

# **EXHIBIT A**

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into this \_\_\_ day of February, 2016, by and among (1) Plaintiff Shane Swift (“Plaintiff” or “Plaintiff Swift”), individually and on behalf of the Settlement Class, and (2) BancorpSouth Bank (“BancorpSouth”), subject to preliminary and final approval as required by Rule 23 of the Federal Rules of Civil Procedure. As provided herein, Plaintiff Swift, Class Counsel and BancorpSouth hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Order and Judgment, all claims of the Settlement Class against BancorpSouth in the action titled *Shane Swift v. BancorpSouth*, N.D. Fla. Case No. 1:10-cv-00090-MP-GRJ (the “Action”), shall be settled and compromised upon the terms and conditions contained herein.

### **I. Recitals**

1. On May 18, 2010, Plaintiff Swift initiated this litigation against BancorpSouth and BancorpSouth, Inc., Case No. 1:10-cv-00090-MP-GRJ in the United States District Court for the Northern District of Florida (“*Swift*”), alleging improper assessment and collection of overdraft fees and seeking, *inter alia*, monetary damages, interest, attorney’s fees, restitution, and equitable relief. BancorpSouth, Inc. was later dismissed as a defendant in this case. [N.D. Fla. DE # 12].
2. In October 2010, the Judicial Panel on Multidistrict Litigation (“JPML”) transferred *Swift* to the United States District Court for the Southern District of Florida, where it joined other actions coordinated under the caption *In Re: Checking Account Overdraft Litigation*, Case No. 1:09-md-02036-JLK (“MDL

- 2036”). *Swift* was assigned to Senior Judge James Lawrence King and made part of the *Fourth Tranche* of cases.
3. On December 6, 2010, Plaintiff Swift filed a Second Amended Complaint, asserting claims for breach of contract/breach of the implied covenant of good faith and fair dealing (Count I), unconscionability (Count II), conversion (Count III), unjust enrichment (Count IV), and for violation of Arkansas’ Deceptive Trade Practices Act (Count V). [S.D. Fla. DE # 994]
  4. BancorpSouth filed a Motion to Dismiss the Second Amended Complaint. [S.D. Fla. DE # 1068]. Following briefing and oral argument, the Court denied BancorpSouth’s motion. [S.D. Fla. DE # 1305].
  5. On April 11, 2011, BancorpSouth filed its Answer and Affirmative Defenses. [S.D. Fla. DE #1335]. In response, Plaintiff moved to strike a number of BancorpSouth’s affirmative defenses as legally insufficient. [S.D. Fla. DE #1390]. Prior to a ruling on that motion, the Court approved the parties’ stipulation authorizing BancorpSouth to file an Amended Answer and Affirmative Defenses. [S.D. Fla. DE # 1693]. Accordingly, the operative pleadings in *Swift* are Plaintiff’s Second Amended Complaint and BancorpSouth’s Amended Answer and Affirmative Defenses.
  6. On April 13, 2011, the Court entered the Scheduling Order Pertaining to “Fourth Tranche” Cases, the first in a series of scheduling orders to be entered applicable to the *Swift* case. [S.D. Fla. DE # 1340].
  7. In July 2011, Class Counsel and counsel for the *Fourth Tranche* banks, including BancorpSouth, entered into a Stipulated Protective Order relating to the

- production of documents and information. [S.D. Fla. DE # 1774]. Soon thereafter, Class Counsel and BancorpSouth entered into a Stipulated Discovery Plan for Electronically Stored Information (“ESI”), which the Court adopted on October 11, 2011. [S.D. Fla. DE # 1968].
8. Discovery commenced in May of 2011. During the course of fact and expert discovery, Class Counsel deposed approximately six (6) current and former BancorpSouth employees, including several who were designated under Rule 30(b)(6), and three (3) expert witnesses designated by BancorpSouth. Plaintiff ultimately conducted approximately fourteen (14) depositions of BancorpSouth witnesses. BancorpSouth deposed Plaintiff Swift, his wife, and three (3) expert witnesses designated by Plaintiff.
  9. During the course of discovery, Class Counsel served written discovery requests on BancorpSouth. In response, BancorpSouth produced approximately 100,000 pages of documents, as well as voluminous electronic data files and spreadsheets in native format.
  10. 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. [S.D. Fla. DE # 2673].
  11. On August 12, 2012, the Parties participated in their first mediation under the auspices of Professor Eric Green of Resolutions, LLC. The first mediation ended in an impasse, and the Parties continued their active litigation thereafter.

12. BancorpSouth filed a Petition for Permission to Appeal the Order Granting Class Certification Pursuant to Federal Rule of Civil Procedure 23(f). *See* 11th Cir. Case No. 12-90024-E. On February 13, 2013, following briefing, the Eleventh Circuit Court of Appeals denied the petition. [S.D. Fla. DE # 3294].
13. On May 3, 2013, BancorpSouth moved to decertify the class. [S.D. Fla. DE # 3455]. Following briefing, the Court denied BancorpSouth's Motion to Decertify. [S.D. Fla. # 3540]. BancorpSouth filed a second Petition for Permission to Appeal the Order Denying the Motion to Decertify Pursuant to Federal Rule of Civil Procedure 23(f), which the Eleventh Circuit Court of Appeals denied. *See* 11th Cir. Case No. 13-90019-E.
14. In February 2013, the Court approved the implementation and completion of the class notice plan to the certified class. [S.D. Fla. DE # 3242, 3338, 3342]. Pursuant to the Court's Order, notice was mailed to all members of the certified class for whom reasonably reliable mailing addresses were available, and 238 class members timely exercised their right to opt out of the certified class. [S.D. Fla. DE # 3589].
15. Following class certification, the Court entered a Revised Scheduling Order that directed the parties to file all pretrial motions by certain deadlines. [S.D. Fla. DE # 2834]. The motion-filing deadlines were extended by a subsequent Scheduling Order. [S.D. Fla. DE # 2891].

16. Pursuant to the operative Scheduling Order, the Parties filed the following pretrial motions that were decided by the Court following extensive briefing and, in some instances, oral argument:<sup>1</sup>
- Plaintiff's Motion for Partial Summary Judgment was granted in part and denied in part. [S.D. Fla. DE # 2997, 3035, 3116, 3655, 3682];
  - Plaintiff's Motion in Limine to preclude BancorpSouth from offering certain evidence at trial was granted. [S.D. Fla. DE # 2996, 3258];
  - Plaintiff's Motion to Strike two of BancorpSouth's designated expert witnesses was denied. [S.D. Fla. DE # 3014, 3229];
  - BancorpSouth's Motion for Summary Judgment was denied in its entirety. [S.D. Fla. DE # 2999, 3682]; and
  - BancorpSouth's Motion to Strike two of Plaintiff's designated expert witnesses was denied. [S.D. Fla. DE # 3014, 3229].
17. Upon the conclusion of three years of pretrial proceedings, including substantial fact and expert discovery and pretrial motion practice as set forth above, the Court entered a Suggestion of Remand. [S.D. Fla. DE # 3683, 3707]. Thereafter, the JPML remanded the Action to the Northern District of Florida. [N.D. Fla. DE # 25, 26].
18. Following remand, BancorpSouth filed a Renewed Motion to Transfer Venue, pursuant to 28 U.S.C. § 1404(a) [N.D. Fla. DE # 29, 33], which renewed

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<sup>1</sup> On October 2, 2013, the claim for conversion (Count III) was dismissed pursuant to a Stipulation and Order. [S.D. Fla. DE #3667, 3669].

- BancorpSouth's Motion to Transfer Venue Filed According to Revised Scheduling Order. [S.D. Fla. DE # 3000]. On June 4, 2014, following briefing and oral argument, the Court denied BancorpSouth's Renewed Motion to Transfer Venue. [N.D. Fla. DE # 48].
19. On June 5, 2014, the Court entered an Order for Pre-Trial Conference and Setting Trial, that directed the Parties to file a series of memoranda and a Joint Pretrial Stipulation in advance of a Pretrial Conference scheduled for September 11, 2014. [N.D. Fla. DE # 49].
  20. Pursuant to the Order for Pre-Trial Conference and Setting Trial, the Parties filed a series of memoranda addressing various issues. [N.D. Fla. DE # 54, 55, 56, 57, 60, 61]. The Parties also filed a Joint Pretrial Stipulation, along with their respective witnesses and exhibit lists, proposed jury instructions and verdict forms, and proposed findings of fact and conclusions of law. [N.D. Fla. DE # 63, 64, 65, 66]. On September 11, 2014, the Court held a Pretrial Conference, during which it heard extensive oral argument regarding the various issues addressed in the Parties' memoranda. [N.D. Fla. DE # 69].
  21. On August 27, 2015, the Court entered an Order denying BancorpSouth's request for reconsideration of certain pretrial rulings decided by the Court prior to remand. [N.D. Fla. DE # 77]. The Order also directed the Parties to participate in a second mediation no later than October 30, 2015. [N.D. Fla. DE # 77].
  22. On October 28, 2015, the Parties participated in a second mediation under the auspices of Jonathan B. Marks of MarksADR, LLC. Although an agreement to settle was not reached during that mediation conference, the Parties agreed that

- Mr. Marks would continue his mediation efforts thereafter.
23. On December 4, 2015, following weeks of continued mediation efforts by Mr. Marks, the Parties reached an agreement in principle to resolve the Action. On January 5, 2016, following further negotiations and discussions, the Parties resolved all remaining issues, and executed a Summary Agreement memorializing their binding and enforceable agreement to settle the Action.
  24. On January 6, 2016, the Parties filed a Joint Notice of Settlement with the Court [N.D. Fla. DE # 83]. On January 13, 2016, the Court entered an Order temporarily suspending all further proceedings in the Action [N.D. Fla. DE # 84] pending the drafting and execution of a comprehensive Settlement Agreement and the preliminary approval and final approval process required by Rule 23 of the Federal Rules of Civil Procedure.
  25. Following further negotiations and discussions, the Parties resolved all remaining issues, culminating in this Agreement.
  26. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Releasing Parties. The Parties intend this Agreement to bind Plaintiff, BancorpSouth, and all Settlement Class Members who do not timely request to be excluded from the Settlement.

**NOW, THEREFORE,** in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

**II. Definitions**

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

27. “Account” means any consumer checking, demand deposit or savings account maintained by BancorpSouth in the United States linked to and/or accessible by a Debit Card during the Class Period and on which an Overdraft Fee could be applied.
28. “Account Holder” means any person who has or had any interest, whether legal or equitable, in an Account during the Class Period.
29. “Action” means *Shane Swift v. BancorpSouth*, N.D. Fla. Case No. 1:10-cv-00090-MP-GRJ, including the period during which *Swift* was part of *In Re: Checking Account Overdraft Litigation*, MDL Case No. 1:09-md-02036-JLK.
30. “BancorpSouth” means BancorpSouth Bank and BancorpSouth, Inc. and includes each banking institution that before or during the Class Period entered into a merger transaction such that BancorpSouth has succeeded to pre-merger liabilities of such other institution by virtue of the merger.
31. “Class Counsel” means:

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and such other counsel as are identified in Class Counsel's request for attorneys' fees and costs.

32. "Class Period" means:
- i. for Settlement Class Members who opened accounts in Alabama, the period from May 18, 2004 through August 13, 2010;
  - ii. for Settlement Class Members who opened accounts in Arkansas, the period from May 18, 2005 through August 13, 2010;
  - iii. for Settlement Class Members who opened accounts in Florida, the period from May 18, 2006 through August 13, 2010;
  - iv. for Settlement Class Members who opened accounts in Louisiana, the period from May 18, 2003 through August 13, 2010;
  - v. for Settlement Class Members who opened accounts in Mississippi, the period from May 18, 2007 through August 13, 2010;
  - vi. for Settlement Class Members who opened accounts in Missouri, the period from May 18, 2007 through August 13, 2010;
  - vii. for Settlement Class Members who opened accounts in Tennessee, the period from May 18, 2004 through August 13, 2010; and

- viii. for Settlement Class Members who opened accounts in Texas, the period from May 18, 2006 through August 13, 2010.
33. “Class Representative” means Shane Swift.
34. “Court” means the United States District Court for the Northern District of Florida, Gainesville Division, or the United States District Court for the Southern District of Florida during the period from October 2010 through November 2013.
35. “Current Account Holder” means the holder of an Account, individually or jointly, at any time during the Class Period, who continues to hold the same Account, individually or jointly, as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.
36. “Debit Card” means a card or similar device issued or provided by BancorpSouth, including a debit card, check card, or automated teller machine (“ATM”) card that can or could be used to debit funds from an Account by Point of Sale and/or ATM transactions.
37. “Debit Card Transaction” means any debit transaction effectuated with a Debit Card, including Point of Sale transactions (whether by PIN or signature/PIN-less) and ATM transactions. For avoidance of doubt, Debit Card Transaction does not include a debit transaction effectuated by paper or electronic check, by preauthorized transaction, by wire transfer or Automated Clearing House (“ACH”) transaction, or a transfer to another account such as a credit card account or line of credit.

38. “Effective Date” means the fifth business day after which all of the following events have occurred:
- a. All Parties, BancorpSouth’s counsel, and Settlement Class Counsel have executed this Agreement;
  - b. The Court has entered without material change the Final Approval Order; and
  - c. The time for seeking rehearing or appellate or other review has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired and relief from a failure to file same is not available.
39. “Escrow Account” means the account to be established consistent with the terms and conditions described in Section X hereof.
40. “Escrow Agent” means Epiq Class Action & Claims Solutions, Inc. (“Epiq”). Settlement Class Counsel and BancorpSouth may, by agreement, substitute a different Escrow Agent, subject to approval by the Court if the Court has previously approved the Settlement, preliminarily or finally. In the absence of agreement, either Settlement Class Counsel, or BancorpSouth, may move the Court to substitute a different Escrow Agent, upon a showing that the responsibilities of Escrow Agent have not been adequately executed by the incumbent. The Escrow Agent shall administer the Escrow Account.

41. “Final Approval” means the date that the Court enters an order and judgment granting final approval to the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Award to the Class Representative. The proposed Final Approval Order shall be in a form agreed upon by Settlement Class Counsel and BancorpSouth. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.
42. “Final Approval Order” means the order and final judgment that the Court enters upon Final Approval. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then the Final Approval Order includes all such orders.
43. “High-to-Low Posting” means BancorpSouth’s practice of posting an Account’s Debit Card Transactions from highest to lowest dollar amount each business day, which is alleged to have resulted in the assessment of Overdraft Fees that would not have been assessed if BancorpSouth had used the alternative posting order based on the estimated chronological posting of the same Debit Card transactions 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.
44. “Notice” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of Mailed Notice, Published

- Notice and Long-Form Notice. The form of the Mailed Notice, Published Notice and Long-Form Notice shall be agreed upon by Settlement Class Counsel and BancorpSouth. Additional description of the contemplated Notice Program is provided in Section VIII hereof.
45. “Notice Administrator” means Hilsoft Notifications. Settlement Class Counsel and BancorpSouth may, by agreement, substitute a different Notice Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Settlement Class Counsel, or BancorpSouth, may move the Court to substitute a different Notice Administrator, upon a showing that the responsibilities of Notice Administrator have not been adequately executed by the incumbent.
46. “Opt-Out Period” means the period that begins the day after the earliest date on which the Notice is first mailed or published, and that ends no later than 35 days before the Final Approval Hearing. The deadline for the Opt-Out Period will be specified in the Notice.
47. “Overdraft Fee” means any fee or fees assessed to an Account resulting from item(s) paid because the Account had insufficient funds to cover the item(s). Fees charged to transfer funds from other accounts are excluded.
48. “Parties” means Plaintiff Swift and BancorpSouth.
49. “Past Account Holder” means the holder of an Account, individually or jointly, who held that Account at some time during the Class Period but no longer holds

that Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

50. “Plaintiff” means Shane Swift.
51. “Point of Sale” or “POS” transaction means a transaction in which an Account holder uses his or her Debit Card to purchase or make a payment on a product or service.
52. “Preliminary Approval” means the date that the Court enters, without material change, an order preliminarily approving the Settlement in the form jointly agreed upon by the Parties.
53. “Released Claims” means all claims to be released as specified in Section XIV hereof. The “Releases” means all of the releases contained in Section XIV hereof.
54. “Released Parties” means those persons released as specified in Section XIV hereof.
55. “Releasing Parties” means Plaintiff and all Settlement Class Members who do not timely and properly opt out of the Settlement, as determined by the Court, and each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by the entirety, agents, attorneys, including any person who has or had any interest, whether legal or equitable, in an Account covered by the Settlement during the Class Period.
56. “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement.

57. “Settlement Administrator” means Epiq. Settlement Class Counsel and BancorpSouth may, by agreement, substitute a different Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Settlement Class Counsel or BancorpSouth may move the Court to substitute a different Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.
58. “Settlement Class” is defined in paragraph 64 hereof.
59. “Settlement Class Counsel” means Bruce S. Rogow, Robert C. Gilbert, and Jeffrey M. Ostrow. Settlement Class Counsel are a subset of Class Counsel. Settlement Class Counsel are authorized to and responsible for handling all Settlement-related matters on behalf of Plaintiff and the Settlement Class.
60. “Settlement Class Member” means any person included in the Settlement Class.
61. “Settlement Fund” means the fund established under Section X hereof.
62. “Settlement Website” means the website that the Settlement Administrator will use as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long-Form Notice, the order preliminarily approving this Settlement, and such other documents as Settlement Class Counsel and BancorpSouth agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement Website shall be [www.BancorpSouthOverdraftlitigation.com](http://www.BancorpSouthOverdraftlitigation.com) or such other URL as Settlement

Class Counsel and BancorpSouth agree upon in writing. The Settlement Website shall not include any advertising, and shall not bear or include the BancorpSouth logo or BancorpSouth trademarks. Ownership of the Settlement Website URL shall be transferred to BancorpSouth within 10 days after the date on which operation of the Settlement Website ceases.

63. “Tax Administrator” means Epiq. Settlement Class Counsel and BancorpSouth may, by agreement, substitute a different Tax Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Settlement Class Counsel, or BancorpSouth, may move the Court to substitute a different Tax Administrator, upon a showing that the responsibilities of Tax Administrator have not been adequately executed by the incumbent. The Tax Administrator will perform all tax-related services for the Escrow Account as provided in this Agreement.

**III. Certification of the Settlement Class**

64. For settlement purposes only, Plaintiff and BancorpSouth agree to ask the Court to certify the following Settlement Class under Rule 23(b)(3) of the Federal Rules of Civil Procedure:

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.<sup>2</sup> Excluded from the Class are all current BancorpSouth officers and directors, and the judge presiding over this Action.

65. This Settlement may be terminated as specified in Section XVI hereof.

**IV. Settlement Consideration**

66. Subject to approval by the Court, and except as provided in paragraph 67 hereafter, the total cash consideration to be provided by BancorpSouth to the Settlement Class pursuant to the Settlement shall be Twenty-Four Million and 00/100 Dollars (\$24,000,000.00), inclusive of all attorneys' fees, costs and expenses awarded to Class Counsel, and Service Award to the Class Representative.

67. In addition to the cash consideration specified in paragraph 66 above, BancorpSouth shall pay up to, but no more than, Five Hundred Thousand Dollars (\$500,000) in administration fees, costs, charges, and expenses of the Settlement Administrator and of the Notice Administrator incurred in connection with the administration of the Notice Program as set forth in Section VIII hereof, and the payment of Automatic Distributions from the Settlement Fund to Settlement Class Members as set forth in Section XII hereof. For avoidance of doubt, BancorpSouth shall not bear any other fees, costs, charges, or expenses incurred

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<sup>2</sup> The Settlement Class consists solely 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].

by Plaintiff or by Settlement Class Counsel. The monetary payments to be made by BancorpSouth shall be strictly limited to those specified in this paragraph and paragraph 66. In the event the administration fees, costs, charges, and expenses of the Settlement Administrator and of the Notice Administrator incurred in connection with the administration of the Notice Program as set forth in Section VIII hereof exceed Five Hundred Thousand and 00/100 Dollars (\$500,000), all additional fees, costs, charges, and expenses shall be paid from the Settlement Fund.

**V. Settlement Approval**

68. Upon execution of this Agreement by all Parties, Settlement Class Counsel shall promptly move the Court for an Order granting Preliminary Approval of this Settlement (“Preliminary Approval Order”). The proposed Preliminary Approval Order that will be attached to the motion shall be in a form agreed upon by Settlement Class Counsel and BancorpSouth. The motion for Preliminary Approval shall request that the Court: (1) approve the terms of the Settlement as within the range of fair, adequate and reasonable; (2) provisionally certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the procedures set forth in Section VIII hereof for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement; (5) stay the Action pending Final Approval of the Settlement; and (6) schedule a Final Approval hearing for a time and date mutually convenient for the Court,

Settlement Class Counsel and counsel for BancorpSouth, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's application for attorneys' fees, costs and expenses and for Service Award to the Class Representative ("Final Approval Hearing").

69. BancorpSouth, at its own expense, shall serve or cause to be served a notice of the proposed Settlement in conformance with the Class Action Fairness Act, 28 U.S.C. § 1715(b).

**VI. Discovery**

70. Class Counsel and BancorpSouth already have engaged in significant discovery, including depositions of approximately 14 party and non-party witnesses and the production of more than 100,000 pages of documents as well as voluminous electronic customer transactional data. In addition, and consistent with its contractual, statutory and regulatory obligations to protect its customers' private financial information, BancorpSouth will provide Settlement Class Counsel with (i) updated addresses for Current Account Holders and last known addresses for Part Account Holders, and (ii) information regarding whether an Account in the Settlement Class is open or closed.

**VII. Settlement Administrator**

71. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph hereafter and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, providing Mailed Notice to Settlement Class

Members; working with the Notice Administrator to effectuate the Published Notice Program; distributing the Settlement Fund as provided herein; paying BancorpSouth from the Settlement Fund the amount of account credits BancorpSouth provides to Current Account Holder Settlement Class Members pursuant to paragraph 100 hereof; and repaying the Settlement Fund to BancorpSouth in the event of a termination of the Settlement pursuant to Section XVI hereof.

72. The duties of the Settlement Administrator, in addition to other responsibilities that are described in the preceding paragraph and elsewhere in this Agreement, are as follows:

- i. Use the name and address information for Settlement Class Members gathered from Settlement Class Counsel and BancorpSouth in connection with the notice process approved by the Court in its order on class certification [S.D. Fla. DE ## 3338, 3342], and verify and update the addresses received through the National Change of Address database, for the purpose of mailing the Mailed Notice, and later mailing distribution checks to Past Account Holder Settlement Class Members, and to Current Account Holder Settlement Class Members where it is not feasible or reasonable for BancorpSouth to make the payment by a credit to the Settlement Class Members' Accounts;
- ii. Establish and maintain a Post Office box for requests for exclusion from the Settlement Class;
- iii. Establish and maintain the Settlement Website;

- iv. Establish and maintain an automated and live operator 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;
- v. Respond to any mailed Settlement Class Member inquiries;
- vi. Process all requests for exclusion from the Settlement Class;
- vii. Provide weekly reports and, no later than five days after the end of the Opt-Out Period, a final report to Settlement Class Counsel and BancorpSouth, that summarize the number of requests for exclusion received that week, the total number of exclusion requests received to date, and other pertinent information;
- viii. Interface with the Tax Administrator;
- ix. At Settlement Class Counsel's request in advance of the Final Approval Hearing, prepare an affidavit to submit to the Court that identifies each Settlement Class Member who timely and properly requested exclusion from the Settlement Class;
- x. Process and transmit distributions to Past Account Holder Settlement Class Members from the Settlement Fund; instruct BancorpSouth as to the direct payments to be made to Current Account Holder Settlement Class Members (to the extent feasible); and pay BancorpSouth from the Settlement Fund the aggregate amount of account credits to be provided to Current Account Holder Settlement Class Members;

- xi. Pay invoices, expenses and costs upon approval by Settlement Class Counsel and BancorpSouth, as provided in this Agreement; and
- xii. Perform the duties of Escrow Agent as described in this Agreement, and any other Settlement-administration-related function at the instruction of Settlement Class Counsel and BancorpSouth, including, but not limited to, verifying that Settlement Funds have been distributed as required by Section XII hereof.

**VIII. Notice to Settlement Class Members**

73. Upon Preliminary Approval of the Settlement, at the direction of Settlement Class Counsel, the Notice Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class Members may exclude themselves from or “opt out” of the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date upon which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class Members may access this Agreement and other related documents and information. Settlement Class Counsel and BancorpSouth shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices and publications provided under or as part of the Notice Program shall not bear or include the BancorpSouth logo or trademarks or the return address of

BancorpSouth, or otherwise be styled to appear to originate from BancorpSouth. Ownership of the Settlement Website URL shall be transferred to BancorpSouth within ten (10) days after the date on which operation of the Settlement Website ceases, which shall be one year and thirty (30) days following distribution of the Net Settlement Fund to Settlement Class Members as provided in Section XII, or such other date as Settlement Class Counsel and BancorpSouth may agree upon in writing.

74. The Notice also shall include a procedure for Settlement Class Members to opt out of the Settlement Class. A Settlement Class Member may opt out of the Settlement Class at any time during the Opt-Out Period. Any Settlement Class Member who does not timely and validly request to opt out shall be bound by the terms of this Agreement.
75. The Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses and/or Service Awards to Class Representatives. Objections to the Settlement, to the application for fees, costs, expenses, and/or to the Service Awards must be mailed to the Clerk of the Court, Settlement Class Counsel, and BancorpSouth's counsel. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Opt-Out Period, as specified in the Notice. If submitted by mail, 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. If submitted by private courier (*e.g.*, Federal Express), an

objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

76. For an objection to be considered by the Court, the objection must also set forth:
- a. the name of the Action;
  - b. the objector's full name, address and telephone number;
  - c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
  - d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
  - e. the number of times in which the objector has objected to a class action settlement within the five 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 objections that were issued by the trial and appellate courts in each listed case;
  - f. 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;
  - g. a copy of any orders related to or ruling upon counsel's or the firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five (5) years;

- h. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector’s counsel and any other person or entity;
- i. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
- j. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- k. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- l. the objector’s signature (an attorney’s signature is not sufficient).

Settlement Class Counsel and/or BancorpSouth may conduct limited discovery on any objector consistent with the Federal Rules of Civil Procedure.

77. Notice shall be provided to Settlement Class Members in three different ways: Mailed Notice; Published Notice; and Long-Form Notice on the Settlement Website. Not all Settlement Class Members will receive all three forms of Notice, as detailed herein. Notice shall be provided in a form to be agreed upon by Settlement Class Counsel and BancorpSouth.
78. Within 28 days after the date that the Settlement Administrator receives from Settlement Class Counsel and BancorpSouth the data files identified in paragraph 70 (the Settlement Administrator already has a master data file with the information set forth in footnote 2 in paragraph 64), the Settlement Administrator shall run the 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 the Settlement Administrator’s receipt of the data files described herein, the Settlement Administrator shall promptly inform the Notice Administrator by email that it has received the data files.
79. The Settlement Administrator shall perform reasonable address traces for all Initial Mailed Notice postcards that are returned as undeliverable. By way of example, a “reasonable” tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 70 days before the Final Approval Hearing, 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”). Because the United States Postal Service sometimes returns undeliverable items beyond the typical time for returning such items, the Settlement Administrator may, at its discretion, perform the Notice Re-mailing Process up to 14 days before the Opt-Out Deadline. The Settlement Administrator’s continued efforts in connection with the Notice Re-mailing Process shall not affect or extend any Settlement Class Member’s deadlines for objecting or opting out.
80. The Mailed Notice Program (which is composed of both the Initial Mailed Notice and the Notice Re-mailing Process) shall be completed no later than 70 days before the Final Approval Hearing. Within seven days after the date the Settlement Administrator completes the Notice Re-mailing Process, the

Settlement Administrator shall provide Settlement Class Counsel and BancorpSouth an affidavit that confirms that the Mailed Notice Program was completed in a timely manner. Settlement Class Counsel shall file that affidavit with the Court as an exhibit to or in conjunction with Plaintiff's motion for final approval of the Settlement.

81. The Notice Administrator shall administer the Published Notice Program, which shall be composed of the following components: One insertion as an approximate one quarter page ad unit will be placed in the following daily circulation newspapers: *Arkansas Democrat-Gazette, Biloxi-Gulfport Sun Herald, Florence Times Daily, Fort Smith Times Record, Hattiesburg American, Jackson Clarion Ledger, Jackson Sun, Jonesboro Sun, Longview News-Journal, Memphis Commercial Appeal, Monroe News-Star, N.E. Mississippi Daily Journal, Pensacola News Journal, Shreveport Times, Springfield News-Leader and Tuscaloosa News*. The Published Notice Program shall be completed no later than 70 days before the Final Approval Hearing.
82. Within seven days after the date the Notice Administrator completes the Published Notice Program, the Notice Administrator shall provide Settlement Class Counsel and BancorpSouth with one or more affidavits that confirm that Published Notice was given in accordance with the Published Notice Program. Settlement Class Counsel shall file that affidavit with the Court as an exhibit to or in conjunction with Plaintiff's motion for final approval of the Settlement.

83. All costs of the Notice Program shall be borne by BancorpSouth, subject to the \$500,000 maximum contribution from BancorpSouth set forth in paragraph 67 and the reimbursement of costs set forth in paragraph 104(a).
84. Within the provisions set forth in this Section VIII, further specific details of the Notice Program shall be subject to the agreement of Settlement Class Counsel and BancorpSouth.

**IX. Final Approval Order and Judgment**

85. The Plaintiff's motion for preliminary approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiff shall file his motion for Final Approval of the Settlement, and his application for attorneys' fees, costs and expenses and for a Service Award for the Class Representative, no later than 56 days before the Final Approval Hearing. At the Final Approval Hearing the Court will hear argument on Plaintiff's motion for final approval of the Settlement, and on Class Counsel's application for attorneys' fees, costs, and expenses and for the Service Award for the Class Representative. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the fee, cost, expense or Service Award application, provided the objectors submitted timely objections that meet all of the requirements listed in paragraphs 75 and 76 hereof.
86. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and entering final judgment thereon, and whether to approve Class Counsel's request

for attorneys' fees, costs, expenses and Service Awards. The proposed Final Approval Order shall be in a form agreed upon by Settlement Class Counsel and BancorpSouth. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfies Due Process requirements;
- d. Enter judgment dismissing the Action with prejudice and without costs;
- e. Bar and enjoin all Releasing Parties from asserting any of the Released Claims, as set forth in Section XIV hereof, bar and enjoin all Releasing Parties from pursuing any Released Claims against BancorpSouth or its affiliates at any time, including during any appeal from the Final Approval Order, and retain jurisdiction over the enforcement of the Court's injunctions;
- f. Release BancorpSouth and the Released Parties from the Released Claims, as set forth in Section XIV hereof; and
- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including BancorpSouth, all Settlement Class Members, and all objectors, to administer, supervise, construe and enforce this Agreement in accordance with its terms.

**X. Settlement Fund**

87. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases as set forth in Section XIV hereof and the dismissal of the Action upon Final Approval, within fourteen (14) calendar days

after Preliminary Approval, BancorpSouth shall deposit the sum of Twenty-Four Million and 00/100 Dollars (\$24,000,000.00) into the Escrow Account to create the Settlement Fund as set forth herein.

88. Upon the establishment of the Escrow Account, the Escrow Agent may, but shall not be required to, cause the funds in the Escrow Account to be invested, in whole or in part, in interest-bearing short-term instruments or accounts—to be agreed upon by Settlement Class Counsel and BancorpSouth —that are backed by the full faith and credit of the United States Government or that are fully insured by the United States Government or an agency thereof (the “Instruments”). The Escrow Account shall be established and maintained at Northern Trust Bank or such other FDIC-insured financial institution as Settlement Class Counsel and BancorpSouth may agree. The Escrow Agent may thereafter re-invest the interest proceeds and the principal as they mature in similar Instruments, bearing in mind the liquidity requirements of the Escrow Account to ensure that it contains sufficient cash available to pay all invoices, taxes, fees, costs and expenses, and other required disbursements, in a timely manner. Notwithstanding the foregoing, that portion of the Settlement Fund that the Settlement Administrator reasonably estimates needs to be available on a liquid basis to pay on-going costs of settlement administration, as provided in this Agreement, may be placed in one or more insured accounts that may be non-interest-bearing. Except as otherwise specified herein, the Instruments at all times will remain in the Escrow Account and under the control of the Escrow Agent. The Escrow Agent shall communicate with Settlement Class Counsel and counsel for BancorpSouth on at

least a monthly basis to discuss potential cash needs for the following month. All costs or fees incurred in connection with investment of the Settlement Fund in the Instruments shall not constitute a cost of settlement administration to be paid by BancorpSouth, but shall instead be payable out of the Settlement Fund.

89. The Settlement Fund at all times shall be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed upon BancorpSouth or its counsel, or Plaintiff or Class Counsel, with respect to income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out of the Settlement Fund. Plaintiff and Class Counsel, and BancorpSouth and its counsel shall have no liability or responsibility for any of the Taxes. The Settlement Fund shall indemnify and hold Plaintiff and Class Counsel, and BancorpSouth and its counsel, harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

90. The Settlement Fund shall be used for the following purposes:

- a. Automatic distribution of payments to the Settlement Class pursuant to Section XII hereof, including, without limitation, the payment to BancorpSouth of all amounts automatically distributed by it through credits to Current Account Holder Settlement Class Members;

- b. Payment of the Court-ordered award of Class Counsel’s attorneys’ fees, costs, and expenses pursuant to paragraphs 108–110 hereof;
- c. Payment of the Court-ordered Service Awards to the Class Representative pursuant to paragraph 111 hereof;
- d. Payment of any residual distribution as set forth in paragraph 104 hereof, together with any administrative costs associated therewith;
- e. Payment of all Taxes pursuant to paragraph 89 hereof, including, without limitation, taxes owed as a result of accrued interest on the Escrow Account, in a timely manner consistent with the recommendation of the Tax Administrator, subject to approval by Settlement Class Counsel and BancorpSouth;
- f. Payment of any costs of settlement administration other than those to be paid by BancorpSouth as set forth in paragraph 67 hereof; and
- g. Payment of additional fees, costs and expenses not specifically enumerated in subparagraphs (a) through (f) of this paragraph, subject to approval of Settlement Class Counsel and BancorpSouth.

**XI. Calculation of Automatic Distributions from Settlement Fund**

91. The calculation and implementation of allocations of the Settlement Fund contemplated by this Section XI has been undertaken by Class Counsel and its expert for the purpose of compensating Settlement Class Members for alleged damages based on data previously produced by BancorpSouth. The methodology provided for in paragraph 93 hereof has been applied to the data as consistently, sensibly, and conscientiously as reasonably possible, recognizing and taking into

consideration the nature and completeness of the data and the purpose of the computations. Consistent with its contractual, statutory and regulatory obligations to maintain bank security and protect its customers' private financial information, BancorpSouth shall make available such additional data and information as may be needed by Settlement Class Counsel and its expert to confirm and/or effectuate the calculations and allocations contemplated by this Agreement. Settlement Class Counsel shall confer with BancorpSouth's counsel concerning any such additional data and information.

92. The Parties acknowledge that the information available in reasonably accessible electronic form from BancorpSouth's databases was incomplete for limited portions of the Class Period and, therefore, it was not possible to identify all potential Settlement Class Members and/or to calculate and make Automatic Distribution of all amounts that Settlement Class Members may be due from the Settlement Fund for the entire Class Period pursuant to the methodology provided for in paragraph 93. To the extent that Class Counsel and their expert, consistent with the foregoing data constraints and limitations, were able to reasonably identify Settlement Class Members and calculate the amount that such Settlement Class Members are due from the Settlement Fund, an Automatic Distribution will be provided to them based upon the terms of the allocation set forth in this Section XI.
93. The amount of the Automatic Distribution from the Settlement Fund to which each Settlement Class Member is entitled for the Class Period (subject to the

availability of data) has been determined using the following methodology or such other methodology as would have an equivalent result:

- a. All Accounts were identified in which, on one or more calendar days during the Class Period, BancorpSouth assessed two or more Overdraft Fees on such day or days during which the account was subject to High-to-Low Posting. If Settlement Class Counsel's expert could not conclusively determine from the available data whether the account was subject to High-to-Low Posting on a particular calendar day, it was assumed for purposes of this paragraph that the account was subject to High-to-Low Posting.
- b. For each such calendar day on which BancorpSouth assessed two or more Overdraft Fees, all transactions posted in such Accounts on that day were ordered in the following posting order:
  - i. All credits;
  - ii. All high-priority debits, including bank initiated debits, fees, and wire transfers, in the order originally posted by the bank;
  - iii. All Debit Card transactions with date and time of authorization ordered chronologically;
  - iv. All Debit Card transactions without date and time of authorization ordered by transaction amount, low-to-high;
  - v. All other customer initiated debits, including checks and ACH transactions, in the order originally posted by the bank.

- c. After ordering the transactions as set forth in subparagraph (b) of this paragraph, each Account—on a daily basis for such calendar days—was identified in which the number of Overdraft Fees BancorpSouth actually assessed exceeded the number of Overdraft Fees that would have been assessed if the Account had been ordered as set forth in subparagraph (b) (“Differential Overdraft Fees”).
  - d. The foregoing allocation formula yielded the identification of all Account holders whose Accounts experienced at least one Differential Overdraft Fee, as well as the respective dollar amounts of the Differential Overdraft Fees.
94. The Parties agree the foregoing allocation formula is exclusively for purposes of computing retrospectively, in a reasonable and efficient fashion, the amount of alleged damages, defined as Differential Overdraft Fees, that each Settlement Class Member incurred during the Class Period as a result of High-to-Low Posting, and the amount of any Automatic Distribution each Settlement Class Member should receive from the Settlement Fund. The fact that this allocation formula was used is not intended and shall not be used for any other purpose or objective whatsoever.

**XII. Distribution of Net Settlement Fund**

95. As soon as practicable but no later than sixty (60) days from the Effective Date, BancorpSouth and the Settlement Administrator shall distribute the Net Settlement Fund as set forth in this Section XII. Each Settlement Class Member who had a Differential Overdraft Fee and has not opted out as provided herein

shall receive a distribution in the amount of a pro rata share of the Net Settlement Fund.

96. The Net Settlement Fund is equal to the Settlement Fund plus any interest earned from the Instruments, and less the following:
- a. the amount of the Court-awarded attorneys' fees, costs and expenses to Class Counsel;
  - b. the amount of the Court-awarded Service Award to the Class Representative;
  - c. a reservation of a reasonable amount of funds for prospective costs of Settlement administration (if any) that are not BancorpSouth's responsibility pursuant to paragraph 67 hereof, including tax administration as agreed upon by Settlement Class Counsel and BancorpSouth; and
  - d. all other costs and/or expenses incurred in connection with the Settlement not specifically enumerated in subsections (a) through (c) of this paragraph that are expressly provided for in this Agreement or have been approved by Settlement Class Counsel and BancorpSouth.
97. The Settlement Administrator shall divide the total amount of the Net Settlement Fund by the total amount of all Settlement Class Members' Differential Overdraft Fees calculated pursuant to Section XI hereof. This calculation shall yield the "Pro Rata Percentage."
98. The Settlement Administrator shall multiply each Settlement Class Member's total Differential Overdraft Fees by the Pro Rata Percentage. This calculation

shall yield each Settlement Class Member's "Differential Overdraft Payment Amount." The Settlement Administrator shall communicate to Settlement Class Counsel, BancorpSouth and its counsel the Differential Overdraft Payment Amount to be paid to Settlement Class Members.

99. Every Settlement Class Member shall be paid from the Net Settlement Fund the total Differential Overdraft Payment Amount to which he or she is entitled, calculated as set forth herein ("Settlement Fund Payments"). In no event, however, shall BancorpSouth ever be required to pay more than a total of Twenty-Four Million and 00/100 Dollars (\$24,000,000.00) to the Settlement Class, inclusive of all attorneys' fees, costs, and expenses, and Service Award (exclusive of the capped cost of Notice and Administration as provided in this Agreement).
100. Settlement Fund Payments to Current Account Holders shall be made first by a credit to those Account Holders' Accounts, or by mailed standard size check if it is not feasible or reasonable to make the payment by a credit. BancorpSouth shall notify Current Account Holders of any such credit, and provide a brief explanation that the credit has been made as a payment in connection with the Settlement. BancorpSouth shall provide the notice of account credit described in this paragraph in or with the account statement on which the credit is reflected. BancorpSouth will bear any costs associated with implementing the account credits and notification discussed in this paragraph. In consultation with the Settlement Administrator, BancorpSouth may determine the timeline for paying account credits to Current Account Holders, so long as such payments are completed by both the deadline set forth in paragraph 95, and within ten (10)

calendar days after the Settlement Administrator mails the first check representing the Settlement Fund Payments to Past Account Holders. Settlement Fund Payments made to Current Account Holders by check will be cut and mailed by the Settlement Administrator with an appropriate legend, in a form approved by Settlement Class Counsel and BancorpSouth, to indicate that it is from the Settlement, and will be sent to the addresses that the Settlement Administrator identifies as valid. Checks shall be valid for 180 days. For jointly held Accounts, checks will be payable to all Account Holders, and will be mailed to the first Account Holder listed on the Account. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of Settlement Funds whose check is returned by the Postal Service as undeliverable (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose), and will re-mail the check once to the updated address. All costs associated with the process of printing and mailing the checks and any accompanying communication to Current Account Holders shall be borne by BancorpSouth as provided in paragraph 67 hereof, subject to the \$500,000 maximum contribution from BancorpSouth set forth in paragraph 67 and the reimbursement of costs set forth in paragraph 104(a).

101. BancorpSouth shall be entitled to a payment from the Net Settlement Fund equal to the amount of account credits to be paid pursuant to paragraph 100 hereof. Within five (5) business days after receiving such payment from the Net Settlement Fund, BancorpSouth shall complete paying the account credits to Current Account Holders as described in paragraph 100 hereof. Within two (2)

business days after the completion of the payment of such account credits, BancorpSouth shall provide written verification to Settlement Class Counsel and the Escrow Agent of the aggregate amount of account credits that were given and that such Settlement Fund Payments were given to the Settlement Class Members who are Current Account Holders.

102. Settlement Fund Payments to Past Account Holders will be made by standard size check with an appropriate legend, in a form approved by Settlement Class Counsel and BancorpSouth, to indicate that it is from the Settlement Fund. Checks will be cut and mailed by the Settlement Administrator, and will be sent to the addresses that the Settlement Administrator identifies as valid. Checks shall be valid for 180 days. For jointly held Accounts, checks will be payable to all Account Holders, and will be mailed to the first Account Holder listed on the Account. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of Settlement Funds whose check is returned by the Postal Service as undeliverable (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose), and will re-mail the check once to the updated address, or, in the case of a jointly held Account, and in the Settlement Administrator's discretion, to an Account Holder other than the one listed first. All costs associated with the process of printing and mailing the checks and any accompanying communication to Past Account Holders shall be borne by BancorpSouth as provided in paragraph 67 hereof, subject to the \$500,000 maximum contribution from BancorpSouth set

forth in paragraph 67 and the reimbursement of costs set forth in paragraph 104(a).

103. The amount of the Net Settlement Fund attributable to uncashed or returned checks sent by the Settlement Administrator shall remain in the Settlement Fund for one year from the date that the first distribution check is mailed by the Settlement Administrator. During this time the Settlement Administrator shall make a reasonable effort to locate intended recipients of Settlement Funds whose checks were returned (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose), to effectuate delivery of such checks. The Settlement Administrator shall make only one such additional attempt to identify updated addresses and re-mail or re-issue a distribution check to those for whom an updated address was obtained.

**XIII. Disposition of Residual Funds**

104. Within one year after the date the Settlement Administrator mails the first Settlement Fund Payments, any funds remaining in the Settlement Fund shall be distributed as follows:
- a. First, any residual funds shall be paid to BancorpSouth to reimburse it for the actual fees, costs, and expenses it incurred and paid to the Notice Administrator and Settlement Administrator in connection with the Settlement;
  - b. Second, any residual funds remaining after distribution pursuant to paragraph 104(a) above shall be distributed on a *pro rata* basis to participating Settlement Class Members who received Settlement Fund Payments pursuant to Section XII of the Agreement, to the extent feasible and practical in light of the costs of

- administering such subsequent payments unless the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair;
- c. Third, in the event the costs of preparing, transmitting and administering such subsequent payments pursuant to subparagraph (b) above are not feasible and practical to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair, Settlement Class Counsel and BancorpSouth shall file recommendations with the Court for distribution of the residual funds consistent with the American Law Institute, *Principles of Aggregate Litigation* § 3.07(c), together with supporting materials. The Court shall have the discretion to approve, deny, amend or modify, in whole or in part, the proposed recommendations for distribution of the residual funds in a manner consistent with the American Law Institute, *Principles of Aggregate Litigation* § 3.07(c). The Parties agree that any residual funds shall not be used for any litigation purpose or to disparage any Party. The Parties further agree that the Court's approval, denial, amendment or modification, in whole or in part, of the recommendations for distribution of the residual funds pursuant to this paragraph shall not constitute grounds for termination of the Settlement pursuant to paragraph 113 of the Agreement; and
- d. All costs associated with the disposition of residual funds – whether through additional distributions to Settlement Class Members and/or through an alternative plan approved by the Court – shall be borne solely by the Settlement Fund. Under no circumstances shall BancorpSouth have responsibility for any

costs associated with the disposition of residual funds whether through additional distributions to Settlement Class Members and/or through an alternative plan approved by the Court.

**XIV. Release**

105. Upon the Effective Date of the Settlement, Plaintiff Swift and all Settlement Class Members (who do not timely opt-out of the Settlement), each on behalf of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries, and successors, shall automatically be deemed to have fully and irrevocably released and forever discharged BancorpSouth and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them, of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters at any time from the beginning of the Class Period through the date an order preliminary approving the Settlement Agreement is entered by the Court, that were or could possibly have been claimed, raised, or alleged in this Action to the extent they relate in any way to Overdraft Fees, or debit transaction sequencing or posting order, including, without limitation, any

claims, actions, causes of action, demands, damages, losses, or remedies relating to, based upon, resulting from, or arising out of (a) the notation or assessment of one or multiple Overdraft Fees on Settlement Class Members' Accounts, (b) the amount of one or more Overdraft Fees assessed on Settlement Class Members' Accounts, or (c) debit transaction sequencing or posting order on Settlement Class Members' Accounts. The foregoing release includes any and all of the following to the extent they involve, result in, or seek recovery or relief for notation or assessment of Overdraft Fees or debit transaction sequencing or posting order: (1) the authorization, approval or handling of any Debit Card Transaction, (2) any failure to notify or to obtain advance approval when a Debit Card Transaction would or might cause Settlement Class Members' Accounts to become overdrawn or further overdrawn or an Overdraft Fee to be noted or assessed, (3) any failure to allow Settlement Class Members to opt-out of overdrafts, or to publicize or disclose the ability of the holder of any BancorpSouth Account to opt-out of overdrafts, (4) any failure to adequately or clearly disclose, in one or more agreements, posting order, debit re-sequencing, overdrafts, Overdraft Fees, or the manner in which Debit Card Transactions are or would be approved, processed, noted, or posted to Settlement Class Members' Accounts; (5) any conduct or statements encouraging the use of BancorpSouth Debit Cards, (6) the assessment of any Overdraft Fee, and (7) any advertisements relating to any of the foregoing.

As of the Effective Date, Plaintiff and each Settlement Class Member shall further automatically be deemed to have waived and released any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code

or similar laws of any other state or jurisdiction. Section 1542 of the California Civil Code reads: “§1542. Certain Claims Not Affected By General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

The Parties agree that the foregoing release specifically excludes and does not release any and all claims for actual and/or statutory damages based on alleged violations of The Electronic Funds Transfer Act 15 U.S.C. § 1963, to the extent such claims arise from the notice and affirmative consent requirements set out in 12 C.F.R. § 205.17, and such alleged violations occurred on or after August 15, 2010.

106. Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of paragraph 105 hereof, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by paragraph 105 hereof. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the release contained in paragraph 105

hereof, and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement and/or never receives a distribution of funds or credits from the Settlement.

107. Nothing in this Agreement shall operate or be construed to release any claims or rights that BancorpSouth has to recover any past, present or future amounts that may be owed by Plaintiff or by any Settlement Class Member on his/her accounts, loans or any other debts with BancorpSouth, pursuant to the terms and conditions of such accounts, loans, or any other debts. Likewise, nothing in this Agreement shall operate or be construed to release any defenses or rights of set-off that any Plaintiff or any Settlement Class Members has in the event BancorpSouth and/or its assigns seeks to recover any past, present or future amounts that may be owed by Plaintiff or by any Settlement Class Member on his/her accounts, loans or any other debts with BancorpSouth, pursuant to the terms and conditions of such accounts, loans, or any other debts.

**XV. Payment of Attorneys' Fees, Costs, and Service Award**

108. BancorpSouth agrees not to oppose Class Counsel's request for attorneys' fees of up to thirty-five percent (35%) of the Settlement Fund specified in paragraph 66, and not to oppose Class Counsel's request for reimbursement of costs and expenses. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Fund. The determination of Class Counsel's request for attorneys' fees shall be based on controlling Eleventh

Circuit precedent involving the award of fees in common fund class actions and not based on state law. The Parties agree that the Court's failure to approve, in whole or in part, any award for attorneys' fees shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

109. Within three business days after the Effective Date, the Escrow Agent shall pay from the Settlement Fund to Settlement Class Counsel all Court-approved attorneys' fees, costs, and expenses of Class Counsel, including interest accrued thereon. Provided, however, that the Escrow Agent shall not pay any such fees, costs or expenses from the Settlement Fund to Settlement Class Counsel until such time as Settlement Class Counsel have jointly agreed upon a plan of allocation of fees, costs and expenses among all Class Counsel, and have jointly provided payment instructions to the Escrow Agent. In the event that the award of attorneys' fees, costs, and expenses of Class Counsel is reduced on appeal, the Escrow Agent shall only pay to Settlement Class Counsel from the Settlement Fund the reduced amount of such award, including interest accrued thereon. Settlement Class Counsel shall timely furnish to the Escrow Agent any required tax information or forms before the payment is made.
110. The payment of attorneys' fees, costs and expenses of Class Counsel pursuant to paragraphs 108 and 109 hereof shall be made through a deposit by the Escrow Agent into an Attorney Client Trust Account jointly controlled by Settlement Class Counsel. After the fees, costs and expenses have been deposited into this account, Settlement Class Counsel shall be solely responsible for distributing each Class Counsel firm's allocated share of such fees, costs and expenses to that firm.

BancorpSouth shall have no responsibility for any allocation, and no liability whatsoever to any person or entity claiming any share of the funds to be distributed for payment of attorneys' fees, costs, or expenses or any other payments from the Settlement Fund not specifically described herein.

111. Settlement Class Counsel will ask the Court to approve a service award of \$10,000 (the "Service Award"). The Service Award is to be paid from the Settlement Fund. The Service Award shall be paid to Class Representative in addition to Class Representative's Settlement Class Member Payment. BancorpSouth agrees not to oppose Settlement Class Counsel's request for the Service Award.
112. The Parties negotiated and reached agreement regarding attorneys' fees and costs, and the Service Award, only after reaching agreement on all other material terms of this Settlement.

**XVI. Termination of Settlement**

113. This Settlement may be terminated by either Settlement Class Counsel or BancorpSouth by serving on counsel for the opposing Party and filing with the Court a written notice of termination within thirty (30) days (or such longer time as may be agreed in writing between Settlement Class Counsel and BancorpSouth) after any of the following occurrences:
  - a. Settlement Class Counsel and BancorpSouth agree to termination;
  - b. the Court fails to preliminarily approve the Settlement within 180 days after filing of the motion for preliminary approval, or fails to finally

- approve the Settlement within 360 days after Preliminary Approval by the Court;
- c. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
  - d. an appellate court vacates or reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 270 days after such reversal;
  - e. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement in a way that Settlement Class Counsel or BancorpSouth seeking to terminate the Settlement reasonably considers material;
  - f. the Effective Date does not occur; or
  - g. any other ground for termination provided for elsewhere in this Agreement.
114. BancorpSouth also shall have the right to terminate the Settlement by serving on Settlement Class Counsel and filing with the Court a notice of termination within fourteen calendar (14) days after its receipt from the Settlement Administrator of the final report specified in paragraph 72(vii) hereof, if the number of Settlement Class Members who timely request exclusion from the Settlement Class equals or exceeds the number or percentage specified in the separate letter executed concurrently with this Settlement by Settlement Class Counsel and BancorpSouth.

The number or percentage shall be confidential except to the Court, who shall upon request be provided with a copy of the letter for *in camera* review.

**XVII. Effect of a Termination**

115. The grounds upon which this Agreement may be terminated are set forth in paragraphs 113 and 114 hereof. In the event of a termination as provided therein, this Agreement shall be considered null and void; all of Plaintiff's Settlement Class Counsel's, Class Counsel's, and BancorpSouth's obligations under the Settlement shall cease to be of any force and effect; the amounts in the Settlement Fund shall be returned to BancorpSouth in accordance with paragraph 116 hereof; and the Parties shall return to the status *quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims and defenses will be retained and preserved.
116. In the event of a termination as provided in paragraphs 113 and/or 114, and after payment of any invoices or other fees or expenses mentioned in this Agreement that have been incurred and are due to be paid from the Escrow Account, to the extent any such fees or expenses have been incurred based on BancorpSouth's obligation in paragraph 67 hereof to pay settlement expenses directly, the Escrow Agent shall return the balance of the Settlement Fund to BancorpSouth within seven (7) business days after termination. For any funds paid directly by BancorpSouth in connection with the Notice in Section VIII hereof, or paid directly from the Escrow Account pursuant to this Agreement, BancorpSouth shall have no right to seek reimbursement from Plaintiff, Settlement Class

Counsel, Class Counsel, the Notice Administrator or the Settlement Administrator in the event of termination of this Agreement.

117. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions of paragraphs 113 and/or 114 hereof.
118. In the event the Settlement is terminated in accordance with the provisions of paragraphs 113 and/or 114 hereof, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

**XVIII. No Admission of Liability**

119. BancorpSouth continues to dispute its liability for the claims alleged in the Action, and maintains that its debit posting practices complied, at all times, with applicable laws and regulations and the terms of the account agreements with its customers. BancorpSouth does not by this Agreement or otherwise admit any liability or wrongdoing of any kind. BancorpSouth has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.
120. Class Counsel believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued

prosecution of this complex, costly and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted extensive discovery, and conducted independent investigation of the challenged practices. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

121. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind whatsoever.
122. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiff or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal.
123. In addition to any other defenses BancorpSouth may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full

and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.

**XIX. Miscellaneous Provisions**

125. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.
126. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.
127. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement. This obligation of the Parties to support and complete the Settlement shall remain in full force and effect regardless of events that may occur, or court decisions that may be issued in N.D. Fla. Case No. 1:10-cv-00090-MP-GRJ, MDL 2036, or in any other case in any court.
128. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.
129. Integration. This Agreement (along with the letter referenced in paragraph 114 hereof) constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants,

agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

130. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.
131. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of Florida, without regard to the principles thereof regarding choice of law.
132. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.
133. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice program, the Settlement Administrator, the Notice Administrator, and the Tax Administrator. As part of their respective agreements to render services in

connection with this Settlement, the Settlement Administrator, the Notice Administrator, and the Tax Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against BancorpSouth or its affiliates at any time, including during any appeal from the Final Approval Order.

134. Notices. All notices to Settlement Class Counsel provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

Bruce S. Rogow, Esq.  
BRUCE S. ROGOW, P.A.  
100 NE 3rd Ave  
Suite 1000  
Fort Lauderdale, FL 33301  
Email: brogow@rogowlaw.com

Robert C. Gilbert, Esq.  
GROSSMAN ROTH, P.A.  
2525 Ponce de Leon Boulevard  
11th Floor  
Coral Gables, FL 33134  
Email: rcg@grossmanroth.com

Jeffrey M. Ostrow  
KOPELOWITZ OSTROW FERGUSON  
WEISELBERG GILBERT  
1 West Las Olas Blvd.  
Suite 500  
Fort Lauderdale, FL 33301  
Email: ostrow@kolawyers.com

All notices to BancorpSouth, provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

Charles J. Pignuolo  
Senior Executive Vice President and General Counsel  
BancorpSouth  
201 South Spring Street  
Tupelo, MS 38804  
charles.pignuolo@bxs.com

Eric Jon Taylor, Esq.  
HUNTON & WILLIAMS LLP  
Bank of America Plaza, Suite 4100  
600 Peachtree Street, NE  
Atlanta, GA 30308  
Email: etaylor@hunton.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice program.

135. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Settlement Class Counsel and counsel for BancorpSouth and, if the Settlement has been approved preliminarily by the Court, approved by the Court.
136. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.
137. Authority. Settlement Class Counsel (for the Plaintiff and the Settlement Class Members), and counsel for BancorpSouth (for BancorpSouth), represent and warrant that the persons signing this Agreement on their behalf have full power

and authority to bind every person, partnership, corporation or entity included within the definitions of Plaintiff and BancorpSouth to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

138. Agreement Mutually Prepared. Neither BancorpSouth nor Plaintiff, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.
139. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. BancorpSouth has provided and is providing information that Plaintiff reasonably request to identify Settlement Class Members and the alleged damages they incurred. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any

additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

140. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she or it has fully read this Agreement and the Release contained in Section XIV hereof, received independent legal advice with respect to the advisability of entering into this Agreement and the Release and the legal effects of this Agreement and the Release, and fully understands the effect of this Agreement and the Release.

Dated: \_\_\_\_\_

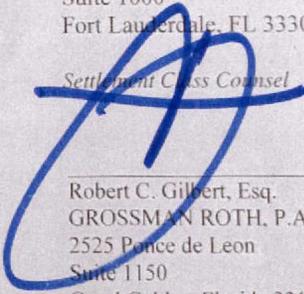
  
Shane Swift  
Plaintiff

Dated: \_\_\_\_\_

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

~~Settlement Class Counsel~~

Dated: 2/23/16

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

Settlement Class Counsel

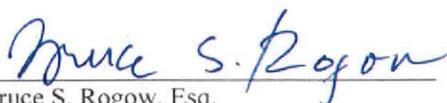
additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

140. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she or it has fully read this Agreement and the Release contained in Section XIV hereof, received independent legal advice with respect to the advisability of entering into this Agreement and the Release and the legal effects of this Agreement and the Release, and fully understands the effect of this Agreement and the Release.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Shane Swift  
*Plaintiff*

Dated: \_\_\_\_\_

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

*Settlement Class Counsel*

Dated: 2/23/16

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

*Settlement Class Counsel*

Dated: 2-22-16



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

*Settlement Class Counsel*

Dated: \_\_\_\_\_

**BANCORPSOUTH BANK**

By: CHARLES J. PIGNUOLO  
Its: SENIOR EXECUTIVE VICE PRESIDENT  
AND GENERAL COUNSEL  
201 South Spring Street  
Tupelo, MS 38804

*Defendant*

Dated: \_\_\_\_\_

Eric Jon Taylor, Esq.  
HUNTON & WILLIAMS LLP  
Bank of America Plaza, Suite 4100  
600 Peachtree Street, NE  
Atlanta, GA 30308

*Counsel for BancorpSouth Bank*

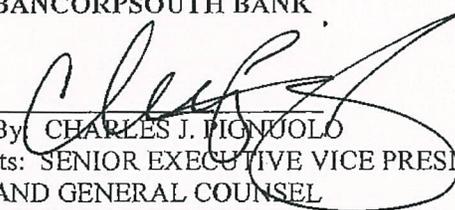
Dated: \_\_\_\_\_

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

*Settlement Class Counsel*

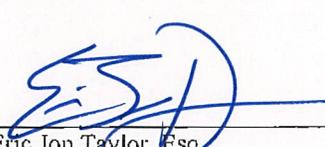
Dated: February 24, 2016

BANCORPSOUTH BANK

  
By: CHARLES J. PIONUOLO  
Its: SENIOR EXECUTIVE VICE PRESIDENT  
AND GENERAL COUNSEL  
201 South Spring Street  
Tupelo, MS 38804

*Defendant*

Dated: Feb 24, 2016

  
\_\_\_\_\_  
Eric Jon Taylor, Esq.  
HUNTON & WILLIAMS LLP  
Bank of America Plaza, Suite 4100  
600 Peachtree Street, NE  
Atlanta, GA 30308

*Counsel for BancorpSouth Bank*