

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

COMMONWEALTH OF
MASSACHUSETTS, NATIONAL
FEDERATION OF THE BLIND, INC.,
ADRIENNE ASCH, JENNIFER
BOSE, NORMA CROSBY, DWIGHT
SAYER, ROBERT CROWLEY, JR.,
RAYMOND WAYNE, TERRI
UTTERMÖHLEN, AND BRYAN BASHIN,

Plaintiffs

v.

E*TRADE ACCESS, INC., E*TRADE
BANK, CARDTRONICS, LP, AND
CARDTRONICS, INC.,
Defendants

CIVIL ACTION NO. 03-11206-MEL

**ORDER ENTERED GRANTING MOTION TO FILE FOURTH
AMENDED SUPPLEMENTAL CLASS ACTION COMPLAINT
SEPTEMBER 11, 2007**

FOURTH AMENDED AND SUPPLEMENTAL CLASS ACTION COMPLAINT

NATURE OF THE CASE

1. Plaintiff Commonwealth of Massachusetts, by and through its Attorney General, Thomas Reilly, Plaintiff the National Federation of the Blind, Inc. (the "NFB" or the "Federation"), and Adrienne Asch, Jennifer Bose, Norma Crosby, Dwight Sayer, Robert Crowley, Jr., Raymond Wayne, Terri Uttermohlen, and Bryan Bashin, individuals who are legally blind (collectively "Individual Plaintiffs"), by their undersigned counsel, bring this Fourth Amended and Supplemental Class Action Complaint ("Complaint") against the Defendants E*TRADE Access, Inc., E*TRADE Bank, Cardtronics, LP, and Cardtronics, Inc., individually and jointly, for (1) E*TRADE Bank's failure to offer E*TRADE banking services, the services of a public accommodation, through ATMs that are accessible to blind people; (2) the Defendants' ownership, operation, control and/or leasing of inaccessible ATMs that are public

accommodations, that offer the services of a public accommodation, and that are located in places of public accommodation, in violation of Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12182 and 12183 and the regulations promulgated thereunder, 28 C.F.R. Part 36.101 *et seq.*, the Massachusetts Public Accommodations Act, Mass. Gen. Laws ch. 272, §§ 92A and 98, and the Massachusetts Equal Rights Act, Mass. Gen. Laws ch. 93, § 103.

2. The NFB and the Individual Plaintiffs seek certification of a nationwide class and sub-class of blind people who have encountered discrimination when desiring or attempting to use Defendants’ ATMs. The putative class seeks injunctive relief requiring Defendants to make their ATMs accessible nationwide. The putative sub-class seeks injunctive relief requiring Defendant E*TRADE Bank to make reasonable modifications to ensure nondiscrimination. This relief will ensure that banking services that are available to a sighted user of these ATMs are similarly independently available to blind people, of whom there are approximately 1.1 million nationwide, including approximately 35,000 in Massachusetts. In addition, those Individual Plaintiffs who have encountered discrimination with respect to Defendants’ ATMs in Massachusetts seek compensatory and punitive damages as a result of Defendants’ knowing, intentional and deliberate disregard of the law.

JURISDICTION AND VENUE

3. This action is authorized by 28 U.S.C. §§ 2201-02 and 42 U.S.C. § 12188. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1367, since each Defendant transacts business in the Commonwealth, maintains facilities in the Commonwealth and the claims of several of the Individual Plaintiffs against each Defendant arise out of the transaction of business in Massachusetts. The Court also has supplemental jurisdiction over the state law claims at issue pursuant to 28 U.S.C. § 1367.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), since each Defendant, as a corporation, is subject to personal jurisdiction in this District because a substantial part of the events giving rise to this action occurred and continue to occur in this District.

PARTIES

5. The Commonwealth of Massachusetts, represented by the Attorney General, brings this action in the public interest on behalf of all blind people who wish to independently use the Defendants' ATMs that are located in Massachusetts, and on behalf of all blind Massachusetts residents who desire the opportunity for full and equal enjoyment of E*TRADE Bank's services. The Attorney General's principal office is located at One Ashburton Place, Boston, Massachusetts. The Attorney General is authorized to bring this action on behalf of the Commonwealth pursuant to Mass. Gen. Laws. ch. 151B, § 5, in addition to other statutory and common law authority to bring legal actions in the public interest. *See, e.g.,* Mass. Gen. Laws ch. 12, § 10.

6. The NFB, the leading national organization of blind persons, is a non-profit corporation duly organized under the laws of the District of Columbia with its principal place of business in Baltimore, Maryland. It has affiliates in all 50 states, Washington, DC and Puerto Rico. The vast majority of the Federation's approximately 50,000 members are blind persons and therefore members of the protected class of disabled persons under the ADA, 42 U.S.C. § 12102(2), the regulations implementing the ADA contained in 28 C.F.R. §§ 36.101, *et seq.*, the Massachusetts Public Accommodations Act, Mass. Gen. Laws ch. 272, § 98, and the Massachusetts Equal Rights Act, Mass. Gen. Laws ch. 93, § 103. The NFB is widely recognized by the public, Congress, executive agencies of government and the courts as a collective and representative voice on behalf of blind Americans and their families. The purpose of the NFB is

to promote the general welfare of the blind by (1) assisting the blind in their efforts to integrate themselves into society on terms of equality and independence; and (2) removing barriers and changing social attitudes, stereotypes and mistaken beliefs sighted and blind persons hold concerning the limitations created by blindness that result in the denial of opportunity to blind persons in virtually every sphere of life. The NFB and many of its members have long been actively involved in promoting adaptive technology for the blind, so that blind persons can live and work independently in today's technology-dependent world. NFB members reside throughout the United States, including the Commonwealth of Massachusetts, and many of its members would use the ATMs and the services offered by Defendants if they were made independently usable by the blind.

7. Adrienne Asch is a blind resident of New York, New York. Until August, 2005, she was a resident of Cambridge, Massachusetts. Ms. Asch is a member of a protected class under the ADA, 42 U.S.C. § 12102(2), the regulations implementing the ADA contained in 28 C.F.R. §§ 36.101, *et seq.*, the Massachusetts Public Accommodations Act, Mass. Gen. Laws ch. 272, § 98, and the Massachusetts Equal Rights Act, Mass. Gen. Laws ch. 93, § 103. Ms. Asch is the Edward and Robin Milstein Professor of Bioethics at the Wurzweiler School of Social Work and Professor of Epidemiology and Population Health at the Albert Einstein College of Medicine at Yeshiva University. Starting in at least August, 2003, Ms. Asch has attempted to use Defendants' ATMs and has suffered discrimination because she was unable to do so independently. She would like to use the ATMs offered by Defendants if they were made independently usable by the blind, and to have the choice to be an E*TRADE Bank account holder if that bank's services were independently usable by the blind.

8. Jennifer Bose, a blind resident of Brookline, Massachusetts, is a member of a protected class under the ADA, 42 U.S.C. § 12102(2), the regulations implementing the ADA contained in 28 C.F.R. §§ 36.101, *et seq.*, the Massachusetts Public Accommodations Act, Mass. Gen. Laws ch. 272, § 98, and the Massachusetts Equal Rights Act, Mass. Gen. Laws ch. 93, § 103. Ms. Bose is a researcher at the Institute for Community Inclusion in Boston, Massachusetts. As early as April, 2005, Ms. Bose has attempted to use Defendants' ATMs and has suffered discrimination because she was unable to do so independently. Ms. Bose would like to use the ATMs offered by Defendants if they were made independently usable by the blind.

9. Norma Crosby, a blind resident of Ruston, Louisiana, is a member of a protected class under the ADA, 42 U.S.C. § 12102(2) and the regulations implementing the ADA contained in 28 C.F.R. §§ 36.101, *et seq.* Ms. Crosby owns and operates two coffee shops with her husband, who is also legally blind. Starting at least four years ago and as recently as July, 2006, Ms. Crosby has attempted to use Defendants' ATMs and has suffered discrimination because she was unable to do so independently. She would like to use the ATMs offered by Defendants if they were made independently usable by the blind, and to have the choice to be an E*TRADE Bank account holder if that bank's services were independently usable by the blind.

10. Dwight Sayer, a blind resident of Winter Garden, Florida, is a member of a protected class under the ADA, 42 U.S.C. § 12102(2) and the regulations implementing the ADA contained in 28 C.F.R. §§ 36.101, *et seq.* Mr. Sayer works full time and is actively involved in the blind community of Florida. In 2005, Governor Jeb Bush appointed him to the Florida Rehabilitation Council for the Blind. He also currently serves as President of the Orlando Chapter of the National Federation of the Blind; First Vice President of the National Federation of the Blind of Florida; Assistant District Director, Blinded Veterans Association -- Florida Regional

Group; and serves on the board of the Lighthouse of Central Florida, a vision rehabilitation resources center. Starting at least three years ago and as recently as July, 2006, Mr. Sayer has attempted to use Defendants' ATMs and has suffered discrimination because he was unable to do so independently. Mr. Sayer would like to use the ATMs offered by Defendants if they were made independently usable by the blind, and to have the choice to be an E*TRADE Bank account holder if that bank's services were independently usable by the blind.

11. Robert Crowley, Jr., a blind resident of Windsor, New York, is a member of a protected class under the ADA, 42 U.S.C. § 12102(2) and the regulations implementing the ADA contained in 28 C.F.R. §§ 36.101, *et seq.* Mr. Crowley is a full-time student at Binghamton University. Starting at least three years ago and as recently as July, 2006, Mr. Crowley has attempted to use Defendants' ATMs and has suffered discrimination because he was unable to do so independently. He would like to use the ATMs offered by Defendants if they were made independently usable by the blind, and to have the choice to be an E*TRADE Bank account holder if that bank's services were independently usable by the blind.

12. Raymond Wayne, a blind resident of Brooklyn, New York, is a member of a protected class under the ADA, 42 U.S.C. § 12102(2) and the regulations implementing the ADA contained in 28 C.F.R. §§ 36.101, *et seq.* Mr. Wayne is the Assistant Managing Attorney for the Law Enforcement Bureau of the New York City Commission on Human Rights and is Secretary of the National Association of Blind Lawyers. Over the past one to three years, and as recently as July, 2006, Mr. Wayne has attempted to use Defendants' ATMs and has suffered discrimination because he was unable to do so independently. He would like to use the ATMs offered by Defendants if they were made independently usable by the blind.

13. Terri Uttermohlen, a blind resident of Baltimore, Maryland, is a member of a protected class under the ADA, 42 U.S.C. § 12102(2) and the regulations implementing the ADA contained in 28 C.F.R. §§ 36.101, *et seq.* Ms. Uttermohlen is an instructor at Virginia Commonwealth University. Starting at least three years ago and as recently as September, 2006, Ms. Uttermohlen has attempted to use Defendants' ATMs and has suffered discrimination because she was unable to do so independently. She would like to use the ATMs offered by Defendants if they were made independently usable by the blind.

14. Bryan Bashin, a blind resident of Sacramento, California, is a member of a protected class under the ADA, 42 U.S.C. § 12102(2) and the regulations implementing the ADA contained in 28 C.F.R. §§ 36.101, *et seq.* Mr. Bashin is a consultant. Starting at least three years ago and as recently as September, 2006, Mr. Bashin has attempted to use Defendants' ATMs and has suffered discrimination because he was unable to do so independently. Mr. Bashin would like to use the ATMs offered by Defendants if they were made independently usable by the blind, and to have the choice to be an E*TRADE Bank account holder if that bank's services were independently usable by the blind.

15. E*TRADE Access, Inc. ("E*TRADE Access"), an Oregon corporation with its principal place of business in Arlington, Virginia, is a subsidiary of E*TRADE Bank. Prior to June 2, 2004, E*TRADE Access owned, operated, controlled and/or leased ATMs under the E*TRADE name.

16. E*TRADE Bank, a federally chartered savings bank with its principal place of business in Arlington, Virginia, is a wholly-owned subsidiary of E*TRADE Financial Corporation. E*TRADE Bank is a public accommodation pursuant to 42 U.S.C. § 12181(7)(f) that offers banking services under the E*TRADE name, including the withdrawal of funds, the

making of deposits, and the verification of deposits, at over 15,000 ATMs across the United States, including more than 600 in Massachusetts.

17. Cardtronics, LP is a limited partnership organized under the laws of Delaware with a principal place of business at 3000 Hayes Road, Suite 101, Houston, Texas.

18. Cardtronics, Inc. is a corporation organized under the laws of Delaware with a principal place of business at 3000 Hayes Road, Suite 300, Houston, Texas.

19. Prior to June 2, 2004, Cardtronics, LP and Cardtronics, Inc. ("Cardtronics") owned, operated, controlled and/or leased more than 12,000 ATMs nationwide.

20. On or about June 2, 2004, Cardtronics, LP acquired the ATM business of E*TRADE Access, Inc. The acquisition included approximately 13,200 active ATMs, increasing the ATM network owned, operated, controlled and/or leased by Cardtronics to over 25,000 ATMs nationwide, becoming the nation's largest independent owner/operator of ATMs.

CLASS ACTION ALLEGATIONS

21. The NFB and the Individual Plaintiffs seek to maintain this action as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure. The class ("Class") consists of all blind people who, during a time period to be determined by this Court, were denied, or are currently being denied, on the basis of disability, full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any ATM owned, operated, controlled, and/or leased by Defendant Cardtronics anywhere in the United States.

22. The NFB and Individual Plaintiffs Asch, Crosby, Sayer, Crowley, and Bashin also seek certification of a sub-class ("Sub-Class") under rule 23(b)(2), consisting of all blind people who, during a time period to be determined by this Court, were denied, or are currently being denied full and equal enjoyment of the goods, services, facilities, privileges, advantages, or

accommodations of E*TRADE Bank due to the denial, on the basis of disability, of the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any ATM through which the services of E*TRADE Bank may be accessed.

23. The Class and Sub-Class are each believed to consist of well over 1,000 members who are dispersed throughout the United States. Joinder of all such Class and Sub-Class members in this lawsuit is impracticable.

24. There are numerous questions of law and fact common to the Class, including but not limited to:

- a. Whether Cardtronics owns, operates, leases, leases to and/or controls places of public accommodation under 42 U.S.C. §§ 12181(7) & 12182(a);
- b. Whether Cardtronics's ATMs are accessible to and independently useable by blind people; and
- c. What steps Cardtronics is required to take to make its ATMs accessible to and independently useable by blind people.

25. There are numerous questions of law and fact common to the Sub-Class, including but not limited to:

- a. Whether E*TRADE Bank owns, operates, leases, leases to and/or controls places of public accommodation under 42 U.S.C. §§ 12181(7) & 12182(a);
- b. Whether the services that E*TRADE Bank makes available through its ATMs are accessible to and independently useable by blind people; and
- c. What steps E*TRADE Bank is required to take to make its services available to blind people.

26. The claims of the Individual Plaintiffs are typical of the claims of the members of the Class and Sub-Class. The Individual Plaintiffs are all blind people who have been injured by the fact that one or more of Cardtronics's ATMs was not accessible to and/or independently useable by them. Individual Plaintiffs Asch, Crosby, Sayer, Crowley, and Bashin are all blind people who have been injured by the fact that they do not have the choice to become an E*TRADE Bank account holder on a nondiscriminatory basis. Because of this, each of the Individual Plaintiffs brings a claim against each Defendant for violation of Title III of the ADA, which claims are typical of those of the Class and (in the case of Individual Plaintiffs Asch, Crosby, Sayer, Crowley, and Bashin) of the Sub-Class. Similarly, the vast majority of NFB's 50,000 members are blind people from around the United States who are members of the proposed Class and Sub-Class, many of whom have claims typical of those of the Class and Sub-Class.

27. NFB and the Individual Plaintiffs will fairly and adequately protect the interests of the Class and Sub-Class because they have retained counsel with extensive experience in class action and disability rights litigation. NFB has a long history of advocating for the rights of blind people as do each of the Individual Plaintiffs. None of the named plaintiffs has interests that conflict in any way with those of the Class or Sub-Class.

28. This action may be maintained as a class action pursuant to Rule 23(b)(2) because Defendants have acted or refused to act -- and are continuing to act and refuse to act -- on grounds generally applicable to the class, in that most of Defendants' ATMs are inaccessible to all class members and Defendants refuse to make those ATMs accessible to class members. This makes appropriate final injunctive relief or corresponding declaratory relief -- declaring the Defendants

to be in violation of the ADA and ordering them to make their ATMs and banking services comply with the ADA -- with respect to the class as a whole.

FACTS

29. Prior to June 2, 2004, E*TRADE Access held legal title to only a few thousand of the more than 15,000 ATMs it operated within its network (approximately 17 in Massachusetts). After demand and as a result of negotiation, E*TRADE Access agreed to make these ATMs accessible to the blind.

30. Prior to June 2, 2004, E*TRADE Access operated and controlled the balance of ATMs in its fleet at the sites of various retail merchants, pursuant to a variety of contractual arrangements with the merchants. On information and belief, E*TRADE Access leased back from merchants some of the ATMs it operated and controlled, including some of the ATMs it operated and controlled within Massachusetts. As of June 2, 2004, E*TRADE Access had not made these ATMs accessible to the blind. As a result of the June 2, 2004, acquisition of E*TRADE Access's ATM business by Cardtronics, Cardtronics now operates, controls and/or leases all of these ATMs, upon information and belief, under the E*TRADE name ("E*TRADE ATMs").

31. In addition to the E*TRADE ATMs, Cardtronics continues to own, operate, control and/or lease more than 12,000 ATMs nationwide ("Cardtronics ATMs").

32. At all times relevant to this action, E*TRADE Bank has offered its banking services, including fee-free transactions to E*TRADE Bank account holders, through E*TRADE ATMs.

33. Each E*TRADE ATM (a) displays the E*TRADE logo, and (b) offers fee-free transactions to E*TRADE Bank account holders. In addition, E*TRADE Bank represented on its website that it operates the second largest network of ATMs in the United States.

34. E*TRADE Bank, each E*TRADE ATM, each Cardtronics ATM, each of the locations in which those ATMs are found, and the network of E*TRADE and Cardtronics ATMs are all public accommodations as defined by Title III of the ADA, 42 U.S.C. § 12181(7), the regulations implementing the ADA contained in 28 C.F.R. §§ 36.101, *et seq.*, and the Massachusetts Public Accommodations Act, Mass. Gen. Laws ch. 272, § 92A.

35. The banking services offered by E*TRADE Bank through E*TRADE ATMs in Massachusetts constitute a program or activity under Article 114 of the Amendments to the Massachusetts Constitution, Mass. Const. amend. CXIV, and the services and facilities of a public accommodation under 42 U.S.C. § 12181.

36. Most E*TRADE and Cardtronics ATMs are inaccessible because they use computer screen text prompts that are undetectable to blind people to guide customers through banking transactions. These computer screen text prompts are not translated into a medium accessible to the blind, such as audio output.

37. Currently, if a blind person enters the wrong personal identification number (“PIN”) into an E*TRADE or Cardtronics ATM, the ATM may retain his or her card. Also, a blind person who presses an incorrect function key on an E*TRADE or Cardtronics ATM has no way of knowing that he or she has made a mistake in the transaction.

38. As a result of this inaccessibility, blind people, including the Individual Plaintiffs and members of the NFB, are not able to independently use E*TRADE or Cardtronics ATMs, unlike sighted people.

39. E*TRADE and Cardtronics ATMs threaten blind people with loss of their private information. Blind people who wish to use an E*TRADE or Cardtronics ATM have no choice but to repeatedly reveal their private PINs to others to complete an ATM banking transaction.

40. As a result, blind people, including the Individual Plaintiffs and members of the NFB who wish to use an E*TRADE or Cardtronics ATM are not able to maintain the security of their private PINS, unlike sighted people.

41. Although some E*TRADE and Cardtronics ATMs have Braille keypads and labels, this feature is not an effective accommodation under the ADA:

- a. Not all persons who are blind read Braille. In fact, current national figures estimate a Braille literacy rate of only 15% among persons who are blind; and;
- b. Braille keypads and labels are static and do not provide sequential computer screen instructions or any information about the contents of any given screen.

42. Without injunctive relief, blind people, including the Individual Plaintiffs and members of the NFB, will continue to be unable to independently use E*TRADE and Cardtronics ATMs in violation of their rights under the ADA, the Massachusetts Public Accommodations Act, and the Massachusetts Equal Rights Act.

43. The Individual Plaintiffs and the NFB's members are legally blind and recognized as a protected class under the ADA, 42 U.S.C. § 12102(2), and the regulations implementing the ADA contained in 28 C.F.R. §§ 36.101, *et seq.*

44. The Individual Plaintiffs have either attempted to independently use ATMs owned, operated, controlled, leased or leased by Cardtronics or such an attempt would constitute a futile

gesture; they would all like to be able to use such ATMs in the future and will do so as soon as they can do so independently.

45. Individual Plaintiffs Asch, Crosby, Sayer, Crowley, and Bashin would like to become E*TRADE Bank customers if they could do so without discrimination.

46. There are E*TRADE and Cardtronics ATMs located in Massachusetts which blind people would like to independently use, and there are blind Massachusetts residents who would like the opportunity for full and equal enjoyment of E*TRADE Bank services.

COUNT I
(Violation of the ADA's Full and Equal Enjoyment of Services Mandate)

47. The allegations contained in the previous paragraphs are incorporated by reference.

48. E*TRADE Bank is a public accommodation, and each Defendant owns, operates, controls, leases and/or leases to a place of public accommodation as defined by Title III of the ADA, 42 U.S.C. § 12181(7)(F).

49. Each Defendant, in violation of 42 U.S.C. § 12182(a), has failed to make its ATM banking services fully accessible and independently usable by individuals who are blind.

COUNT II
(Violation of ADA's Reasonable Modification Mandate)

50. The allegations contained in the previous paragraphs are incorporated by reference.

51. Defendant E*TRADE Bank, in violation of 42 U.S.C. § 12182(b)(2)(A)(ii), has failed to make reasonable modifications (by failing to modify policies, practices and procedures) necessary to make its ATM banking services fully accessible and independently usable by individuals who are blind.

52. Modifying its policies, practices and procedures to afford blind persons full accessibility and independent use of ATMs that E*TRADE Bank owns, operates, leases and/or controls would not fundamentally alter the nature of E*TRADE Bank's services.

COUNT III
(Violation of the ADA's Auxiliary Aids and Services Mandate)

53. The allegations contained in the previous paragraphs are incorporated by reference.

54. Defendants, in violation of the auxiliary aids and services provision of the ADA, 42 U.S.C. § 12182(b)(2)(A)(iii), have failed to make their ATM banking services fully accessible and independently usable by blind persons.

55. Providing auxiliary aids and services to make ATMs the Defendants own, operate, control, lease and/or lease to others, and through which E*TRADE Bank offers its banking services, accessible to and independently usable by blind persons would neither fundamentally alter the nature of Defendants' banking services nor result in an undue burden.

COUNT IV
(Violation of the Accessible Facilities Mandate)

56. The allegations contained in the previous paragraphs are incorporated by reference.

57. Each Defendant, in violation of 42 U.S.C. §12183, owns, operates, controls and/or leases or offers banking services through, ATMs that were installed after January 26, 1993 and are not readily accessible to and independently usable by blind persons.

58. Defendants are required to comply with the Department of Justice Standards for Accessible Design ("Standards"). 28 C.F.R. pt 36, app A; see 28 C.F.R. § 36.406. Standards Section 4.34.5 requires that "[i]nstructions and all information for use [in ATM's] shall be made accessible to and independently usable by persons with vision impairments."

59. Each Defendant, in violation of 42 U.S.C. §12183 and 28 C.F.R. § 36.406, has failed to make its ATM banking services fully accessible and independently usable by blind persons.

COUNT V
(Violation of the Massachusetts Public Accommodations Act)

60. The allegations contained in the previous paragraphs are incorporated by reference.

61. Plaintiffs Adrienne Asch and Jennifer Bose are legally blind and recognized as a protected class under Mass. Gen. Laws ch. 272, § 98.

62. Each Defendant owns, operates, controls and/or leases a place of public accommodation as defined by Mass. Gen. Laws ch. 272, § 92A.

63. Each Defendant, in violation of Mass. Gen. Laws ch. 272, § 98, has failed to make its ATM banking services fully accessible and independently usable by individuals who are blind.

COUNT VII
(Violation of the Massachusetts Equal Rights Act)

64. The allegations contained in the previous paragraphs are incorporated by reference.

65. Plaintiffs Adrienne Asch and Jennifer Bose and the NFB's members are legally blind and are recognized as a protected class under Mass. Const. amend. CXIV and under the Massachusetts Equal Rights Act, Mass. Gen. Laws ch. 93, § 103(a).

66. The banking services offered by E*TRADE Bank through E*TRADE and Cardtronics ATMs in Massachusetts constitute a program or activity under Mass. Const. amend. CXIV.

67. Each Defendant has excluded blind people from the participation in and benefits of the banking services offered by E*TRADE Bank through E*TRADE and Cardtronics ATMs in

Massachusetts and has subjected Plaintiffs to discrimination under Mass. Const. amend. CXIV and the Massachusetts Equal Rights Act, Mass. Gen. Laws ch. 93, § 103(a).

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs request that the Court:

(a) exercise jurisdiction over this action;

(b) certify a Class defined as follows:

all blind people who, during a time period to be determined by this Court, were denied, or are currently being denied, on the basis of disability, full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any ATM owned, operated, controlled, or leased by Defendant Cardtronics anywhere in the United States.

(c) certify a Sub-Class defined as follows:

all blind people who, during a time period to be determined by this Court, were denied, or are currently being denied full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of E*TRADE Bank due to the denial, on the basis of disability, of the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any ATM through which the services of E*TRADE Bank may be accessed.

(d) Certify the NFB and Adrienne Asch, Jennifer Bose, Norma Crosby, Dwight Sayer, Robert Crowley, Jr., Raymond Wayne, Terri Uttermohlen and Bryan Bashin as representatives of the Class, certify Adrienne Asch, Norma Crosby, Dwight Sayer, Robert Crowley, Jr., and Bryan Bashin as representatives of the Sub-Class, and certify the attorneys for the NFB and Individual Plaintiffs (listed below) as class counsel;

(e) declare that the actions and inactions of Defendants E*TRADE Access, Inc., E*TRADE Bank and Cardtronics violate Title III of the ADA, 42 U.S.C. §§ 12182 and 12183, 28 C.F.R. § 36.101 *et seq.*, the Massachusetts Public Accommodations Act, Mass. Gen. Laws. ch. 272 §§ 92A and 98, and the Massachusetts Equal Rights Act, Mass. Gen. Laws ch. 93, § 103;

(f) enjoin each of the Defendants from continuing to violate the ADA and Massachusetts law and order all Defendants immediately to take the steps necessary to comply with the ADA and Massachusetts law, including but not limited to making the necessary modifications to the ATMs they own, operate, control and/or operate and lease, so that blind people may have access to and independently use these ATMs, providing auxiliary aids and services required to make their ATMs accessible to and independently useable by blind people, and (in the case of E*TRADE Bank) making reasonable modifications to policies, practices and procedures necessary to eliminate discrimination on the basis of disability; and

(g) award actual damages pursuant to Mass. Gen. Laws ch. 93, § 103, Mass. Gen. Laws ch. 272, §§ 92A and 98 and Mass. Gen. Laws ch. 151B, §§ 5 and 9;

(h) award punitive damages pursuant to Mass. Gen. Laws ch. 272, §§ 92A and 98 and Mass. Gen. Laws ch. 151B, §§ 5 and 9;

(i) award reasonable attorneys' fees, litigation expenses and costs pursuant to 42 U.S.C. § 12205, and Mass. Gen. Laws ch. 151B, §§ 5 and 9; and

(j) order such other relief as maybe just, equitable and appropriate.

COMMONWEALTH OF
MASSACHUSETTS,
By its Attorneys,

/s/ Patricia Correa

Patricia Correa, BBO #560437
Assistant Attorney General
Director, Disability Rights Project
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2919

NFB AND
THE INDIVIDUAL PLAINTIFFS,
By their Attorneys,

/s/ Christine M. Netski

Anthony M. Doniger, BBO #129420
Christine M. Netski, BBO #546936
Sugarman, Rogers, Barshak &
Cohen, P.C.
101 Merrimac Street
Boston, MA 02114-4737
(617) 227-3030

/s/ Daniel F. Goldstein

Daniel F. Goldstein
Sharon Krevor-Weisbaum
Brown, Goldstein & Levy, LLP
120 E. Baltimore Street, Suite 1700
Baltimore, MD 21202
(410) 962-1030

/s/ Amy F. Robertson

Amy F. Robertson
Timothy P. Fox
Fox & Robertson, P.C.
910 - 16th Street, Suite 610
Denver, CO 80202
(303) 595-9700

DATED: September 11, 2007

CERTIFICATE OF SERVICE

I, Christine M. Netski, hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants.

/s/ Christine M. Netski

Christine M. Netski