaintiff or the Class or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Defendants;

(b) shall be offered or received against the Defendants as evidence of any presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant, or against the Lead Plaintiff and the Class as evidence of any infirmity in the claims of Lead Plaintiff or the Class;

(c) shall be offered or received against the Defendants, Defendants' Counsel, Lead Plaintiff, the Class or Plaintiff's Counsel as evidence of any presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Parties to the Stipulation, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation and this Order and Final Judgment;

(d) shall not be construed against the Defendants or the Lead Plaintiff or any member of the Class as an admission, evidence, or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(e) shall not be construed as or received in evidence as an admission, concession or presumption against the Lead Plaintiff, the Class or Plaintiff's Counsel that any of the claims of Lead Plaintiff or the Class are without merit or that damages recoverable under the Action would not have exceeded the Settlement Fund.

10. Any Defendant(s) may file the Order and Final Judgment in any action that may be brought against him or them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11. No member of the Class or Authorized Claimant shall have any claim against the Lead Plaintiff, Plaintiff's Counsel, the Claims Administrator, any other employee of or agent designated by Plaintiff's Counsel, Defendants, or Defendants' Counsel based on the distributions made substantially in accordance

with the Stipulation, the Settlement, or the Plan of Allocation, including any modifications which may be approved by the Court, or in accordance with any Order of the Court. Plaintiff's Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any filed Proofs of Claim in the interest of achieving substantial justice.

12. Payment pursuant to the Stipulation included in the Notice shall be deemed final and conclusive against all members of the Class. All members of the Class whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by: all of the terms of the Stipulation and the Settlement; Orders of the Court relating to the approval and distribution of the Notice; the Plan of Allocation; the Administration of the Settlement; any award of attorneys' fees to Lead Counsel or Plaintiff's Counsel; the reimbursement of costs and expenses to Lead Counsel or Plaintiff's Counsel; and the reimbursement of costs and expenses to the Lead Plaintiff; the terms of the Order and Final Judgment to be entered in the Action and the releases provided for therein, and will be barred and enjoined from bringing any Released Claim against any Released Person.

13. The Court finds that Plaintiff's Counsel, Defendants' Counsel, Lead Plaintiff Robert A. Brown and Defendants have complied with each applicable requirement of Section 21D(c)(1), 15 U.S.C. § 78u-4(c)(1), and Fed.R.Civ.P. 11 as to all proceedings herein, including the filing, prosecution, defense and settlement of this Action, and as to each pleading, motion and other filings made in this Action.

14. Exclusive jurisdiction is hereby retained over Defendants, Defendants' Counsel, Lead Plaintiff, Plaintiff's Counsel, and the Class for all matters relating to or arising from this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with the administration and/or distribution of the Settlement proceeds to the members of the Class.

15. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

16. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Fed.R.Civ.P. 54 (b).

IT IS SO ORDERED.

Dated: 11.9.11

A handwritten signature in black ink, appearing to read "Timothy C. Batten, Sr.", written over a horizontal line.

THE HONORABLE TIMOTHY C. BATTEN, SR.
UNITED STATES DISTRICT JUDGE

In re NetBank Inc., Securities Litigation, No. 1:07-cv-2298-TCB
Order and Final Judgment -- Exhibit A
Persons Excluded from the Settlement

1. Raphael Theodore Brauch
2. Thomas E. Brown
3. Angela Frackowiak
4. Günther Frackowiak
5. Hans Hartmut Karg