

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

SHANE SWIFT, on Behalf of Himself and
All Others Similarly Situated.,

Plaintiff,

v.

CASE NO. 1:10-cv-00090-MP-GRJ

BANCORPSOUTH BANK,

Defendants.

**ORDER PRELIMINARILY APPROVING CLASS
SETTLEMENT AND CERTIFYING SETTLEMENT CLASS**

Plaintiff and BancorpSouth Bank (“BancorpSouth” or the “Bank”) have agreed to a settlement as part of this litigation, the terms and conditions of which are set forth in a written Settlement Agreement and Release (the “Settlement”). The Parties reached the Settlement through arms’-length negotiations following private mediation in 2015. Under the Settlement, subject to the terms and conditions therein and subject to Court approval, Plaintiff and the proposed Settlement Class would fully, finally, and forever resolve, discharge, and release their claims in exchange for BancorpSouth’s total payment of Twenty-Four Million and 00/100 Dollars (\$24,000,000.00), inclusive of all attorneys’ fees and costs to Class Counsel and a Service Award to Plaintiff, to create a common fund to benefit the Settlement Class, without admission of liability by BancorpSouth. In addition, as further described in the Settlement, BancorpSouth has agreed to pay all fees and costs associated with providing Notice to the Settlement Class and for Settlement Administration up to a maximum of Five Hundred Thousand and 00/100 Dollars (\$500,000.00).

The Settlement has been filed with the Court, and Plaintiff and Class Counsel have filed an Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of the Settlement Class (the “Motion”). Upon considering the Motion and exhibits thereto, the Settlement, the record in these proceedings, the representations and recommendations of Settlement Class Counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and parties to these proceedings; (2) the proposed Settlement Class meets the requirements of Federal Rule of Civil Procedure 23 and should be certified for settlement purposes only; (3) the persons and entities identified below should be appointed class representative, Class Counsel and Settlement Class Counsel; (4) the Settlement is the result of informed, good-faith, arms’-length negotiations between the Parties and their capable and experienced counsel and is not the result of collusion; (5) the Settlement is within the range of reasonableness and should be preliminarily approved; (6) the proposed Notice Program, including the proposed forms of Notice, satisfy Federal Rule of Civil Procedure 23 and Constitutional Due Process requirements, and are reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, Class Counsel’s application for an award of attorneys’ fees and expenses (“Fee Application”) and request for a Service Award for the Class Representative, their rights to opt-out of the Settlement Class or object to the Settlement, Class Counsel’s Fee Application, and/or the request for a Service Award for the Class Representative; (7) good cause exists to schedule and conduct a Final Approval Hearing, pursuant to Federal Rule of Civil Procedure 23(e), to assist the Court in determining whether to grant final approval of the Settlement and enter Final Judgment, and whether to grant Class Counsel’s Fee Application and request for a Service Award for the Class Representative; and finally (8) the other related matters pertinent to the

preliminary approval of the Settlement should also be approved.

Based on the foregoing, IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. As used in this Order, capitalized terms shall have the definitions and meanings accorded to them in the Settlement.
2. The Court has jurisdiction over the subject matter and parties to this proceeding pursuant to 28 U.S.C. § 1332.
3. Venue is proper in this District. Settlement Class Certification and Appointment of Class Representatives and Class Counsel
4. On December 20, 2011, Plaintiff filed a Motion for Class Certification. [S.D. Fla. DE # 2271]. On May 4, 2012, following extensive briefing, the Court entered an Opinion and Order Granting Class Certification (the “Class Certification Order”), finding that the relevant requirements of Rule 23 were satisfied. [S.D. Fla. DE # 2673].
5. In deciding whether to certify a settlement class, a court must consider the same factors that it would consider in connection with a proposed litigation class—i.e., all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied—except that the Court need not consider the manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial. Borcea v. Carnival Corp., 238 F.R.D. 664, 671 (S.D. Fla. 2006); Amchem Products, Inc. v. Windsor, 521 U.S. 591, 620 (1997).
6. The Court reaffirms its Class Certification Order and finds, for settlement purposes, that the Federal Rule of Civil Procedure 23 factors are present and that certification of the proposed Settlement Class is appropriate under Rule 23 for the same reasons stated in the Class Certification Order. The Court, therefore, certifies the following Settlement Class:

All Account Holders of a BancorpSouth Account who, during the Class Period

applicable to the state in which the Account was opened, incurred one or more Overdraft Fees as a result of BancorpSouth's High-to-Low Posting.¹ Excluded from the Class are all current BancorpSouth officers and directors, and the judge presiding over this Action.

7. In the Class Certification Order, the Court appointed Plaintiff Shane Swift as Class Representative and the Court hereby reaffirms Plaintiff Shane Swift's appointment as Class Representative.

8. In the Class Certification Order, the Court appointed, and the Court hereby reaffirms, the following law firms and lawyers as Class Counsel, subject to possible later additions in accord with the provisions of the Settlement:

BRUCE S. ROGOW, P.A.
Bruce S. Rogow, Esq.
100 NE 3rd Ave
Suite 1000
Fort Lauderdale, FL 33301

GROSSMAN ROTH, P.A.
Robert C. Gilbert, Esq.
2525 Ponce de Leon
Suite 1150
Coral Gables, FL 33134

KOPELOWITZ OSTROW FERGUSON WEISELBERG GILBERT
Jeffrey M. Ostrow, Esq.
Jonathan M. Streisfeld, Esq.
1 West Las Olas Blvd.
Suite 500
Fort Lauderdale, FL 33301

CHITWOOD HARLEY HARNES LLP

Darren T. Kaplan, Esq.
1350 Broadway
Suite 908
New York, New York 10018
BARON & BUDD, P.C.
Russell Budd, Esq.
3102 Oak Lawn Avenue
Suite 1100
Dallas, TX 75219

GOLOMB & HONIK, P.C.
Richard Golomb, Esq.
1515 Market Street
Suite 1100
Philadelphia, PA 19102

¹The Settlement Class consists of the 190,953 identifiable current and former BancorpSouth Account Holders identified based on the analysis set forth in the Expert Report of Arthur Olsen dated November 8, 2012, as supplemented by the Supplemental Expert Report of Arthur Olsen dated August 28, 2014, excluding the 238 class members who previously exercised their right to opt out of the certified class. [S.D. Fla. DE # 3589].

LIEFF, CABRASER, HEIMANN
& BERNSTEIN, LLP
Michael W. Sobol, Esq.
Roger Heller, Esq.
Embarcadero Center West
275 Battery Street
29th Floor
San Francisco, CA 94111-3339

PODHURST ORSECK, P.A.
Aaron S. Podhurst, Esq.
City National Bank Building
25 W. Flagler Street
Suite 800
Miami, FL 33130-1780

TRIEF & OLK
Ted E. Trief, Esq.
150 East 58th Street
34th Floor
New York, NY 10155

WEBB, KLAISE & LEMOND, L.L.C.
Edward Adam Webb, Esq.
Matthew C. Klase, Esq.
1900 The Exchange SE
Suite 480
Atlanta, GA 30339

9. The Court appoints the following persons as Settlement Class Counsel: Bruce S. Rogow, Robert C. Gilbert, and Jeffrey M. Ostrow. Settlement Class Counsel, a subset of Class Counsel, shall be responsible for handling all Settlement-related matters on behalf of Plaintiff and the Settlement Class.

Preliminary Approval of the Settlement

10. At the preliminary approval stage, the Court's task is to evaluate whether the Settlement is within the "range of reasonableness." 4 NEWBERG ON CLASS ACTIONS § 11.26 (4th ed. 2010). "Preliminary approval is appropriate where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies and the settlement falls within

the range of reason.” Smith v. Wm. Wrigley Jr. Co., 2010 WL 2401149, at *2 (S.D. Fla. Jun. 15, 2010). Settlement negotiations that involve arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See* MANUAL FOR COMPLEX LITIGATION, THIRD, § 30.42 (West 1995) (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.”) (internal quotation marks omitted).

11. The Court preliminarily approves the Settlement, and the exhibits appended to the Motion, as fair, reasonable and adequate. The Court finds that the Settlement was reached in the absence of collusion, and is the product of informed, good-faith, arms’-length negotiations between the parties and their capable and experienced counsel. The Court further finds that the Settlement, including the exhibits appended to the Motion, is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the Settlement, and schedule a Final Approval Hearing to assist the Court in determining whether to grant Final Approval to the Settlement and enter final judgment. Approval of Notice and Notice Program and Direction to Effectuate Notice

12. The Court approves the form and content of the Notice to be provided to the Settlement Class, substantially in the forms appended as Exhibits C, D and E to the Motion. The Court further finds that the Notice Program, described in section VIII of the Settlement, is the best practicable under the circumstances. The Notice Program is reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, their rights to opt-out of the Settlement Class and object to the

Settlement, Class Counsel's Fee Application and the request for a Service Award for the Plaintiff. The Notice and Notice Program constitute sufficient notice to all persons entitled to notice. The Notice and Notice Program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the Constitutional requirement of Due Process.

13. The Court directs that Epiq Class Action and Claim Systems, Inc. ("Epiq") act as the Settlement Administrator.

14. The Court directs that Hilsoft Notifications act as the Notice Administrator.

15. The Court directs that Epiq act as the Escrow Agent.

16. The Court directs that Epiq act as the Tax Administrator.

17. The Settlement Administrator and Notice Administrator shall implement the Notice Program, as set forth below and in the Settlement, using substantially the forms of Notice appended as Exhibits C, D and E to the Motion and approved by this Order. Notice shall be provided to the Settlement Class Members pursuant to the Notice Program, as specified in Section VIII of the Settlement and approved by this Order. The Notice Program shall include Mailed Notice, Published Notice, and Long-Form Notice on the Settlement Website, as set forth in the Settlement, the exhibits appended to the Motion, and below.

Mailed Notice Program

18. The Settlement Administrator shall administer the Mailed Notice Program.

Within 28 days from the date that the Settlement Administrator receives the data files that update the data for names and last known addresses of the identifiable Settlement Class Members, as set forth in paragraph 78 of the Settlement, the Settlement Administrator shall run such addresses through the National Change of Address Database, and shall mail to all such Settlement Class

Members postcards that contain the Mailed Notice (the “Initial Mailed Notice”). To coordinate the Mailed Notice Program with the Published Notice Program, following its receipt of the data files described above, the Settlement Administrator shall promptly inform the Notice Administrator by email that it has received such data files.

19. The Settlement Administrator shall perform reasonable address traces for all Initial Mailed Notice postcards that are returned as undeliverable. No later than April 28, 2016, the Settlement Administrator shall complete the re-mailing of Mailed Notice postcards to those Settlement Class Members whose new addresses were identified as of that time through address traces (the “Notice Re-mailing Process”).

20. The Mailed Notice Program (both the Initial Mailed Notice and the Notice Re-mailing Process) shall be completed no later than April 28, 2016. Within seven days after the date the Settlement Administrator completes the Notice Re-mailing Process, the Settlement Administrator shall provide Settlement Class Counsel an affidavit that confirms that the Mailed Notice Program was completed in a timely manner. Settlement Class Counsel shall file such affidavit with the Court in conjunction with Plaintiff’s and Class Counsel’s Motion for Final Approval of the Settlement.

21. All fees and costs associated with the Mailed Notice Program shall be paid by BancorpSouth, as set forth in the Settlement.

Published Notice Program

22. The Notice Administrator shall administer the Published Notice Program in the manner and using the form of Published Notice agreed to by the Parties, and approved by the Court. The Published Notice Program shall be completed no later than April 28, 2016.

23. Within seven days after the date the Notice Administrator completes the

Published Notice Program, the Notice Administrator shall provide Settlement Class Counsel with one or more affidavits that confirm that Published Notice was given in accordance with the Published Notice Program. Settlement Class Counsel shall file such affidavit(s) with the Court in conjunction with Plaintiff's and Class Counsel's Motion for Final Approval of the Settlement.

24. All fees and costs associated with the Published Notice Program shall be paid by BancorpSouth, subject to the terms of the Settlement including the maximum contribution from BancorpSouth set forth in paragraph 67 and the reimbursement of costs set forth in paragraph 104(a).

Settlement Website, Web Advertising, and Toll-Free Settlement Line

25. The Settlement Administrator shall convert the already-existing website established for the class certification to a Settlement Website as a means for Settlement Class Members to obtain notice of, and information about, the Settlement. The Settlement Website shall be established as soon as practicable following Preliminary Approval, but no later than the date of the Initial Mailed Notice. The Settlement Website shall include hyperlinks to the Settlement, the Long-Form Notice, this Order, and such other documents as Settlement Class Counsel and counsel for BancorpSouth agree to post or that the Court orders posted on the Settlement Website. These documents shall remain on the Settlement Website at least until Final Approval.

26. The Settlement Administrator shall establish and maintain a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries.

27. Epiq is directed to perform all other responsibilities under the Notice Program assigned to the Settlement Administrator in the Settlement.

28. Hilsoft Notifications is directed to perform all other responsibilities under the Notice Program assigned to the Notice Administrator in the Settlement.

Final Approval Hearing, Opt-Outs, and Objections

29. The Court directs that a Final Approval Hearing shall be scheduled for Thursday, July 7, 2016 at 1pm, to assist the Court in determining whether to grant Final Approval to the Settlement and enter the Final Approval Order and Judgment, and whether Class Counsel's Fee Application and request for a Service Award for the Class Representative should be granted.

30. The Court directs that any person within the Settlement Class definition who wishes to be excluded from the Settlement Class may exercise their right to opt-out of the Settlement Class by following the opt-out procedures set forth in the Long-Form Notice at any time during the Opt-Out-Period. To be valid and timely, opt-out requests must be postmarked on or before the last day of the Opt-Out Period (the "Opt-Out Deadline"), which is June 2, 2016, and mailed to the address indicated in the Long-form Notice, and must include:

- (i) the full name, telephone number and address of the person seeking to be excluded from the Settlement Class;
- (ii) a statement that such person wishes to be excluded from the BancorpSouth Settlement in *Shane Swift v. BancorpSouth*, N.D. Fla. Case No. 1:10-cv-00090-MP-GRJ; and
- (iii) the signature of the person seeking to be excluded from the Settlement Class. The Opt-Out Deadline shall be specified in the Mailed Notice, Published Notice, and Long-Form Notice. All persons within the Settlement Class definition who do not timely and validly opt-out of the Settlement Class shall be bound by all determinations and judgments in the Action concerning the Settlement, including,

but not limited to, the Releases set forth in Section XIV of the Settlement.

31. The Court further directs that any person in the Settlement Class who does not opt-out of the Settlement Class may object to the Settlement, Class Counsel's Fee Application and/or the request for a Service Award for the Class Representative. Any such objections must be mailed to the Clerk of the Court, Settlement Class Counsel, and counsel for BancorpSouth, at the addresses indicated in the Long-Form Notice. For an objection to be considered by the Court, the objection must be postmarked no later than the Opt-Out Deadline of June 2, 2016, and must include the following information:

- (i) the case name, Shane Swift v. BancorpSouth, N.D. Fla. Case No. 1:10-cv-00090-MP-GRJ, and an indication that the objection is to the BancorpSouth Settlement;
- (ii) the objector's full name, address, and telephone number;
- (iii) an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- (iv) all grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel;
- (v) the number of times the objector has objected to a class action settlement within the five (5) years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
- (vi) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;

- (vii) the number of times the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five (5) years preceding the date that the objector files the objection, the caption of each case in which the counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;
- (viii) any and all agreements that relate to the objection or the process of objecting—whether written or verbal—between objector or objector's counsel and any other person or entity;
- (ix) the identity of all counsel representing the objector who will appear at the Final Approval Hearing;
- (x) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- (xi) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- (xii) the objector's signature (the objector's counsel's signature is not sufficient).

An objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. Settlement Class Counsel and/or BancorpSouth may conduct limited discovery, including depositions, on any objector consistent with the Federal Rules of Civil Procedure, no later than June 23, 2016.

Further Papers In Support Of Settlement and Fee Application

- 32. Plaintiff and Class Counsel shall file their Motion for Final Approval of the

Settlement, and Class Counsel shall file their Fee Application and request for a Service Award for the Class Representative, no later than May 12, 2016.

33. Plaintiff and Class Counsel shall file their responses to timely filed objections to the Motion for Final Approval of the Settlement and the Fee Application no later than June 23, 2016. If BancorpSouth chooses to file a response to timely filed objections to the Motion for Final Approval of the Settlement, it also must do so no later than June 23, 2016.

Effect of Failure to Approve the Settlement or Termination

34. In the event the Settlement is not approved by the Court, or for any reason the Parties fail to obtain a Final Approval Order and Judgment as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

- (i) All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;
- (ii) All of the Parties' respective pre-Settlement claims and defenses will be preserved;
- (iii) Nothing contained in this Order is, or may be construed as, any admission or concession by or against BancorpSouth or Plaintiff on any point of fact or law; and
- (iv) Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Notice, court filings, orders and public statements, may be used as evidence. In addition, neither the fact of, nor any documents relating to, either party's withdrawal from the Settlement, any

failure of the Court to approve the Settlement and/or any objections or interventions may be used as evidence.

Stay/Bar Of Other Proceedings

35. All proceedings in the Action are hereby stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination of whether the Settlement should be approved, Plaintiff, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any of the Released Parties any action or proceeding in any court asserting any of the Released Claims.

36. Based on the foregoing, the Court sets the following schedule for the Final Approval Hearing and the actions which must precede it:

- (i) The Settlement Administrator shall establish the Settlement Website and toll-free telephone line as soon as practicable following Preliminary Approval, but no later than the date of the Initial Mailed Notice;
- (ii) The Settlement Administrator shall complete the Mailed Notice Program no later than April 28, 2016 [70 days before the Final Approval Hearing];
- (iii) The Notice Administrator shall complete the Published Notice Program no later than April 28, 2016;
- (iv) The Settlement Administrator shall complete the Notice Program (which includes both the Mailed Notice Program and the Published Notice Program) no later than April 28, 2016;
- (v) Plaintiff and Class Counsel shall file their Motion for Final Approval of the Settlement, and Class Counsel shall file their Fee Application and Request for a Service Award for the Class Representative, no later than May 12, 2016;
- (vi) Settlement Class Members must file any objections to the Settlement, the Motion for Final Approval of the Settlement, Class Counsel's Fee Application and/or the Request for Service Awards no later than June 2, 2016;
- (vii) Settlement Class Members must submit requests for exclusion from the

- Settlement no later than June 2, 2016;
- (viii) Settlement Class Counsel and/or BancorpSouth must conduct any discovery involving objectors no later than June 23, 2016;
- (ix) Plaintiff and Class Counsel shall file their responses to timely filed objections to the Motion for Final Approval of the Settlement and Fee Application no later than June 23, 2016;
- (x) If BancorpSouth chooses to file a response to timely filed objections to the Motion for Final Approval of the Settlement, it shall do so no later than June 23, 2016; and
- (xi) The Final Approval Hearing will be held on Thursday, July 7, 2016 at 1 p.m. at the United States Courthouse for the Northern District of Florida, Gainesville Division, in Gainesville, Florida.

DONE AND ORDERED this 8th day of March, 2016

s/Maurice M. Paul

Maurice M. Paul, Senior District Judge