

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF
MASSACHUSETTS, *et al.*,

Plaintiffs

v.

CARDTRONICS, INC., *et al.*,

Defendants

CIVIL ACTION NO. 03-11206-NMG

**~~PROPOSED~~ ORDER GRANTING JOINT MOTION FOR FINAL APPROVAL OF
PROPOSED REMEDIATION PLAN CONCERNING CLASS ACTION SETTLEMENT
AGREEMENT**

Plaintiffs Commonwealth of Massachusetts, National Federation of the Blind, Inc., Adrienne Asch, Jennifer Bose, Norma Crosby, Dwight Sayer, Robert Crowley, Jr., Raymond Wayne, Terri Uttermohlen, and Bryan Bashin and Defendants Cardtronics Inc. and Cardtronics USA, Inc. (successor by conversion to Cardtronics, LP) (collectively "Cardtronics") seek final approval of a remediation plan ("Proposed Remediation Plan") concerning alleged violations of a class action settlement agreement that was approved by this Court on December 4, 2007. *See* Final Order and Judgment ("Final Order") at 12 (Docket No. 279, Dec. 4, 2007).

In its May 18, 2010 Order Granting Joint Motion for Preliminary Approval of Proposed Remediation Plan Concerning Class Action Settlement Agreement, and for a Fairness Hearing ("Preliminary Approval Order" (docket no. 283)), this Court granted preliminary approval of the parties' Proposed Remediation Plan based on its analysis of the factors set forth on pages nine

and ten of that Order. The Court could not fully evaluate one such factor – the reaction of the class to the settlement – because notice to the class had not yet issued.

The parties have informed the Court that they have completed the notice program ordered by the Court, and no class member has objected to the Proposed Remediation Plan. This further demonstrates that the Plan should be granted final approval. For this reason, as well as the grounds cited by this Court in its Preliminary Approval Order, the Court grants final approval to the following Proposed Remediation Plan:

(1) All Cardtronics-owned ATMs in Massachusetts will be Voice-guided no later than June 30, 2010.

(2) By December 31, 2010, at least ninety percent (90%) of all transactions at covered ATMs occurring within the borders of Massachusetts will occur on ATMs that are Voice-guided.

(3) All Cardtronics-owned ATMs nationally will be Voice-guided no later than December 31, 2010, with the exception of Cardtronics-owned ATMs located in 7-Eleven stores which will be Voice-guided no later than March 31, 2011.

(4) By March 31, 2011, at least ninety percent (90%) of all transactions at covered ATMs nationally will occur on ATMs that are Voice-guided.

(5) With the assistance of the NFB, Cardtronics has developed enhanced scripts for the great majority of the ATMs it owns. With the exception of Cardtronics-owned ATMs located in 7-Eleven stores, on or before December 31, 2010 Cardtronics will install enhanced scripts on all Cardtronics-owned ATMs, except where it is not technologically feasible to do so, in which cases, on or before December 31, 2010, Cardtronics shall either (i) replace such ATMs with ATMs on which an enhanced script can and will be installed, or (ii) remove such ATMs from the

Cardtronics-owned fleet. Cardtronics-owned ATMs located in 7-Eleven stores will be Voice-guided no later than March 31, 2011. Any script on any Cardtronics-owned ATM, including the enhanced scripts, shall meet the requirements set forth in the definition of “Voice-guided” and “Voice-Guidance” set forth in the Final Order¹ and as supplemented in paragraph 6 of this Order.

(6) With the exception of Cardtronics-owned ATMs located in 7-Eleven stores, by December 31, 2010, all Cardtronics-owned Voice-guided ATMs and those merchant-owned, Voice-guided ATMs that Cardtronics designates as making up a portion of the ninety percent (90%) transaction requirements of paragraphs 2 and 4 above, will have tactilely discernible controls, that is, operating mechanisms used in conjunction with speech output that can be located and operated by feel. When a numeric keypad is part of the tactilely discernible controls, all function keys will be mapped to the numeric keypad and, except for those remaining Wincor ATMs installed in Target stores prior to June 2007, the numeric keypad will have an “echo” effect such that the user’s numeric entries (other than the entry of a personal identification number) are repeated in voice form. All tactilely discernible controls will otherwise comply with applicable regulations. All Cardtronics-owned ATMs located in 7-Eleven stores will meet these requirements no later than March 31, 2011.

(7) With the exception of Cardtronics-owned ATMs located in 7-Eleven stores, by December 31, 2010, all Cardtronics-owned ATMs will have appropriate signage as identified in the Final Order Ex. 1.² All Cardtronics-owned ATMs located in 7-Eleven stores will meet these requirements no later than March 31, 2011. By December 31, 2010, Cardtronics will send such signage to each of its Merchant-owned customers that operate a Voice-guided ATM (with the

¹ Final Order Ex. 1 at 4.

² See Final Order Ex. 1 at ¶ 4.2.

exception of those customers for whom Cardtronics physically placed Braille signage on each of the customer's Voice-guided ATMs after April 9, 2007) requesting that those customers install such signage on their Voice-guided ATMs. Cardtronics will include a letter from the NFB describing the importance of such signage with its request. On or before February 1, 2011, Cardtronics will provide the NFB with the approximate date on which it placed signage on each of the Merchant-owned Voice-guided ATMs or sent the appropriate signage by mail.

(8) By December 31, 2012, Cardtronics will cause to have inspected all Cardtronics-owned, non-branded ATMs to ensure that the Voice-guided features of these ATMs are in working condition. Approximately 10,000 of these inspections shall take place in calendar years 2010 and 2011, with the balance taking place in calendar year 2012. To the extent Cardtronics can demonstrate to Class counsel that within the first two years of conducting such inspections the Voice-guided features are in compliance with the definition of Voice-guidance, the parties shall meet to discuss the results of these inspections and may agree in writing that Cardtronics shall cause to have inspected a minimum of 1,000 Cardtronics-owned, non-branded ATMs each year for the remainder of the term of the Agreement. These inspections will be documented in a manner showing that the person conducting the inspection used headphones to listen to the voice script on the ATM. Similarly, in the course of conducting its routine inspections of Cardtronics-owned, branded ATMs, such inspections shall be documented in a manner showing that the person conducting the inspection used headphones to listen to the voice script on the ATM. On a monthly basis, Cardtronics shall report the results of all inspections required by this paragraph to Class counsel.

(9) In addition to the reporting requirements identified in the Final Order,³ Cardtronics will report monthly between June 1, 2010 and December 31, 2011. For the period between June 1, 2010 and December 31, 2011, Cardtronics will add to the information it is currently reporting for each Cardtronics-owned ATM whether the enhanced script has been installed on the ATM, as well as the month and year of such installation. No later than October 31, 2010, for each Cardtronics-owned ATM on which it is not technologically feasible to install an enhanced script, Cardtronics will indicate whether it will replace such ATM with a Voice-guided ATM or remove the ATM from the fleet.

(10) Cardtronics will keep its ATM locator on its website up to date as to whether a covered ATM is equipped with Voice-guidance.

(11) In addition to the testing costs set forth in Final Order Ex. 1, Cardtronics will pay \$60,000 to the NFB to be used for interim testing and other compliance monitoring by the NFB taking place in 2010 and the first quarter of 2011. The NFB shall provide Cardtronics with invoices as testing is completed, to be payable by Cardtronics within 30 days of receipt of each invoice.

(12) Cardtronics will pay the NFB \$145,000 for the reasonable fees and costs incurred by the NFB as a result of Cardtronics' failure to comply with the Final Order. This amount includes attorneys' fees and testing costs that the NFB incurred due to the failure of Cardtronics to comply with the Final Order and shall be paid in two equal installments of \$72,500, one upon the effective date of this Court's final approval of the Proposed Remediation Plan and the second 60 days thereafter.

³ See *id.* at ¶ 4.4.1.

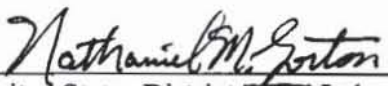
(13) The requirements set forth in Final Order Ex. 1 shall remain in effect, in whole or in part, for eight years from the date of this Court's final approval of the Proposed Remediation Plan. The Parties may agree in writing to extend the requirements of Final Order Ex. 1 further or the Court may so order in connection with paragraph 13.3. Notwithstanding any expiration of Final Order Ex. 1, paragraphs 6, 7 and 13 of Final Order Ex. 1 shall continue to remain in effect in perpetuity.

(14) To the extent that the requirements set forth herein are inconsistent with any provision of Final Order Ex. 1, this Order controls. All other terms and requirements of the Final Order, including Final Order Ex. 1, will remain in full force and effect.

Accordingly, the Court GRANTS the Joint Motion for Final Approval of Proposed Remediation Plan Concerning Class Action Settlement Agreement.

It is so ordered.

Dated: 11/3/10


United States District Judge

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