

**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 PRELIMINARILY APPROVING THE CLASS
SETTLEMENT AND FOR PROVIDING NOTICE TO THE CLASS**

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, Lead Plaintiff has made an unopposed motion, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the settlement of this Action, in accordance with the Stipulation which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Action and for dismissal of the Action with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation and those exhibits; and

WHEREAS, all defined terms contained herein shall have the same meanings as set forth in the Stipulation;

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

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court hereby preliminarily approves the Stipulation and the terms of settlement set forth therein, subject to further consideration at the Settlement Fairness Hearing as defined and described below.

2. A hearing (the "Settlement Fairness Hearing") shall be held before this Court on November 9, 2011, at 10:00 a.m., at the United States Courthouse, 75 Spring Street, SW, Courtroom 2106, Atlanta, Georgia 30303-3309, to determine whether the proposed settlement of the Action, on the terms and conditions provided for in the Stipulation, is fair, just, reasonable and adequate to the Class and should be approved by the Court; whether a Judgment as provided for in the Stipulation should be entered by the Court; whether the proposed Plan of Allocation should be approved; whether the application of Lead Counsel for an award of attorneys' fees, reimbursement of expenses, and a reimbursement award for the Lead Plaintiff should be approved; and to rule upon such other matters as the Court may deem appropriate. The Court may adjourn the Settlement Fairness Hearing without further notice to members of the Class.

3. The Court approves, as to form and content, the Notice of Proposed Settlement, Motion for Attorneys' Fees and Expenses, and Hearing Thereon (the

“Printed Notice”), the Summary Notice of Proposed Settlement, Motion for Attorneys’ Fees and Expenses, and Hearing Thereon (the “Summary Notice”), and the Proof of Claim and Release Form (the “Proof of Claim”), attached to this Order as Exhibits 1, 2 and 3, respectively; and finds that the mailing and distribution of the Printed Notice and publishing of the Summary Notice substantially in the manner and form set forth in ¶¶ 4-5 of this Order meet the requirements of Federal Rule of Civil Procedure 23, including the provisions relating to notice, the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), and due process under the U.S. Constitution, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled hereto.

4. The firm of Heffler, Radetich & Saitta LLP (the “Claims Administrator”) is hereby appointed to supervise and administer the notice procedures, as well as the processing of claims as more fully set forth below:

(a) Plaintiff’s Lead Counsel shall make reasonable efforts to identify all Persons who are members of the Class, including those Persons identified in connection with the prior notice given to the Class, entitled Notice of Pendency of Class Action (the “Initial Notice”), pursuant to the Court’s Order dated October 21, 2010 (Dkt. 174). The Claims Administrator will use the address list compiled for

the Initial Notice. Within twenty one (21) days of this Order, or as soon as practicable thereafter, Plaintiff's Lead Counsel shall cause a copy of the Printed Notice and the Proof of Claim, substantially in the forms annexed as Exhibits 1 and 3, to be mailed by first-class mail to all Class Members who can be identified with reasonable effort (the "Notice Date");

(b) Not later than ten (10) days after the Notice Date, Plaintiff's Lead Counsel shall cause the Summary Notice to be published once in *The Atlanta-Journal Constitution* and once in the *Investor's Business Daily*, and once electronically via *PR Newswire* or another suitable on-line newswire;

(c) Not later than ten (10) days after the Notice Date, Plaintiff's Lead Counsel shall cause the Printed Notice and Summary Notice to be posted on the websites of www.bergermontague.com, www.gorbypeters.com, and www.hrscclaimsadministration.com for a period of not less than one hundred twenty (120) days; and

(d) At least twenty one (21) days prior to the Settlement Fairness Hearing, Plaintiff's Counsel shall cause to be served on Defendants' Counsel and filed with the Court proof, by affidavit or declaration, of such mailing, publishing and/or posting.

5. Nominees who purchased the stock for the beneficial ownership of Class Members shall send the Printed Notice and the Proof of Claim to all beneficial owners of such shares within ten (10) days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) days of receipt thereof, in which event the Claims Administrator shall promptly mail the Printed Notice and Proof of Claim to such beneficial owners. Such holders of record shall be reimbursed from the Settlement Fund, upon receipt by the Claims Administrator of proper documentation, for the reasonable expense of providing notice to beneficial owners who are Class Members out of the Settlement Fund, which expenses would not have been incurred except for the sending of such Printed Notice, subject to further order of this Court with respect to any dispute concerning such compensation.

6. All members of the Class who do not timely and validly effect their exclusion from the Class shall be bound by all determinations and judgments in the Action concerning the settlement, whether favorable or unfavorable to the Class.

7. Class Members who do not timely and validly effect their exclusion from the Class shall complete and submit Proof of Claim forms in accordance with the instructions contained therein to obtain a payment, unless as otherwise

provided for in the Plan of Allocation contained in the Printed Notice. Unless the Court orders otherwise, all Proof of Claim forms must be postmarked within the 120 days following the initial mailing of the Printed Notice as described in paragraph 4(a) above. Any Class member who does not submit a Proof of Claim within the time provided for shall be barred from sharing in the distribution of the proceeds of the Net Settlement Fund, unless otherwise ordered by the Court and as otherwise provided for in the Plan of Allocation contained in the Printed Notice. Notwithstanding the foregoing, Plaintiff's Lead Counsel shall have discretion to accept late-submitted claims for processing by the Claims Administrator so long as the distribution of the Settlement Fund is not materially delayed thereby.

8. Any Member of the Class may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice, in which case such counsel must file with the Clerk of the Court and deliver to Plaintiff's Lead Counsel and Defendants' Counsel a notice of such appearance. If they do not enter an appearance, they will be represented by Plaintiff's Lead Counsel.

9. Any Person falling within the definition of the Class may, upon request, be excluded from the Class. Any such Person must submit to the Claims Administrator a request for exclusion ("Request for Exclusion") that is received no

later than sixty (60) days after the Notice Date. A Request for Exclusion must: (a) state the name, address, and telephone number of the person(s) requesting exclusion; and (b) state that the person wishes to be excluded from the Class. The Request for Exclusion must also: identify each of the person's purchase(s), and/or sale(s), of the common stock of NetBank, including the dates of purchase and/or sale; and provide proper evidence of the person's purchase(s), and/or sale(s) of the common stock of NetBank. No request will be considered valid unless all of the information described above is included in the request. All members of the Class who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or the Judgment entered in the Action. Members of the Class who neither submit a valid and timely Request for Exclusion in the manner set forth in this paragraph nor submit a valid and timely Proof of Claim and Release Form in accordance with the instructions contained therein will be bound by the settlement of this Action as set forth in the parties' Stipulation and the Orders of this Court.

10. Any Member of the Class may appear and show cause, if he, she or it has any reasons why the proposed settlement of the Action should or should not be

approved as fair, reasonable and adequate, why a judgment should or should not be entered thereon, why the Plan of Allocation should or should not be approved, why attorneys' fees and expenses should or should not be awarded to Plaintiff's Counsel, or why an award to the Lead Plaintiff for reimbursement of his time and expenses should or should not be made; provided, however, that no Class Member or any other Person shall be heard or entitled to contest such matters, unless that Class Member has delivered by hand, or sent by first-class mail or private courier, written objections and copies of any papers and briefs such that they are received no later than sixty (60) days after the Notice Date, by Merrill G. Davidoff, Berger & Montague, P.C., 1622 Locust Street, Philadelphia, Pennsylvania 19103, and Michael R. Smith, King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309-3521 and filed said objections, papers and briefs with the Clerk of the United States District Court for the Northern District of Georgia, no later than sixty (60) days after the Notice Date. Any objection must include: (a) the full name, address, and phone number of the person on whose behalf the objection is made; (b) a list of the transactions in the common stock of NetBank made by that person; (c) a written statement of all grounds for the objection accompanied by any legal support for the objection; (d) copies of any papers, briefs, or other documents upon

which the objection is based; (e) a list of all persons who will be called to testify in support of the objection; (f) a statement of whether the person making the objection intends to appear, if at all, personally or through a designated representative at the Settlement Fairness Hearing; (g) a list of other cases in which both the person making the objection and, if represented by counsel, his or her counsel, have appeared either as settlement objectors or as counsel for objectors in the preceding five years; and (h) the signature of the person making the objection, even if represented by counsel, as well as the signature of counsel, if any, who represents the person making the objection. If the objector intends to appear at the Settlement Fairness Hearing through counsel, the objection must also state the identity of all attorneys who will appear at the Settlement Fairness Hearing. Any member of the Class who does not make his, her or its 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 or adequacy of the proposed settlement as set forth in the Stipulation or the Plan of Allocation.

11. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of

the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

12. Plaintiffs' Lead Counsel shall be entitled to withdraw up to \$200,000 (two hundred thousand dollars) from the Settlement Fund pursuant to paragraph 3.8 of the Stipulation to pay reasonable expenses of notice and administration of the settlement upon the execution of this Order, subject to final approval of said expenses at the Settlement Fairness Hearing and other provisions of the Stipulation.

13. The Parties are permitted to modify the Printed Notice, Proof of Claim, and/or Summary Notice without further Court approval prior to publication, mailing and/or posting to correct subsequently discovered errors, enhance existing disclosures, include additional disclosures, or to simplify the text for the purposes of improving the accuracy of those documents or to aid the Class' comprehension and understanding.

14. All papers in support of the Settlement and the Plan of Allocation shall be filed and served fourteen (14) days in advance of the Settlement Fairness Hearing, as scheduled in paragraph 2 above.

15. The Defendants and Defendants' Counsel shall have no responsibility for the Plan of Allocation or any application for attorneys' fees or reimbursement of expenses submitted by Plaintiff's Counsel or the Lead Plaintiff's proposed reimbursement award, and such matters will be considered separately from the fairness, reasonableness and adequacy of the settlement.

16. At or after the Settlement Fairness hearing, the Court shall determine whether the Plan of Allocation proposed by Plaintiff's Lead Counsel shall be approved, and upon application of Plaintiff's Counsel, consider any applications for some or all of: Plaintiff's Counsels' attorneys' fees, and reimbursement of Plaintiff's Counsels' expenses, and an award for the Lead Plaintiff.

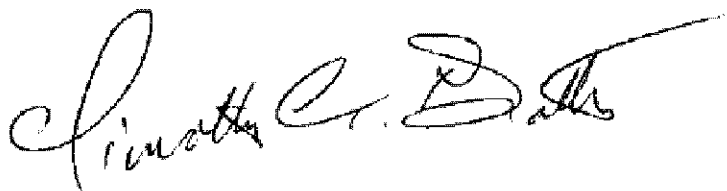
17. All reasonable expenses incurred in identifying and notifying Class Members, as well as administering the Settlement Fund, shall be paid as set forth in the Stipulation.

18. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Defendants of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind.

19. Pending final determination of whether the Stipulation should be approved, Lead Plaintiff, all Class Members who do not timely exclude themselves from the Settlement, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts Released Claims against any Released Party.

IT IS SO ORDERED.

Dated: July 27, 2011

A handwritten signature in black ink, appearing to read "Timothy C. Batten, Sr.", written in a cursive style.

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