UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

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

Plaintiff,

vs.

BANCORPSOUTH BANK,

Defendant.

Case No. 1:10-cv-90-MMP

PLAINTIFF'S AND CLASS COUNSEL'S *CORRECTED* MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT, AND APPLICATION FOR SERVICE AWARD, ATTORNEYS' FEES AND EXPENSES, AND INCORPORATED MEMORANDUM OF LAW

After six years of hard-fought litigation, Settlement Class Counsel negotiated the Settlement Agreement and Release attached as Exhibit A ("Agreement" or "Settlement") with Defendant BancorpSouth Bank ("BancorpSouth" or the "Bank").[1] The Settlement – which consists of the Bank's payment of $24,000,000 in cash, plus up to $500,000 for fees and costs associated with the Notice Program and administration of the Settlement – is an outstanding result for the Settlement Class. *See* Joint Declaration of Bruce S. Rogow, Robert C. Gilbert, and Jeffrey M. Ostrow ¶¶ 2, 5, 74 attached as Exhibit B ("Joint Decl."). The Settlement is fair, adequate and reasonable, and represents a "very impressive" result, in the opinion of one nationally recognized expert. *See* Declaration of Professor Brian T. Fitzpatrick ¶ 18 attached as Exhibit C ("Fitzpatrick Decl.").

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[1] All capitalized defined terms used herein have the same meanings ascribed in the Agreement.

Plaintiff and Class Counsel now seek Final Approval of the Settlement. Based on the controlling legal standards and supporting facts, Final Approval is clearly warranted. In addition, Class Counsel respectfully request that the Court award a Service Award to the Class Representative Plaintiff, whose willingness to represent the Settlement Class and participation in the Action helped make the Settlement possible. Finally, Class Counsel respectfully request that the Court award attorneys' fees equal to thirty-five percent (35%) of the Settlement Fund to compensate for the work in achieving the Settlement, and approve reimbursements of certain expenses incurred in prosecuting the Action and in connection with the Settlement.

I. INTRODUCTION

The Action involved sharply opposed positions on several fundamental legal questions. Plaintiff sued on behalf of himself and all others similarly situated who incurred Overdraft Fees as a result of BancorpSouth's High-to-Low Posting of Debit Card Transactions. Plaintiff alleged that BancorpSouth systemically engaged in High-to-Low Posting of Debit Card Transactions to maximize the Bank's Overdraft Fee revenues. According to Plaintiff, BancorpSouth's practices violated the Bank's contractual and good faith duties to the Settlement Class, were substantively and procedurally unconscionable, and resulted in unjust enrichment. BancorpSouth consistently argued that the relevant Account agreements expressly authorized it to engage in High-to-Low Posting, that there was nothing wrong with the High-to-Low Posting process it used and that it complied, at all times, with applicable laws and regulations and the terms of the Account agreements with its customers.

Following an initial formal mediation conference in August 2012 that ended in an impasse, the Parties resumed active litigation for over three more years. In October 2015, at the Court's direction, Settlement Class Counsel and BancorpSouth participated in a second formal mediation

conference. Although an agreement was not reached at the second mediation conference, the Parties continued settlement negotiations with the assistance of the mediator. As a result of those efforts, Settlement Class Counsel and BancorpSouth reached an agreement in principle in December 2015. Following further discussions and drafting, the Parties entered into the Agreement in February 2016. The Court entered the Preliminary Approval Order on March 8, 2016, and Notice was subsequently disseminated to the Settlement Class.

Under the Settlement, all Settlement Class Members who sustained a Differential Overdraft Fee and do not opt-out of the Settlement will automatically receive their *pro rata* share of the Net Settlement Fund. There are no claims forms to fill out, and Settlement Class Members will not be asked to prove that they were damaged as a result of the Bank's High-to-Low Posting. Instead, Settlement Class Counsel and their expert used BancorpSouth's available electronic customer data to determine which BancorpSouth Account Holders were adversely affected by High-to-Low Posting, and applied the formula detailed in paragraph 93 of the Agreement to calculate each Settlement Class Member's damages under the Settlement.

A testament to the reasonableness and fairness of the Settlement is the magnitude of the Settlement Fund. Settlement Class Counsel negotiated a $24,000,000 Settlement Fund, which is remarkable given that BancorpSouth asserted – and would continue to assert in the absence of this Settlement – that the relevant Account agreements expressly authorized it to engage in High-to-Low Posting, that there was nothing wrong with the High-to-Low Posting process it used, and that it complied, at all times, with applicable laws and regulations and the terms of the Account agreements with its customers. In the face of those risks alone, the $24,000,000 recovery secured through this Settlement clearly merits Final Approval. In addition to the $24,000,000 Settlement Fund, BancorpSouth agreed to pay up to $500,000 for fees and costs incurred in connection with

the Notice Program and administration of the Settlement, further increasing the recovery under the Settlement. All told, therefore, the common fund created through Class Counsel's efforts is $24,500,000.

Plaintiff and Class Counsel respectfully request that the Court: (1) grant Final Approval to the Settlement; (2) certify for settlement purposes the Settlement Class, pursuant to Rule 23(b)(3) and (e) of the Federal Rules of Civil Procedure; (3) appoint as Class Representative the Plaintiff listed in paragraph 50 of the Agreement; (4) appoint as Class Counsel and Settlement Class Counsel the law firms and attorneys listed in paragraphs 31 and 59 of the Agreement, respectively; (5) approve the Service Award to the Plaintiff; (6) award Class Counsel attorneys' fees and reimbursement of certain expenses pursuant to Rule 23(h) of the Federal Rules of Civil Procedure; and (7) enter Final Judgment dismissing the Action with prejudice.

II. MOTION FOR FINAL APPROVAL

A. Procedural History

On May 18, 2010, Plaintiff Shane Swift initiated this litigation against BancorpSouth 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, attorneys' fees, restitution, and equitable relief. Joint Decl. ¶ 9. In October 2010, *Swift* was transferred to the United States District Court for the Southern District of Florida, where it joined other actions coordinated under the MDL caption *In Re: Checking Account Overdraft Litigation*, Case No. 1:09-md-02036-JLK ("MDL 2036"), before Senior Judge James Lawrence King, who presided over MDL 2036 based on an assignment by the Judicial Panel on Multidistrict Litigation (the "MDL 2036 Court"). *Swift* was made part of the *Fourth Tranche* of cases in the MDL 2036 Court. *Id*. at ¶ 10.

In December 2010, Plaintiff Swift filed a Second Amended Complaint [S.D. Fla. D.E. #994], alleging unfair assessment and collection of Overdraft Fees and seeking monetary damages, restitution, interest, attorneys' fees, and equitable relief from BancorpSouth. Joint Decl. ¶ 11.

BancorpSouth filed a Motion to Dismiss the Second Amended Complaint [S.D. Fla. D.E. # 1068]. Following briefing and oral argument, the MDL 20136 Court denied BancorpSouth's motion on March 21, 2011. *See* [S.D. Fla. D.E. # 1305], reported at *In re Checking Account Overdraft Litig*., No. 09-2036, 2011 U.S. Dist. LEXIS 30965 (S.D. Fla. Mar. 21, 2011). Joint Decl. ¶ 12.

On April 13, 2011, the MDL 2036 Court entered the Scheduling Order Pertaining to "Fourth Tranche" Cases [S.D. Fla. D.E. # 1340], the first in a series of scheduling orders to be entered in *Swift*. Joint Decl. ¶ 13.

Also in April 2011, BancorpSouth filed an Answer and Affirmative Defenses [S.D. Fla. D.E. # 1335], which Plaintiff responded to with a motion to strike a number of BancorpSouth's affirmative defenses as legally insufficient. [S.D. Fla. D.E. #1390]. Prior to a ruling on that motion, the MDL 2036 Court approved the Parties' stipulation authorizing BancorpSouth to file an Amended Answer and Affirmative Defenses, and BancorpSouth filed an Amended Answer and Affirmative Defenses [S.D. Fla. D.E. #1693], denying any and all wrongdoing and liability whatsoever and asserting, *inter alia*, that its actions complied with all applicable laws and regulations, and raising various affirmative defenses. Accordingly, the operative pleadings in *Swift* are Plaintiff's Second Amended Complaint [S.D. Fla. D.E. #994] and BancorpSouth's Amended Answer and Affirmative Defenses [S.D. Fla. D.E. #1693]. Joint Decl. ¶ 14.

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. D.E. # 1774]. Soon thereafter, Class Counsel and BancorpSouth entered into a Stipulated Discovery Plan for Electronically Stored Information ("ESI"), which the MDL 2036 Court adopted on October 11, 2011. [S.D. Fla. D.E. # 1968]. Joint Decl. ¶ 15.

Discovery commenced in May 2011. During the course of fact and expert discovery, Class Counsel conducted approximately fourteen depositions of BancorpSouth fact and expert witnesses, and BancorpSouth conducted five depositions of Plaintiff's fact and expert witnesses. Joint Decl. ¶ 16. BancorpSouth also produced approximately 100,000 pages of documents, as well as voluminous electronic data files and spreadsheets produced in native format. *Id.* at ¶ 17.

In December 2011, Plaintiff filed a Motion for Class Certification. [S.D. Fla. D.E. # 2271]. In February 2012, BancorpSouth filed its Opposition to Plaintiff's Motion for Class Certification [S.D. Fla. D.E. # 2446], and Plaintiff filed its Reply in Support of Motion for Class Certification in March 2012 [S.D. Fla. D.E. # 2576]. Joint Decl. ¶ 18.

On May 4, 2012, the MDL 2036 Court entered an Opinion and Order Granting Class Certification. [S.D. Fla. D.E. # 2673]. 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. D.E. # 3294]. Joint Decl. ¶¶ 19-20.

Thereafter, also in February 2013, the MDL 2036 Court approved the implementation and completion of the class notice plan to the certified class. [S.D. Fla. D.E. # 3242, 3338, 3342]. Pursuant to the MDL 2036 Court's Order, notice was mailed to all (approximately 190,000) members of the certified class for whom reasonably reliable mailing addresses were available; 238 class members timely exercised their right to opt out of the certified class. [S.D. Fla. D.E. # 3589]. Joint Decl. ¶ 21.

In May 2013, BancorpSouth moved to decertify the class. [S.D. Fla. D.E. # 3455]. Following briefing, the MDL 2036 Court denied BancorpSouth's Motion to Decertify. [S.D. Fla. D.E. # 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. Joint Decl. ¶¶ 22-23.

Following class certification, the MDL 2036 Court entered a Revised Scheduling Order that directed the Parties to file all pretrial motions by certain deadlines. [S.D. Fla. D.E. # 2834]. The motion-filing deadlines were extended by a subsequent Scheduling Order. [S.D. Fla. DE # 2891]. Joint Decl. ¶ 24.

Pursuant to the operative Scheduling Order, the Parties filed the following pretrial motions that were decided by the MDL 2036 Court following extensive briefing and, in some instances, oral argument: Plaintiff's Motion for Partial Summary Judgment was granted in part and denied in part. [S.D. Fla. D.E. # 2997, 3035, 3116, 3655, 3682]; Plaintiff's Motion in Limine to preclude BancorpSouth from offering certain evidence at trial was granted. [S.D. Fla. D.E. # 2996, 3258]; Plaintiff's Motion to Strike two of BancorpSouth's designated expert witnesses was denied. [S.D. Fla. D.E. # 3014, 3229]; BancorpSouth's Motion for Summary Judgment was denied in its entirety. [S.D. Fla. D.E. # 2999, 3682]; and BancorpSouth's Motion to Strike two of Plaintiff's designated expert witnesses was denied. [S.D. Fla. D.E. # 3014, 3229]. Joint Decl. ¶ 25.

Upon the conclusion of three years of extensive pretrial proceedings, the MDL 2036 Court entered a Suggestion of Remand. [S.D. Fla. D.E. # 3683, 3707]. Thereafter, in December 2013, the JPML remanded the Action to this Court. [N.D. Fla. D.E. # 25, 26]. Joint Decl. ¶ 26.

Following remand, BancorpSouth filed a Renewed Motion to Transfer Venue to the Eastern District of Arkansas, pursuant to 28 U.S.C. § 1404(a). [N.D. Fla. D.E. # 29, 33]. On June

4, 2014, following briefing and oral argument, this Court denied BancorpSouth's Renewed Motion to Transfer Venue. [N.D. Fla. D.E. # 48]. Joint Decl. ¶ 27.

On June 5, 2014, this Court entered an Order for Pre-Trial Conference and Setting Trial, which 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. D.E. # 49]. Pursuant to that Order, the Parties filed a series of memoranda addressing various issues. [N.D. Fla. D.E. # 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. D.E. # 63, 64, 65, 66]. On September 11, 2014, this Court conducted a Pretrial Conference, during which it heard extensive oral argument regarding the various issues addressed in the Parties' memoranda. [N.D. Fla. D.E. # 69]. Joint Decl. ¶¶ 28-29.

On August 27, 2015, this Court entered an Order denying BancorpSouth's request for reconsideration of certain pretrial rulings decided by the MDL 2036 Court prior to remand. [N.D. Fla. D.E. # 77]. Joint Decl. ¶ 30.

B. <u>Settlement Negotiations</u>

In August 2012, the Parties participated in their first mediation conference under the auspices of Professor Eric Green of Resolutions, LLC. The first mediation ended in an impasse, and the Parties continued their active litigation for more than three years. Joint Decl. ¶ 31.

In August 2015 [N.D. Fla. D.E. # 77], this Court directed the Parties to participate in a second formal mediation conference no later than October 30, 2015. [N.D. Fla. D.E. # 77]. On October 28, 2015, Parties participated in their second mediation conference under the auspices of Jonathan B. Marks of MarksADR, LLC. Joint Decl. ¶ 32. Although an agreement to settle was not reached during that mediation conference, the Parties agreed that Mr. Marks would continue

his mediation efforts thereafter. Throughout November and early December 2015, Mr. Marks conducted a series of mediation communications with both sides in an effort to assist the Parties in reaching an agreement in principle. *Id.*

On December 4, 2015, following weeks of continued mediation efforts by Mr. Marks, the Parties reached an agreement in principle to resolve the Action. Joint Decl. ¶ 33. On January 5, 2016, following further negotiations and discussions, the Parties executed a Summary Agreement that memorialized their binding and enforceable agreement to settle the Action. *Id.* Further discussions and negotiations over the detailed terms and conditions to be included in the comprehensive Settlement Agreement and Release and related documents took place January and February. The Parties ultimately resolved all remaining issues and completed the detailed process of drafting the Settlement Agreement and Release and related documents, which were executed in February 2016. *Id.*

On February 24, 2016, Plaintiff and Class Counsel filed their Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class. [N.D. Fla. D.E. # 89]. On March 8, 2016, this Court entered the Order Preliminarily Approving Settlement and Certifying Settlement Class. [N.D. Fla. D.E. # 90]. The Preliminary Approval authorized and directed Notice to the Settlement Class, and established a series of deadlines preceding the Final Approval Hearing, which is now scheduled for July 14, 2016. Joint Decl. ¶ 34.

C. Summary of the Settlement Terms

The Settlement terms are detailed in the Agreement attached as Exhibit A. The following is a summary of the material terms of the Settlement.

1. The Settlement Class

The Settlement Class is an opt-out class under Rule 23(b)(3) of the Federal Rule of Civil Procedure. The Settlement Class is defined as:

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

Agreement ¶ 64.[3]

2. Monetary Relief

The Settlement required BancorpSouth to deposit $24,000,000.00 into the Escrow Account within fourteen days following entry of the Preliminary Approval Order. Agreement ¶ 87. The Bank deposited that sum, creating the Settlement Fund. Joint Decl. ¶ 35.

The Settlement Fund will be used to: (i) pay all Automatic Distributions of payments to the Settlement Class; (ii) pay all Court-ordered awards of attorneys' fees, costs and expenses of Class Counsel; (iii) pay the Court-ordered Service Award to the Plaintiff; (iv) distribute any residual funds as set forth in paragraph 104 of the Agreement; (v) pay all Taxes pursuant to paragraph 89 of the Agreement; (vi) pay any costs of the Notice Administrator and Settlement Administration exceeding the $500,000 to be paid by BancorpSouth pursuant to paragraph 67 of the Agreement; and (vii) pay any additional fees, costs and expenses not specifically enumerated

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[2] 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. D.E. # 3589].

[3] "Class Period" means: (a) for Settlement Class Members who opened accounts in Louisiana, the period from May 18, 2003 through August 13, 2010; (b) for Settlement Class Members who opened accounts in Alabama or Tennessee, the period from May 18, 2004 through August 13, 2010; (c) for Settlement Class Members who opened accounts in Arkansas, the period from May 18, 2005 through August 13, 2010; (d) for Settlement Class Members who opened accounts in Florida or Texas, the period from May 18, 2006 through August 13, 2010; and (e) for Settlement Class Members who opened accounts in Mississippi or Missouri, the period from May 18, 2007 through August 13, 2010. Agreement ¶ 32.

in paragraph 90 of the Agreement, subject to approval of Settlement Class Counsel and BancorpSouth. Agreement ¶ 90. In addition to the Settlement Fund, BancorpSouth deposited $500,000 into the Escrow Account to pay for costs and fees of the Settlement Administrator and Notice Administrator incurred in connection with the administration of the Notice Program and Settlement administration, for which it is responsible under the Settlement. *Id.* at ¶ 67.

All identifiable Settlement Class Members who experienced a Differential Overdraft Fee will receive pro rata distributions from the Net Settlement Fund, provided they did not opt-out of the Settlement.[4] Agreement Section XII. The Differential Overdraft Fee analysis determined, among other things, which BancorpSouth Account holders were assessed additional Overdraft Fees that would not have been assessed if the Bank had used a chronological posting sequence or method for posting Debit Card Transactions instead of High-to-Low Posting, and how much in additional Overdraft Fees those Account holders paid as a result. The calculation involved a multi-step process that is described in detail in the Agreement. *Id.* at ¶ 93.

Eligible Settlement Class Members do not have to submit claims or take any other affirmative step to receive relief under the Settlement. The amount of their Differential Overdraft Fees was determined by Settlement Class Counsel and their expert through a detailed analysis of BancorpSouth's electronic data. Agreement Section XI. As soon as practicable after Final Approval, but no later than 60 days from the Effective Date (Agreement ¶ 95), the Settlement Administrator will calculate and distribute the Net Settlement Fund, on a *pro rata* basis, to all

[4] The Net Settlement Fund is equal to the Settlement Fund, plus interest earned (if any), less the amount of Court-awarded attorneys' fees and costs to Class Counsel, the amount of Court-awarded Service Award to the Plaintiff, a reservation of a reasonable amount of funds for prospective costs of Settlement administration that are not BancorpSouth's responsibility pursuant to paragraph 67 of the Agreement, and any other costs and/or expenses incurred in connection with the Settlement that are not specifically enumerated in paragraph 67 that are provided for in the Agreement and have been approved by Settlement Class Counsel and BancorpSouth. Agreement ¶ 96.

Settlement Class Members who had a Differential Overdraft Fee and did not timely opt-out of the previously certified class or the Settlement. Agreement Section XII.

Payments to Settlement Class Members who are Current Account Holders will be made by crediting their Accounts, and notifying them of the credit. Agreement ¶ 100. BancorpSouth will be entitled to a reimbursement for such credits from the Net Settlement Fund. *Id.* at ¶ 101. Past Account Holders (and any Current Account Holders whose Accounts cannot feasibly be automatically credited) will receive their payments by checks mailed by the Settlement Administrator. *Id.* at ¶ 102.

Any uncashed or returned checks will remain in the Settlement Fund for one year from the date the first distribution check is mailed, during which time the Settlement Administrator will make reasonable efforts to effectuate delivery of the Settlement Fund Payments. Agreement ¶ 103. Any residual funds remaining in the Settlement Fund one year after the first Settlement Fund Payments are mailed will be distributed pursuant to Section XIII of the Agreement. *Id.* at ¶ 104.

3. Class Release

In exchange for the benefits conferred by the Settlement, all Settlement Class Members who do not opt-out will be deemed to have released BancorpSouth from claims related to the subject matter of the Action. The detailed release language is found in Section XIV of the Agreement. Agreement ¶¶ 105-107.

4. Settlement Notice

The Notice Program (Agreement, Section VIII) was designed to provide the best notice practicable, and was tailored to take advantage of the information BancorpSouth has available about Settlement Class Members. Agreement ¶¶ 73-84. BancorpSouth has and will pay up to $500,000 of the fees and costs associated with the Notice Program. *Id.* at ¶¶ 67, 83. The Notice Program was reasonably calculated under the circumstances to apprise the Settlement Class of the

pendency of the Action, the terms of the Settlement, Class Counsel's Fee Application and request for Service Award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement. *See* Declaration of Cameron Azari ¶¶ 8-10, 30-39 attached as Exhibit D ("Azari Decl."); Joint Decl. ¶ 43. The Notices and Notice Program constituted sufficient notice to all persons entitled to notice, and satisfied all applicable requirements of law including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of due process. Azari Decl. ¶¶ 8-10, 30-39; Joint Decl. ¶ 43.

5. Settlement Termination

Except as provided in paragraphs 104(c) of the Agreement, either Party may terminate the Settlement if it is rejected or materially modified by the Court or an appellate court. Agreement ¶ 113. BancorpSouth also has the right to terminate the Settlement if the number of Settlement Class Members who timely opt-out of the Settlement Class equals or exceeds the number or percentage specified in the separate letter executed concurrently with the Agreement by the Bank's counsel and Settlement Class Counsel. *Id.* at ¶ 114. The number or percentage will be confidential except to the Court which, upon request, will be provided with a copy of the letter agreement for *in camera* review. *Id.*

6. Service Award

Class Counsel are entitled to request, and BancorpSouth will not oppose, a Service Award of $10,000 for Plaintiff/Class Representative Shane Swift. Agreement ¶ 111. If the Court approves it, the Service Award will be paid from the Settlement Fund, and will be in addition to any other relief to which the Plaintiff/Class Representative is entitled as a Settlement Class Member. *Id.* The Service Award will compensate Plaintiff/Class Representative Swift for his time and effort in the Action, and for the risks he undertook in prosecuting the Action against BancorpSouth. Joint Decl. ¶ 52.

7. Attorneys' Fees and Costs

Class Counsel are entitled to request, and BancorpSouth will not oppose, attorneys' fees of up to thirty-five percent (35%) of the Settlement Fund, plus reimbursement of litigation costs and expenses. Agreement ¶ 108. The Parties negotiated and reached agreement regarding attorneys' fees and costs only after reaching agreement on all other material terms of the Settlement. Agreement ¶ 112; Joint Decl. ¶ 53.

D. <u>Argument</u>

Court approval is required for settlement of a class action. Fed. R. Civ. P. 23(e). The federal courts have long recognized a strong policy and presumption in favor of class settlements. The Rule 23(e) analysis should be "informed by the strong judicial policy favoring settlements as well as the realization that compromise is the essence of settlement." *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. Unit B 1982). In evaluating a proposed class settlement, the Court "will not substitute its business judgment for that of the parties; 'the only question . . . is whether the settlement, taken as a whole, is so unfair on its face as to preclude judicial approval.'" *Rankin v. Rots*, 2006 WL 1876538, at *3 (E.D. Mich. June 28, 2006) (quoting *Zerkle v. Cleveland-Cliffs Iron Co*., 52 F.R.D. 151, 159 (S.D.N.Y. 1971)). Indeed, "[s]ettlement agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and uncertainties and preventing lawsuits." *In re Nissan Motor Corp. Antitrust Litig*., 552 F.2d 1088, 1105 (5th Cir. 1977). Class settlements minimize the litigation expenses of the parties and reduce the strain that litigation imposes upon already scarce judicial resources. Therefore, "federal courts naturally favor the settlement of class action litigation." *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996).

The Settlement here is more than sufficient under Rule 23(e) and Final Approval is clearly warranted.

1. The Court Has Personal Jurisdiction Over the Settlement Class Because Settlement Class Members Received Adequate Notice and an Opportunity to Be Heard.

In addition to having personal jurisdiction over the Plaintiff, who is a party to this Action, the Court also has personal jurisdiction over all members of the Settlement Class because they received the requisite notice and due process. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (citing *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 314-15 (1950)); *see also In re Prudential Ins. Co. of Am. Sales Practices Litig*., 148 F.3d 283, 306 (3d Cir. 1998).

a. The Best Notice Practicable Was Furnished.

The Notice Program was comprised of three parts: (1) direct mail postcard notice ("Mailed Notice") to all identifiable Settlement Class Members; (2) publication notice ("Published Notice") designed to reach those Settlement Class Members for whom direct mail notice was not possible; and (3) a "Long-Form" notice with more detail than the direct mail or publication notices, that has been available on the Settlement Website and via mail upon request. Agreement, Section VIII; Azari Decl. ¶¶ 14-28.

Each facet of the Notice Program was timely and properly accomplished. Azari Decl. ¶¶ 14-28. The Notice Administrator received data files from BancorpSouth that identified the names and last known addresses of 190,983 identifiable Settlement Class Members, ran the addresses through the National Change of Address Database, and mailed postcards to 190,541 Settlement Class Members. *Id*. at ¶¶ 14-17. The Notice Administrator performed follow up research and is continuing to attempt, prior to the Final Approval Hearing, to re-mail postcards to Settlement Class Members whose initial postcard notices were returned by the postal service. *Id*. at ¶ 18. The

Notice Administrator also mailed "Long Form" notices in response to requests from Settlement Class Members. *Id*. at ¶ 19.

The Notice Administrator also performed and timely completed the Published Notice Program through advertisements in the following 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*. Azari Decl. ¶¶ 21-25.

The Notice Administrator also established the Settlement Website, including the "Long-Form" notice, to enable Settlement Class Members to obtain detailed information about the Action and the Settlement. Azari Decl. ¶ 26. As of May 9, 2016, the Settlement Website had 9,955 visitors. *Id*. at ¶ 27. In addition, a toll free number was established and has been operational since April 25, 2016. *Id*. at ¶ 28. By calling this number, Settlement Class Members can listen to answers to frequently asked questions and request a copy of the "Long Form" notice. *Id*. As of May 9, 2016, the toll free number had handled 3,220 calls. *Id*.

b. The Notice and Notice Program Were Reasonably Calculated to Inform Settlement Class Members of Their Rights.

The Court-approved Notice and Notice Program satisfied due process requirements because they described "the substantive claims . . . [and] contain[ed] information reasonably necessary to make a decision to remain a class member and be bound by the final judgment." *In re Nissan Motor Corp. Antitrust Litig*., 552 F.2d at 1104-05. The Notice, among other things, defined the Settlement Class, described the release provided to BancorpSouth under the Settlement, as well as the amount and proposed distribution of the Settlement proceeds, and

informed Settlement Class Members of their right to opt-out or object, the procedures for doing so, and the time and place of the Final Approval Hearing. It also notified Settlement Class Members that a class judgment would bind them unless they opted out, and told them where they could get more information – for example, at the Settlement Website that posts a copy of the Agreement, as well as other important documents. Further, the Notice described Class Counsel's intention to seek attorneys' fees of up to thirty-five percent (35%) of the $24,000,000.00 Settlement Fund, plus expenses, and a Service Award for the Plaintiff/Class Representative. Hence, Settlement Class Members were provided with the best practicable notice that was "reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Shutts*, 472 U.S. at 812 (quoting *Mullane*, 339 U.S. at 314-15); *see* Azari Decl. ¶¶ 8-10, 30-39.

As of May 9, 2016, the Notice Administrator had received no requests for exclusion (opt-outs) in addition to the 238 received during the Notice of Pendency notice effort in 2013. Azari Decl. ¶ 29; Joint Decl. ¶ 73. As of that date, no objections to the Settlement that relate to the Notice and Notice Program had been received. Azari Decl. ¶ 29; Joint Decl. ¶ 73.

2. The Settlement Should Be Approved as Fair, Adequate and Reasonable.

In deciding whether to approve the Settlement, the Court will analyze whether it is "fair, adequate, reasonable, and not the product of collusion." *Leverso v. Southtrust Bank*, 18 F.3d 1527, 1530 (11th Cir. 1994); *see also Bennett v. Behring Corp*., 737 F.2d 982, 986 (11th Cir. 1984). A settlement is fair, reasonable and adequate when "the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued." *In re Lorazepam & Clorazepate Antitrust Litig*., MDL No. 1290, 2003 WL 22037741, at *2 (D.D.C. June 16, 2003) (quoting *Manual for Complex Litigation (Third)* § 30.42 (1995)). Importantly, the Court is "not

called upon to determine whether the settlement reached by the parties is the best possible deal, nor whether class members will receive as much from a settlement as they might have recovered from victory at trial." *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1014 (N.D. Ill. 2000) (citations omitted).

The Eleventh Circuit has identified six factors to be considered in analyzing the fairness, reasonableness and adequacy of a class settlement under Rule 23(e):

(1) the existence of fraud or collusion behind the settlement;

(2) the complexity, expense, and likely duration of the litigation;

(3) the stage of the proceedings and the amount of discovery completed;

(4) the probability of the plaintiffs' success on the merits;

(5) the range of possible recovery; and

(6) the opinions of the class counsel, class representatives, and the substance and amount of opposition to the settlement.

Leverso, 18 F.3d at 1530 n.6; *see also Bennett*, 737 F.2d at 986. The analysis of these factors set forth below shows this Settlement to be eminently fair, adequate and reasonable.

a. There Was No Fraud or Collusion.

This Court is aware of the vigor with which the Parties litigated until they reached the Settlement. The sharply contested nature of the proceedings in this Action demonstrates the absence of fraud or collusion behind the Settlement. *See, e.g.*, *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1329 n.3 (S.D. Fla. 2001); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001) (court had "no doubt that this case has been adversarial, featuring a high level of contention between the parties"); *In re Motorsports Merchandise Antitrust Litig.*, 112 F. Supp. 2d 1329, 1338 (N.D. Ga. 2000) ("This was not a quick settlement, and there is no suggestion of

collusion"); *Warren v. City of Tampa*, 693 F. Supp. 1051, 1055 (M.D. Fla. 1988) (record disclosed no evidence of collusion, but to the contrary showed "that the parties conducted discovery and negotiated the terms of settlement for an extended period of time"), *aff'd*, 893 F.2d 347 (11th Cir. 1989).

Settlement Class Counsel negotiated the Settlement with similar vigor. Plaintiff and the Settlement Class were represented by experienced counsel throughout the negotiations. Settlement Class Counsel and BancorpSouth engaged in formal mediation on two separate occasions before two experienced and nationally-respected mediators. All negotiations were arm's-length and extensive. Joint Decl. ¶¶ 31-32, 54-57; *see also Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1384 (S.D. Fla. 2007) (concluding that class settlement was not collusive in part because it was overseen by "an experienced and well-respected mediator").

b. The Settlement Will Avert Years of Highly Complex and Expensive Litigation.

The claims and defenses are complex; litigating them is both difficult and time-consuming. Joint Decl. ¶¶ 58-64; Fitzpatrick Decl. ¶ 15. Although this Action was litigated for over five years before the Parties resolved it, recovery by any means other than settlement would require additional years of litigation. *Id.*; *see United States v. Glens Falls Newspapers, Inc.*, 160 F. 3d 853, 856 (2d Cir. 1998) (noting that "a principal function of a trial judge is to foster an atmosphere of open discussion among the parties' attorneys and representatives so that litigation may be settled promptly and fairly so as to avoid the uncertainty, expense and delay inherent in a trial."); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 317, 325-26 & n.32 (N.D. Ga. 1993) ("[A]djudication of the claims of two million claimants could last half a millennium").

In contrast, the Settlement provides immediate and substantial benefits to approximately 190,000 Settlement Class Members, all of whom are current or former BancorpSouth customers. Joint Decl. ¶¶ 63-64. As stated in *In re Shell Oil Refinery*, 155 F.R.D. 552 (E.D. La. 1993):

> The Court should consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect, "[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush."

Id. at 560 (alterations in original) (quoting *Oppenlander v. Standard Oil Co*., 64 F.R.D. 597, 624 (D. Colo. 1974)); *see also In re U.S. Oil & Gas Litig*., 967 F.2d 489, 493 (11th Cir. 1992) (noting that complex litigation "can occupy a court's docket for years on end, depleting the resources of the parties and taxpayers while rendering meaningful relief increasingly elusive"). Particularly because the "demand for time on the existing judicial system must be evaluated in determining the reasonableness of the settlement," *Ressler v. Jacobson*, 822 F. Supp. 1551, 1554 (M.D. Fla. 1992) (citation omitted), there can be no doubt about the adequacy of the present Settlement, which provides reasonable benefits to the Settlement Class.

c. The Factual Record Is Sufficiently Developed to Enable Class Counsel to Make a Reasoned Judgment.

Courts also consider "the degree of case development that class counsel have accomplished prior to settlement" to ensure that "counsel had an adequate appreciation of the merits of the case before negotiating." *In re General Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig*., 55 F.3d 768, 813 (3d Cir. 1995). At the same time, "[t]he law is clear that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery should be required to make these determinations." *Ressler*, 822 F. Supp. at 1555.

Settlement Class Counsel negotiated the Settlement with the benefit of significant litigation before the MDL 2036 Court and the Eleventh Circuit involving BancorpSouth (and other banks in

MDL 2036), including a complete damage analysis by Class Counsel's expert based on customer data produced by BancorpSouth. Joint Decl. ¶¶ 65, 68; Declaration of Arthur Olsen ¶¶ 21-33 attached as Exhibit E ("Olsen Decl."). Settlement Class Counsel's analysis and understanding of the various legal obstacles, as well as the damage analysis, positioned them to evaluate with confidence the strengths and weaknesses of Plaintiff's and the certified class's claims and BancorpSouth's defenses through the conclusion of the litigation, as well as the range and amount of damages that were potentially recoverable if the Action successfully proceeded to judgment on a class-wide basis. Joint Decl. ¶ 65; Fitzpatrick Decl. ¶¶ 12-14. "Information obtained from other cases may be used to assist in evaluating the merits of a proposed settlement of a different case." *Lipuma*, 406 F. Supp. 2d at 1325.

d. Plaintiff and the Class Still Faced Significant Obstacles to Prevailing.

The "likelihood and extent of any recovery from the defendants absent . . . settlement" is another important factor in assessing the reasonableness of a settlement. *Domestic Air*, 148 F.R.D. at 314; *see also Ressler*, 822 F. Supp. at 1555 ("A Court is to consider the likelihood of the plaintiff's success on the merits of his claims against the amount and form of relief offered in the settlement before judging the fairness of the compromise."). According to Professor Fitzpatrick: "[I]t was not at all clear that the class here would have won its case on the merits." Fitzpatrick Decl. ¶ 13. BancorpSouth's defenses that the relevant Account agreements expressly authorized it to engage in High-to-Low Posting, that there was nothing wrong with the High-to-Low Posting process it used and that it complied, at all times, with applicable laws and regulations and the terms of the Account agreements with its customers presented serious legal issues that made success far from certain. *Id.* at ¶¶ 13-14.

Settlement Class Counsel believe that Plaintiff and the certified class had a solid case against BancorpSouth. Joint Decl. ¶¶ 66-67. Even so, Settlement Class Counsel are mindful that

BancorpSouth advanced significant defenses that would have been required to overcome in the absence of the Settlement. *Id.*; Fitzpatrick Decl. ¶¶ 13-14. This Action involved several major litigation risks. Joint Decl. ¶¶ 66-67; Fitzpatrick Decl. ¶¶ 13-14. As Judge King of MDL 2036 Court recognized in granting final approval to the settlement of overdraft claims against Bank of America: "The combined risks here were real and potentially catastrophic . . . [B]ut for the Settlement, Plaintiffs and the class faced a multitude of potentially serious, substantive defenses, any one of which could have precluded or drastically reduced the prospects of recovery." *In re Checking Account Overdraft Litig*., 830 F. Supp. 2d 1330, 1347-48 (S.D. Fla. 2011).

Apart from the risks, continued litigation would have involved substantial delay and expense, which further counsels in favor of Final Approval. Joint Decl. ¶¶ 59, 67; Fitzpatrick Decl. ¶ 15. The uncertainties and delays from this process would have been significant. *Id.*

Given the myriad risks attending these claims, as well as the certainty of substantial delay and expense from ongoing litigation, the Settlement cannot be seen as anything except a fair compromise. *See, e.g*., *Haynes v. Shoney's*, No. 89-30093-RV, 1993 U.S. Dist. LEXIS 749, at *16-17 (N.D. Fla. Jan. 25, 1993) ("The risks for all parties should this case go to trial would be substantial. …. It is possible that trial on the merits would result in … no relief for the class members. … Based on … the factual and legal obstacles facing both sides should this matter continue to trial, I am convinced that the settlement … is a fair and reasonable compromise."); *Bennett v. Behring Corp*., 96 F.R.D. 343, 349-50 (S.D. Fla. 1982), *aff'd*, 737 F.2d 982 (11th Cir. 1984) (plaintiffs faced a "myriad of factual and legal problems" creating "great uncertainty as to the fact and amount of damage," making it "unwise [for plaintiffs] to risk the substantial benefits which the settlement confers . . . to the vagaries of a trial").

e. The Benefits Provided by the Settlement Are Fair, Adequate and Reasonable Compared to the Range of Possible Recovery.

In determining whether a settlement is fair given the potential range of recovery, the Court should be guided by "the fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate." *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990). Indeed, "[a] settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery." *Id.* "[T]he court must remember that "compromise is the essence of settlement. A just result is often no more than an arbitrary point between competing notions of reasonableness." *Raines v. Florida*, 987 F. Supp. 1416, 1418 (N.D. Fla. 1997) (citing *Bennett*, 737 F.2d at 986) (internal annotations omitted). This is because fairness of a settlement must be evaluated in light of "the likelihood of success on the merits, the complexity, expense, and duration of litigation, the judgment and experience of trial counsel, and objections raised to the settlement." *Id.* Thus, courts regularly find settlements to be fair where "[p]laintiffs have not received the optimal relief." *Warren*, 693 F. Supp. at 1059; *see, e.g.*, *Great Neck Capital Appreciation Investment P'ship, L.P. v. PriceWaterHouseCoopers, L.L.P.*, 212 F.R.D. 400, 409-10 (E.D. Wis. 2002) ("The mere possibility that the class might receive more if the case were fully litigated is not a good reason for disapproving the settlement.").

Settlement Class Counsel were well-positioned to evaluate the strengths and weaknesses of Plaintiff's claims, as well as the appropriate basis upon which to settle them, as a result of their litigation and settlement of similar claims reached within and outside of MDL 2036. Joint Decl. ¶¶ 54-56. Settlement Class Counsel also gained further insight into the practical and legal issues they would have continued to face litigating these claims against BancorpSouth based, in part, on similar claims challenging Wells Fargo's high-to-low posting practices prosecuted in *Gutierrez v.*

Wells Fargo Bank, N.A., 730 F. Supp. 2d 1080 (N.D. Cal. 2010). Joint Decl. ¶ 57. In *Gutierrez*, the United States Court of Appeals for the Ninth Circuit affirmed in part and reversed in part the judgment rendered in favor of the certified class of California customers in that case, vacated the $203 million restitution award, and remanded the case for further proceedings. *Gutierrez v Wells Fargo Bank, N.A.*, 704 F.3d 712 (9th Cir. 2012).[5]

Class Counsel's damage expert's analysis of BancorpSouth's available electronic transactional data showed that the *maximum* amount of damages that Plaintiff and the certified class could reasonably have anticipated recovering at trial was $42,295,560.69 under the litigation class periods for the eight (8) states where BancorpSouth operated branches during the applicable class periods. Olsen Decl. ¶ 33. Through this Settlement, Plaintiff and the Settlement Class Members achieved a recovery of approximately fifty-seven percent (57%) of the *maximum* possible damages, without further risks or delays. Joint Decl. ¶¶ 50-63, 68. When one considers the $500,000 in Notice Administration and Settlement Administration costs that BancorpSouth is required to pay pursuant to the Settlement, the actual recovery is fifty-eight percent (58%) of the total damages. Joint Decl. ¶¶ 62, 68; Fitzpatrick Decl. ¶ 12. This Settlement provides an extremely fair and reasonable recovery to the Settlement Class in light of BancorpSouth's defenses, as well as the challenging, unpredictable path of litigation that Plaintiff would otherwise have continued to face in the trial and appellate courts. Joint Decl. ¶ 63; Fitzpatrick Decl. ¶¶ 13-14. The Automatic Distribution process further supports Final Approval. Joint Decl. ¶ 70. Eligible Settlement Class

[5] On remand, the District Court again entered judgment in favor of the class based on provisions of the California consumer fraud statute – a claim not available here since the Bank did not operate branches in California. In 2014, in an unpublished opinion, the Ninth Circuit affirmed the reinstated judgment. The United States Supreme Court recently denied review. *Wells Fargo Bank, N.A. v. Gutierrez*, 2016 U.S. LEXIS 2408 (2016).

Members will receive their cash benefits automatically, without needing to fill out any claim forms or take any affirmative steps whatsoever. *Id.*; Fitzpatrick Decl. ¶ 17.

The $24,000,000 cash recovery is fair and reasonable given the obstacles confronted and the complexity of the Action, and the significant barriers that stood between the pre-settlement status of the Action and final judgment, including rulings at trial and in an inevitable post-judgment plenary appeal. Joint Decl. ¶¶ 63, 69; Fitzpatrick Decl. ¶¶ 12-14. Taking these risks into account, the Settlement "is not only fair, adequate and reasonable, but, frankly, very impressive as well." Fitzpatrick Decl. ¶ 19. BancorpSouth's agreement to pay up to $500,000 of the fees, costs and expenses of the Notice Administrator and Settlement Administrator further enhances the recovery. Joint Decl. ¶ 68; Fitzpatrick Decl. ¶ 8. Given the extraordinary obstacles that Plaintiff and the certified class faced in the litigation, this recovery is an excellent achievement by any objective measure.

f. The Opinions of Settlement Class Counsel, the Plaintiff, and Absent Class Members Favor Approval of the Settlement.

Settlement Class Counsel strongly endorse the Settlement with BancorpSouth. Joint Decl. ¶¶ 71-74. The Court should give "great weight to the recommendations of counsel for the parties, given their considerable experience in this type of litigation." *Warren*, 693 F. Supp. at 1060; *see also Domestic Air*, 148 F.R.D. at 312-13 ("In determining whether to approve a proposed settlement, the Court is entitled to rely upon the judgment of the parties' experienced counsel. '[T]he trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.'") (citations omitted).

To date, there has been virtually no opposition to the Settlement. As of May 9, 2016, the Notice Administrator had received no additional requests for exclusion (in addition to the 238 received during the Notice of Pendency notice effort in 2013). Azari Decl. ¶ 29; Joint Decl. ¶ 73.

Moreover, as of that date, no known objections to the Settlement had been received. Azari Decl. ¶ 29; Joint Decl. ¶ 73. This is another indication that the Settlement Class is clearly satisfied with the Settlement. Even if there were some objections, it is settled that "[a] small number of objectors from a plaintiff class of many thousands is strong evidence of a settlement's fairness and reasonableness." *Association for Disabled Americans v. Amoco Oil Co.*, 211 F.R.D. 457, 467 (S.D. Fla. 2002); *also Mangone v. First USA Bank*, 206 F.R.D. 222, 227 (S.D. Ill. 2001) ("In evaluating the fairness of a class action settlement, such overwhelming support by class members is strong circumstantial evidence supporting the fairness of the Settlement."); *Austin v. Pennsylvania Dept. of Corrections*, 876 F. Supp. 1437, 1458 (E.D. Pa. 1995) ("Because class members are presumed to know what is in their best interest, the reaction of the class to the Settlement Agreement is an important factor for the court to consider.").

3. The Court Should Certify the Settlement Class.

The MDL 2036 Court previously found the requirements of Rule 23(a) and 23(b)(3) satisfied in this Action (S.D. Fla. D.E. # 2673, 3540), and in similar actions in MDL 2036 on contested motions for class certification [*see*, *e.g.*, S.D. Fla. D.E. # 1763 (Union Bank); S.D. Fla. D.E. # 2615 (TD Bank); S.D. Fla. D.E. # 2697 (PNC Bank); S.D. Fla. D.E. # 2847 (Capital One); and S.D. Fla. D.E. # 3559 (U.S. Bank)] and in the context of settlement [*see*, *e.g.*, S.D. Fla. D.E. # 1520, 2150 (Bank of America); S.D. Fla. D.E. # 2712, 3134 (JPMorgan Chase Bank); S.D. Fla. D.E. # 2959, 3331 (Citizens Financial)]. This Court should make the same class certification findings in granting Final Approval.

Based on the foregoing, the Settlement is fair, adequate and reasonable, and clearly merits Final Approval.

III. APPLICATION FOR SERVICE AWARD

Pursuant to the Settlement, Class Counsel respectfully request, and BancorpSouth does not oppose, a Service Award for Plaintiff/Class Representative Shane Swift, who is identified in paragraph 50 of the Agreement. The amount of the requested Service Award is $10,000. Agreement ¶ 111; Joint Decl. ¶ 75. Service awards "compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Allapattah Servs., Inc. v. Exxon Corp*., 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006). "[T]here is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action." *David v. American Suzuki Motor Corp*., 2010 WL 1628362, at *6 (S.D. Fla. Apr. 15, 2010). Courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become class representatives. *See, e.g*., *Stallworth v. Monsanto Co.*, No. PCA 73-45. 198) U.S. Dist. LEXIS 12858, at *20-21 (N.D. Fla. June 26, 1980) (approving service awards ranging from $10,000 to $20,000 to four named plaintiffs, "each of whom devoted substantial time to the prosecution of th[e] lawsuit"); *Ingram v. The Coca-Cola Co*., 200 F.R.D. 685, 694 (N.D. Ga. 2001) (awarding class representatives $300,000 each, explaining that "the magnitude of the relief the Class Representatives obtained on behalf of the class warrants a substantial incentive award."); *Spicer v. Chicago Bd. Options Exchange, Inc*., 844 F. Supp. 1226, 1267-68 (N.D. Ill. 1993) (collecting cases approving service awards ranging from $5,000 to $100,000, and awarding $10,000 to each named plaintiff).

The relevant factors include: (1) the actions the class representatives took to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the class representatives expended in pursuing the litigation. *See, e.g*., *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998).

The above factors, as applied to this Action, demonstrate the reasonableness of the requested Service Award to Plaintiff/Class Representative Swift. Joint Decl. ¶ 78; *see, e.g., Checking Account Overdraft*, 830 F. Supp. 2d at 1357-58 ("The Court notes that the class representatives expended time and effort in meeting their fiduciary obligations to the Class, and deserve to be compensated for it."). Plaintiff/Class Representative Swift provided substantial assistance that enabled Class Counsel to successfully prosecute the Action including (1) submitting to interviews with Class Counsel, (2) locating and forwarding responsive documents and information (i.e., monthly account statements and account agreements), and (3) being deposed by BancorpSouth's counsel. In so doing, Plaintiff/Class Representative Swift was integral to forming the theory of the case. Joint Decl. ¶ 78.

Plaintiff/Class Representative Swift not only devoted time and effort to the litigation, but the end result of his efforts, coupled with those of Class Counsel, provided a substantial benefit to the Settlement Class. Joint Decl. ¶ 78. If the Court approves it, the total Service Award will be $10,000. This amount is less than 0.0005% of the Settlement Fund, a ratio that falls well below the range of what has been deemed to be reasonable. *Id.* at ¶ 80; s*ee, e.g.*, *Enter. Energy Corp. v. Columbia Gas Transmission*, 137 F.R.D. 240, 251 (S.D. Ohio 1991) (approving service awards totaling $300,000, or 0.56% of a $56.6 million settlement). The Service Award requested here is reasonable and should be approved.

IV. APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

As indicated in the Agreement and the Notice, and consistent with recognized class action practice and procedure, Class Counsel respectfully request an award of attorneys' fees equal to thirty-five percent (35%) of the $24,000,000 Settlement Fund created through their efforts. Agreement ¶ 108; Joint Decl. ¶ 80. Class Counsel also request reimbursement of limited out-of-

pocket costs and expenses totaling $338,605.49 incurred in connection with the prosecution of the Action and in connection with the Settlement. Joint Decl. ¶ 80. Settlement Class Counsel and BancorpSouth negotiated and reached agreement regarding attorneys' fees and costs only after reaching agreement on all other material terms of this Settlement. Agreement ¶ 112; Joint Decl. ¶ 80. The thirty-five percent (35%) fee request is within the range of reason under the factors listed by the Eleventh Circuit in *Camden I Condo. Ass'n. v. Dunkle*, 946 F.2d 768 (11th Cir. 1991). Fitzpatrick Decl. ¶ 22; *see also* Declaration of John A. DeVault, III attached as Exhibit F ("Devault Decl."), ¶ 18. For the reasons detailed herein, Class Counsel submit that the requested fee is appropriate, fair and reasonable and should be approved.

A. The Law Awards Class Counsel Fees From the Common Fund Created Through Their Efforts.

It is well established that when a representative party has conferred a substantial benefit upon a class, counsel is entitled to attorneys' fees based upon the benefit obtained. *Camden I*, 946 F.2d at 771; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The common benefit doctrine is an exception to the general rule that each party must bear its own litigation costs. The doctrine serves the "twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts." *In re Gould Sec. Litig.*, 727 F. Supp. 1201, 1202 (N.D. Ill. 1989) (citation omitted). The common benefit doctrine stems from the premise that those who receive the benefit of a lawsuit without contributing to its costs are "unjustly enriched" at the expense of the successful litigant. *Van Gemert*, 444 U.S. at 478. As a result, the Supreme Court, the Eleventh Circuit, and courts in this District have all recognized that "[a] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as whole." *Sunbeam*, 176 F. Supp. 2d at 1333 (citing *Van Gemert*, 444

U.S. at 478); *see also Camden I*, 946 F.2d at 771 ("Attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund, but the amount is subject to court approval."). Courts have also recognized that appropriate fee awards in cases such as this encourage redress for wrongs caused to entire classes of persons, and deter future misconduct of a similar nature. *See, e.g.*, *Mashburn*, 684 F. Supp. at 687; *see also Deposit Guar. Nat'l Bank v. Rope*, 445 U.S. 326, 338-39 (1980). Adequate compensation promotes the availability of counsel for aggrieved persons:

> If the plaintiffs' bar is not adequately compensated for its risk, responsibility, and effort when it is successful, then effective representation for plaintiffs in these cases will disappear . . . . We as members of the judiciary must be ever watchful to avoid being isolated from the experience of those who are actively engaged in the practice of law. It is difficult to evaluate the effort it takes to successfully and ethically prosecute a large plaintiffs' class action suit. It is an experience in which few of us have participated. The dimensions of the undertaking are awesome.

Muehler v. Land O'Lakes, Inc., 617 F. Supp. 1370, 1375-76 (D. Minn. 1985).

In the Eleventh Circuit, class counsel receives a percentage of the funds obtained through a settlement. In *Camden I* – the controlling authority regarding attorneys' fees in common-fund class actions – the Eleventh Circuit held that "the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this circuit, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I*, 946 F.2d at 774. Southern District of Florida Judge King has applied the percentage of the fund approach in overdraft cases pending as part of MDL 2036, holding:

> The Eleventh Circuit made clear in *Camden I* that percentage of the fund is the exclusive method for awarding fees in common fund class actions. *Camden I*, 946 F.2d at 774. Even before *Camden I*, courts in this Circuit recognized that "a percentage of the gross recovery is the only sensible method of awarding fees in common fund cases." *Mashburn v. Nat'l Healthcare, Inc.*, 684 F. Supp. 660, 670 (M.D. Ala. 1988). More

> importantly, the Court observed first-hand the monumental effort exerted by Class Counsel in this case, and does not need to see timesheets to know how much work Class Counsel have put in to reach this point.

Checking Account Overdraft, 830 F. Supp. 2d at 1362.

The Court has substantial discretion in determining the appropriate fee percentage. "There is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee because the amount of any fee must be determined upon the facts of each case." *Sunbeam*, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 774). Nonetheless, "[t]he majority of common fund fee awards fall between 20 percent to 30 percent of the fund" – though "an upper limit of 50 percent of the fund may be stated as a general rule." *Id*. (quoting *Camden I*, 946 F.2d at 774-75); *see also Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291 (11th Cir. 1999), *cert. denied*, 530 U.S. 1289 (2000) (approving fee award where the district court determined that the benchmark should be 30 percent and then adjusted the fee award higher in view of the circumstances of the case).

Class Counsel's fee request falls within this accepted range and, as Professor Fitzpatrick points out, a significant percentage of the Eleventh Circuit fee awards analyzed in his study awarded fee of 30% and greater. Fitzpatrick Decl. ¶ 23; *see also* Devault Decl. ¶ 22 (noting normal range between 25% and 40%). As Professor Fitzpatrick and Mr. DeVault opine, analysis of the relevant factors and circumstances justify the fee request in this case. Fitzpatrick Decl. ¶¶ 23-25; Devault Decl. ¶ 30.

B. Application of the *Camden I* Factors Supports the Requested Fee.

The Eleventh Circuit has provided a set of factors the Court should use to determine a reasonable percentage to award as an attorney's fee to class counsel in class actions:

(1) the time and labor required;

(2) the novelty and difficulty of the relevant questions;

(3) the skill required to properly carry out the legal services;

(4) the preclusion of other employment by the attorney as a result of his acceptance of the case;

(5) the customary fee;

(6) whether the fee is fixed or contingent;

(7) time limitations imposed by the clients or the circumstances;

(8) the results obtained, including the amount recovered for the clients;

(9) the experience, reputation, and ability of the attorneys;

(10) the "undesirability" of the case;

(11) the nature and the length of the professional relationship with the clients; and

(12) fee awards in similar cases.

Camden I, 946 F.2d at 772 n.3 (citing factors originally set forth in *Johnson v. Georgia Highway Express, Inc*., 488 F.2d 714, 717-19 (5th Cir. 1974)).

These twelve factors are guidelines and are not exclusive. "Other pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action." *Sunbeam*, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 775). In addition, the Eleventh Circuit has "encouraged the lower courts to consider additional factors unique to the particular case." *Camden I*, 946 F.2d at 775. As applied here, the *Camden I* factors demonstrate that the Court should approve the requested fee. Fitzpatrick Decl. ¶¶ 19-28.

1. The Claims Against BancorpSouth Required Substantial Time and Labor.

Prosecuting and settling these claims demanded considerable time and labor, making this fee request reasonable.[6] Joint Decl. ¶ 82; Fitzpatrick Decl. ¶ 26; Devault Decl. ¶ 19.

Throughout the pendency of the Action, the organization of Class Counsel ensured that we engaged in coordinated, productive work to maximize efficiency and minimize duplication of effort. Joint Decl. ¶ 82. Class Counsel devoted substantial time to investigating the claims against BancorpSouth. *Id.* at ¶ 83. Class Counsel interviewed numerous BancorpSouth customers and potential plaintiffs to gather information about the Bank's conduct, at the time the lawsuit was filed and in the past, to determine the effect that its conduct had on consumers. *Id.* This information was essential to Class Counsel's ability to understand the nature of BancorpSouth's conduct, the language of the Account agreements at issue, and potential remedies. *Id.* Class Counsel also expended significant resources researching and developing the legal claims at issue. *Id.* at ¶ 84.

Class Counsel expended significant resources researching and developing the legal theories and arguments presented in our pleadings and motions, and in opposition to BancorpSouth's motions, before the MDL 2036 Court, the Eleventh Circuit, and, ultimately following remand, before this Court. Joint Decl. ¶ 84. Substantial time and resources were also dedicated to

[6] Although N.D. Fla. Loc. R. 54.1 requires that time records be filed within 30 days after the Court determines entitlement to fees, this rule does not appear applicable to the Action because: (i) the fee request is *unopposed*; (ii) the fees are to be paid out of the Settlement Fund and *not* by the adverse party; and (iii) as discussed in Professor Fitzpatrick's and Mr. DeVault's accompanying declarations (*see* Exhibits C and F, respectively), the Eleventh Circuit has held that attorneys' fee awards in common fund class actions shall be based on a percentage of the common fund created through class counsel's efforts. *See Camden I Condominium Ass'n v. Dukle*, 946 F.2d 768, 774 (11th Cir. 1991) ("Henceforth in this circuit, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund . . . ."). In the twenty-plus settlements and accompanying applications for attorneys' fees approved by Judge King in the MDL 2036 Court, the submission of time records was never required. Settlement Class Counsel will promptly submit Class Counsel's time records or a summary thereof if the Court requests them.

conducting discovery. *Id.* at ¶ 85. Class Counsel took approximately fourteen depositions of BancorpSouth's fact and expert witnesses. *Id.* Class Counsel also devoted a substantial amount of time to reviewing over 100,000 pages of documents and voluminous electronic spreadsheets and other data produced by BancorpSouth. *Id.* Class Counsel also served and responded to written discovery. *Id.*

Settlement negotiations consumed further time and resources. Joint Decl. ¶ 86. The initial mediation session held in 2012 required substantial preparation. In October 2015, at this Court's direction, Settlement Class Counsel and BancorpSouth participated in a second mediation conference that also required substantial preparation. Substantial time and effort was devoted to the continued settlement negotiations following the mediation session that ultimately resulted in the Parties' agreement. Finally, a significant time was devoted to the drafting of the Agreement and the preliminary approval process. All of this work consumed a substantial amount of time.

This case was litigated longer than any other settlement reached to date for a case that was included in MDL 2036 (nearly 6 years). The Parties completed everything but the trial itself; all pretrial discovery and motion practice was completed at the time we reached the Settlement. Joint Decl. ¶ 87.

All told, Class Counsel's coordinated work paid dividends for the Settlement Class. Each of the above-described efforts was essential to achieving the Settlement before the Court. Joint Decl. ¶ 87. The time and resources Class Counsel devoted to prosecuting and settling this Action readily justify the fee that we now request. "For all these reasons, I believe the 35% fee award requested here is well within the range of reason." *See* Fitzpatrick Decl. ¶ 32.

As Professor Fitzpatrick notes, this particular case was litigated longer than any other settlement reached to date in MDL 2036 (more than 6 years), well beyond the average time to

resolve a consumer class action. In this case, the Parties completed everything but the trial itself; all pretrial discovery and motion practice was completed. *See* Fitzpatrick Decl. ¶ 26. These factors support the increased fee request. *Id.*; *see also* Devault Decl. ¶ 19.

2. The Issues Involved Were Novel and Difficult, and Required the Skill of Highly Talented Attorneys.

"[P]rosecution and management of a complex national class action requires unique legal skills and abilities." *Edmonds v. U.S.*, 658 F. Supp. 1126, 1137 (D.S.C. 1987). The MDL 2036 Court, and to a limited extent this Court, witnessed the high quality of our legal work, which conferred a substantial benefit on the Settlement Class in the face of significant litigation obstacles. Joint Decl. ¶ 88. Our work required the acquisition and analysis of a substantial amount of factual and legal information. *Id.* The management of MDL 2036, including the Action against BancorpSouth before remand, also presented challenges most law firms are simply not able to meet. *Id.*

In any given case, the skill of legal counsel should be commensurate with the novelty and complexity of the issues, as well as the skill of the opposing counsel. Litigation of this Action required counsel highly trained in class action law and procedure as well as the specialized issues presented here. Class Counsel possess these attributes, and their participation added value to the representation of this large Settlement Class. Joint Decl. ¶ 89. The record demonstrates that the Action involved a broad range of complex and novel challenges, which Class Counsel met at every juncture. *Id.* at ¶ 90.

Consideration of the novelty and difficulty of the questions involved and the 'undesirability" of the case factors further support the increased fee request in this case. *See* Fitzpatrick Decl. ¶ 23; Devault Decl. ¶¶ 20, 27.

In evaluating the quality of representation by Class Counsel, the Court should also consider the quality of opposing counsel. *See Camden I*, 946 F.2d at 772 n.3; *Ressler*, 149 F.R.D. at 654. Throughout the litigation, BancorpSouth was represented by extremely capable counsel. They were worthy, highly competent adversaries. Joint Decl. ¶ 91; *see also Checking Account Overdraft*, 830 F. Supp. 2d at 1348 (finding "Class Counsel confronted not merely a single large bank, but the combined forces of a substantial portion of the entire American banking industry, and with them a large contingent of some of the largest and most sophisticated law firms in the country.") (internal quotation marks and citation omitted); *Walco Invs. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997) (stating that "[g]iven the quality of defense counsel from prominent national law firms, the Court is not confident that attorneys of lesser aptitude could have achieved similar results").

3. Class Counsel Achieved a Successful Result.

Given the significant litigation risks Class Counsel faced, the Settlement represents a successful result. Fitzpatrick Decl. ¶ 27; Devault Decl. ¶¶ 21, 26 ("The novelty and difficulty of the questions involved… along with the results obtained, are the most compelling factors supporting the attorney's fees requested in this case."). Rather than facing more years of costly and uncertain litigation, the overwhelming majority of Settlement Class Members will receive an immediate cash benefit. Joint Decl. ¶ 92. The Settlement Fund will not be reduced by the substantial fees and costs of Notice or Settlement administration; up to $500,000 of such fees and expenses have been and will continue to be borne by BancorpSouth. *Id.* Moreover, payments to eligible Settlement Class Members will be forthcoming automatically, through direct deposit for current Account Holders and checks for former Account Holders. *Id.*

4. The Claims Presented Serious Risk.

The Settlement is particularly noteworthy given the combined litigation risks. Joint Decl. ¶¶ 93-94; Fitzpatrick Decl. ¶ 27; Devault Decl. ¶ 20-21. BancorpSouth raised substantial defenses. Success under these circumstances represents a genuine milestone.

Consideration of the "litigation risks" factor under *Camden I* "recognizes that counsel should be rewarded for taking on a case from which other law firms shrunk. Such aversion could be due to any number of things, including social opprobrium surrounding the parties, thorny factual circumstances, or the possible financial outcome of a case. All of this and more is enveloped by the term 'undesirable.'" *Sunbeam*, 176 F. Supp. 2d at 1336.

Further, "[t]he point at which plaintiffs settle with defendants . . . is simply not relevant to determining the risks incurred by their counsel in agreeing to represent them." *Skelton v. General Motors Corp.*, 860 F.2d 250, 258 (7th Cir. 1988). "Undesirability" and relevant risks must be evaluated from the standpoint of class counsel as of the time they commenced the suit – not retroactively, with the benefit of hindsight. *Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp.*, 540 F.2d 102, 112 (3d Cir. 1976); *Walco*, 975 F. Supp. at 1473.

Prosecuting the Action was risky from the outset. Joint Decl. ¶ 93; Fitzpatrick Decl. ¶ 13. "Although Judge King rejected [BancorpSouth's state law] defenses as a matter of law, other courts have [accepted such defenses], and it is not at all clear how an appellate court would ultimately rule on these issues. Moreover, it is not at all clear how a jury would have seen these defenses as a matter of fact had this case proceeded to trial." Fitzpatrick Decl. ¶ 13. Given these risks, the $24,000,000 cash recovery obtained through the Settlement – which amounts to approximately fifty-seven percent (57%) of the *maximum* possible damages recoverable by the certified class – is outstanding, given the complexity of the litigation and the significant risks and

barriers that loomed in the absence of Settlement. *Id.* These risks could easily have impeded, if not altogether derailed, Plaintiff's and the Settlement Class' successful prosecution of these claims at trial and in an eventual appeal.

The recovery achieved by this Settlement must be measured against the fact that any recovery by Plaintiff and Settlement Class Members through continued litigation could only have been achieved if: (i) Plaintiff and the certified class established liability and recovered damages at trial; and (ii) the final judgment was affirmed on appeal. The Settlement is an extremely fair and reasonable recovery for the Settlement Class in light of BancorpSouth's merits defenses, and the challenging and unpredictable path of litigation Plaintiff and the certified class would have faced absent the Settlement. Joint Decl. ¶ 94; Fitzpatrick Decl. ¶¶ 12-13.

5. Class Counsel Assumed Considerable Risk to Pursue This Action on a Pure Contingency Basis.

In undertaking to prosecute this complex case entirely on a contingent fee basis, Class Counsel assumed a significant risk of nonpayment or underpayment. Joint Decl. ¶ 95; Fitzpatrick Decl. ¶ 27; Devault Decl. ¶ 24. That risk warrants an appropriate fee. Indeed, "[a] contingency fee arrangement often justifies an increase in the award of attorney's fees." *Sunbeam*, 176 F. Supp. 2d at 1335 (quoting *Behrens*, 118 F.R.D. at 548); *see also In re Continental Ill. Sec. Litig.*, 962 F.2d 566 (7th Cir. 1992) (holding that when a common fund case has been prosecuted on a contingent-fee basis, plaintiffs' counsel must be adequately compensated for the risk of non-payment); *Ressler*, 149 F.R.D. at 656 ("Numerous cases recognize that the attorney's contingent fee risk is an important factor in determining the fee award.").

Public policy concerns – in particular, ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs holding small individual claims –

support the requested fee. Joint Decl. ¶ 96. As the Southern District of Florida Court presiding over MDL 2036 has held:

> Generally, the contingency retainment must be promoted to assure representation when a person could not otherwise afford the services of a lawyer. . . . A contingency fee arrangement often justifies an increase in the award of attorney's fees. This rule helps assure that the contingency fee arrangement endures. If this "bonus" methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.

Behrens, 118 F.R.D. at 548.

The progress of the Action to date shows the inherent risk faced by Class Counsel in accepting and prosecuting the Action on a contingency fee basis. Despite Class Counsel's effort in litigating this Action for the past six years, we remain completely uncompensated for the time invested in the Action, in addition to the substantial expenses we advanced. Joint Decl. ¶ 97. There can be no dispute that this case entailed substantial risk of nonpayment for Class Counsel. Fitzpatrick Decl. ¶ 27; Devault Decl. ¶ 24.

6. The Requested Fee Comports With Fees Awarded in Similar Cases.

The fee sought here is within the range of fees typically awarded in similar cases. Joint Decl. ¶ 98; Fitzpatrick Decl. ¶¶ 23-25; Devault Decl. ¶ 23. Numerous decisions within and outside of the Eleventh Circuit have found that a 35% fee is within the range of reason under the factors listed by the *Camden I*. *See* Fitzpatrick Decl. ¶ 23-25.

"[F]ederal district courts across the country have, in the class action settlement context, *routinely* awarded class counsel fees in excess of the 25 percent 'benchmark,' even in so-called

'mega-fund' cases."[7] *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1210 (S.D. Fla. 2006) (emphasis added) (awarding fees equaling 31⅓% of mega fund); *In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403 (S.D. Tex. 1999) (35.1%)); *see also Gaskill v. Gordon*, 942 F. Supp. 382, 387-88 (N.D. Ill. 1996), *aff'd*, 160 F.3d 361 (7th Cir. 1998) (finding that 33% is the norm, and awarding 38% of settlement fund); *In re Combustion, Inc.*, 968 F. Supp. 1116 (W.D. La. 1997) (36%); *In re Crazy Eddie Sec. Litig.*, 824 F. Supp. 320, 326 (E.D.N.Y. 1993) (33.8 %); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 498 (D.D.C. 1981) (45%); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*, 480 F. Supp. 1195, 1199 (S.D.N.Y. 1979), *aff'd*, 622 F.2d 1106 (2d Cir. 1980) (approximately 53%); *Zinman v. Avemco Corp.*, 1978 WL 5686 (E.D. Pa. Jan. 18, 1978) (Higginbotham, J.) (50%).

Class Counsel's fee request falls within the range of the private marketplace, where contingency fee arrangements often approach or equal forty percent of any recovery. *See Continental*, 962 F.2d at 572 ("The object in awarding a reasonable attorneys' fee . . . is to simulate the market."); *RJR Nabisco, Inc. Sec. Litig.*, Fed. Sec. L. Rep. (CCH) ¶ 94, 268 (S.D.N.Y. 1992) ("[W]hat should govern [fee] awards is . . . what the market pays in similar cases"). And, "[i]n tort suits, an attorney might receive one-third of whatever amount the Plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery." *Blum v. Stenson*, 465 U.S. 886, 904 (1984) (Brennan, J., concurring); *see also Kirchoff v. Flynn*, 786 F.2d 320, 323, 325 n.5 (7th Cir. 1986) (noting "40 percent is the customary fee in tort litigation"); *In re Public Serv. Co. of N.M.*, 1992 WL 278452, at *7 (S.D. Cal. July 28, 1992) ("If this were a non-representative

[7] *See also* 1 *Court Awarded Attorney Fees*, ¶ 2.06[3], at 2-88 (Matthew Bender 2010) (noting that, "when appropriate circumstances have been identified, a court may award a percentage significantly higher" than 25%); 4 *Newberg on Class Actions*, § 14:6, at 551 (4th ed. 2002) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").

litigation, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 30% to 40% of the recovery.").

The record here leaves no doubt that Class Counsel's fee request is appropriate and comports with attorneys' fees awarded in similar cases. *See* Fitzpatrick Decl. ¶¶ 23-25; Devault Decl. ¶ 23. Professor Fitzpatrick distilled several major empirical studies of attorneys' fees, including his own, awarded in connection with class action settlements. Fitzpatrick Decl. ¶ 23. He concluded that the empirical data from those studies supports the reasonableness of a 35% fee award in this case. Fitzpatrick Decl. ¶¶ 23-25; *see also* Devault Decl. ¶ 23.

Class Counsel's fee request also falls within the range of awards in numerous other cases within this Circuit, including MDL 2036 overdraft cases. *See* Fitzpatrick Decl. ¶¶ 23-25; Devault Decl. ¶¶ 9, 23, 29; *see also, e.g.*, *Waters*, 190 F.3d 1291 (11th Cir. 1999) (affirming fee award of 33⅓% on settlement of $40 million even though most of the fund ultimately reverted to the defendant); *Gutter v. E.I. Dupont De Nemours & Co*., 95-2152-CIV-Gold (S.D. Fla. May 30, 2003) (33⅓% of $77.5 million settlement); *Sands Point Partners, LP v. Pediatrix Med. Group, Inc*., 2002 U.S. Dist. LEXIS 25721 (S.D. Fla. 2002) (30% of $12 million settlement); *In re CHS Elecs., Inc. Sec. Litig*., 99-8186-CIV-Gold (S.D. Fla. 2002) (30% on settlement of over $11 million); *Ehrenreich v. Sensormatic Elecs. Corp*., 95-6637-CIV-Zloch (S.D. Fla. 1998) (30% on settlement of over $44 million); *Tapken v. Brown*, 90-0691-CIV-Marcus (S.D. Fla. 1995) (33% of $10 million settlement).[8]

[8] *See also In re Friedman's, Inc. Sec. Litig*., 2009 WL 1456698 (N.D. Ga. May 22, 2009) (30%); *Francisco v. Numismatic Guar. Corp. of Am*., 2008 WL 649124 (S.D. Fla. 2008) (30%); *Pinto v. Princess Cruise Lines, Ltd*., 513 F. Supp. 2d 1334 (S.D. Fla. 2007) (30%); *In re BellSouth Corp. Sec. Litig*., Civil Action No. 1:02-cv-2142-WSD (N.D. Ga. Apr. 9, 2007) (30%); *In re Cryolife, Inc. Sec. Litig*., Civil Action No. 1:02-cv-1868-BBM (N.D. Ga. Nov. 9, 2005) (30%); *In re Profit Recovery Group Int'l, Inc. Sec. Litig*., Civil Action No. 1:00-cv-1416-CC (N.D. Ga. May 26, 2005) (33⅓% plus interest and expenses); *In re Clarus Corp. Sec. Litig*., Civil Action No. 1:00-CV-2841-

7. The Remaining *Camden I* Factors also Favor Approving the Requested Fee.

The remaining *Camden I* factors likewise support granting Class Counsel's fee request. "[C]lass counsel count among their number some of the most experienced and highly regarded lawyers in the United States. These are not mere "benchmark" lawyers. Indeed, had class counsel not been so talented, I doubt the class would have received the compensation that is provided in this settlement." *See* Fitzpatrick Decl. ¶ 28; Devault Decl. ¶ 21. Moreover, without adequate compensation and financial reward, cases such as this simply could not be pursued. The Court presiding over the overdraft cases pending in MDL 2036 previously held that, "given the positive societal benefits to be gained from lawyers' willingness to undertake difficult and risky, yet important, work like this, such decisions must be properly incentivized." *Checking Account Overdraft*, 830 F. Supp. 2d at 1364.

In sum, the record before the Court justifies the increased fee request in this case. *See* Fitzpatrick Decl. ¶ 32; Devault Decl. ¶ 30.

8. The Expense Request Is Appropriate.

Class Counsel also request reimbursement for a total of $338,605.49 in certain litigation costs and expenses.[9] Joint Decl. ¶ 100; *see Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970). This sum corresponds to certain actual out-of-pocket costs and expenses that Class Counsel necessarily incurred and paid in connection with the prosecution of the Action and the

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CAP (N.D. Ga. Jan. 6, 2005) (33⅓%); *In re Pediatric Servs. of Am., Inc. Sec. Litig.*, Civil Action No. 1:99-CV-0670-RLV (N.D. Ga. Mar. 15, 2002) (33⅓%); *Ressler v. Jacobson*, 149 F.R.D. 651 (M.D. Fla. 1992) (30%).

[9] Although N.D. Fla. Loc. R. 54.2 requires that a register of costs be filed within 14 days after judgment when a party seeks to tax costs against the opposing party, this rule is not applicable to the Action because: (i) the request for reimbursement of costs is *unopposed*; and (ii) the costs are to be paid out of the $24 million Settlement Fund and *not* by the adverse party.

Settlement. Joint Decl. ¶ 100. Specifically, these costs and expenses consist of: (1) $289,320.22 in fees and expenses incurred for three experts, including Arthur Olsen, whose services were critical in identifying members of the certified class and in determining their damages, as in reconfirming the identification of Settlement Class Members and the amount of their damages for purposes of the Settlement; (2) $30,361.17 in court reporter fees and transcripts associated with depositions and hearings in the Action; and (3) $18,924.10 in mediators' fees and expenses incurred for the services rendered by the two mediators, Professor Eric Green and Mr. Jonathan Marks.[10] *Id.* These out-of-pocket expenses were reasonably and necessarily incurred and paid in furtherance of the prosecution of this Action. *Id.*

VI. CONCLUSION

The Settlement with BancorpSouth securing $24,000,000 in cash for the benefit of the Settlement Class represents an excellent result given the obstacles confronted in this Action. The Settlement more than satisfies the fairness and reasonableness standard of Rule 23(e), as well as the class certification requirements of Rules 23(a) and (b)(3). Further, Class Counsel's request for a Service Award for the Plaintiff/Class Representative and the application for attorneys' fees and expenses is reasonable under all the circumstances. The fee request satisfies the guidelines of *Camden I* given the results achieved, the notable litigation risks, the extremely complicated nature of the factual and legal issues, and the time, effort and skill required to litigate claims of this nature to a satisfactory conclusion.

Accordingly, Plaintiff and Class Counsel respectfully request that this Court (1) grant Final Approval to the Settlement; (2) certify for settlement purposes the Settlement Class pursuant to

[10] Class Counsel have limited the categories of expenses for which reimbursement is being sought to those enumerated above, and are not seeking reimbursement for over $100,000 in other expenses that are routinely sought and recovered in common fund class actions. Joint Decl. ¶ 101.

Federal Rules of Civil Procedure 23(a), 23(b)(3), and 23(e); (3) appoint as Class Representative the Plaintiff listed in paragraph 50 of the Agreement; (4) appoint as Class Counsel and Settlement Class Counsel the law firms and attorneys listed in paragraphs 31 and 59 of the Agreement, respectively; (5) approve the requested Service Award for the Plaintiff/Class Representative; (6) award Class Counsel attorneys' fees and expenses; and (7) enter Final Judgment dismissing the Action with prejudice.

N.D. FLA. LOCAL RULE 7.1(B) CERTIFICATE

Pursuant to N.D. Fla. Local Rule 7.1(B), I hereby certify that Class Counsel has conferred with BancorpSouth's counsel in a good faith effort to resolve by agreement the relief sought in this motion. BancorpSouth does *not* oppose the request for Final Approval of the Settlement, and the application for a Service Award, and for attorneys' fees and expenses.

Dated: May 12, 2016.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

Case No. 1:10-cv-90-MMP

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

Plaintiff,

vs.

BANCORPSOUTH BANK,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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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. <u>Recitals</u>

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 is 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:[1]

- 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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[1] 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:

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

GROSSMAN ROTH, P.A.
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Coral Gables, FL 33134

KOPELOWITZ OSTROW FERGUSON
WEISELBERG GILBERT
Jeffrey M. Ostrow, Esq.
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& BERNSTEIN, LLP
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Roger Heller, Esq.
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PODHURST ORSECK, P.A.
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TRIEF & OLK
Ted E. Trief, Esq.
150 East 58th Street
34th Floor
New York, NY 10155

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

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 entireties, 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 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. <u>Certification of the Settlement Class</u>

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.[2] 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. <u>Settlement Consideration</u>

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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[2] 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. <u>Discovery</u>

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. <u>Settlement Administrator</u>

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. <u>Final Approval Order and Judgment</u>

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-l. 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. <u>Calculation of Automatic Distributions from Settlement Fund</u>

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. <u>Disposition of Residual Funds</u>

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. <u>Payment of Attorneys' Fees, Costs, and Service Award</u>

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
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Robert C. Gilbert, Esq.
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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
____
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. PIGNUOLO
Its: SENIOR EXECUTIVE VICE PRESIDENT
AND GENERAL COUNSEL
201 South Spring Street
Tupelo, MS 38804

Defendant

Dated: Feby 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

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

Case No. 1:10-cv-90-MMP

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

Plaintiff,

vs.

BANCORPSOUTH BANK,

Defendant.

JOINT DECLARATION OF BRUCE S. ROGOW, ROBERT C. GILBERT, AND JEFFREY M. OSTROW IN SUPPORT OF PLAINTIFF'S AND CLASS COUNSEL'S MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT, AND APPLICATION FOR SERVICE AWARD, ATTORNEYS' FEES AND EXPENSES

Bruce S. Rogow, Robert C. Gilbert, and Jeffrey M. Ostrow declare as follows:

1. We are Settlement Class Counsel for Plaintiff and the Settlement Class under the Settlement Agreement and Release with BancorpSouth ("Settlement" or "Agreement") that was preliminarily approved by this Court on March 8, 2016.[1] (DE # 90). We submit this declaration in support of Plaintiff's and Class Counsel's Motion for Final Approval of Class Settlement, and Application for Service Award, Attorneys' Fees and Expenses (the "Motion"). Unless otherwise noted, we have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. After six years of litigation and protracted settlement negotiations, Plaintiff, Settlement Class Counsel and BancorpSouth entered into the Settlement under which

[1] All capitalized defined terms have the same meaning as defined in the Agreement attached as Exhibit A to the Motion for Final Approval.

BancorpSouth will pay (i) $24,000,000 in cash to create a settlement fund for the benefit of the Settlement Class, plus (ii) up to $500,000 of the fees and costs of providing Notice to Settlement Class Members and associated fees and costs incurred in connection with administration of the Settlement. Under the Settlement, all identifiable Settlement Class Members who sustained a Differential Overdraft Fee will automatically receive *pro rata* distributions from the Net Settlement Fund in proportion to the actual harm that each of them sustained.

3. The Action involved sharply opposed positions on several fundamental legal and factual issues, including: (i) whether BancorpSouth's relevant Account agreements expressly authorized it to engage in High-to-Low Posting; (ii) whether state law claims for relief were preempted; (iii) whether BancorpSouth breached its duty of good faith and fair dealing when it engaged in High-to-Low Posting of its customers' Debit Card Transactions; (iv) whether BancorpSouth's policies and practices involving High-to-Low Posting were unconscionable and/or resulted in unjust enrichment; and (v) the appropriate methodology for establishing damages on a class-wide basis and the amount of damages to be recovered.

4. Plaintiff and Class Counsel maintain that the claims asserted in the Action are meritorious; that Plaintiff and the certified class would establish liability and recover substantial damages if the Action proceeded to trial; and that the final judgment would be affirmed on appeal. Conversely, BancorpSouth maintains that Plaintiff's claims are unfounded and could not be maintained as a class action, denies liability, and litigated its defenses vigorously. Plaintiff's ultimate success required him to prevail, in whole or in part, at *all* of these junctures, while BancorpSouth's success at any one of these junctures could have spelled defeat for Plaintiff and the Settlement Class. Thus, continued litigation posed significant risks and countless

uncertainties, as well as the time, expense, and delays associated with trial and appellate proceedings, particularly in the context of complex multi-district litigation.

5. In light of the risks, uncertainties and delays associated with continued litigation, the Settlement represents an outstanding achievement by providing guaranteed benefits to the Settlement Class in the form of direct cash compensation without further risks, delays or costs.

A. Background of the Litigation.

6. Plaintiff sought monetary damages, restitution and declaratory relief from BancorpSouth, on behalf of himself and all others similarly situated, who incurred Overdraft Fees as a result of BancorpSouth's practice of High-to-Low Posting of Debit Card Transactions. Plaintiff alleged that BancorpSouth systemically engaged in High-to-Low Posting of Debit Card Transactions to maximize the Bank's Overdraft Fee revenues. According to Plaintiff, BancorpSouth's practices violated the Bank's contractual and good faith duties, were substantively and procedurally unconscionable, and resulted in conversion and unjust enrichment.

7. BancorpSouth denied all of Plaintiff' allegations of wrongdoing. The Bank consistently defended its conduct by, *inter alia*, highlighting language in the relevant Account agreements that it contended expressly advised its customers of and permitted the very High-to-Low Posting practices at issue. The Bank advanced additional defenses.

B. Class Counsel's Investigation.

8. Class Counsel devoted substantial time to investigating the potential claims against BancorpSouth. Class Counsel interviewed customers and potential plaintiffs to gather information about the Bank's conduct and its impact upon customers. This information was essential to Class Counsel's ability to understand the nature of BancorpSouth's conduct, the language of the Account agreements, and potential remedies.

C. <u>The Course of Proceedings.</u>

9. On May 18, 2010, Plaintiff Shane Swift initiated this Action against BancorpSouth 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, attorneys' fees, restitution, and equitable relief.

10. In October 2010, *Swift* was transferred to the United States District Court for the Southern District of Florida, where it joined other actions coordinated under the MDL caption *In Re: Checking Account Overdraft Litigation*, Case No. 1:09-md-02036-JLK ("MDL 2036"), before Senior Judge James Lawrence King, who presided over MDL 2036 based on an assignment by the Judicial Panel on Multidistrict Litigation (the "MDL 2036 Court"). *Swift* was made part of the *Fourth Tranche* of cases in the MDL 2036 Court.

11. On December 6, 2010, Plaintiff Swift filed a Second Amended Complaint that asserted 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 violation of Arkansas' Deceptive Trade Practices Act (Count V). [S.D. Fla. 2036 DE # 994].

12. BancorpSouth filed a Motion to Dismiss the Second Amended Complaint [S.D. Fla. D.E. # 1068]. Following briefing and oral argument, the MDL 2036 Court denied BancorpSouth's motion on March 21, 2011. *See* [S.D. Fla. D.E. # 1305], reported at *In re Checking Account Overdraft Litig*., No. 09-2036, 2011 U.S. Dist. LEXIS 30965 (S.D. Fla. Mar. 21, 2011).

13. On April 13, 2011, the MDL 2036 Court entered the Scheduling Order Pertaining to "Fourth Tranche" Cases [DE # 1340], the first in a series of scheduling orders to be entered in *Swift*.

14. Also in April 2011, BancorpSouth filed an Answer and Affirmative Defenses [S.D. Fla. D.E. # 1335], which Plaintiff responded to with a motion to strike a number of BancorpSouth's affirmative defenses as legally insufficient. [S.D. Fla. D.E. #1390]. Prior to a ruling on that motion, the MDL 2036 Court approved the Parties' stipulation authorizing BancorpSouth to file an Amended Answer and Affirmative Defenses, and BancorpSouth filed an Amended Answer and Affirmative Defenses [S.D. Fla. D.E. #1693], denying any and all wrongdoing and liability whatsoever and asserting, *inter alia*, that its actions complied with all applicable laws and regulations, and raising various affirmative defenses. Accordingly, the operative pleadings in *Swift* are Plaintiff's Second Amended Complaint [S.D. Fla. D.E. #994] and BancorpSouth's Amended Answer and Affirmative Defenses [S.D. Fla. D.E. #1693].

15. 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. D.E. # 1774]. Soon thereafter, Class Counsel and BancorpSouth entered into a Stipulated Discovery Plan for Electronically Stored Information ("ESI"), which the MDL 2036 Court adopted on October 11, 2011 [S.D. Fla. D.E. # 1968].

16. Discovery commenced in May 2011. During the course of fact and expert discovery, Class Counsel conducted approximately fourteen depositions of BancorpSouth fact and expert witnesses, and BancorpSouth conducted five depositions of Plaintiff's fact and expert witnesses.

17. During the course of discovery, BancorpSouth produced approximately 100,000 pages of documents, as well as voluminous electronic data files and spreadsheets produced in native format, for analysis by Plaintiff's experts.

18. In December 2011, Plaintiff filed his Motion for Class Certification [S.D. Fla. D.E. # 2271]. BancorpSouth filed its Opposition to Plaintiff's Motion for Class Certification [S.D. Fla. D.E. # 2446], and Plaintiff filed its Reply in Support of Motion for Class Certification in March 2012 [S.D. Fla. D.E. # 2576].

19. On May 4, 2012, the MDL 2036 Court entered an Opinion and Order Granting Class Certification. [S.D. Fla. D.E. # 2673].

20. BancorpSouth filed a Petition for Permission to Appeal the Order Granting Class Certification Pursuant to Federal Rule of Civil Procedure 23(f). Following briefing, on February 13, 2013, the Eleventh Circuit Court of Appeals denied the petition.

21. Following class certification, the MDL 2036 Court approved the implementation and completion of the class notice plan to the certified class. [S.D. Fla. D.E. # 3242, 3338, 3342]. Pursuant to the MDL 2036 Court's Order, notice was mailed to all (approximately 190,000) members of the certified class for whom reasonably reliable mailing addresses were available; 238 class members timely exercised their right to opt out of the certified class. [S.D. Fla. D.E. # 3589].

22. In May 2013, BancorpSouth moved to decertify the class. [S.D. Fla. D.E. # 3455]. Following briefing, the MDL 2036 Court denied BancorpSouth's Motion to Decertify. [S.D. Fla. D.E. # 3540].

23. 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.

24. Following class certification, the MDL 2036 Court entered a Revised Scheduling Order that directed the Parties to file all pretrial motions by certain deadlines. [S.D. Fla. D.E. #

2834]. The motion-filing deadlines were extended by a subsequent Scheduling Order. [S.D. Fla. DE # 2891].

25. Pursuant to the operative Scheduling Order, the Parties filed the following pretrial motions that were decided by the MDL 2036 Court following extensive briefing and, in some instances, oral argument: Plaintiff's Motion for Partial Summary Judgment was granted in part and denied in part. [S.D. Fla. D.E. # 2997, 3035, 3116, 3655, 3682]; Plaintiff's Motion in Limine to preclude BancorpSouth from offering certain evidence at trial was granted. [S.D. Fla. D.E. # 2996, 3258]; Plaintiff's Motion to Strike two of BancorpSouth's designated expert witnesses was denied. [S.D. Fla. D.E. # 3014, 3229]; BancorpSouth's Motion for Summary Judgment was denied in its entirety. [S.D. Fla. D.E. # 2999, 3682]; and BancorpSouth's Motion to Strike two of Plaintiff's designated expert witnesses was denied. [S.D. Fla. D.E. # 3014, 3229].

26. Upon the conclusion of three years of extensive pretrial proceedings, the MDL 2036 Court entered a Suggestion of Remand. [S.D. Fla. D.E. # 3683, 3707]. Thereafter, in December 2013, the JPML remanded the Action back to this Court. [N.D. Fla. D.E. # 25, 26]. Joint Decl. ¶ 24.

27. Following remand, BancorpSouth filed a Renewed Motion to Transfer Venue to the Eastern District of Arkansas, pursuant to 28 U.S.C. § 1404(a). [N.D. Fla. D.E. # 29, 33]. On June 4, 2014, following briefing and oral argument, this Court denied BancorpSouth's Renewed Motion to Transfer Venue. [N.D. Fla. D.E. # 48].

28. On June 5, 2014, this Court entered an Order for Pre-Trial Conference and Setting Trial. [N.D. Fla. D.E. # 49]. Pursuant to that Order, the Parties filed a series of memoranda addressing various issues as well as 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. D.E. # 54, 55, 56, 57, 60, 6163, 64, 65, 66].

29. On September 11, 2014, this Court conducted a Pretrial Conference, during which it heard extensive oral argument regarding the various issues addressed in the Parties' memoranda. [N.D. Fla. D.E. # 69].

30. On August 27, 2015, this Court entered an Order denying BancorpSouth's request for reconsideration of certain pretrial rulings decided by the MDL 2036 Court prior to remand. [N.D. Fla. D.E. # 77].

D. Settlement Negotiations.

31. In August 2012, the Parties participated in their first mediation conference under the auspices of Professor Eric Green of Resolutions, LLC. The first mediation conference ended in an impasse, and the Parties resumed active litigation for more than three years.

32. In August 2015 [N.D. Fla. D.E. # 77], this Court directed the Parties to participate in a second formal mediation conference no later than October 30, 2015. [N.D. Fla. D.E. # 77]. On October 28, 2015, Settlement Class Counsel and BancorpSouth participated in their second mediation conference with Jonathan B. Marks of MarksADR, LLC serving as the mediator. Although an agreement was not reached at that mediation session, the Parties continued their settlement negotiations in the days thereafter with the assistance of Mr. Marks.

33. 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 executed a Summary Agreement that memorialized their agreement. Thereafter, the Parties resolved all remaining issues and completed the detailed process of drafting the Settlement Agreement and Release and related documents, which were executed in February 2016.

34. On February 24, 2016, Plaintiff and Class Counsel filed their Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class. [N.D. Fla. D.E. # 89]. On March 8, 2016, this Court entered the Order Preliminarily Approving Settlement and Certifying Settlement Class. [N.D. Fla. D.E. # 90]. The Preliminary Approval authorized and directed Notice to the Settlement Class, and established a series of deadlines preceding the Final Approval Hearing, which is now scheduled for July 14, 2016.

E. Settlement Recovery.

35. The Settlement required BancorpSouth to deposit $24,000,000 into the Escrow Account within fourteen days following entry of the Preliminary Approval Order. Agreement ¶ 87. The Bank deposited that sum, creating the Settlement Fund. The Settlement Fund will be used to: (i) pay all Automatic Distributions of payments to the Settlement Class; (ii) pay all Court-ordered awards of attorneys' fees, costs and expenses of Class Counsel; (iii) pay the Court-ordered Service Award to the Plaintiff; (iv) distribute any residual funds as set forth in paragraph 104 of the Agreement; (v) pay all Taxes pursuant to paragraph 89 of the Agreement; (vi) pay any costs of Notice Administrator and Settlement Administration exceeding the $500,000 of Notice Administrator and Settlement Administration costs to be paid by BancorpSouth pursuant to paragraph 67 of the Agreement; and (vii) pay any additional fees, costs and expenses not specifically enumerated in paragraph 90 of the Agreement, subject to approval of Settlement Class Counsel and BancorpSouth. Agreement ¶ 90. In addition to the Settlement Fund, BancorpSouth deposited $500,000 into the Escrow Account to pay for costs and fees of the Settlement Administrator and Notice Administrator incurred in connection with the administration of the Notice Program and Settlement administration for which it is responsible under the Settlement. *Id.* at ¶ 67.

36. All identifiable Settlement Class Members who experienced a Differential Overdraft Fee will receive pro rata distributions from the Net Settlement Fund, provided they did not opt-out of the Settlement.[2] Agreement Section XII. The Differential Overdraft Fee analysis determined, among other things, which BancorpSouth Account holders were assessed additional Overdraft Fees that would not have been assessed if the Bank had used a chronological posting sequence or method for posting Debit Card Transactions instead of High-to-Low Posting, and how much in additional Overdraft Fees those Account holders paid as a result. The calculation involved a multi-step process that is described in detail in the Agreement. *Id*. at ¶ 93.

37. Settlement Class Members do not have to submit claims or take any other affirmative step to receive relief under the Settlement. The amount of their Differential Overdraft Fees was determined by Settlement Class Counsel and their expert through a detailed analysis of BancorpSouth's available electronic data. Agreement Section XI. As soon as practicable after Final Approval, but no later than 60 days from the Effective Date (Agreement ¶ 95), the Settlement Administrator will calculate and distribute the Net Settlement Fund, on a *pro rata* basis, to all Settlement Class Members who had a Differential Overdraft Fee(s) and did not timely opt out of the previously certified class or the Settlement. Agreement Section XII.

38. Payments to Settlement Class Members who are Current Account Holders will be made by crediting their Accounts, and notifying them of the credit. Agreement ¶ 100.

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[2] The Net Settlement Fund is equal to the Settlement Fund, plus interest earned (if any), less the amount of Court-awarded attorneys' fees and costs to Class Counsel, the amount of Court-awarded Service Award to the Plaintiff, a reservation of a reasonable amount of funds for prospective costs of Settlement administration that are not BancorpSouth's responsibility pursuant to paragraph 67 of the Agreement, and any other costs and/or expenses incurred in connection with the Settlement that are not specifically enumerated in paragraph 67 that are provided for in the Agreement and have been approved by Settlement Class Counsel and BancorpSouth. Agreement ¶ 96.

BancorpSouth will be entitled to a reimbursement for such credits from the Net Settlement Fund. *Id.* at ¶ 101. Past Account Holders (and any Current Account Holders whose Accounts cannot feasibly be automatically credited) will receive their payments by checks mailed by the Settlement Administrator. *Id.* at ¶ 102.

39. Any uncashed or returned checks will remain in the Settlement Fund for one year from the date the first distribution check is mailed, during which time the Settlement Administrator will make reasonable efforts to effectuate delivery of the Settlement Fund Payments. Agreement ¶ 103.

40. Any residual funds remaining in the Settlement Fund one year after the first Settlement Fund Payments are mailed will be distributed pursuant to Section XIII of the Agreement. Agreement ¶ 104.

F. Class Release.

41. In exchange for the benefits conferred by the Settlement, all Settlement Class Members who do not opt out will be deemed to have released BancorpSouth from claims related to the subject matter of the Action. The detailed release language is found in Section XIV of the Agreement. Agreement ¶¶ 105-107.

G. Settlement Notice.

42. The Notice Program (Agreement Section VIII) was designed to provide the best notice practicable, and was tailored to take advantage of the information BancorpSouth had available about Settlement Class Members. Agreement ¶¶ 73-84. BancorpSouth has and will pay up to $500,000 of the fees and costs associated with the Notice Program. *Id.* at ¶¶ 67, 83.

43. The Notice Program was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, the terms of the Settlement, Class Counsel's Fee Application and request for Service Award, and their rights to opt-out of the Settlement

Class or object to the Settlement. The Notices and Notice Program constituted sufficient notice to all persons entitled to notice. The Notices and Notice Program satisfied all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of due process.

44. The Notice Program was comprised of three (3) parts: (1) direct mail postcard notice ("Mailed Notice") to all identifiable Settlement Class Members; (2) publication notice ("Published Notice") designed to reach those Settlement Class Members for whom direct mail notice was not possible; and (3) a "Long-Form" notice with more detail than the direct mail or publication notices, that has been and remains available on the Settlement Web Site and via mail upon request. Agreement, Section VIII.

45. All forms of Notice to the Settlement Class included, among other information: a description 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 on which the Final Approval Hearing will occur; and the address of the Settlement Website at which Settlement Class Members may access the Agreement and other related documents and information.

46. In addition to the information described above, the "Long-Form" notice also described the procedure and deadlines for Settlement Class Members to opt out of the Settlement or to object to the Settlement, and/or to Class Counsel's Fee Application and/or request for Service Award.

1. <u>The Mailed Notice Program</u>

47. As described in the accompanying Declaration of Cameron Azari, the Mailed Notice Program was administered and timely completed by the Notice Administrator in accord with Section VIII the Agreement.

2. The Published Notice Program

48. As described in the accompanying Declaration of Cameron Azari, the Published Notice Program was administered and timely completed by the Notice Administrator in accord with paragraph 81 of the Agreement.

3. The Settlement Website and the Toll-Free Settlement Line

49. As described in the accompanying Declaration of Cameron Azari, the Notice Administrator timely established and has maintained the Settlement Website as a means for Settlement Class Members to obtain notice of, and information about, the Settlement. Agreement ¶¶ 62, 73. The Settlement Website includes hyperlinks to the Settlement, the "Long-Form" notice, the Preliminary Approval Order, and such other documents as Settlement Class Counsel and counsel for BancorpSouth agreed to post on the Settlement Website. *Id.* These documents will remain on the Settlement Website at least until Final Approval. *Id.*

50. As described in the accompanying Declaration of Cameron Azari, the Notice Administrator also timely established and has maintained an automated 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. Agreement ¶ 72(iv).

H. Settlement Termination.

51. Except as provided in paragraphs 104(c) of the Agreement, either Party may terminate the Settlement if it is rejected or materially modified by the Court or an appellate court. Agreement ¶ 113. BancorpSouth also has the right to terminate the Settlement if the number of Settlement Class Members who timely opt out of the Settlement Class equals or exceeds the number or percentage specified in the separate letter executed concurrently with the Agreement by the Bank's counsel and Settlement Class Counsel. *Id.* at ¶ 114. The number or percentage

will be confidential except to the Court which,, upon request, will be provided with a copy of the letter agreement for *in camera* review. *Id.*

I. <u>Service Award, Attorneys' Fees and Costs.</u>

52. Class Counsel are entitled to request, and BancorpSouth will not oppose, a Service Award of $10,000 for the Class Representative. Agreement ¶ 111. If the Court approves the Service Award, it will be paid from the Settlement Fund and will be in addition to any other relief to which the Plaintiff is entitled under the terms of the Settlement. *Id.* The award will compensate the Plaintiff/Class Representative for his time and effort in the Action, and for the risks he undertook in prosecuting the Action against BancorpSouth.

53. Class Counsel are entitled to request, and BancorpSouth will not oppose, an award of attorneys' fees up to thirty-five percent (35%) of the $24,000,000 Settlement Fund, plus reimbursement of certain litigation costs and expenses. Agreement ¶ 108. The Parties negotiated and reached this agreement regarding attorneys' fees and costs only after reaching agreement on all other material terms of the Settlement. *Id*. at ¶ 112.

J. <u>Considerations Supporting Settlement.</u>

1. <u>The Settlement is the Product of Good Faith, Informed and Arm's Length Negotiations.</u>

54. Settlement negotiations were informed by the experience of counsel in the litigation, certification, trial and settlement of nationwide class action cases. In particular, Class Counsel had the benefit of years of experience and a familiarity with the facts of this Action, as well as numerous other cases involving similar claims.

55. As detailed above, Class Counsel conducted substantial discovery and litigation relating to the Plaintiff' claims and the Bank's anticipated defenses. Class Counsel's analysis

enabled them to gain an understanding of the legal and factual issues in the Action, and prepared them for well-informed settlement negotiations.

56. Settlement Class Counsel were well-positioned to evaluate the strengths and weaknesses of Plaintiff's claims, as well as the appropriate basis upon which to settle them, as a result of the litigation and settlement of similar cases reached within and outside of MDL 2036.

57. Class Counsel also gained a thorough understanding of the practical and legal issues they would continue to face litigating these claims based, in part, on similar claims challenging Wells Fargo's high-to-low posting practices prosecuted in *Gutierrez v. Wells Fargo Bank, N.A.*, 730 F. Supp. 2d 1080 (N.D. Cal. 2010). Wells Fargo appealed the final judgment in *Gutierrez* to the United States Court of Appeals for the Ninth Circuit, which affirmed in part and reversed in part and remanded for further proceedings. *See Gutierrez v Wells Fargo Bank, N.A.*, 704 F.3d 712 (9th Cir. 2012). Following remand, the District Court in *Gutierrez* reinstated the final judgment in favor of the certified California class of Wells Fargo customers. The Ninth Circuit subsequently affirmed the reinstated judgment, 589 F. App'x 824 (9th Cir. 2014), and the Supreme Court recently denied review, 2016 U.S. LEXIS 2408.

2. <u>Risks Associated with Trial Favor Settlement.</u>

58. While Settlement Class Counsel are confident in the strength of Plaintiff's and the certified class's case, we are also pragmatic in our awareness of the various defenses available to BancorpSouth, and the risks inherent in continued litigation. While Plaintiff and the certified class avoided dismissal at the motion to dismiss stage, obtained class certification, and survived summary judgment, the ultimate success of Plaintiff's and the certified class's claims would turn on these and other questions that were certain to arise in the context of trial and post-judgment appellate review.

59. Protracted litigation carries inherent risks and inevitable delay. Under the circumstances, Settlement Class Counsel determined that the Settlement outweighs the risks of continued litigation.

3. The Settlement Amount is Reasonable Given the Range of Possible Recovery.

60. In reaching the Settlement, Settlement Class Counsel were forced to consider the potential impact of BancorpSouth's various defenses at trial and in an inevitable post-judgment plenary appeal, in addition to all of the other litigation risks created in this complex Action.

61. The $24,000,000 cash recovery obtained through the Settlement represents approximately fifty-seven percent (57%) of Plaintiff's and Settlement Class Members' *maximum* possible damages recovery, *if* Plaintiff and the certified class were successful in all respects through trial and on plenary appeal. On the other hand, if BancorpSouth succeeded at trial or on appeal, the total damages recoverable by Plaintiff and the certified class could have decreased to zero.

62. Given these risks, the $24,000,000 cash recovery obtained through the Settlement is outstanding. In addition, BancorpSouth's agreement to pay up to $500,000 of the fees, costs and expenses associated with the Notice Program and administration of the Settlement further enhances the recovery, as that will not reduce the amount available for distribution to eligible Settlement Class Members.

63. The recovery achieved by this Settlement must be measured against the fact that any recovery by Plaintiff' and Settlement Class Members through continued litigation could only have been achieved if: (i) Plaintiff and the certified class established liability and recovered damages at trial; and (ii) the final judgment was affirmed on appeal. The Settlement is an extremely fair and reasonable recovery for the Settlement Class in light of BancorpSouth's

defenses, and the challenging and unpredictable path of litigation that Plaintiff and the Settlement Class would have faced absent the Settlement.

4. The Complexity, Expense, and Duration of Ongoing Litigation Favors Settlement.

64. The Settlement is the best vehicle for approximately 190,000 Settlement Class Members to receive the relief to which they are entitled in a prompt and efficient manner. Ongoing litigation would involve trial and a plenary appeal to the United States Court of Appeals for the Eleventh Circuit. Thus, absent the Settlement, the Action would likely continue for at least two more years.

5. The Factual Record Is Sufficiently Developed to Enable Plaintiff and Settlement Class Counsel to Make a Reasoned Judgment Concerning This Settlement.

65. The Action was settled with the benefit of extensive briefing and decisions involving BancorpSouth and other banks in proceedings before the MDL 2036 Court, the Eleventh Circuit, and ultimately following remand, from final pretrial proceedings before this Court. Settlement Class Counsel also had the benefit of 100,000 pages produced by BancorpSouth, as well as deposition testimony from approximately fourteen fact and expert witnesses. Review of those documents and deposition testimony positioned Settlement Class Counsel to evaluate with confidence the strengths and weaknesses of Plaintiff's and the certified class' claims and the prospects for success at trial and on appeal. Settlement Class Counsel, with the benefit of their experience in MDL No. 2036, were well positioned to evaluate with confidence the strengths and weaknesses of Plaintiff's and the certified class's claims and BancorpSouth's defenses.

6. Plaintiff Faced Significant Obstacles to Prevailing.

66. Protracted litigation involves risks, delay and expenses; this case is no exception. While Settlement Class Counsel believe that Plaintiff had a solid case against BancorpSouth, we are mindful that BancorpSouth advanced significant defenses that we would have been required to overcome in the absence of the Settlement. As discussed, above, this Action involved several major litigation risks.

67. Apart from the risks, continued litigation would have involved substantial delay and expense, which further counsels in favor of Final Approval. Although the MDL 2036 Court previously certified a class for litigation purposes in the Action (S.D. Fla. D.E. # 2673, 3540) and denied summary judgment, and this Court denied BancorpSouth's motion to reconsider the MDL 2036 Court's pretrial rulings, Plaintiff and the certified class still faced a trial on the merits and a post-judgment appeal. The uncertainties and delays from this process would have been significant. Given the myriad risks attending these claims, as well as the certainty of substantial delay and expense from ongoing litigation, the Settlement cannot be seen as anything except a fair compromise.

7. The Benefits Provided by the Settlement Are Fair, Adequate and Reasonable Compared to the Range of Possible Recovery.

68. This Settlement provides reasonable benefits to the Settlement Class. Class Counsel's expert's analysis of BancorpSouth's transactional data showed that the *maximum* possible damages Plaintiff and the Settlement Class could reasonably have anticipated recovering at a trial in the Action was $42,295,560.69. *See* Declaration of Arthur Olsen. Through Settlement, Plaintiff and the Settlement Class Members achieved a recovery of approximately fifty-seven percent (57%) of those damages without further risks or delays. The additional $500,000 being paid by BancorpSouth toward Notice and administration of the

Settlement increases the recovery percentage even higher. If BancorpSouth succeeded at trial or on appeal the total damages recovered by the certified class could have been less or even none at all.

69. The $24,000,000 cash recovery obtained through this Settlement is an extremely fair and reasonable recovery to the Settlement Class in light of BancorpSouth's merits defenses, as well as the challenging, unpredictable path of litigation that Plaintiff and the certified class would otherwise have continued to face in the trial and appellate courts.

70. The Automatic Distribution process further supports Final Approval. All Settlement Class Members who experienced a Differential Overdraft Fee will receive their cash benefits automatically, without needing to fill out any claim forms – or indeed to take any affirmative steps whatsoever.

8. <u>The Opinions of Settlement Class Counsel, the Plaintiff, and Absent Class Members Favor Approval of the Settlement</u>.

71. Settlement Class Counsel believe this Settlement represents an excellent result in the face of extraordinary risks, and represents the best vehicle for Settlement Class Members to receive the relief to which they are entitled in a prompt and efficient manner.

72. The recovery achieved by this Settlement must be measured against the fact that any recovery by Plaintiff and Settlement Class Members through continued litigation could only have been achieved if (i) Plaintiff and the certified class established liability at trial; (ii) Plaintiff and the certified class recovered damages at trial under our theory of the case; and (iii) the final judgment was affirmed on appeal. Given the extraordinary obstacles that Plaintiff and the certified class continued to face in the litigation, this recovery is a significant achievement by any objective measure.

73. To date, there has been virtually no opposition to the Settlement. As of May 9, 2016, no Settlement Class Members had requested to be excluded from the Settlement Class (in addition to the 238 received during the Notice of Pendency notice effort in 2013). As of the same date, there were no known objections to the Settlement.

74. Based on these and other reasons, we are of the opinion that the Settlement is deserving of Final Approval.

K. Service Award.

75. Pursuant to the Settlement, Class Counsel request, and BancorpSouth does not oppose, a Service Award of $10,000 for the Plaintiff/Class Representative, Shane Swift. Agreement ¶ 111. If the Court approves it, the Service Award will be paid from the Settlement Fund, and will be in addition to any relief to which Plaintiff/Class Representative Swift is entitled under the terms of the Settlement. *Id.* This award will compensate the Plaintiff/Class Representative Swift for his time and effort and the risks he undertook in prosecuting the Action.

76. Service awards compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation. Courts have found service awards to be an efficient and productive way to encourage members of a class to become class representatives.

77. The factors for determining a service award include: (1) the actions the class representatives took to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the class representatives expended in pursuing the litigation.

78. The above factors, as applied to this Action, demonstrate the reasonableness of Service Award to Plaintiff/Class Representative Shane Swift. Mr. Swift provided substantial assistance that enabled Class Counsel to successfully prosecute the Action and reach the

Settlement, including (1) submitting to interviews with Class Counsel, (2) locating and forwarding responsive documents and information (i.e., monthly account statements and account agreements), and (3) appearing for a lengthy deposition taken by BancorpSouth's counsel. In so doing, the Plaintiff/Class Representative Swift was integral to forming the theory of the case. He not only devoted time and effort to the litigation, but the end result of his efforts, and those of Class Counsel, conferred a substantial benefit on the Settlement Class.

79. If the Court approves it, the total Service Award will be $10,000. This amount represents less than 0.0005% of the Settlement Fund, a ratio that falls well below the range of reasonable service awards.

L. Attorneys' Fees and Expenses.

80. Pursuant to the Settlement, Class Counsel request that the Court award attorneys' fees of thirty-five percent (35%) of the $24,000,000 Settlement Fund, plus reimbursement of $338,605.49 representing certain litigation costs and expenses we incurred in the prosecution and settlement of the Action. Pursuant to the Settlement, BancorpSouth agreed not to oppose our request for such fees and expenses. We negotiated and reached this agreement regarding attorneys' fees and expenses only after reaching agreement on all other material terms of this Settlement.

81. The Court-approved Notice disseminated to the Settlement Class indicated that Class Counsel intended to request a fee of up to thirty-five percent (35%) of the $24,000,000 common fund created through our efforts, plus reimbursement of litigation costs and expenses.

1. The Claims Against BancorpSouth Required Substantial Time and Labor.

82. Prosecuting and settling the claims in the Action demanded considerable time and labor, making this fee request reasonable. Throughout the pendency of the Action, the

organization of Class Counsel ensured that we engaged in coordinated, productive work to maximize efficiency and minimize duplication of effort.

83. Class Counsel devoted substantial time to investigating the claims against BancorpSouth. We interviewed BancorpSouth customers and potential plaintiffs to gather information about BancorpSouth's conduct and its effect on consumers. This information was essential to our ability to understand the nature of BancorpSouth's conduct, the language of the account agreements at issue, and potential remedies.

84. Class Counsel also expended significant resources researching and developing the legal theories and arguments presented in our pleadings and motions, and in opposition to BancorpSouth's motions, before the MDL 2036 Court, the Eleventh Circuit and, ultimately following remand, before this Court.

85. Substantial time and resources were also dedicated to conducting discovery. Class Counsel took approximately fourteen depositions of BancorpSouth's fact and expert witnesses. BancorpSouth took five depositions of Plaintiff's fact and expert witnesses. Class Counsel also devoted a substantial amount of time to reviewing over 100,000 pages of documents and voluminous electronic spreadsheets and other data produced by BancorpSouth. Class Counsel also served and responded to written discovery.

86. Settlement negotiations consumed further time and resources. The initial mediation session held in 2012 required substantial preparation. In October 2015, at this Court's direction, Settlement Class Counsel and BancorpSouth participated in a second mediation conference that also required substantial preparation. Substantial time and effort was devoted to the continued settlement negotiations following the mediation session that ultimately resulted in

the Parties' agreement. Finally, a significant time was devoted to the drafting of the Agreement and the preliminary approval process. All of this work consumed a substantial amount of time.

87. This case was litigated longer than any other settlement reached to date for a case that was included in MDL 2036 (nearly 6 years). The Parties completed everything but the trial itself; all pretrial discovery and motion practice was completed at the time we reached the Settlement. All told, our steadfast and coordinated work paid dividends for the Settlement Class. Taken together, the time and resources we devoted to prosecuting and settling this Action support the fee we are now seeking.

2. <u>The Issues Involved Were Novel and Difficult, and Required the Exceptional Skill of a Talented Group of Attorneys.</u>

88. The MDL 2036 Court, and to a limited extent this Court, witnessed the high quality of our legal work, which conferred a significant benefit on the Settlement Class in the face of numerous litigation obstacles. It required the acquisition and analysis of substantial factual information and complex legal issues. Moreover, the management of the very large MDL 2036, including the Action against BancorpSouth before remand, presented challenges that many law firms are simply not able to meet.

89. Indeed, litigation of a case like this requires counsel highly trained in class action law and procedure as well as the specialized issues these cases present. Class Counsel possess these attributes, and their participation on the team added value to the representation of this Settlement Class of approximately 190,000 Account holders.

90. The record before the Court shows that the Action involved a wide array of complex and novel challenges. We met every challenge, at every juncture.

91. In assessing the quality of representation by Class Counsel, the Court also should consider the quality of BancorpSouth's counsel. BancorpSouth was represented by extremely

able and diligent attorneys, led Eric J. Taylor of Hunton & Williams LLP. Mr. Taylor and his colleagues were worthy, highly competent adversaries.

3. Class Counsel Achieved a Successful Result.

92. The Settlement we achieved is excellent in light of the hurdles we faced. Instead of facing additional years of costly and uncertain litigation, all Settlement Class Members who experienced a Differential Overdraft Fee and do not opt-out will receive automatic distributions under the Settlement. Moreover, the Settlement Fund will not be substantially diminished by the fees and expenses associated with the Notice Program and Settlement administration; up to $500,000 of those fees and expenses have been and will continue to be borne by BancorpSouth. Furthermore, payments to eligible Settlement Class Members will be forthcoming automatically, through direct deposit for Current Account Holders and checks for Past Account Holders. The Settlement represents an excellent result by any measure.

4. The Claims Against BancorpSouth Entailed Considerable Risk.

93. Prosecuting the Action was risky from the outset. BancorpSouth asserted that the relevant Account agreements expressly authorized it to engage in High-to-Low Posting, that there was nothing wrong with the High-to-Low Posting process it used and that it complied, at all times, with applicable laws and regulations and the terms of the Account agreements with its customers. If the Bank were successful in their defense against the Plaintiff and class members, this litigation would have ground to a halt and this Settlement would never have been achieved.

94. Each of these risks, by itself, could have impeded Plaintiff's and the class's successful prosecution of these claims at trial and on appeal. Together, they clearly demonstrate that Plaintiff's and the class's claims against BancorpSouth entailed considerable risk and that, in light of all the circumstances, the Settlement achieves an excellent class-wide result.

5. Class Counsel Assumed Substantial Risk to Pursue the Action on a Pure Contingency Basis.

95. Class Counsel prosecuted the Action on a contingent fee basis. In undertaking to prosecute this complex action on that basis, we assumed a significant risk of nonpayment or underpayment. That risk favors awarding the requested attorneys' fees.

96. Public policy concerns – especially ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs whose individual claims would defy vindication – further support the requested attorneys' fees.

97. The progress of the Action to date shows the inherent risk we assumed in taking this case on a contingency fee basis. Despite our ongoing effort in litigating the Action for the past six years, we remain completely uncompensated for the substantial time and expenses incurred in this Action. There can be no dispute that the Action entailed substantial risk of nonpayment.

6. The Requested Fee Comports with Customary Fees Awarded in Similar Cases.

98. Although the requested fee is slightly higher than the fee awards in prior settlements for cases in MDL 2036, the 35% fee request here is within the range of reason under the factors listed by the Eleventh Circuit in *Camden I Condo. Ass'n. v. Dunkle*, 946 F.2d 768 (11th Cir. 1991), and supported by similar fee awards in many other cases. Numerous decisions in this Circuit and elsewhere have recognized that a fee award of thirty-five percent (35%) of a common fund is well within the range of a customary fee. Moreover, the requested fee also is extremely close to the range of fee awards in other settlements approved by the MDL 2036 Court.

7. Other Factors Support Approving Class Counsel's Fee Request.

99. Other factors also support granting our fee request. As noted above, the time and expense demands on us were considerable. Moreover, our fee request is firmly rooted in the economics involved in prosecuting a class action. Without adequate compensation and financial reward, cases such as this simply could not be pursued.

8. Reimbursement of Certain Costs and Expenses.

100. Class Counsel also respectfully request reimbursement of $338,605.49, representing limited out-of-pocket costs and expenses we necessarily incurred in connection with the prosecution of the Action and the Settlement. These costs and expenses are comprised of: (1) $289,320.22 in fees and expenses incurred for three experts, including Arthur Olsen, whose services were critical in identifying members of the certified class and in determining their damages, as in reconfirming the identification of Settlement Class Members and the amount of their damages for purposes of the Settlement; (2) $30,361.17 in court reporter fees and transcripts; and (3) $18,924.10 in mediators' fees and expenses. These costs and expenses are recorded in the books and records maintained by Plaintiff's Coordinating Counsel in MDL 2036, and were reasonably and necessarily incurred in furtherance of our prosecution of the Action and the Settlement.

101. We have limited the categories of expenses for which we are seeking reimbursement to the three enumerated above. We are not seeking reimbursement for over $100,000 in other expenses, including (but not limited to) travel expenses and internal and outside copying costs.

* * *

I declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Ft. Lauderdale, Florida, on May 12, 2016.

/s/ Bruce S. Rogow
Bruce S. Rogow

I declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Coral Gables, Florida, on May 12, 2016.

/s/ Robert C. Gilbert
Robert C. Gilbert

I declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Ft. Lauderdale, Florida on May 12, 2016.

/s/ Jeffrey M. Ostrow
Jeffrey M. Ostrow

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

Swift v. BancorpSouth Bank

Case No. 1:10-cv-90-MMP

DECLARATION OF BRIAN T. FITZPATRICK

I. Background and qualifications

1. My name is Brian Fitzpatrick and I am a Professor of Law at Vanderbilt University in Nashville, Tennessee. I joined the Vanderbilt law faculty in 2007, after serving as the John M. Olin Fellow at New York University School of Law in 2005 and 2006. I graduated from Harvard Law School in 2000. After law school, I served as a law clerk to The Honorable Diarmuid O'Scannlain on the United States Court of Appeals for the Ninth Circuit and to The Honorable Antonin Scalia on the United States Supreme Court. I also practiced law for several years in Washington, D.C., at Sidley Austin LLP. My C.V. is attached as Appendix 1.

2. Like my research at New York University before it, my teaching and research at Vanderbilt have focused on class action litigation. I teach the Civil Procedure, Federal Courts, and Complex Litigation courses at Vanderbilt. In addition, I have published a number of articles on class action litigation in such journals as the University of Pennsylvania Law Review, the Journal of Empirical Legal Studies, the Vanderbilt Law Review, the NYU Journal of Law & Business, and the University of Arizona Law Review. My work has been cited by numerous courts, scholars, and media outlets such as the New York Times, USA Today, and Wall Street Journal. I have also been invited to speak at symposia and other events about class action litigation, such as the ABA National Institute on Class Actions in 2011 and 2015, and the ABA

Annual Meeting in 2012. Since 2010, I have also served on the Executive Committee of the Litigation Practice Group of the Federalist Society for Law & Public Policy Studies.

3. In December 2010, I published an article in the Journal of Empirical Legal Studies entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811 (2010) (hereinafter "Empirical Study"). This article is what I believe to be the most comprehensive examination of federal class action settlements and attorneys' fees that has ever been published. Unlike other studies of class actions, which have been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as settlements approved in published opinions), my study attempted to examine *every* class action settlement approved by a federal court over a two-year period, 2006-2007. *See id*. at 812-13. As such, not only is my study an unbiased sample of settlements, but the number of settlements included in my study is several times the number of settlements per year that has been identified in any other empirical study of class action settlements: over this two-year period, I found 688 settlements, including 54 from the Eleventh Circuit alone. *See id*. at 817. I presented the findings of my study at the Conference on Empirical Legal Studies at the University of Southern California School of Law in 2009, the Meeting of the Midwestern Law and Economics Association at the University of Notre Dame in 2009, and before the faculties of many law schools in 2009 and 2010. This study has been relied upon by a number of courts, scholars, and testifying experts. *See*, *e.g.*, *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (relying on article to assess fees); *In re Capital One Tel. Consumer Prot. Act Litig.*, 2015 WL 605203, at *12 (N.D. Ill. Feb. 12, 2015) (same); *In re Neurontin Marketing and Sales Practices Litigation*, 2014 WL 5810625, at *3 (D. Mass. Nov. 10, 2014) (same); *Tennille v. W. Union Co.*, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014)

(same); *In re Colgate-Palmolive Co. Erisa Litig.*, 36 F.Supp.3d 344, 349-51 (S.D.N.Y. 2014) (same); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 991 F.Supp.2d 437, 444-46 & n.8 (E.D.N.Y. 2014) (same); *In re Federal National Mortgage Association Securities, Derivative, and "ERISA" Litigation*, 4 F.Supp.3d 94, 111-12 (D.D.C. 2013) (same); *In re Vioxx Products Liability Litigation*, 2013 WL 5295707, at *3-4 (E.D. La. Sep. 18, 2013) (same); *In re Black Farmers Discrimination Litigation*, 953 F.Supp.2d 82, 98-99 (D.D.C. 2013) (same); *In re Southeastern Milk Antitrust Litigation*, 2013 WL 2155387, at *2 (E.D. Tenn., May 17, 2013) (same); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1081 (S.D. Tex. 2012) (same); *Pavlik v. FDIC*, 2011 WL 5184445, at *4 (N.D. Ill. Nov. 1, 2011) (same); *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

4. I have been asked by class counsel to opine on (1) whether the settlement they have asked the court to approve is fair, adequate, and reasonable, and (2) whether the attorneys' fees they have requested are reasonable. In order to formulate my opinion, I reviewed a number of documents provided to me by class counsel; I have attached a list of these documents (and noted how I refer to these documents herein) in Appendix 2. As I explain, based on my study of settlements across the country and in the Eleventh Circuit in particular—including those in the same multidistrict litigation from which this case was remanded—I believe both the settlement agreement and fee request here are well within the range of reason.

II. Case background

5. This lawsuit alleges that BancorpSouth breached the covenant of good faith and fair dealing and other state laws of general application through its practices of sequencing customers' debit-card transactions from the largest amount to the smallest amount in order to maximize the number of overdraft fees it could charge its customers. The lawsuit was filed on May 18, 2010. In October of that year, the suit was transferred to the United States District Court for the Southern District of Florida to join the *In Re: Checking Account Overdraft Litigation* MDL 2036 ("*Overdraft Litigation MDL*"). Senior District Court Judge James Lawrence King was appointed to preside over the *Overdraft Litigation MDL*, which included class action cases brought against approximately 30 banks.

6. BancorpSouth moved to dismiss the case in early 2011, but its motion was denied. Thereafter the parties exchanged discovery for many months and in December 2011, the plaintiff moved for class certification. On May 4, 2012, Judge King certified this case here as a class action, and, after discovery was completed and the court resolved a number of pretrial motions, the case was remanded back to this court for trial. Upon remand, BancorpSouth moved to transfer venue to the Eastern District of Arkansas, which this court denied after briefing and argument. The court then directed the parties to file a series of pretrial submissions identifying any outstanding issues. BancorpSouth's filings included requests that this court reconsider a number of the pretrial matters previously decided by Judge King while this case was part of the *Overdraft Litigation MDL*. Following several rounds of briefing and a hearing, this court denied BancorpSouth's requests to revisit issues previously decided by Judge King, and ordered the parties to participate in a new round of mediation prior to scheduling the trial.

7. Following a series of mediation conferences in the fall of 2015, the parties finally reached a settlement providing for the creation of a $24 million settlement fund, plus $500,000

toward settlement notice and administration costs. This court granted preliminary approval to the settlement on March 8, 2016. The parties have now moved the court to grant final approval to the settlement, and to award class counsel fees and expenses for their work in this case.

8. The settlement class includes, with minor exceptions, all holders of BancorpSouth consumer accounts who, between various dates depending on each state's applicable statute of limitations,[1] "incurred one or more Overdraft Fees as a result of BancorpSouth's High-to-Low Posting." BancorpSouth Settlement Agreement ¶ 64. Pursuant to the settlement agreement, the settlement class will release BancorpSouth from any and all claims pertaining to matters during the class period that "were or could possibly have been claimed" in this lawsuit, including any claims arising out of "the notation or assessment of one or multiple Overdraft Fees," "the amount of one or more Overdraft Fees," and "debit transaction sequencing or posting order . . . ." *Id*. at ¶ 105. In exchange, BancorpSouth will pay the class $24 million, to be distributed *pro rata* (after deducting attorneys' fees, expenses, and any service awards to the named plaintiff) based on the amount of each class member's damages, and with no amount reverting to BancorpSouth (except, if residual funds remain following distributions to class members, to reimburse it for the actual costs of settlement notice and administration that BancorpSouth will pay pursuant to the settlement, see below). *See id*. at ¶¶ 66, 93, 95-96, 104. All settlement class members will receive their cash distributions automatically, without the need to file claim forms. *See id*. at ¶¶ 100-102. In addition to this cash compensation, BancorpSouth has agreed to pay up to $500,000 of the costs associated with administering and notifying the class of the settlement. *See id.* at ¶ 67.

9. Plaintiffs and class counsel are now moving for final approval of the settlement and class counsel are moving for an award of fees equal to $8.4 million plus expenses.

[1] *See* BancorpSouth Settlement Agreement ¶ 32.

III. Assessment of the reasonableness of the settlement

10. Under Federal Rule of Civil Procedure 23, class actions can be settled "only with the court's approval," Fed. R. Civ. P. 23(e), and only if the settlement is "fair, reasonable, and adequate," Fed. R. Civ. P. 23(e)(2). The court is given this responsibility because the interests of class counsel, the class representative, and the defendant can diverge from the interests of absent class members, and the court must ensure that the absent class members are treated fairly before they are bound to the agreement. *See, e.g.,* Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand. L. Rev. 1623, 1630 (2009) (hereinafter "Objector Blackmail").

11. Courts usually examine a number of factors in discharging this duty. In the Eleventh Circuit, courts have been instructed to consider at least six factors: "(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the anticipated complexity, expense, and duration of litigation; (5) the opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved." *Faught v. Amer. Home Shield Corp.*, 668 F.3d 1233, 1240 (11th Cir. 2012); *see also Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). Although it is not possible to fully assess the fifth factor yet because the deadline for objections to the settlement has not yet passed,[2] as I explain below, all of the other factors clearly counsel in favor of approving the settlement.

12. Consider first the factors "(1) the likelihood of success at trial," "(2) the range of possible recovery," and "(3) the range of possible recovery at which a settlement is fair,

[2] It is important to note that, even if there is opposition to the settlement from class members, not all opposition is created equal. Although some class members file objections because they sincerely believe there is something amiss in the settlement, many others do so only to try to delay final resolution of the case and to use that delay to extract side payments from class counsel. This phenomenon is known as objector blackmail, and courts are wise to stand guard against it. *See generally* Fitzpatrick, *Objector Blackmail, supra*.

adequate, and reasonable." These factors together ask the court to assess whether the settlement is a fair value in light of the risks presented by the litigation. That is, these factors ask the court to compare the relief called for in the settlement with the relief the class might have recovered had the case gone forward, discounted by the risks of no or reduced recovery. According to class counsel, the $24 million settlement fund constitutes approximately 57% of the wrongful overdraft fees the settlement class members were charged (compared to chronological ordering). *See* BancorpSouth Joint Declaration ¶ 53. In light of the risks and expense of class action litigation, this level of recovery is very successful. *See, e.g., In re Cendant Corp. Litig.*, 264 F.3d 201, 241 & n.22 (3d Cir. 2001) (citing securities class action settlements with recoveries between 1.6% and 14% of damages). As I explain below, it is even more successful when compared to the other settlements from the *Overdraft Litigation MDL* and in light of the history and risks presented by this case in particular.

13. First, it was not at all clear that the class here would have won its case on the merits. Like many other banks in the *Overdraft Litigation MDL*, BancorpSouth asserted a number of defenses under state law. Although Judge King rejected these defenses as a matter of law, other courts have not, and, it is not at all clear how an appellate court would ultimately rule on these issues. Moreover, it is not at all clear how a jury would have seen these defenses as a matter of fact had this case proceeded to trial. The recovery of 57% of the highest possible damages here is, in my opinion, an excellent one when compared to the possibilities that the class could have recovered much less or nothing at all at trial, or as a result of a post-judgment appeal.

14. Second, it is even more apparent that the recovery here is excellent in light of the risks when the settlement is compared to the others from the *Overdraft Litigation MDL*. In Table

1, I set forth each of these settlements, the sum of the cash (and any valued policy changes called for in the settlement) as a percentage of the class's damages (using chronological ordering as the baseline), whether the defendant had invoked arbitration with a class action waiver,[3] the approximate number of states comprising the plaintiff classes in each case,[4] and any other obvious considerations relevant to the risk and recovery in these suits. As this table shows, most of the settlements to date in the *Overdraft Litigation MDL* recovered between roughly 40% and 65% of the damages estimated by class counsel's expert, with the variation largely dependent on how likely the prospects for class certification appeared (including the prospects of surviving an appeal under Fed. R. Civ. P. 23(f) to review class certification).[5] The settlement here will recover more of the class's damages than almost any other settlement, with the few exceptions typically only in cases with class members from fewer states (thereby posing less risk of winning or maintaining class certification). In short, the risk-recovery tradeoff here is very much in line with the settlements approved in the *Overdraft Litigation MDL*.

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[3] Although not applicable in this case, this factor is important because class action waivers imbedded in arbitration agreements are enforceable over state unconscionability laws, and the presence of such a waiver is one of the most significant risk factors in the lawsuits in this MDL. *See AT&T Mobility LLC v. Concepcion*, 131 S.Ct. 1740 (2011).

[4] These numbers were provided to me by class counsel. This factor is important because the lawsuits in the *Overdraft Litigation MDL* are based on state law claims and the laws of the states vary to some extent. This is a risk factor because the greater the number of states comprising the class, the greater the risk posed by the predominance requirement under Fed. R. Civ. P. 23(b)(3).

[5] The exceptions were the Bank of America settlement, the Chase settlement, the M&I settlement, the Compass settlement, the U.S. Bank settlement, and the M&T settlement. In my opinion, other factors justified the lower percentage recoveries in those settlements. As I alluded to in the table, the lower percentage recovered against Bank of America was nevertheless quite impressive because class counsel estimated that approximately 80% of the value of the claims there had already been settled and released in state court in California; although class counsel were challenging that settlement in California state court, they had been rebuffed by the trial court and there was substantial doubt they would have had any more success on appeal. With regard to the settlements with Chase, M&I, Compass, U.S. Bank, and M&T, the lower percentage recoveries were well justified, in my opinion, by the fact that the defendant banks invoked arbitration clauses with class action waivers in these cases; these waivers create great risks that account holders might not recover anything at all.

Table 1: Settlements from *In re: Checking Account Overdraft Litigation*, MDL No. 2036

Defendant	Final approval	Recovery as % of damages	Arbitration invoked?	No. of states	Other factors
BancorpSouth[6]	Pending	57%	No	8	Certified, 23(f) denied
Capital One[7]	5/22/15	35%	No	6	Certified, 23(f) denied, abbr. statute of limit. pd.
Synovus Bank[8]	4/2/15	36%	Yes	4	
M&T Bank[9]	3/13/15	5%	Yes	10	
Comerica[10]	6/10/14	35%	No	5	Certified, 23(f) denied, abbr. contractual limit. pd.
Susquehanna[11]	4/1/14	40%	No	4	
U.S. Bank[12]	1/6/14	13%	Yes	24	
Compass[13]	8/7/13	16%	Yes	7	
PNC[14]	8/5/13	45+%	No	14	Certified, recon. pending
Harris[15]	8/5/13	65+%	No	10	
M & I[16]	8/2/13	25+%	Yes	10	
Great Western[17]	8/2/13	50+%	No	7	
Commerce[18]	8/2/13	57%	No	6	
Associated[19]	8/2/13	50+%	No	4	
TD[20]	3/18/13	42%	No	14	Certified, 23(f) pending
Citizens[21]	3/12/13	42%	No	13	

[6] *See* BancorpSouth Joint Declaration ¶ 53.
[7] *See* Capital One Joint Declaration ¶ 61.
[8] *See* Synovus Bank Joint Declaration ¶ 46.
[9] *See* M&T Bank Joint Declaration ¶ 61.
[10] *See* Comerica Joint Declaration ¶ 49.
[11] *See* Susquehanna Joint Declaration ¶ 43.
[12] *See* U.S. Bank Joint Declaration ¶ 73.
[13] *See* Compass Joint Declaration ¶ 65.
[14] *See* PNC Joint Declaration ¶ 62. The percentage number listed in the table is based solely on the cash portion of the settlement; the total percentage recovery is unknown because the changed practices the bank agreed to as part of the settlement were not valued.
[15] *See* Harris Bank Joint Declaration ¶ 38. The percentage number listed in the table is based solely on the cash portion of the settlement; the total percentage recovery is unknown because the changed practices the bank agreed to as part of the settlement were not valued.
[16] *See* M&I Joint Declaration ¶¶ 9, 39. The percentage number listed in the table is based solely on the cash portion of the settlement; the total percentage recovery is unknown because the changed practices the bank agreed to as part of the settlement were not valued.
[17] *See* Great Western Joint Declaration ¶ 50. The percentage number listed in the table is based solely on the cash portion of the settlement; the total percentage recovery is unknown because the changed practices the bank agreed to as part of the settlement were not valued.
[18] *See* Commerce Bank Joint Declaration ¶¶ 21, 45. The $18.3 million cash portion of the settlement constituted 45% of the class's estimated damages; the valuation of the defendant's changed practices constituted the remainder.
[19] *See* Associated Bank Joint Declaration ¶ 50. The percentage number listed in the table is based solely on the cash portion of the settlement; the total percentage recovery is unknown because the changed practices the bank agreed to as part of the settlement were not valued.
[20] *See* TD Bank Joint Declaration ¶¶ 25-27, 54.

Chase[22]	12/19/12	21%	Yes	25	
Bank of the West[23]	12/18/12	52%	No	19	
Union[24]	10/4/12	63%	No	3	Certified, 23(f) denied
Bank of OK[25]	9/13/12	46%	No	9	
Bank of America[26]	11/22/11	9-45%	No	50	Prior settlement

15. Consider next the factor "(4) the anticipated complexity, expense, and duration of litigation." This factor asks the court to assess whether the risk-recovery trade-off identified by the above factors might be further justified by the savings in time and expense that the settlement brings. At the time of settlement, the parties were on the precipice of trial; motions *in limine* had been decided and this court had already held the final pretrial hearing. Had the parties not settled, they would have had to complete preparations for trial, present trial and all that goes with it, litigate post-trial motions, and then litigate any appeals on the merits before the Eleventh Circuit. Even at this advanced stage of litigation, all of this would have probably consumed millions of dollars of class counsel's time and delay any payments to class members for several years. As such, this factor further supports the settlement in this case.

16. Consider next the factor "(6) the stage of proceedings at which the settlement was achieved." This factor asks the court to satisfy itself that class counsel have dug far enough into the case to know what the case is worth and to enable the court to assess what the case is worth using the factors discussed above; it is largely a procedural consideration rather than a substantive one. There is no doubt that this case has been litigated long enough to assess its value. As I noted, this case settled on the precipice of trial—indeed, it has gone further than any

[21] *See* Citizens Financial Joint Declaration ¶ 65.
[22] *See* Chase Joint Declaration ¶ 29. The $110 million cash portion of the settlement constituted 14% of the class's estimated damages; the valuation of the defendant's changed practices constituted the remainder.
[23] *See* Bank of the West Joint Declaration ¶ 46.
[24] *See* Union Bank Joint Declaration ¶¶ 15, 49.
[25] *See* Bank of Oklahoma Joint Declaration ¶25.
[26] *See* Bank of America Joint Declaration ¶¶ 24-30, 68.

other case from the *Overdraft Litigation MDL*. The parties have benefited from six years of litigation, hundreds of thousands of pages of discovery, voluminous electronically-stored information, and many depositions. *See* BancorpSouth Joint Declaration ¶ 16. Moreover, the parties have had the benefit of decisions by Judge King in years of related litigation. In other words, the lawsuits from the *Overdraft Litigation MDL*—especially this one—are at a mature stage; they have not been rushed to settlement for a quick fee award.

17. Consider finally one other factor that I believe should be examined in order to complete a thorough assessment of the fairness of this settlement: the care with which class counsel have taken to maximize class member participation in the settlement. First, class counsel have made it possible for class members to know the approximate amount they stand to receive from the settlement before they must decide whether to out opt. *See* Postcard Notice. Second, *all* settlement class members will *automatically* receive their share of the settlement; they will not have to submit claim forms. *See* BancorpSouth Settlement Agreement ¶¶ 100, 102. These features of the settlement are very unusual in my experience (although, the latter feature has been common in class counsel's other settlements from the *Overdraft Litigation MDL*), and they are additional reasons to look favorably on the settlement.

18. For all these reasons, I believe this settlement is not only fair, adequate, and reasonable, but, frankly, very impressive as well.

IV. Assessment of the reasonableness of the request for attorneys' fees

19. This is a so-called "common fund" settlement, where the efforts by attorneys for the plaintiff have created a common fund for the benefit of class members, but, because this is a class action and there is no fee-shifting statute applicable, the attorneys can be compensated only

from the fund they have created. At one time, courts that awarded fees in common fund class actions did so using the familiar lodestar approach. *See* Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little*, 158 U. Pa. L. Rev. 2043, 2051 (2010) (hereinafter "Class Action Lawyers"). Under this approach, courts awarded class counsel a fee equal to the number of hours they worked on the case (to the extent the hours were reasonable), multiplied by a reasonable hourly rate as well as by a discretionary multiplier that courts often based on the risk of non-recovery and other factors. *See id.* Over time, however, the lodestar approach fell out of favor in common fund class actions because it was difficult to calculate the lodestar (courts had to review voluminous time records and the like) and the method did not align the interests of class counsel with the interests of the class (because class counsel's recovery did not depend on how much the class recovered). *See id.* at 2051-52; *Camden I Condominium Ass'n v. Dukle*, 946 F.2d 768, 771-74 (11th Cir. 1991). According to my empirical study, the lodestar method is now used to award fees in only a small percentage of class action cases. *See* Fitzpatrick, *Empirical Study*, *supra*, at 832 (finding the lodestar method used in only 12% of settlements).

20. Reflecting this trend, the Eleventh Circuit held in 1991 that courts should no longer use the lodestar method in common fund cases, and, instead, should use what is known as the percentage method. *See Camden I*, 946 F.2d at 774 ("Henceforth in this circuit, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund . . . ."). Under this approach, courts select a percentage that they believe is fair to class counsel, multiply the settlement amount by that percentage, and then award class counsel the resulting product. The percentage approach has the advantages of being easy to calculate (because courts need not review voluminous time records and the like) and of aligning the interests of class

counsel with the interests of the class (because the more the class recovers, the more class counsel recovers). *See* Fitzpatrick, *Class Action Lawyers, supra,* at 2052.

21. Courts usually examine a number of factors when deciding what percentage to award class counsel under the percentage approach. *See* Fitzpatrick, *Empirical Study, supra*, at 832. In the Eleventh Circuit, courts use 25% as the "'bench mark' percentage fee award" and then adjust it upward or downward "in accordance with the individual circumstances of each case." *Camden I*, 946 F.2d at 775. Although "[t]he factors which will impact upon the appropriate percentage . . . in any particular case will undoubtedly vary," the Eleventh Circuit has identified sixteen factors that it has said may be "appropriate[]" or "pertinent" to consider. *Camden I*, 946 F.2d at 775. These factors include "[1] the time required to reach a settlement, [2] whether there are any substantial objections . . ., [3] any non-monetary benefits conferred upon the class . . ., and [4] the economics involved in prosecuting a class action," *id*., as well as the twelve factors from *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974): "[5] the time and labor required; [6] the novelty and difficulty of the questions involved; [7] the skill requisite to perform the legal service properly; [8] the preclusion of other employment by the attorney due to acceptance of the case; [9] the customary fee; [10] whether the fee is fixed or contingent; [11] time limitations imposed by the client or the circumstances; [12] the amount involved and the results obtained; [13] the experience, reputation, and ability of the attorneys; [14] the 'undesirability' of the case; [15] the nature and length of the professional relationship with the client; [and] [16] awards in similar cases." *Camden I*, 946 F.2d at 772 n.3.

22. In this case, class counsel are seeking an award of fees equal to $8.4 million. This is thirty-four percent (34%) of the total $24.5 million settlement fund.[27] In my opinion, the

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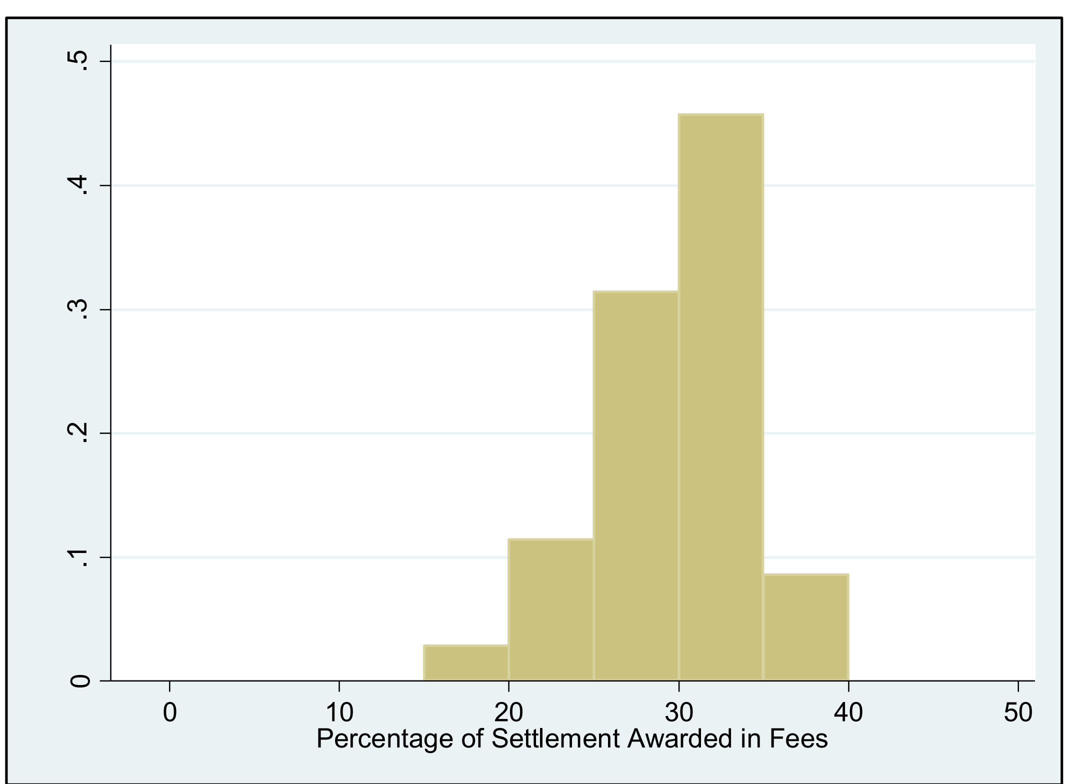
[27] It is customary to add notice and administration costs paid by the defendant to the common fund because those expenditures also benefit the class.

award requested here is within the range of reason in light of the factors listed by the Eleventh Circuit in *Camden I*.

23. Consider first the factors that go to the fee awards in other cases: "[9] the customary fee" and "[16] awards in similar cases." In my empirical study, there were 35 class action cases in which district courts in the Eleventh Circuit used the percentage method to award attorneys' fees. *See* Fitzpatrick, *Empirical Study, supra*, at 836. The average fee awarded in these cases was 28.1% and the median fee awarded was 30%.[28] *See id.* Although the award requested here is higher, it is by no means unprecedented. This can be seen from Figure 1, which shows the distribution of all of the Eleventh Circuit percentage-method fee awards in my study. In particular, the figure shows what fraction of settlements (y-axis) had fee awards within each five-point range of fee percentages (x-axis). As the figure shows, *over 40%* (i.e., .4) of all settlements included fee awards between 30% (inclusive) and 35%.

[28] In their nationwide study of class action fees, Ted Eisenberg and Geoff Miller found mean and median fee awards in the Eleventh Circuit somewhat lower than those found in my study: 21% and 22%, respectively. *See* Theodore Eisenberg & Geoffrey P. Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical L. Stud. 248, 260 (2010). It should be noted, however, that their study was based on settlements dating back to 1993, and, as such, their data are older than mine. Moreover, their study examined only a fraction of the settlements over this period, and the fraction examined was not designed to be representative of the whole. *See id*. at 253 ("[O]ur data include only opinions that were published in some readily available form. Obviously, therefore, we have not included the full universe of cases . . . . [P]ublished opinions are not necessarily representative of the universe of all cases."). Indeed, one of the reasons their study may have found lower numbers than mine is because it oversampled larger cases (where the fee percentages awarded are often lower than in other cases). *See* Fitzpatrick, *Empirical Study, supra*, at 829 (discussing the unrepresentative sampling in the Eisenberg-Miller studies).

Figure 1: Percentage-method fee awards in the Eleventh Circuit, 2006-2007



Indeed, there are plenty of cases in the Eleventh Circuit where courts have awarded fees of even *more* than 34% when the other factors and circumstances justify it. *See, e.g., Johns Manville v. Tennessee Valley Auth.*, No. 99-2294 (N.D. Ala. Aug. 20, 2007) (awarding $6.3 million in fees—35%—of $18 million class settlement); *Neal v. Chase Manhattan Bank, U.S.A., N.A.*, No. 06-00049 (S.D. Ala. May 30, 2006) (awarding $1 million in fees and expenses—37%—of $2.7 million class settlement). In other words, the fee request here is in line with awards in the Eleventh Circuit.

24. The request here is also consistent with the fee awards in other cases from the *Overdraft Litigation MDL*, where Judge King has awarded either 30% or 31% in every case. *See In re Checking Account Overdraft Litigation*, 830 F. Supp. 2d 1330, 1358-68 (S.D. Fla. 2011) (30%); *Case v. Bank of Oklahoma, N.A.*, No. 11-cv-20815-JLK (S.D. Fla., Sep. 13, 2012)

(same); *Larsen et al. v. Union Bank, N.A.*, No. 09-cv-23235-JLK (S.D. Fla., Oct. 4, 2012) (same); *Dee v. Bank of the West, N.A.*, No. 10-cv-22985-JLK (S.D. Fla., Dec. 18, 2012) (same); *Lopez v. JPMorgan Chase Bank, N.A.*, No. 09-cv-23127-JLK (S.D. Fla., Dec. 19, 2012) (same); *Duval v. Citizens Financial Group, Inc.,* No. 10-cv-21080-JLK (S.D. Fla., Mar. 12, 2013) (same); *Mosser v. TD Bank, N.A.,* No. 10-cv-21386-JLK (S.D. Fla., Mar. 18, 2013) (same); *Harris v. Associated Bank, N.A.*, No. 10-cv-22948-JLK (S.D. Fla., Aug., 2, 2013) (same); *Wolfgeher v. Commerce Bank, N.A.*, No. 10-cv-22017-JLK (S.D. Fla., Aug. 2, 2013) (same); *McKinley v. Great Western Bank*, No. 10-cv-22770-JLK (S.D. Fla., Aug. 2, 2013) (same); *Eno v. M & I Marshall & Illsley Bank*, No. 10-cv-22730-JLK (S.D. Fla., Aug. 2, 2013) (same); *Blahut v. Harris Bank, N.A.*, No. 10-cv-21821-JLK (S.D. Fla., Aug. 5, 2013) (same); *Casayuran, et al. v. PNC Bank, N.A.*, No. 10-cv-20496-JLK (S.D. Fla., Aug. 5, 2013) (same); *Anderson v. Compass Bank*, No. 11-cv-20436-JLK (S.D. Fla., Aug. 7, 2013) (same); *Waters et al. v. U.S. Bank, N.A.*, 09-cv-23034-JLK (S.D. Fla., Jan. 6, 2014) (same); *Mello v. Susquehanna Bank*, No. 11-cv-23250-JLK (S.D. Fla., Apr. 1, 2014) (same); *Simmons v. Comerica Bank*, No. 10-cv-22958-JLK (S.D. Fla., Jun. 10, 2014) (same); *Given v. M&T Bank*, No. 10-cv-20478-JLK (S.D. Fla., Mar. 13, 2015) (same); *Childs v. Synovus Bank*, No. 10-cv-23938-JLK (S.D. Fla., Apr. 2, 2015) (same); *Steen v. Capital One, N.A.*, No. 10-cv-22058-JLK (S.D. Fla., May 22, 2015) (31%).[29] Although the request here is higher than the fee awards in the other cases from the *Overdraft Litigation MDL*, none of those cases was litigated to the precipice of trial before it was resolved like this one was.

25. Indeed, even when compared to fee awards outside the Eleventh Circuit, the fee requested in this case is hardly unprecedented. According to my empirical study, the mean and

[29] In awarding fees in many of these settlements, Judge King relied, in part, on my declarations supporting class counsel's fee requests.

median nationwide using the percentage method was 25.4% and 25%, respectively, with over thirty percent of awards between 30% and 35%. *See* Fitzpatrick, *Empirical Study,* at 833-34, 838. Again, although the fee request here is higher than has been awarded in most cases, when the other factors and circumstances justify it, courts are not afraid to award fees at or above 35%. *See also* Stuart J. Logan et al., *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Rep. 169 (Mar.-Apr. 2003) (listing numerous fee awards above 35% between 1973 and 2003). As I explain below, it is my opinion that these other factors and circumstances justify the request here as well.

26. Consider next the factors that go to the time it took to litigate and resolve these lawsuits: "[1] the time required to reach a settlement" and "[5] the time and labor required." These factors distinguish this case from most others, including the others from the *Overdraft Litigation MDL*. With the exception of the case against Wells Fargo Bank—which is still involved in active litigation in the *Overdraft Litigation* MDL—this case has been litigated longer than any other case in the *Overdraft Litigation MDL* (6 years)—and well beyond the average time to resolve a consumer class action (less than 3 years), *see* Fitzpatrick, *Empirical Study, supra*, at 820. Indeed, as I noted, the parties settled this case on the precipice of trial: all legal motions had been decided, including motions for summary judgment and motions *in limine*, and the court had already held the final pretrial hearing. As such, these factors counsel in favor of a increase from the Eleventh Circuit's benchmark as well as past awards in the *Overdraft Litigation MDL*.

27. Consider next some of the factors that go to the results obtained by class counsel in light of the risks they faced: "[4] the economics involved in prosecuting a class action," "[6] the novelty and difficulty of the questions involved," "[10] whether the fee is fixed or

contingent," "[12] the amount involved and the results obtained," and "[14] the 'undesirability' of the case." As I explained above, the recovery here is very impressive in light of the risks the class faced, even when compared to the other settlements from the *Overdraft Litigation MDL*. Yet, like virtually all consumer class actions, this litigation was undertaken on a contingency basis. That is, class counsel devoted a significant amount of time over six years without receiving any compensation. Given their work and the results achieved, they should now be compensated appropriately. As such, these factors, too, weigh in favor of a deviation from the Eleventh Circuit's benchmark as well as past awards in the *Overdraft Litigation MDL*.

28. Consider next the other *Camden* factors. Two of these factors are inapplicable here (at least as of yet)—"[2] whether there are any substantial objections" and "[3] any non-monetary benefits conferred upon the class"—but the other remaining factors look favorably on the fee award requested here. The other factors go to the skills of class counsel and their relationship with the plaintiffs: "[7] the skill requisite to perform the legal service properly," "[8] the preclusion of other employment by the attorney due to acceptance of the case," "[11] time limitations imposed by the client or the circumstances," "[13] the experience, reputation, and ability of the attorneys," and "[15] the nature and length of the professional relationship with the client." Although I was not privy to the attorney-client relationships here, I can say that class counsel count among their number some of the most experienced and highly regarded lawyers in the United States. These are not mere "benchmark" lawyers. Indeed, had class counsel not been so talented, I doubt the class would have recovered the compensation that is provided in this settlement.

29. Finally, I should note that, even though the lodestar method has fallen out of favor in common fund class actions, some courts (about half in my empirical study) "crosscheck" the

percentage method with class counsel's lodestar for the purpose of capping the percentage at some multiple of the lodestar in order to prevent class counsel from reaping a so-called "windfall." *See* Fitzpatrick, *Empirical Study*, *supra*, at 832. In my opinion, the court should *not* use what has become known as the "lodestar crosscheck." As scholars have pointed out, the lodestar crosscheck reintroduces the very same undesirable effects of the lodestar method that the percentage method was supposed to correct in the first place. *See, e.g.*, Myriam Gilles & Gary Friedman, *Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers*, 155 U. Pa. L. Rev. 103, 140-45 (2006). In particular, the lodestar crosscheck blunts class counsel's incentive to achieve the largest possible award for the class and instead incentivizes them to multiply filings and drag along proceedings to increase their lodestar.

30. Consider the following examples. Suppose a class action lawyer worked on a case for 1 year and accrued a lodestar of $1 million. If the lawyer believed that a court would award it a fee of 25% or 5 times his lodestar, whichever was lesser, then he would be completely indifferent between accepting a settlement offer at this point of $20 million and $200 million; either way, the lawyer would earn $5 million. Needless to say, the incentive to be indifferent as to the size of the settlement is good neither for the class, which is interested in maximizing its compensation, nor for society, which is interested in fully deterring misconduct. Suppose instead the lawyer had been offered $40 million after one year of work. If the lawyer again believed the court would not award a fee of 25% unless it was no more than 5 times his lodestar, then the lawyer would want to delay accepting the settlement until he could generate another $1 million in lodestar and thereby reap the maximum fee. Again, this is good neither for the class nor for

society, both of which have interests in compensating and deterring in the most timely and efficient manner.

31. For these reasons, many courts have rejected the lodestar crosscheck, *see Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988) ("[I]n awarding attorneys' fees in a common fund case, the 'time and labor involved' factor need not be evaluated using the lodestar formulation."), and Judge King refused to undertake it in *all* of the related cases in the *Overdraft Litigation MDL*. *See, e.g., In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1362 ("The lodestar approach should not be imposed through the back door via a 'cross-check.'"). In my opinion, the court here should continue this practice.

32. For all these reasons, I believe the $8.4 million fee award requested here is well within the range of reason.

33. My compensation in this matter is $695 per hour plus expenses.

Nashville, TN

May 12, 2016

Brian T. Fitzpatrick

Appendix 1

BRIAN T. FITZPATRICK

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ACADEMIC APPOINTMENTS

VANDERBILT UNIVERSITY LAW SCHOOL, *Professor*, 2012-present

- *FedEx Research Professor*, 2014-15; *Associate Professor*, 2010-12; *Assistant Professor*, 2007-10
- Classes: Civil Procedure, Federal Courts, Complex Litigation
- Hall-Hartman Outstanding Professor Award, 2008-2009
- Vanderbilt's Association of American Law Schools Teacher of the Year, 2009

EDUCATION

HARVARD LAW SCHOOL, J.D., *magna cum laude*, 2000

- Fay Diploma (for graduating first in the class)
- Sears Prize, 1999 (for highest grades in the second year)
- *Harvard Law Review*, Articles Committee, 1999-2000; Editor, 1998-1999
- *Harvard Journal of Law & Public Policy*, Senior Editor, 1999-2000; Editor, 1998-1999
- Research Assistant, David Shapiro, 1999; Steven Shavell, 1999

UNIVERSITY OF NOTRE DAME, B.S., Chemical Engineering, *summa cum laude*, 1997

- First runner-up to Valedictorian (GPA: 3.97/4.0)
- Steiner Prize, 1997 (for overall achievement in the College of Engineering)

CLERKSHIPS

HON. ANTONIN SCALIA, Supreme Court of the United States, 2001-2002

HON. DIARMUID O'SCANNLAIN, U.S. Court of Appeals for the Ninth Circuit, 2000-2001

EXPERIENCE

NEW YORK UNIVERSITY SCHOOL OF LAW, Feb. 2006 to June 2007
John M. Olin Fellow

HON. JOHN CORNYN, United States Senate, July 2005 to Jan. 2006
Special Counsel for Supreme Court Nominations

SIDLEY AUSTIN LLP, Washington, DC, 2002 to 2005
Litigation Associate

ACADEMIC ARTICLES

An Empirical Look at Compensation in Consumer Class Actions, 11 NYU J. L. & BUS. 767 (2015) (with Robert Gilbert)

The End of Class Actions?, 57 ARIZ. L. REV. 161 (2015)

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The Politics of Merit Selection, 74 MISSOURI L. REV. 675 (2009)

Errors, Omissions, and the Tennessee Plan, 39 U. MEMPHIS L. REV. 85 (2008)

Election by Appointment: The Tennessee Plan Reconsidered, 75 TENN. L. REV. 473 (2008)

Can Michigan Universities Use Proxies for Race After the Ban on Racial Preferences?, 13 MICH. J. RACE & LAW 277 (2007)

BOOK CHAPTERS

Civil Procedure in the Roberts Court in BUSINESS AND THE ROBERTS COURT (Jonathan Adler, ed., Oxford University Press, forthcoming 2016)

Is the Future of Affirmative Action Race Neutral? in A NATION OF WIDENING OPPORTUNITIES: THE CIVIL RIGHTS ACT AT 50 (Ellen Katz & Samuel Bagenstos, eds., Michigan University Press, 2016)

ACADEMIC PRESENTATIONS

The Next Steps for Discovery Reform: Requester Pays, Lawyers for Civil Justice Membership Meeting, Washington, DC (May 5, 2015)

Private Attorney General: Good or Bad?, 17th Annual Federalist Society Faculty Conference, Washington, DC (Jan. 3, 2015)

Liberty, Judicial Independence, and Judicial Power, Liberty Fund Conference, Santa Fe, NM (Nov. 13-16, 2014) (participant)

The Economics of Objecting for All the Right Reasons, 14th Annual Consumer Class Action Symposium, Tampa, Florida (Nov. 9, 2014)

Compensation in Consumer Class Actions: Data and Reform, Conference on The Future of Class Action Litigation: A View from the Consumer Class, NYU Law School, New York, New York (Nov. 7, 2014)

The Future of Federal Class Actions: Can the Promise of Rule 23 Still Be Achieved?, Northern District of California Judicial Conference, Napa, California (Apr. 13, 2014) (panelist)

The End of Class Actions?, Conference on Business Litigation and Regulatory Agency Review in the Era of Roberts Court, Institute for Law & Economic Policy, Boca Raton, Florida (Apr. 4, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, University of Missouri School of Law (Mar. 7, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, George Mason Law School (Mar. 6, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, Roundtable for Third-Party Funding Scholars, Washington & Lee University School of Law (Nov. 7-8, 2013)

Is the Future of Affirmative Action Race Neutral?, Conference on A Nation of Widening Opportunities: The Civil Rights Act at 50, University of Michigan Law School (Oct. 11, 2013)

The Mass Tort Bankruptcy: A Pre-History, The Public Life of the Private Law: A Conference in Honor of Richard A. Nagareda, Vanderbilt Law School (Sep. 28, 2013) (panelist)

Rights & Obligations in Alternative Litigation Financing and Fee Awards in Securities Class Actions, Conference on the Economics of Aggregate Litigation, Institute for Law & Economic Policy, Naples, Florida (Apr. 12, 2013) (panelist)

The End of Class Actions?, Symposium on Class Action Reform, University of Michigan Law School (Mar. 16, 2013)

Toward a More Lawyer-Centric Class Action?, Symposium on Lawyering for Groups, Stein Center for Law & Ethics, Fordham Law School (Nov. 30, 2012)

The Problem: AT & T as It Is Unfolding, Conference on *AT & T Mobility v. Concepcion*, Cardozo Law School (Apr. 26, 2012) (panelist)

Standing under the Statements and Accounts Clause, Conference on Representation without Accountability*,* Corporate Law Center, Fordham Law School (Jan. 23, 2012)

The End of Class Actions?, Washington University Law School (Dec. 9, 2011)

Book Preview Roundtable: Accelerating Democracy: Matching Social Governance to Technological Change, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law (Sep. 15-16, 2011) (participant)

Is Summary Judgment Unconstitutional? Some Thoughts About Originalism, Stanford Law School (Mar. 3, 2011)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Northwestern Law School (Feb. 25, 2011)

The New Politics of Iowa Judicial Retention Elections: Examining the 2010 Campaign and Vote, University of Iowa Law School (Feb. 3, 2011) (panelist)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Washington University Law School (Oct. 1, 2010)

Twombly *and* Iqbal *Reconsidered,* Symposium on Business Law and Regulation in the Roberts Court, Case Western Reserve Law School (Sep. 17, 2010)

Do Class Action Lawyers Make Too Little?, Institute for Law & Economic Policy, Providenciales, Turks & Caicos (Apr. 23, 2010)

Originalism and Summary Judgment, Georgetown Law School (Apr. 5, 2010)

Theorizing Fee Awards in Class Action Litigation, Washington University Law School (Dec. 11, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Conference on Empirical Legal Studies, University of Southern California Law School (Nov. 20, 2009)

Originalism and Summary Judgment, Symposium on Originalism and the Jury, Ohio State Law School (Nov. 17, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Meeting of the Midwestern Law and Economics Association, University of Notre Dame Law School (Oct. 10, 2009)

The End of Objector Blackmail?, Stanford-Yale Junior Faculty Forum, Stanford Law School (May 29, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, University of Minnesota School of Law (Mar. 12, 2009)

The Politics of Merit Selection, Symposium on State Judicial Selection and Retention Systems, University of Missouri Law School (Feb. 27, 2009)

The End of Objector Blackmail?, Searle Center Research Symposium on the Empirical Studies of Civil Liability, Northwestern University School of Law (Oct. 9, 2008)

Alternatives To Affirmative Action After The Michigan Civil Rights Initiative, University of Michigan School of Law (Apr. 3, 2007) (panelist)

OTHER PUBLICATIONS

Lessons from Tennessee Supreme Court Retention Election, THE TENNESSEAN (Aug. 20, 2014)

Public Needs Voice in Judicial Process, THE TENNESSEAN (June 28, 2013)

Did the Supreme Court Just Kill the Class Action?, THE QUARTERLY JOURNAL (April 2012)

Let General Assembly Confirm Judicial Selections, CHATTANOOGA TIMES FREE PRESS (Feb. 19, 2012)

"Tennessee Plan" Needs Revisions, THE TENNESSEAN (Feb. 3, 2012)

How Does Your State Select Its Judges?, INSIDE ALEC 9 (March 2011) (with Stephen Ware)

On the Merits of Merit Selection, THE ADVOCATE 67 (Winter 2010)

Supreme Court Case Could End Class Action Suits, SAN FRANCISCO CHRONICLE (Nov. 7, 2010)

Kagan is an Intellect Capable of Serving Court, THE TENNESSEAN (Jun. 13, 2010)

Confirmation "Kabuki" Does No Justice, POLITICO (July 20, 2009)

Selection by Governor may be Best Judicial Option, THE TENNESSEAN (Apr. 27, 2009)

Verdict on Tennessee Plan May Require a Jury, THE MEMPHIS COMMERCIAL APPEAL (Apr. 16, 2008)

Tennessee's Plan to Appoint Judges Takes Power Away from the Public, THE TENNESSEAN (Mar. 14, 2008)

Process of Picking Judges Broken, CHATTANOOGA TIMES FREE PRESS (Feb. 27, 2008)

Disorder in the Court, LOS ANGELES TIMES (Jul. 11, 2007)

Scalia's Mistake, NATIONAL LAW JOURNAL (Apr. 24, 2006)

GM Backs Its Bottom Line, DETROIT FREE PRESS (Mar. 19, 2003)

Good for GM, Bad for Racial Fairness, LOS ANGELES TIMES (Mar. 18, 2003)

10 Percent Fraud, WASHINGTON TIMES (Nov. 15, 2002)

OTHER PRESENTATIONS

The New Business of Law: Attorney Outsourcing, Legal Service Companies, and Commercial Litigation Funding, Tennessee Bar Association, Nashville, TN (Nov. 12, 2014)

Hedge Funds + Lawsuits = A Good Idea?, Vanderbilt University Alumni Association, Washington, DC (Sep. 3, 2014)

Judicial Selection in Historical and National Perspective, Committee on the Judiciary, Kansas Senate (Jan. 16, 2013)

The Practice that Never Sleeps: What's Happened to, and What's Next for, Class Actions, ABA Annual Meeting, Chicago, IL (Aug. 3, 2012) (panelist)

Life as a Supreme Court Law Clerk and Views on the Health Care Debate, Exchange Club of Nashville (Apr. 3, 2012)

The Tennessee Judicial Selection Process—Shaping Our Future, Tennessee Bar Association Leadership Law Retreat, Dickson, TN (Feb. 3, 2012) (panelist)

Reexamining the Class Action Practice, ABA National Institute on Class Actions, New York, NY (Oct. 14, 2011) (panelist)

Judicial Selection in Kansas, Committee on the Judiciary, Kansas House of Representatives (Feb. 16, 2011)

Judicial Selection and the Tennessee Constitution, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Mar. 24, 2009)

What Would Happen if the Judicial Selection and Evaluation Commissions Sunset?, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Feb. 24, 2009)

Judicial Selection in Tennessee, Chattanooga Bar Association, Chattanooga, TN (Feb. 27, 2008) (panelist)

Ethical Implications of Tennessee's Judicial Selection Process, Tennessee Bar Association, Nashville, TN (Dec. 12, 2007)

PROFESSIONAL ASSOCIATIONS

Referee, Journal of Empirical Legal Studies
Reviewer, Oxford University Press
Reviewer, Supreme Court Economic Review
Member, American Bar Association
Member, Tennessee Advisory Committee to the U.S. Commission on Civil Rights, 2009-2015
Board of Directors, Tennessee Stonewall Bar Association
American Swiss Foundation Young Leaders' Conference, 2012
Bar Admission, District of Columbia

COMMUNITY ACTIVITIES

Board of Directors, Nashville Ballet; Nashville Talking Library for the Blind, 2008-2009

Appendix 2

Documents Reviewed:

- Omnibus Motion to Dismiss and/or For Judgment On the Pleadings and Incorporated Memorandum of Law in *In Re: Checking Account Overdraft Litigation*, No. 1:09-MD-02036-JLK (S.D.Fla.) (document 217, entered 12/22/09)
- Plaintiffs' Memorandum in Opposition to Defendants' Omnibus Motion to Dismiss and/or For Judgments on the Pleadings in *In Re: Checking Account Overdraft Litigation* (document 265, entered 2/5/10)
- Order Ruling on Omnibus Motion to Dismiss in *In Re: Checking Account Overdraft Litigation* (document 305, entered 3/11/10)
- Motion to Clarify Court's March 11, 2010 Order Ruling on Omnibus Motion to Dismiss and/or For Judgment on the Pleadings and Incorporated Memorandum of Law in *In Re: Checking Account Overdraft Litigation* (document 325, entered 4/5/10)
- Omnibus Order Denying Defendants' Motions for Reconsideration in *In Re: Checking Account Overdraft Litigation* (document 1725, entered 7/13/11)
- Plaintiff's and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class, and Incorporated Memorandum of Law in *Swift v. BancorpSouth Bank*, including the Settlement Agreement and Release attached as Exhibit A thereto ("BancorpSouth Settlement Agreement") and the Postcard Notice attached as Exhibit C thereto ("Postcard Notice") (document 89, entered 2/24/16)
- Joint Declaration of Bruce S. Rogow, Robert C. Gilbert and Jeffrey M. Ostrow in Support of Plaintiff's and Class Counsel's Unopposed Motion for Preliminary

Approval of Class Settlement and Certification of Settlement Class in *Swift* ("BancorpSouth Joint Declaration") (document 89-2, entered 2/24/16)

- Order Preliminarily Approving Class Settlement and Certifying Settlement Class (document 90, entered 3/8/16)
- Joint Declaration of Robert C. Gilbert and Michael W. Sobol in Support of Plaintiffs' Motion for Final Approval of Settlement, Application for Service Awards, and Class Counsel's Application for Attorney's Fees in *Tornes, et al., v. Bank of America* and related cases ("Bank of America Joint Declaration") (document 1885-3, entered 9/16/11)
- Joint Declaration of Robert C. Gilbert, Michael W. Sobol, Jeffrey M. Ostrow, and Elaine Ryan in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class in *Dee v. Bank of the West* and related cases ("Bank of the West Joint Declaration") (document 2823-2, entered 7/11/12)
- Joint Declaration of Robert C. Gilbert, Hassan Zavareei, Jeffrey M. Ostrow, and Burton Finkelstein in *Terry Case v. Bank of Oklahoma* ("Bank of Oklahoma Joint Declaration") (document 2843-2, entered 7/16/12)
- Joint Declaration of Robert C. Gilbert and Jeffrey M. Ostrow in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class in *Harris v. Associated Bank, N.A.* ("Associated Bank Joint Declaration") (document 2852-2, entered 7/24/12)
- Joint Declaration of Robert C. Gilbert and Michael W. Sobol in Support of Plaintiffs' Motion for Final Approval of Settlement, Application for Service Awards, and Class

Counsel's Application for Attorney's Fees and Expenses in *Larsen v. Union Bank, N.A.* ("Union Bank Joint Declaration") (document 2859-2, entered 7/30/12)

- Joint Declaration of Robert C. Gilbert and Jeffrey M. Ostrow in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and For Certification of Settlement Class in *Wolfgeher v. Commerce Bank, N.A.* ("Commerce Bank Joint Declaration") (document 2879-2, entered 8/14/12)
- Joint Declaration of Robert C. Gilbert and Jeffrey M. Ostrow in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class in *McKinley v. Great Western Bank* ("Great Western Joint Declaration") (document 2912-2, entered 8/27/12)
- Joint Declaration of Aaron S. Podhurst, Robert C. Gilbert, and Ted Trief in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and For Certification of Settlement Class in *Duval v. Citizens Financial Group, Inc.* and related cases ("Citizens Financial Joint Declaration") (document 2955-2, entered 9/18/12)
- Joint Declaration of Robert C. Gilbert and Peter Prieto in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class in *Mosser v. TD Bank, N.A.* and related cases ("TD Bank Joint Declaration") (document 2956-2, entered 9/18/12)
- Joint Declaration of Robert C. Gilbert and Jeffrey M. Ostrow in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class in *Blahut v. Harris Bank, N.A.* ("Harris Bank Joint Declaration") (document 2979-2, entered 10/1/12)

- Joint Declaration of Robert C. Gilbert and Jeffrey M. Ostrow in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class in *Eno v. M&I Marshall & Ilsley Bank* ("M&I Joint Declaration") (document 2981-2, entered 10/1/12)
- Joint Declaration of Aaron S. Podhurst, Bruce S. Rogow, Robert C. Gilbert, Russell Budd, and Richard Golomb in Support of Plaintiffs' and Class Counsel's Motion for Final Approval of Settlement, and Application for Service Awards, Attorneys' Fees and Expenses in *Luquetta v. JPMorgan Chase Bank, N.A.*, and related cases ("Chase Joint Declaration") (document 3010-2, entered 10/15/12)
- Joint Declaration of Aaron S. Podhurst, Robert C. Gilbert and E. Adam Webb in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class in *Casayuran, et al. v. PNC Bank, N.A.*, and related cases ("PNC Joint Declaration") (document 3150-2, entered 1/3/13)
- Joint Declaration of Robert C. Gilbert, G. Franklin Lemond, Jr., and Lawrence D. Goodman in Support of Plaintiff's and Class Counsel's Motion for Final Approval of Class Settlement and Application for Service Award, Attorneys' Fees and Expenses in *Anderson v. Compass Bank* ("Compass Joint Declaration") (document 3469-3, entered 5/16/13)
- Joint Declaration of Aaron S. Podhurst, Bruce S. Rogow, and Robert C. Gilbert in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class in *Waters, et al.*

v. U.S. Bank, N.A., and related cases ("U.S. Bank Joint Declaration") (document 3543-2, entered 7/24/13)

- Joint Declaration of Robert C. Gilbert and Jeffrey M. Ostrow in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class in *Mello v. Susquehanna Bank* ("Susquehanna Joint Declaration") (document 3690-2, entered 11/7/13)
- Joint Declaration of Robert C. Gilbert, Russell W. Budd and Joseph G. Sauder in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class in *Simmons v. Comerica* ("Comerica Joint Declaration") (document 3703-2, entered 11/14/13)
- Plaintiff's and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class and Incorporated Memorandum of Law in *Given v. Manufacturers and Traders Trust Company a/k/a M&T Bank*, including the Settlement Agreement and Release attached as Exhibit A thereto ("M&T Bank Settlement Agreement") (document 3992, entered 10/17/14)
- Joint Declaration of Robert C. Gilbert and E. Adam Webb in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class in *Childs, et al. v. Synovus Bank, et al.* ("Synovus Bank Joint Declaration") (document 4014-2, entered 11/24/14)
- Joint Declaration of Aaron S. Podhurst, Robert C. Gilbert, and Richard M. Golomb in Support of Plaintiffs' and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class in *Steen* ("Capital One Joint Declaration") (document 4045-2, entered 1/13/15)

EXHIBIT D

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

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

Plaintiff,

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

BANCORPSOUTH BANK,

Defendants.

_______________________________/

AFFIDAVIT OF CAMERON R. AZARI, ESQ., ON IMPLEMENTATION AND ADEQUACY OF SETTLEMENT NOTICE PROGRAM

I, CAMERON R. AZARI, ESQ., hereby declare as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am the Director of Legal Notice for Hilsoft Notifications; a firm that specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal notification plans. Hilsoft is a business unit of Epiq Systems Class Action and Claims Solutions ("ECA").

3. Hilsoft has been involved with some of the most complex and significant notices and notice programs in recent history. We have been recognized by courts for our testimony as to which method of notification is appropriate for a given case, and we have provided testimony on numerous occasions on whether a certain method of notice represents the best notice practicable under the circumstances. Hilsoft's CV is included as **Attachment 1**. For example:

a. *In re: Checking Account Overdraft Litigation (Comerica Bank)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached[1] approximately 93% of settlement class members; granted final approval);

b. *In re: Checking Account Overdraft Litigation (Susquehanna Bank)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 88% of settlement class members; granted final approval);

c. *In re: Checking Account Overdraft Litigation (M&I Bank)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 97.5% of settlement class members; granted final approval);

d. *In re: Checking Account Overdraft Litigation (Compass Bank, N.A.)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 88.7% of settlement class members; granted final approval);

e. *In re: Checking Account Overdraft Litigation (Associated Bank, N.A.)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 95% of settlement class members; granted final approval);

f. *In re: Checking Account Overdraft Litigation (Harris Bank, N.A.)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 97% of settlement class members; granted final approval);

g. *In re: Checking Account Overdraft Litigation (Commerce Bank, N.A.)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 99% of settlement class members; granted final approval);

h. *In re: Checking Account Overdraft Litigation (TD Bank, N.A.)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 90.5% of settlement class members; granted final approval);

i. *In re: Checking Account Overdraft Litigation (RBS Citizens Bank, N.A.)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 86% of settlement class members; granted final approval);

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[1] Reach is defined as the percentage of a class exposed to a notice, net of any duplication among people who may have been exposed more than once. Notice "exposure" is defined as the opportunity to view a notice. The average "frequency" of notice exposure is the average number of times that those reached by a notice would be exposed to a notice.

j. *In re: Checking Account Overdraft Litigation (Bank of Oklahoma, N.A.)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 89% of settlement class members; granted final approval);

k. *In re: Checking Account Overdraft Litigation (IBERIABANK)*, MDL No. 2036, S.D. Fla. (overdraft litigation settlement; individual notification reached approximately 97%; granted final approval);

l. *Schulte v. Fifth Third Bank*, No. 09-CV-06655, N.D. Ill. (overdraft litigation settlement; individual notification reached approximately 89.7% of the class; granted final approval);

m. *Trombley v. National City Bank*, No. 1:10-CV-00232, D.D.C. (overdraft litigation settlement; individual notification reached approximately 93.3% of the class; granted final approval);

n. *Mathena v. Webster Bank, N.A.*, No. 3:10-cv-01448, D. Conn. (overdraft litigation settlement; individual notification reached approximately 97.6% of the class; granted final approval);

o. *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation,* MDL No. 1720 E.D.N.Y. ($6.05 billion settlement reached by Visa and MasterCard. The extensive notice program involved over 19.8 million direct mail notices, insertions in over 1,500 newspapers, consumer magazines, national business publications, trade & specialty publications and language & ethnic targeted publications, as well as a case website in eight languages and banner notices, which generated more than 770 million adult impressions; granted final approval); and

p. *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010,* MDL 2179 E.D. La. (dual landmark settlement notice programs to separate "Economic and Property Damages" and "Medical Benefits" settlement classes. Notice effort included over 7,900 television spots, over 5,200 radio spots and over 5,400 print insertions and reached over 95% of Gulf Coast residents; granted final approval).

4. In the case resolved by this settlement, *Shane Swift v. BancorpSouth*, N.D. Fla. Case No. 1:10- cv-00090-MP-GRJ, which is one of a number of similar lawsuits previously consolidated in proceedings known as *In Re: Checking Account Overdraft Litigation*, 1:09-MD-

02036-JLK, my colleagues and I were asked to design the Notices (or "Notice") and a Notice Program (or "Notice Plan") to inform Settlement Class Members about their rights under the proposed class action settlement.

5. Hilsoft Notifications was previously retained by Plaintiffs in this matter to design and implement the notice program for the Notice of Pendency. This effort was detailed in the *Declaration of Lauran Schultz on Implementation and Adequacy of Class Notice Plan*, executed on August 7, 2013.

6. On March 8, 2016, the Court appointed ECA as the Settlement Administrator and Hilsoft Notifications as the Notice Administrator. The Court also approved the Notice Program and the proposed forms of Notice. With the Court's approval, and according to the Order Preliminarily Approving Class Settlement and Certifying Settlement Class (the "Order"), Hilsoft began implementing each element of the Notice Plan.

7. This affidavit will detail the successful implementation of the Notice Program and document the completion of all of the notice activities. The report will also discuss the administration activity to date, with updated administration statistics to be provided by the parties in advance of the July 7, 2016, Final Approval Hearing. The facts in this report are based on information provided to me by colleagues from Hilsoft Notifications and ECA.

SUMMARY OF CONCLUSIONS

8. The Notice Program we designed and implemented achieved each of the planned objectives:

a. Names and direct contact information for members of the Settlement Class were identified for BancorpSouth Bank's accounts. Individual Notice was sent to virtually all[2] members of the Settlement Class.

b. The individual Notice reached approximately 93% of the Settlement Class.

c. Not reflected in this reach calculation is the publication of a Summary Publication Notice in mainstream newspapers to reach those for whom the Individual Notice was ultimately undeliverable, and to reach the small number of potential members of the Settlement Class who could not be identified from BancorpSouth Bank's records, giving them an opportunity to decide whether to object or opt-out.

d. Each person reached had an opportunity to view a Notice, with an adequate amount of time prior to the Final Approval Hearing to make appropriate decisions such as whether to object or opt-out.

e. The Notices were designed to be noticeable, clear, simple, substantive, and informative. No significant or required information was missing.

f. The program was consistent with other notice programs we have designed and implemented for similar settlements that have received final approval.

g. The Notice Plan was developed with the active participation of both Settlement Class Counsel and counsel for BancorpSouth Bank.

9. In my view, the Notice Plan provided reasonable notice of the class action settlement in this case in such a manner as the court directed, and satisfied due process, including its "desire to actually inform" requirement.[3]

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[2] Name and direct contact information was identified for more than 99% of all Accounts included in the Settlement Class.

10. This affidavit will detail the notice activities undertaken and explain how and why the settlement Notice Plan was comprehensive, well suited to the Settlement Class and was the best notice practicable under the circumstances of this case, and satisfied due process obligations.

NOTICE PLAN IMPLEMENTATION

11. The Order defines the "Settlement Class" as consisting of 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. Excluded from the Class are all current BancorpSouth officers and directors, and the judge presiding over this Action.

12. Class Period means, "(a) for Settlement Class Members who opened accounts in Alabama, the period from May 18, 2004 through August 13, 2010; (b) for Settlement Class Members who opened accounts in Arkansas, the period from May 18, 2005 through August 13, 2010; (c) for Settlement Class Members who opened accounts in Florida, the period from May 18, 2006 through August 13, 2010; (d) for Settlement Class Members who opened accounts in Louisiana, the period from May 18, 2003 through August 13, 2010; (e) for Settlement Class Members who opened accounts in Mississippi, the period from May 18, 2007 through August 13, 2010; (f) for Settlement Class Members who opened accounts in Missouri, the period from May 18, 2007 through August 13, 2010; (g) for Settlement Class Members who opened accounts in Tennessee, the period from May 18, 2004 through August 13, 2010; and (h) for Settlement

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[3] "But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . ." *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 315 (1950).

Class Members who opened accounts in Texas, the period from May 18, 2006 through August 13, 2010."

13. I have reviewed the Order and Settlement Agreement and I fully understand the defined terms used in the definition of the Settlement Class and subsequent defined terms. "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." "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." "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."

Individual Notice

14. BancorpSouth Bank was able to identify names and direct contact information for virtually all of the Settlement Class.

15. April 19, 2016, ECA received an updated data file containing 190,983 records of BancorpSouth Bank's accounts relating to Settlement Class Members' Accounts. Upon receiving the file, ECA merged this updated data with the existing data from the 2013 Notice of Pendency notice effort. ECA also identified and updated all accounts with names and address

and damage changes in order to compile the final Class Member notice mailing list. The 238 Class Members who previously requested exclusion from the Class were excluded from the mailing file.

16. Prior to the initial mailing of the Summary Postcard Notice; postal mailing addresses were checked against the National Change of Address ("NCOA") database maintained by the United States Postal Service ("USPS"), which contains records of all reported permanent moves for the past four years. Any addresses that were returned by NCOA as invalid were updated through a third-party address search service prior to mailing. In addition, the addresses were certified via the Coding Accuracy Support System ("CASS") to ensure the quality of the zip code, and verified through the Delivery Point Validation ("DPV") to verify the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

17. On April 28, 2016, ECA sent 190,541 Summary Postcard Notices by USPS First Class Mail to potential Settlement Class Members. Each notice was a two image 4.25" x 5.5" Summary Postcard Notice. A copy of the Summary Postcard Notice is included as **Attachment 2**.

18. The return address on the Summary Postcard Notice is a post office box maintained by ECA. As of May 9, 2016, ECA has re-mailed 10,245 Summary Postcard Notices for addresses that were corrected through the USPS and via an extra search for different addresses using a third-party lookup service ("ALLFIND", maintained by LexisNexis). Address updating and re-mailing for undeliverable Summary Postcard Notices is ongoing and will continue through the Final Approval Hearing. As of May 9, 2016, 12,636 mailings remain un-delivered. The Summary Postcard Notices are estimated to have reached approximately 93% of the Settlement Class.

19. Settlement Class Members may download a copy of the Long Form Notice at the settlement website or request one via the toll-free number.

20. A copy of the Long Form Notice is included as **Attachment 3**.

Publication Notice

21. According to the Federal Deposit Insurance Corporation, as of June 30, 2012,[4] BancorpSouth Bank (FDIC Certificate Number 11813) had 253 offices with reported deposits in the eight states included in the Settlement. To guide the media selection, BancorpSouth Bank's branch offices were analyzed by county and DMA for the specific states in which Class Members opened accounts. DMA or Designated Market Area is a "term used by Nielsen Media Research to identify an exclusive geographic area of counties in which the home market television stations hold a dominance of total hours viewed. There are 210 DMA's in the US."[5]

22. The selected newspaper in each DMA was the highest circulation daily newspaper published in the DMA. These 16 DMA's, in the eight states in which Class Members opened accounts, included 230 BancorpSouth Bank branch offices or 90.9% of total branches with reported deposits in the eight states in which Class Members opened accounts.

23. An approximate quarter-page Summary Publication Notice (approximately 3 col x 10.5") appeared once in a weekday edition in each of the major daily newspapers in the 16 selected media markets with the highest number of BancorpSouth Bank's branch offices, in the eight states in which Class Members opened accounts. The 16 total newspapers have a combined daily circulation of 546,894. Positioning was sought in the main news section of each newspaper to enhance readership. The newspaper insertion dates and positioning are indicated below:

[4] FDIC Summary of Deposits as of June 30, 2012, FDIC Certificate Number 11813.
[5] Nielsen Media Research, Glossary of Media Terms, http://www.nielsenmedia.com/glossary/.

Branch Office Coverage

DMA	BancorpSouth Bank's Offices	Newspaper	City/State	Issue Date	Page Position
Little Rock-Pine Bluff	17	*Arkansas Democrat-Gazette*	Little Rock, AR	4/27/16	7A
Biloxi-Gulfport	11	*Biloxi-Gulfport Sun Herald*	Biloxi-Gulfport, MS	4/27/16	8A
Huntsville-Decatur (Flor)	8	*Florence Times Daily*	Florence, AL	4/27/16	A6
Ft. Smith	11	*Fort Smith Times Record*	Fort Smith, AR	4/27/16	A5
Hattiesburg-Laurel	15	*Hattiesburg American*	Hattiesburg, MS	4/27/16	5A
Jackson, MS	23	*Jackson Clarion Ledger*	Jackson, MS	4/27/16	4A
Jackson, TN	6	*Jackson Sun*	Jackson, TN	4/27/16	6A
Jonesboro	8	*Jonesboro Sun*	Jonesboro, AR	4/27/16	A11
Tyler-Longview	10	*Longview News-Journal*	Longview, TX	4/27/16	9A
Memphis	35	*Memphis Commercial Appeal*	Memphis, TN	4/27/16	9A
Monroe-El Dorado	10	*Monroe News-Star*	Monroe, LA	4/27/16	3B
Columbus-Tupelo-West Point	33	*N.E. Mississippi Daily Journal*	Tupelo, MS	4/27/16	7A
Mobile-Pensacola (Ft Walt)	6	*Pensacola News Journal*	Pensacola, FL	4/27/16	16A
Shreveport	23	*Shreveport Times*	Shreveport, LA	4/27/16	8A
Springfield, MO	6	*Springfield News-Leader*	Springfield, MO	4/27/16	12A
Birmingham (Ann, Tusc)	8	*Tuscaloosa News*	Tuscaloosa, AL	4/28/16	A4
TOTAL	230				

24. A copy of the Summary Publication Notice is included as **Attachment 4**.

25. Copies of the tear sheets for each insertion in each publication are included as **Attachment 5**.

Case Website

26. The case website, www.BancorpSouthOverdraftSettlement.com, used the same URL as the website used for the Notice of Pendency. The content of the website itself was substantially updated to reflect the settlement of the matter, with the revisions going live on April 25, 2016. The website address was displayed prominently in all notice documents. By visiting the website, members of the Settlement Class can view additional information about the

settlement, including: the Preliminary Approval Order, Settlement Agreement, Long Form Notice and a list of Frequently Asked Questions.

27. As of May 9, 2016, there have been 9,955 website visitor sessions, with 39,100 page views.

Toll Free Number

28. A toll free number (800-420-2916), was set up and hosted by ECA. As with the case website, the toll free number is the same as used during the Notice of Pendency, but with substantial updates to reflect the terms of the Settlement, which went live on April 25, 2016. By calling this number, members of the Settlement Class can listen to answers to frequently asked questions and request a copy of the Long Form Notice be mailed to them or speak to a live operator. This automated system is available 24 hours per day, 7 days per week. As of May 9, 2016, the toll free number has handled 3,220 calls representing 14,391 minutes of use and live operators have handled 1,554 calls representing more than 6,632 minutes of use.

Exclusions and Objections

29. As of May 9, 2016, ECA has received 0 additional requests for exclusion from the Settlement Class (in addition to the 238 received during the Notice of Pendency notice effort in 2013). As of May 9, 2016, I am aware of no objections to the Settlement that relate to the notice. After the June 2, 2016 exclusion request and objection deadlines pass, ECA will prepare a complete report of all timely exclusion requests and objections for the July 7, 2016 Final Approval Hearing.

PERFORMANCE AND DESIGN OF NOTICE PROGRAM

30. ***Objectives were met.*** The primary objective of this settlement notice effort was to effectively reach the greatest practicable number of Settlement Class members with a

"noticeable" Notice of the settlement, and provide them with every reasonable opportunity to understand that their legal rights were affected, including the right to be heard, to object or to exclude themselves, if they so choose. These efforts were successful.

31. ***The Notice reached Settlement Class Members effectively.*** Our calculations indicate that the Summary Postcard Notice reached approximately 93% of the Settlement Class. In my experience, this reach percentage exceeds that achieved in many other court-approved settlement notice programs.

32. ***Plenty of time and opportunity to react to Notices.*** The mailing of the settlement Notices was completed on April 26, 2016, which allows an adequate amount of time for members of the Settlement Class to see the Notice and respond accordingly before the June 2, 2016 exclusion and objection deadlines. With approximately 37 days from the completion of the settlement Notice mailing until the exclusion and objection deadlines, members of the Settlement Class were allotted adequate time to act on their rights.

33. ***Notices were designed to increase noticeability and comprehension.*** Because mailing recipients are accustomed to receiving junk mail, which they may be inclined to discard unread, the program called for steps to bring the Notice to the attention of the Settlement Class. Once people "noticed" the Notices, it was critical that they could understand them. As such, the Notices, as produced, were clearly worded with simple, plain language text to encourage readership and comprehension. The design of the Notices followed the principles embodied in the Federal Judicial Center's illustrative "model" notices posted at www.fjc.gov.

34. The Summary Postcard Notice featured a prominent headline ("**If You Paid Overdraft Fees to BancorpSouth Bank, You May Be Eligible for a Payment from a Class Action Settlement.**") in bold text. The headline alerts recipients that the Notice is an important

document authorized by a court and that the content may affect them, thereby supplying reasons to read the Notice.

35. We drafted a Long Form Notice that provided more information to the Settlement Class. The Long Form Notice began with a summary page providing a concise overview of the important information and Settlement Class members' key options. It contained a prominent focus on the options that Settlement Class members have, using a straightforward table design, and included details about the Settlement, such as who is affected, and their rights. A table of contents, categorized into logical sections, helped to organize the information, while a question and answer format made it easy to find answers to common questions by breaking the information into simple headings and brief paragraphs.

CONCLUSIONS

36. The notice effort reached approximately 93% of the Settlement Class through the individual Summary Postcard Notice efforts alone. Many courts have accepted and understood, based on evidence we provided, that a 75 or 80 percent reach is more than adequate under the circumstances of analogous cases. Here we were able to exceed that. This "reach" indicates that the mailed notice effort was highly successful in providing direct notice to the Settlement Class.

37. In preparing the Notices, we employed communication methods that are well established in our field, and eschewed the idea of producing old-fashioned, case-captioned, lengthy, legalistic notice documents.

38. We have provided evidence that the notice effort sufficiently reached the vast majority of the Settlement Class, and we have prepared notice documents that adequately informed them of the class action, properly described their rights, and clearly conformed to the high standards for modern notice programs. In designing our notice programs, we truly desire to

adequately inform the class, and my colleagues and I designed and implemented a program that effectively accomplished this.

39. In my expert opinion, the Notice Program comported with Federal Rule of Civil Procedure 23, and also the guidance for effective notice articulated in the FJC's *Manual for Complex Litigation, 4th Edition.*

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Cameron R. Azari, Esq.

SUBSCRIBED AND SWORN TO BEFORE ME this 10th day of May 2016.

Kathleen C. Komraus
NOTARY PUBLIC

MY COMMISSION EXPIRES:
March 5, 2017

OFFICIAL SEAL
KATHLEEN C KOMRAUS
NOTARY PUBLIC - OREGON
COMMISSION NO. 476294
MY COMMISSION EXPIRES MARCH 05, 2017

Attachment 1

HILSOFT NOTIFICATIONS

Hilsoft Notifications is a leading provider of legal notice services for large-scale class action and bankruptcy matters. We specialize in providing quality, expert, notice plan development – designing notice programs that satisfy due process requirements and withstand judicial scrutiny. For more than 21 years, Hilsoft Notifications' notice plans have been approved and upheld by courts. Hilsoft Notifications has been retained by defendants and/or plaintiffs on more than 300 cases, including more than 30 MDL cases, with notices appearing in more than 53 languages and in almost every country, territory and dependency in the world. Case examples include:

- One of the largest claim deadline notice campaigns ever implemented, for BP's $7.8 billion settlement claim deadline relating to the Deepwater Horizon oil spill. Hilsoft Notifications designed and implemented the claim deadline notice program, which resulted in a combined measurable paid print, television, radio and Internet effort that reached in excess of 90% of adults aged 18+ in the 26 identified DMAs covering the Gulf Coast Areas an average of 5.5 times each. ***In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010***, MDL No. 2179 (E.D. La.).

- *Large asbestos bar date notice effort, which included individual notice, national consumer publications, hundreds of local and national newspapers, Spanish newspapers, union labor publications, and digital media to reach the target audience*. ***In re: Energy Future Holdings Corp., et. al. (Asbestos Claims Bar Date Notice)***, 14-10979(CSS) (Bankr. D. Del.).

- Landmark $6.05 billion settlement reached by Visa and MasterCard. The intensive notice program involved over 19.8 million direct mail notices to class members together with insertions in over 1,500 newspapers, consumer magazines, national business publications, trade & specialty publications, and language & ethnic targeted publications. Hilsoft also implemented an extensive online notice campaign with banner notices, which generated more than 770 million adult impressions, a case website in eight languages, and acquisition of sponsored search listings to facilitate locating the website. ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation***, MDL No. 1720 (E.D.N.Y.).

- BP's $7.8 billion settlement of claims related to the Deepwater Horizon oil spill emerged from possibly the most complex class action in U.S. history. Hilsoft Notifications drafted and opined on all forms of notice. The 2012 notice program designed by Hilsoft reached at least 95% Gulf Coast region adults via television, radio, newspapers, consumer publications, trade journals, digital media and individual notice. ***In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010***, MDL No. 2179 (E.D. La.).

- Momentous injunctive settlement reached by American Express regarding merchant payment card processing. The notice program provided extensive individual notice to more than 3.8 million merchants as well as coverage in national and local business publications, retail trade publications and placement in the largest circulation newspapers in each of the U.S. territories and possessions. ***In re American Express Anti-Steering Rules Antitrust Litigation (II)***, MDL No. 2221 (E.D.N.Y.) ("Italian Colors").

- Overdraft fee class actions have been brought against nearly every major U.S. commercial bank. For related settlements, Hilsoft Notifications has developed programs that integrate individual notice and paid media efforts. PNC, Citizens, TD Bank, Fifth Third, Harris Bank M&I, Comerica Bank, Susquehanna Bank, Capital One, M&T Bank and Synovus are among the nearly 20 banks that have retained Hilsoft. ***In re Checking Account Overdraft Litigation***, MDL No. 2036 (S.D. Fla.).

- Possibly the largest data breach in U.S. history with approximately 130 million credit and debit card numbers stolen. ***In re Heartland Data Security Breach Litigation***, MDL No. 2046 (S.D. Tex.)

- Largest and most complex class action in Canadian history. Designed and implemented groundbreaking notice to disparate, remote aboriginal people in the multi-billion dollar settlement. ***In re Residential Schools Class Action Litigation**,* 00-CV-192059 CPA (Ont. Super. Ct.).

- Extensive point of sale notice program of a settlement providing payments up to $100,000 related to Chinese drywall – 100 million notices distributed to Lowe's purchasers during a six-week period. ***Vereen v. Lowe's Home Centers***, SU10-CV-2267B (Ga. Super. Ct.).

- Largest discretionary class action notice campaign involving virtually every adult in the U.S. for the settlement. ***In re Trans Union Corp. Privacy Litigation**,* MDL No. 1350 (N.D. Ill.).

- Most complex national data theft class action settlement involving millions of class members. ***Lockwood v. Certegy Check Services, Inc.**,* 8:07-cv-1434-T-23TGW (M.D. Fla.).

- Largest combined U.S. and Canadian retail consumer security breach notice program. ***In re TJX Companies, Inc., Customer Data Security Breach Litigation***, MDL No. 1838 (D. Mass.).

- Most comprehensive notice ever in a securities class action for the $1.1 billion settlement of ***In re Royal Ahold Securities and ERISA Litigation**,* MDL No. 1539 (D. Md.).

- Most complex worldwide notice program in history. Designed and implemented all U.S. and international media notice with 500+ publications in 40 countries and 27 languages for $1.25 billion settlement. ***In re Holocaust Victims Assets,*** **"Swiss Banks"**, No. CV-96-4849 (E.D.N.Y.).

- Largest U.S. claim program to date. Designed and implemented a notice campaign for the $10 billion program. ***Tobacco Farmer Transition Program**,* (U.S. Dept. of Ag.).

- Multi-national claims bar date notice to asbestos personal injury claimants. Opposing notice expert's reach methodology challenge rejected by court. ***In re Babcock & Wilcox Co**,* No. 00-10992 (E.D. La.).

LEGAL NOTICING EXPERTS

Cameron Azari, Esq., Director of Legal Notice

Cameron Azari, Esq. has more than 16 years of experience in the design and implementation of legal notification and claims administration programs. He is a nationally recognized expert in the creation of class action notification campaigns in compliance with Fed R. Civ. P. 23(c)(2) (d)(2) and (e) and similar state class action statutes. Cameron has been responsible for hundreds of legal notice and advertising programs. During his career, he has been involved in an array of high profile class action matters, including *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (MasterCard & Visa), In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, Heartland Payment Systems, In re: Checking Account Overdraft Litigation, Lowe's Home Centers, Department of Veterans Affairs (VA),* and *In re Residential Schools Class Action Litigation*. He is an active author and speaker on a broad range of legal notice and class action topics ranging from amendments to FRCP Rule 23 to email noticing, response rates and optimizing settlement effectiveness. Cameron is an active member of the Oregon State Bar. He received his B.S. from Willamette University and his J.D. from Northwestern School of Law at Lewis and Clark College. Cameron can be reached at caza@legalnotice.com.

Lauran Schultz, Executive Director

Lauran Schultz consults extensively with clients on notice adequacy and innovative legal notice programs. Lauran has more than 20 years of experience as a professional in the marketing and advertising field, specializing in legal notice and class action administration for the past seven years. High profile actions he has been involved in include companies such as BP, Bank of America, Fifth Third Bank, Symantec Corporation, Lowe's Home Centers, First Health, Apple, TJX, CNA and Carrier Corporation. Prior to joining Epiq Systems in 2005, Lauran was a Senior Vice President of Marketing at National City Bank in Cleveland, Ohio. Lauran's education includes advanced study in political science at the University of Wisconsin-Madison along with a Ford Foundation fellowship from the Social Science Research Council and American Council of Learned Societies. Lauran can be reached at lschultz@hilsoft.com.

ARTICLES AND PRESENTATIONS

- **Cameron Azari** Speaker, "Live Cyber Incident Simulation Exercise." Advisen's Cyber Risk Insights Conference, London, UK, February 10, 2015.

- **Cameron Azari** Speaker, "Pitfalls of Class Action Notice and Claims Administration." PLI's Class Action Litigation 2014 Conference, New York, NY, July 9, 2014.

- **Cameron Azari** Co-Author, "What You Need to Know About Frequency Capping In Online Class Action Notice Programs." *Class Action Litigation Report*, June 2014.

- **Cameron Azari** Speaker, "Class Settlement Update – Legal Notice and Court Expectations." PLI's 19th Annual Consumer Financial Services Institute Conference, New York, NY, April 7-8, 2014 and Chicago, IL, April 28-29, 2014.

- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements - Recent Developments." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 29-30, 2014.

- **Cameron Azari** Speaker, "Legal Notice in Building Products Cases." HarrisMartin's Construction Product Litigation Conference, Miami, FL, October 25, 2013.

- **Cameron Azari** Co-Author, "Class Action Legal Noticing: Plain Language Revisited." *Law360*, April 2013.

- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements Getting your Settlement Approved." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 31-February 1, 2013.

- **Cameron Azari** Speaker, "Perspectives from Class Action Claims Administrators: Email Notices and Response Rates." CLE International's 8th Annual Class Actions Conference, Los Angeles, CA, May 17-18, 2012.

- **Cameron Azari** Speaker, "Class Action Litigation Trends: A Look into New Cases, Theories of Liability & Updates on the Cases to Watch." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 26-27, 2012.

- **Lauran Schultz** Speaker, "Legal Notice Best Practices: Building a Workable Settlement Structure." CLE International's 7th Annual Class Action Conference, San Francisco, CA, May 2011.

- **Cameron Azari** Speaker, "Data Breaches Involving Consumer Financial Information: Litigation Exposures and Settlement Considerations." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 2011.

- **Cameron Azari** Speaker, "Notice in Consumer Class Actions: Adequacy, Efficiency and Best Practices." CLE International's 5th Annual Class Action Conference: Prosecuting and Defending Complex Litigation, San Francisco, CA, 2009.

- **Lauran Schultz** Speaker, "Efficiency and Adequacy Considerations in Class Action Media Notice Programs." Chicago Bar Association, Chicago, IL, 2009.

- **Cameron Azari** Author, "Clearing the Five Hurdles of Email - Delivery of Class Action Legal Notices." *Thomson Reuters Class Action Litigation Reporter*, June 2008.

- **Cameron Azari** Speaker, "Planning for a Smooth Settlement." ACI: Class Action Defense – Complex Settlement Administration for the Class Action Litigator, Phoenix, AZ, 2007.

- **Cameron Azari** Speaker, "Noticing and Response Rates in Class Action Settlements" – Class Action Bar Gathering, Vancouver, British Columbia, 2007.

- **Cameron Azari** Speaker, "Structuring a Litigation Settlement." CLE International's 3rd Annual Conference on Class Actions, Los Angeles, CA, 2007.

- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Skadden Arps Slate Meagher & Flom, LLP, New York, NY, 2006.

- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Bridgeport Continuing Legal Education, Class Action and the UCL, San Diego, CA, 2006.

- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Stoel Rives litigation group, Portland, OR / Seattle, WA / Boise, ID / Salt Lake City, UT, 2005.

- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Stroock & Stroock & Lavan litigation group, Los Angeles, CA, 2005.

- **Cameron Azari** Author, "Twice the Notice or No Settlement." Current Developments – Issue II, August 2003.

- **Cameron Azari** Speaker, "A Scientific Approach to Legal Notice Communication" – Weil Gotshal litigation group, New York, NY, 2003.

JUDICIAL COMMENTS

Judge Marcia G. Cooke, *Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co.* (April 11, 2016) No. 14-23120 (S.D. Fla.):

> *Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator, Epiq Systems, Inc. [Hilsoft Notifications], has complied with the approved notice process as confirmed in its Declaration filed with the Court on March 23, 2016. The Court finds that the notice process was designed to advise Class Members of their rights. The form and method for notifying Class Members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order, constituted the best notice practicable under the circumstances, and satisfied the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, and due process under the United States Constitution and other applicable laws.*

Judge Robert W. Gettleman, *Adkins v. Nestle Purina PetCare Company, et al.*, (June 23, 2015) No. 12-cv-2871 (N.D. Ill.):

> *Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the notice requirements specified by the Court in the Preliminary Approval Order. Such notice fully and accurately informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a variety of means to obtain additional information; was the best notice practicable under the circumstances; was valid, due, and sufficient notice to all Settlement Class members; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.*

Judge Rya W. Zobel, *Gulbankian et al. v. MW Manufacturers, Inc.*, (December 29, 2014) No. 1:10-cv-10392-RWZ (D. Mass.):

> *This Court finds that the Class Notice was provided to the Settlement Class consistent with the Preliminary Approval Order and that it was the best notice practicable and fully satisfied the requirements of the Federal Rules of Civil Procedure, due process, and applicable law. The Court finds that the Notice Plan that was implemented by the Claims Administrator satisfies the requirements of FED. R. CIV. P. 23, 28 U.S.C. § 1715, and Due Process, and is the best notice practicable under the circumstances. The Notice Plan constituted due and sufficient notice of the Settlement, the Final Approval Hearing, and the other matters referred to in the notices. Proof of the giving of such notices has been filed with the Court via the Azari Declaration and its exhibits.*

Judge Edward J. Davila, *Rose v. Bank of America Corporation, and FIA Card Services, N.A.*, (August 29, 2014) No. 5:11-CV-02390-EJD; 5:12-CV-04009-EJD (N.D. Cal.):

The Court finds that the notice was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of this action, all material elements of the Settlement, the opportunity for Settlement Class Members to exclude themselves from, object to, or comment on the settlement and to appear at the final approval hearing. The notice was the best notice practicable under the circumstances, satisfying the requirements of Rule 23(c)(2)(B); provided notice in a reasonable manner to all class members, satisfying Rule 23(e)(1)(B); was adequate and sufficient notice to all Class Members; and, complied fully with the laws of the United States and of the Federal Rules of Civil Procedure, due process and any other applicable rules of court.

Judge James A. Robertson, II, *Wong et al. v. Alacer Corp.* (June 27, 2014) No. CGC-12-519221 (Cal. Super. Ct.):

Notice to the Settlement Class has been provided in accordance with the Preliminary Approval Order. Based on the Declaration of Cameron Azari dated March 7, 2014, such Class Notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances and satisfies the requirements of California Civil Code Section 1781, California Civil Code of Civil Procedure Section 382, Rules 3.766 of the California Rules of Court, and due process.

Judge John Gleeson, *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, (December 13, 2013) No. 1:05-cv-03800 (E.D. NY.):

The Class Administrator notified class members of the terms of the proposed settlement through a mailed notice and publication campaign that included more than 20 million mailings and publication in more than 400 publications. The notice here meets the requirements of due process and notice standards… The objectors' complaints provide no reason to conclude that the purposes and requirements of a notice to a class were not met here.

Judge Lance M. Africk, *Evans, et al. v. TIN, Inc., et al,* (July 7, 2013) No. 2:11-cv-02067 (E.D. La.):

The Court finds that the dissemination of the Class Notice… as described in Notice Agent Lauran Schultz's Declaration: (a) constituted the best practicable notice to Class Members under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances…; (c) constituted notice that was reasonable, due, adequate, and sufficient; and (d) constituted notice that fully satisfied all applicable legal requirements, including Rules 23(c)(2)(B) and (e)(1) of the Federal Rules of Civil Procedure, the United States Constitution (including Due Process Clause), the Rules of this Court, and any other applicable law, as well as complied with the Federal Judicial Center's illustrative class action notices.

Judge Edward M. Chen, *Marolda v. Symantec Corporation,* (April 5, 2013) No. 08-cv-05701 (N.D. Cal.):

Approximately 3.9 million notices were delivered by email to class members, but only a very small percentage objected or opted out . . . The Court . . . concludes that notice of settlement to the class was adequate and satisfied all requirements of Federal Rule of Civil Procedure 23(e) and due process. Class members received direct notice by email, and additional notice was given by publication in numerous widely circulated publications as well as in numerous targeted publications. These were the best practicable means of informing class members of their rights and of the settlement's terms.

Judge Ann D. Montgomery, *In re Zurn Pex Plumbing Products Liability Litigation*, (February 27, 2013) No. 0:08cv01958 (D. Minn.):

The parties retained Hilsoft Notifications ("Hilsoft"), an experienced class-notice consultant, to design and carry out the notice plan. The form and content of the notices provided to the class were direct, understandable, and consistent with the "plain language" principles advanced by the Federal Judicial Center.

*The notice plan's multi-faceted approach to providing notice to settlement class members whose identity is not known to the settling parties constitutes "the best notice [*26] that is practicable under the circumstances" consistent with Rule 23(c)(2)(B).*

Magistrate Judge Stewart, *Gessele et al. v. Jack in the Box, Inc.*, (January 28, 2013) No. 3:10-cv-960 (D. Or.):

Moreover, plaintiffs have submitted [a] declaration from Cameron Azari (docket #129), a nationally recognized notice expert, who attests that fashioning an effective joint notice is not unworkable or unduly confusing. Azari also provides a detailed analysis of how he would approach fashioning an effective notice in this case.

Judge Carl J. Barbier, *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* *(Medical Benefits Settlement)*, (January 11, 2013) MDL No. 2179 (E.D. La.):

Through August 9, 2012, 366,242 individual notices had been sent to potential [Medical Benefits] Settlement Class Members by postal mail and 56,136 individual notices had been e-mailed. Only 10,700 mailings—or 3.3%—were known to be undeliverable. (Azari Decl. ¶¶ 8, 9.) Notice was also provided through an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, highly-trafficked websites, and Sunday local newspapers (via newspaper supplements). Notice was also provided in non-measured trade, business and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The combined measurable paid print, television, radio, and Internet effort reached an estimated 95% of adults aged 18+ in the Gulf Coast region an average of 10.3 times each, and an estimated 83% of all adults in the United States aged 18+ an average of 4 times each. (Id. ¶¶ 8, 10.) All notice documents were designed to be clear, substantive, and informative. (Id. ¶ 5.)

The Court received no objections to the scope or content of the [Medical Benefits] Notice Program. (Azari Supp. Decl. ¶ 12.) The Court finds that the Notice and Notice Plan as implemented satisfied the best notice practicable standard of Rule 23(c) and, in accordance with Rule 23(e)(1), provided notice in a reasonable manner to Class Members who would be bound by the Settlement, including individual notice to all Class Members who could be identified through reasonable effort. Likewise, the Notice and Notice Plan satisfied the requirements of Due Process. The Court also finds the Notice and Notice Plan satisfied the requirements of CAFA.

Judge Carl J. Barbier, *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* *(Economic and Property Damages Settlement)*, (December 21, 2012) MDL No. 2179 (E.D. La.):

The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation.

The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.

The Notice Program, as duly implemented, surpasses other notice programs that Hilsoft Notifications has designed and executed with court approval. The Notice Program included notification to known or potential Class Members via postal mail and e-mail; an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, and Sunday local newspapers. Notice placements also appeared in non-measured trade, business, and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The Notice Program met the objective of reaching the greatest possible number of class members and providing them with every reasonable opportunity to understand their legal rights. See Azari Decl. ¶¶ 8, 15, 68. The Notice Program was substantially completed on July 15, 2012, allowing class members adequate time to make decisions before the opt-out and objections deadlines.

The media notice effort alone reached an estimated 95% of adults in the Gulf region an average of 10.3 times each, and an estimated 83% of all adults in the United States an average of 4 times each. These figures do not include notice efforts that cannot be measured, such as advertisements in trade publications and sponsored search engine listings. The Notice Program fairly and adequately covered and notified the class without excluding any demographic group or geographic area, and it exceeded the reach percentage achieved in most other court-approved notice programs.

Judge Alonzo Harris, Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and Arklamiss Surgery Center, L.L.C. v. FairPay Solutions, Inc., (August 17, 2012) No. 12-C-1599 (27th Jud. D. Ct. La.):

Notice given to Class Members and all other interested parties pursuant to this Court's order of April 18, 2012, was reasonably calculated to apprise interested parties of the pendency of the action, the certification of the Class as Defined for settlement purposes only, the terms of the Settlement Agreement, Class Members rights to be represented by private counsel, at their own costs, and Class Members rights to appear in Court to have their objections heard, and to afford persons or entities within the Class Definition an opportunity to exclude themselves from the Class. Such notice complied with all requirements of the federal and state constitutions, including the Due Process Clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Class as Defined.

Judge James Lawrence King, In re Checking Account Overdraft Litigation (IBERIABANK), (April 26, 2012) MDL No. 2036 (S.D. Fla):

The Court finds that the Notice previously approved was fully and properly effectuated and was sufficient to satisfy the requirements of due process because it described "the substantive claims . . . [and] contained information reasonably necessary to [allow Settlement Class Members to] make a decision to remain a class member and be bound by the final judgment." In re Nissan Motor Corp. Antitrust Litig., 552 F.2d 1088, 1104-05 (5th Cir. 1977). The Notice, among other things, defined the Settlement Class, described the release as well as the amount and method and manner of proposed distribution of the Settlement proceeds, and informed Settlement Class Members of their rights to opt-out or object, the procedures for doing so, and the time and place of the Final Approval Hearing. The Notice also informed Settlement Class Members that a class judgment would bind them unless they opted out, and told them where they could obtain more information, such as access to a full copy of the Agreement. Further, the Notice described in summary form the fact that Class Counsel would be seeking attorneys' fees of up to 30 percent of the Settlement. Settlement Class Members were provided with the best practicable notice "reasonably calculated, under [the] circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections." Mullane, 339 U.S. at 314. The content of the Notice fully complied with the requirements of Rule 23.

Judge Bobby Peters, *Vereen v. Lowe's Home Centers,* (April 13, 2012) SU10-CV-2267B (Ga. Super. Ct.):

The Court finds that the Notice and the Notice Plan was fulfilled, in accordance with the terms of the Settlement Agreement, the Amendment, and this Court's Preliminary Approval Order and that this Notice and Notice Plan constituted the best practicable notice to Class Members under the circumstances of this action, constituted due and sufficient Notice of the proposed Settlement to all persons entitled to participate in the proposed Settlement, and was in full compliance with Ga. Code Ann § 9-11-23 and the constitutional requirements of due process. Extensive notice was provided to the class, including point of sale notification, publication notice and notice by first-class mail for certain potential Class Members.

The affidavit of the notice expert conclusively supports this Court's finding that the notice program was adequate, appropriate, and comported with Georgia Code Ann. § 9-11-23(b)(2), the Due Process Clause of the Constitution, and the guidance for effective notice articulate in the FJC's Manual for Complex Litigation, 4th.

Judge Lee Rosenthal, *In re Heartland Payment Systems, Inc. Customer Data Security Breach Litigation,* (March 2, 2012) MDL No. 2046 (S.D. Tex.):

*The notice that has been given clearly complies with Rule 23(e)(1)'s reasonableness requirement… Hilsoft Notifications analyzed the notice plan after its implementation and conservatively estimated that notice reached 81.4 percent of the class members. (Docket Entry No. 106, ¶ 32). Both the summary notice and the detailed notice provided the information reasonably necessary for the presumptive class members to determine whether to object to the proposed settlement. See Katrina Canal Breaches, 628 F.3d at 197. Both the summary notice and the detailed notice "were written in easy-to-understand plain English." In re Black Farmers Discrimination Litig., — F. Supp. 2d —, 2011 WL 5117058, at *23 (D.D.C. 2011); accord AGGREGATE LITIGATION § 3.04(c).15 The notice provided "satisf[ies] the broad reasonableness standards imposed by due process" and Rule 23. Katrina Canal Breaches, 628 F.3d at 197.*

Judge John D. Bates, *Trombley v. National City Bank,* (December 1, 2011) 1:10-CV-00232 (D.D.C.)

The form, content, and method of dissemination of Notice given to the Settlement Class were in full compliance with the Court's January 11, 2011 Order, the requirements of Fed. R. Civ. P. 23(e), and due process. The notice was adequate and reasonable, and constituted the best notice practicable under the circumstances. In addition, adequate notice of the proceedings and an opportunity to participate in the final fairness hearing were provided to the Settlement Class.

Judge Robert M. Dow, Jr., *Schulte v. Fifth Third Bank*, (July 29, 2011) No. 1:09-cv-6655 (N.D. Ill.):

The Court has reviewed the content of all of the various notices, as well as the manner in which Notice was disseminated, and concludes that the Notice given to the Class fully complied with Federal Rule of Civil Procedure 23, as it was the best notice practicable, satisfied all constitutional due process concerns, and provided the Court with jurisdiction over the absent Class Members.

Judge Ellis J. Daigle, *Williams v. Hammerman & Gainer Inc*., (June 30, 2011) No. 11-C-3187-B (27th Jud. D. Ct. La.):

Notices given to Settlement Class members and all other interested parties throughout this proceeding with respect to the certification of the Settlement Class, the proposed settlement, and all related procedures and hearings—including, without limitation, the notice to putative Settlement Class members and others more fully described in this Court's order of 30th day of March 2011 were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination, to apprise interested parties and members of the Settlement Class of the pendency of the action, the certification of the Settlement Class, the Settlement Agreement and its contents, Settlement Class members' right to be represented by private counsel, at their own cost, and Settlement Class members' right to appear in Court to have their objections heard, and to afford Settlement Class members an opportunity to exclude themselves from the Settlement Class. Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedures, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.

Judge Stefan R. Underhill, *Mathena v. Webster Bank, N.A.*, (March 24, 2011) No. 3:10-cv-1448 (D. Conn.):

The form, content, and method of dissemination of Notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

Judge Ted Stewart, *Miller v. Basic Research, LLC*, (September 2, 2010) No. 2:07-cv-871 (D. Utah):

Plaintiffs state that they have hired a firm specializing in designing and implementing large scale, unbiased, legal notification plans. Plaintiffs represent to the Court that such notice will include: 1) individual notice by electronic mail and/or first-class mail sent to all reasonably identifiable Class members; 2) nationwide paid media notice through a combination of print publications, including newspapers, consumer magazines, newspaper supplements and the Internet; 3) a neutral, Court-approved, informational press release; 4) a neutral, Court-approved Internet website; and 5) a toll-free telephone number. Similar mixed media plans have been approved by other district courts post class certification. The Court finds this plan is sufficient to meet the notice requirement.

Judge Sara Loi, *Pavlov v. Continental Casualty Co.*, (October 7, 2009) No. 5:07cv2580 (N.D. Ohio):

As previously set forth in this Memorandum Opinion, the elaborate notice program contained in the Settlement Agreement provides for notice through a variety of means, including direct mail to each class member, notice to the United States Attorney General and each State, a toll free number, and a website designed to provide information about the settlement and instructions on submitting claims. With a 99.9% effective rate, the Court finds that the notice program constituted the "best notice that is practicable under the circumstances," Fed. R. Civ. P. 23(c)(2)(B), and clearly satisfies the requirements of Rule 23(c)(2)(B).

Judge James Robertson, *In re Department of Veterans Affairs (VA) Data Theft Litigation*, (September 23, 2009) MDL No. 1796 (D.D.C.):

The Notice Plan, as implemented, satisfied the requirements of due process and was the best notice practicable under the circumstances. The Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the action, the terms of the Settlement, and their right to appear, object to or exclude themselves from the Settlement. Further, the notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice.

Judge Lisa F. Chrystal, *Little v. Kia Motors America, Inc.*, (August 27, 2009) No. UNN-L-0800-01 (N.J. Super. Ct.):

The Court finds that the manner and content of the notices for direct mailing and for publication notice, as specified in the Notice Plan (Exhibit 2 to the Affidavit of Lauran R. Schultz), provides the best practicable notice of judgment to members of the Plaintiff Class.

Judge Barbara Crowder, *Dolen v. ABN AMRO Bank N.V.*, (March 23, 2009) No. 01-L-454, 01-L-493 (3rd Jud. Cir. Ill.):

The Court finds that the Notice Plan is the best notice practicable under the circumstances and provides the Eligible Members of the Settlement Class sufficient information to make informed and meaningful decisions regarding their options in this Litigation and the effect of the Settlement on their rights. The Notice Plan further satisfies the requirements of due process and 735 ILCS 5/2-803. That Notice Plan is approved and accepted. This Court further finds that the Notice of Settlement and Claim Form comply with 735 ILCS 5/2-803 and are appropriate as part of the Notice Plan and the Settlement, and thus they are hereby approved and adopted. This Court further finds that no other notice other than that identified in the Notice Plan is reasonably necessary in this Litigation.

Judge Robert W. Gettleman, *In re Trans Union Corp.*, (September 17, 2008) MDL No. 1350 (N.D. Ill.):

The Court finds that the dissemination of the Class Notice under the terms and in the format provided for in its Preliminary Approval Order constitutes the best notice practicable under the circumstances, is due and sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the requirements of the Federal Rules of Civil Procedure, the requirements of due process under the Constitution of the United States, and any other applicable law… Accordingly, all objections are hereby OVERRULED.

Judge Steven D. Merryday, *Lockwood v. Certegy Check Services, Inc.*, (September 3, 2008) No. 8:07-cv-1434-T-23TGW (M.D. Fla.):

The form, content, and method of dissemination of the notice given to the Settlement Class were adequate and reasonable and constituted the best notice practicable in the circumstances. The notice as given provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions of the Settlement Agreement, and these proceedings to all persons entitled to such notice, and the notice satisfied the requirements of Rule 23, Federal Rules of Civil Procedure, and due process.

Judge William G. Young, *In re TJX Companies*, (September 2, 2008) MDL No. 1838 (D. Mass.):

The form, content, and method of dissemination of notice provided to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Persons entitled to such notice, and said Notice fully satisfied the requirements of Fed. R. Civ. P. 23 and due process.

Judge Philip S. Gutierrez, *Shaffer v. Continental Casualty Co.*, (June 11, 2008) SACV-06-2235-PSG (PJWx) (C.D. Cal.):

…was reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and met all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clauses), the Rules of the Court, and any other applicable law.

Judge Robert L. Wyatt, ***Gunderson v. AIG Claim Services, Inc.,*** (May 29, 2008) No. 2004-002417 (14th Jud. D. Ct. La.):

> *Notices given to Settlement Class members…were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination…Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.*

Judge Mary Anne Mason, ***Palace v. DaimlerChrysler Corp.,*** (May 29, 2008) No. 01-CH-13168 (Ill. Cir. Ct.):

> *The form, content, and method of dissemination of the notice given to the Illinois class and to the Illinois Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed Settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings, to all Persons entitled to such notice, and said notice fully satisfied the requirements of due process and complied with 735 ILCS §§5/2-803 and 5/2-806.*

Judge David De Alba, ***Ford Explorer Cases,*** (May 29, 2008) JCCP Nos. 4226 & 4270 (Cal. Super. Ct.):

> *[T]he Court is satisfied that the notice plan, design, implementation, costs, reach, were all reasonable, and has no reservations about the notice to those in this state and those in other states as well, including Texas, Connecticut, and Illinois; that the plan that was approved—submitted and approved, comports with the fundamentals of due process as described in the case law that was offered by counsel.*

Judge Kirk D. Johnson, ***Webb v. Liberty Mutual Ins. Co.,*** (March 3, 2008) No. CV-2007-418-3 (Ark. Cir. Ct.):

> *The Court finds that there was minimal opposition to the settlement. After undertaking an extensive notice campaign to Class members of approximately 10,707 persons, mailed notice reached 92.5% of potential Class members.*

Judge Carol Crafton Anthony, ***Johnson v. Progressive Casualty Ins. Co.*****,** (December 6, 2007) No. CV-2003-513 (Ark. Cir. Ct.):

> *Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated…Notice was direct mailed to all Class members whose current whereabouts could be identified by reasonable effort. Notice reached a large majority of the Class members. The Court finds that such notice constitutes the best notice practicable…The forms of Notice and Notice Plan satisfy all of the requirements of Arkansas law and due process.*

Judge Kirk D. Johnson, ***Sweeten v. American Empire Insurance Co.*****,** (August 20, 2007) No. CV-2007-154-3 (Ark. Cir. Ct.):

> *The Court does find that all notices required by the Court to be given to class members was done within the time allowed and the manner best calculated to give notice and apprise all the interested parties of the litigation. It was done through individual notice, first class mail, through internet website and the toll-free telephone call center…The Court does find that these methods were the best possible methods to advise the class members of the pendency of the action and opportunity to present their objections and finds that these notices do comply with all the provisions of Rule 23 and the Arkansas and United States Constitutions.*

Judge Robert Wyatt, ***Gunderson v. F.A. Richard & Associates, Inc.,*** (July 19, 2007) No. 2004-2417-D (14th Jud. D. Ct. La.):

> *Okay. Let me sign this one. This is the final Order and Judgment regarding the fairness, reasonableness and adequacy. And I am satisfied in all respects regarding the presentation that's been made to the Court this morning in the Class memberships, the representation, the notice, and all other aspects and I'm signing that Order at this time. Congratulations, gentlemen.*

Judge Lewis A. Kaplan, *In re Parmalat Securities Litigation*, (July 19, 2007) MDL No. 1653-LAK (S.D.N.Y.):

> *The Court finds that the distribution of the Notice, the publication of the Publication Notice, and the notice methodology…met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution, (including the Due Process clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. 78u-4, et seq.) (the "PSLRA"), the Rules of the Court, and any other applicable law.*

Judge Joe Griffin, *Beasley v. The Reliable Life Insurance Co.,* (March 29, 2007) No. CV-2005-58-1 (Ark. Cir. Ct.):

> *[T]he Court has, pursuant to the testimony regarding the notification requirements, that were specified and adopted by this Court, has been satisfied and that they meet the requirements of due process. They are fair, reasonable, and adequate. I think the method of notification certainly meets the requirements of due process…So the Court finds that the notification that was used for making the potential class members aware of this litigation and the method of filing their claims, if they chose to do so, all those are clear and concise and meet the plain language requirements and those are completely satisfied as far as this Court is concerned in this matter.*

Judge Lewis A. Kaplan, *In re Parmalat Securities Litigation,* (March 1, 2007) MDL No. 1653-LAK (S.D.N.Y.):

> *The court approves, as to form and content, the Notice and the Publication Notice, attached hereto as Exhibits 1 and 2, respectively, and finds that the mailing and distribution of the Notice and the publication of the Publication Notice in the manner and the form set forth in Paragraph 6 of this Order…meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Securities Exchange Act of 1934, as emended by Section 21D(a)(7) of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7), and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons and entities entitled thereto.*

Judge Anna J. Brown, *Reynolds v. The Hartford Financial Services Group, Inc.,* (February 27, 2007) No. CV-01-1529-BR (D. Or):

> *[T]he court finds that the Notice Program fairly, fully, accurately, and adequately advised members of the Settlement Class and each Settlement Subclass of all relevant and material information concerning the proposed settlement of this action, their rights under Rule 23 of the Federal Rules of Civil Procedure, and related matters, and afforded the Settlement Class with adequate time and an opportunity to file objections to the Settlement or request exclusion from the Settlement Class. The court finds that the Notice Program constituted the best notice practicable under the circumstances and fully satisfied the requirements of Rule 23 and due process.*

Judge Kirk D. Johnson, ***Zarebski v. Hartford Insurance Company of the Midwest,*** (February 13, 2007) No. CV-2006-409-3 (Ark. Cir. Ct.):

> *Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Class Notice, as disseminated to members of the Settlement Class in accordance with provisions of the Preliminary Approval Order, was the best notice practicable under the circumstances to all members of the Settlement Class. Accordingly, the Class Notice and Claim Form as disseminated are finally approved as fair, reasonable, and adequate notice under the circumstances. The Court finds and concludes that due and adequate notice of the pendency of this Action, the Stipulation, and the Final Settlement Hearing has been provided to members of the Settlement Class, and the Court further finds and concludes that the notice campaign described in the Preliminary Approval Order and completed by the parties complied fully with the requirements of Arkansas Rule of Civil Procedure 23 and the requirements of due process under the Arkansas and United States Constitutions.*

Judge Richard J. Holwell, *In re Vivendi Universal, S.A. Securities Litigation,* 2007 WL 1490466, at *34 (S.D.N.Y.):

> *In response to defendants' manageability concerns, plaintiffs have filed a comprehensive affidavit outlining the effectiveness of its proposed method of providing notice in foreign countries. According to this…the Court is satisfied that plaintiffs intend to provide individual notice to those class members whose names and addresses are ascertainable, and that plaintiffs' proposed form of publication notice, while complex, will prove both manageable and the best means practicable of providing notice.*

Judge Samuel Conti, *Ciabattari v. Toyota Motor Sales, U.S.A., Inc.,* (November 17, 2006) No. C-05-04289-SC (N.D. Cal.):

> *After reviewing the evidence and arguments presented by the parties…the Court finds as follows…The class members were given the best notice practicable under the circumstances, and that such notice meets the requirements of the Due Process Clause of the U.S. Constitution, and all applicable statutes and rules of court.*

Judge Ivan L.R. Lemelle, ***In re High Sulfur Content Gasoline Prods. Liability Litigation,*** (November 8, 2006) MDL No. 1632 (E.D. La.):

> *This Court approved a carefully-worded Notice Plan, which was developed with the assistance of a nationally-recognized notice expert, Hilsoft Notifications…The Notice Plan for this Class Settlement was consistent with the best practices developed for modern-style "plain English" class notices; the Court and Settling Parties invested substantial effort to ensure notice to persons displaced by the Hurricanes of 2005; and as this Court has already determined, the Notice Plan met the requirements of Rule 23 and constitutional due process.*

Judge Catherine C. Blake, *In re Royal Ahold Securities and "ERISA" Litigation,* (November 2, 2006) MDL No. 1539 (D. Md.):

> *The global aspect of the case raised additional practical and legal complexities, as did the parallel criminal proceedings in another district. The settlement obtained is among the largest cash settlements ever in a securities class action case and represents an estimated 40% recovery of possible provable damages. The notice process appears to have been very successful not only in reaching but also in eliciting claims from a substantial percentage of those eligible for recovery.*

Judge Elaine E. Bucklo, *Carnegie v. Household International,* (August 28, 2006) No. 98 C 2178 (N.D. Ill.):

> *[T]he Notice was disseminated pursuant to a plan consisting of first class mail and publication developed by Plaintiff's notice consultant, Hilsoft Notification[s]…who the Court recognized as experts in the design of notice plans in class actions. The Notice by first-class mail and publication was provided in an adequate and sufficient manner; constitutes the best notice practicable under the circumstances; and satisfies all requirements of Rule 23(e) and due process.*

Judge Joe E. Griffin, *Beasley v. Hartford Insurance Company of the Midwest,* (June 13, 2006) No. CV-2005-58-1 (Ark. Cir. Ct.):

> *Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Individual Notice and the Publication Notice, as disseminated to members of the Settlement Class in accordance with provisions of the Preliminarily Approval Order, was the best notice practicable under the circumstances…and the requirements of due process under the Arkansas and United States Constitutions.*

Judge Norma L. Shapiro, *First State Orthopedics et al. v. Concentra, Inc., et al.,* (May 1, 2006) No. 2:05-CV-04951-NS (E.D. Pa.):

> *The Court finds that dissemination of the Mailed Notice, Published Notice and Full Notice in the manner set forth here and in the Settlement Agreement meets the requirements of due process and Pennsylvania law. The Court further finds that the notice is reasonable, and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, is the best practicable notice; and is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Lawsuit and of their right to object or to exclude themselves from the proposed settlement.*

Judge Thomas M. Hart, *Froeber v. Liberty Mutual Fire Ins. Co.,* (April 19, 2006) No. 00C15234 (Or. Cir. Ct.):

> *The court has found and now reaffirms that dissemination and publication of the Class Notice in accordance with the terms of the Third Amended Order constitutes the best notice practicable under the circumstances.*

Judge Catherine C. Blake, *In re Royal Ahold Securities and "ERISA" Litigation,* (January 6, 2006) MDL No. 1539 (D. Md.):

I think it's remarkable, as I indicated briefly before, given the breadth and scope of the proposed Class, the global nature of the Class, frankly, that again, at least on a preliminary basis, and I will be getting a final report on this, that the Notice Plan that has been proposed seems very well, very well suited, both in terms of its plain language and in terms of its international reach, to do what I hope will be a very thorough and broad-ranging job of reaching as many of the shareholders, whether individual or institutional, as possibly can be done to participate in what I also preliminarily believe to be a fair, adequate and reasonable settlement.

Judge Catherine C. Blake, *In re Royal Ahold Securities & "ERISA" Litigation,* 437 F.Supp.2d 467, 472 (D. Md. 2006):

The court hereby finds that the Notice and Notice Plan described herein and in the Order dated January 9, 2006 provided Class Members with the best notice practicable under the circumstances. The Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation, to all persons entitled to such notice, and the Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.

Judge Robert H. Wyatt, Jr., *Gray v. New Hampshire Indemnity Co., Inc.*, (December 19, 2005) No. CV-2002-952-2-3 (Ark. Cir. Ct.):

Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The Notice contained the essential elements necessary to satisfy due process, including the Settlement Class definition, the identities of the Parties and of their counsel, a summary of the terms of the proposed settlement, Class Counsel's intent to apply for fees, information regarding the manner in which objections could be submitted, and requests for exclusions could be filed. The Notice properly informed Class members of the formula for the distribution of benefits under the settlement…Notice was direct mailed to all Class members whose current whereabouts could be identified by reasonable effort. Notice was also effected by publication in many newspapers and magazines throughout the nation, reaching a large majority of the Class members multiple times. The Court finds that such notice constitutes the best notice practicable.

Judge Michael J. O'Malley, *Defrates v. Hollywood Entm't Corp.*, (June 24, 2005) No. 02 L 707 (Ill. Cir. Ct.):

[T]his Court hereby finds that the notice program described in the Preliminary Approval Order and completed by HEC complied fully with the requirements of due process, the Federal Rules of Civil Procedure and all other applicable laws.

Judge Wilford D. Carter, *Thibodeaux v. Conoco Phillips Co.,* (May 26, 2005) No. 2003-481 F (14th J.D. Ct. La.):

Notice given to Class Members…were reasonably calculated under all the circumstances and have been sufficient, both as to the form and content…Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due process and sufficient notice to all potential members of the Class as Defined.

Judge Michael Canaday, *Morrow v. Conoco Inc.*, (May 25, 2005) No. 2002-3860 G (14th J.D. Ct. La.):

The objections, if any, made to due process, constitutionality, procedures, and compliance with law, including, but not limited to, the adequacy of notice and the fairness of the proposed Settlement Agreement, lack merit and are hereby overruled.

Judge John R. Padova, *Nichols v. SmithKline Beecham Corp.*, (April 22, 2005) No. 00-6222 (E.D. Pa.):

Pursuant to the Order dated October 18, 2004, End-Payor Plaintiffs employed Hilsoft Notifications to design and oversee Notice to the End-Payor Class. Hilsoft Notifications has extensive experience in class action notice situations relating to prescription drugs and cases in which unknown class members need to receive notice…After reviewing the individual mailed Notice, the publication Notices, the PSAs and the informational release, the Court concludes that the substance of the Notice provided to members of the End-Payor Class in this case was adequate to satisfy the concerns of due process and the Federal Rules.

Judge Douglas L. Combs, *Morris v. Liberty Mutual Fire Ins. Co.,* (February 22, 2005) No. CJ-03-714 (D. Okla.):

> *I am very impressed that the notice was able to reach – be delivered to 97 ½ percent members of the class. That, to me, is admirable. And I'm also – at the time that this was initially entered, I was concerned about the ability of notice to be understood by a common, nonlawyer person, when we talk about legalese in a court setting. In this particular notice, not only the summary notice but even the long form of the notice were easily understandable, for somebody who could read the English language, to tell them whether or not they had the opportunity to file a claim.*

Judge Joseph R. Goodwin, *In re Serzone Products Liability Litigation,* 231 F.R.D. 221, 231 (S.D. W. Va. 2005):

> *The Notice Plan was drafted by Hilsoft Notifications, a Pennsylvania firm specializing in designing, developing, analyzing and implementing large-scale, unbiased legal notification plans. Hilsoft has disseminated class action notices in more than 150 cases, and it designed the model notices currently displayed on the Federal Judicial Center's website as a template for others to follow…To enhance consumer exposure, Hilsoft studied the demographics and readership of publications among adults who used a prescription drug for depression in the last twelve months. Consequently, Hilsoft chose to utilize media particularly targeting women due to their greater incidence of depression and heavy usage of the medication.*

Judge Richard G. Stearns, *In re Lupron® Marketing and Sales Practice Litigation,* (November 24, 2004) MDL No. 1430 (D. Mass.):

> *After review of the proposed Notice Plan designed by Hilsoft Notifications…is hereby found to be the best practicable notice under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Fairness Hearing to all persons and entities affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Rule 23 the Federal Rules of Civil Procedure and due process.*

Judge Richard G. Stearns, *In re Lupron® Marketing and Sales Practice Litigation,* (November 23, 2004) MDL No. 1430 (D. Mass.):

> *I actually find the [notice] plan as proposed to be comprehensive and extremely sophisticated and very likely be as comprehensive as any plan of its kind could be in reaching those most directly affected.*

Judge James S. Moody, Jr., *Mantzouris v. Scarritt Motor Group Inc.,* (August 10, 2004) No. 8:03 CV- 0015-T-30 MSS (M.D. Fla.):

> *Due and adequate notice of the proceedings having been given and a full opportunity having been offered to the members of the Class to participate in the Settlement Hearing, or object to the certification of the Class and the Agreement, it is hereby determined that all members of the Class, except for Ms. Gwendolyn Thompson, who was the sole person opting out of the Settlement Agreement, are bound by this Order and Final Judgment entered herein.*

Judge Robert E. Payne, *Fisher v. Virginia Electric & Power Co.*, (July 1, 2004) No. 3:02CV431 (E.D. Va.)**:**

> *The record here shows that the class members have been fully and fairly notified of the existence of the class action, of the issues in it, of the approaches taken by each side in it in such a way as to inform meaningfully those whose rights are affected and to thereby enable them to exercise their rights intelligently…The success rate in notifying the class is, I believe, at least in my experience, I share Ms. Kauffman's experience, it is as great as I have ever seen in practicing or serving in this job…So I don't believe we could have had any more effective notice.*

Judge John Kraetzer, *Baiz v. Mountain View Cemetery*, (April 14, 2004) No. 809869-2 (Cal. Super. Ct.):

> *The notice program was timely completed, complied with California Government Code section 6064, and provided the best practicable notice to all members of the Settlement Class under the circumstances. The Court finds that the notice program provided class members with adequate instructions and a variety of means to obtain information pertaining to their rights and obligations under the settlement so that a full opportunity has been afforded to class members and all other persons wishing to be heard…The Court*

has determined that the Notice given to potential members of the Settlement Class fully and accurately informed potential Members of the Settlement Class of all material elements of the proposed settlement and constituted valid, due, and sufficient notice to all potential members of the Settlement Class, and that it constituted the best practicable notice under the circumstances.

Hospitality Mgmt. Assoc., Inc. v. Shell Oil Co., 356 S.C. 644, 663, 591 S.E.2d 611, 621 (Sup. Ct. S.C. 2004):

Clearly, the Cox court designed and utilized various procedural safeguards to guarantee sufficient notice under the circumstances. Pursuant to a limited scope of review, we need go no further in deciding the Cox court's findings that notice met due process are entitled to deference.

Judge Joseph R. Goodwin, *In re Serzone Prods. Liability Litigation,* 2004 U.S. Dist. LEXIS 28297, at *10 (S.D. W. Va.):

The Court has considered the Notice Plan and proposed forms of Notice and Summary Notice submitted with the Memorandum for Preliminary Approval and finds that the forms and manner of notice proposed by Plaintiffs and approved herein meet the requirements of due process and Fed.R.Civ.P. 23(c) and (e), are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the Constitutional requirements of notice.

Judge James D. Arnold, *Cotten v. Ferman Mgmt. Servs. Corp.,* (November 26, 2003) No. 02-08115 (Fla. Cir. Ct.):

Due and adequate notice of the proceedings having been given and a full opportunity having been offered to the member of the Class to participate in the Settlement Hearing, or object to the certification of the Class and the Agreement…

Judge Judith K. Fitzgerald, *In re Pittsburgh Corning Corp.,* (November 26, 2003) No. 00-22876-JKF (Bankr. W.D. Pa.):

The procedures and form of notice for notifying the holders of Asbestos PI Trust Claims, as described in the Motion, adequately protect the interests of the holders of Asbestos PI Trust Claims in a manner consistent with the principles of due process, and satisfy the applicable requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

Judge Carter Holly, *Richison v. American Cemwood Corp.,* (November 18, 2003) No. 005532 (Cal. Super. Ct.):

As to the forms of Notice, the Court finds and concludes that they fully apprised the Class members of the pendency of the litigation, the terms of the Phase 2 Settlement, and Class members' rights and options…Not a single Class member—out of an estimated 30,000—objected to the terms of the Phase 2 Settlement Agreement, notwithstanding a comprehensive national Notice campaign, via direct mail and publication Notice…The notice was reasonable and the best notice practicable under the circumstances, was due, adequate, and sufficient notice to all Class members, and complied fully with the laws of the State of California, the Code of Civil Procedure, due process, and California Rules of Court 1859 and 1860.

Judge Thomas A. Higgins, *In re Columbia/HCA Healthcare Corp.,* (June 13, 2003) MDL No. 1227 (M.D. Tenn.):

Notice of the settlement has been given in an adequate and sufficient manner. The notice provided by mailing the settlement notice to certain class members and publishing notice in the manner described in the settlement was the best practicable notice, complying in all respects with the requirements of due process.

Judge Harold Baer, Jr., *Thompson v. Metropolitan Life Ins. Co.,* 216 F.R.D. 55, 68 (S.D.N.Y. 2003):

In view of the extensive notice campaign waged by the defendant, the extremely small number of class members objecting or requesting exclusion from the settlement is a clear sign of strong support for the settlement…The notice provides, in language easily understandable to a lay person, the essential terms of the settlement, including the claims asserted…who would be covered by the settlement…[T]he notice campaign that defendant agreed to undertake was extensive…I am satisfied, having reviewed the contents of the notice package, and the extensive steps taken to disseminate notice of the settlement, that the class notice complies with the requirements of Rule 23 (c)(2) and 23(e). In summary, I have reviewed

all of the objections, and none persuade me to conclude that the proposed settlement is unfair, inadequate or unreasonable.

Judge Edgar E. Bayley, *Dimitrios v. CVS, Inc.,* (November 27, 2002) No. 99-6209; ***Walker v. Rite Aid Corp.,*** No. 99-6210; and ***Myers v. Rite Aid Corp.*,** No. 01-2771 (Pa. Ct. C.P.):

The Court specifically finds that: fair and adequate notice has been given to the class, which comports with due process of law.

Judge Dewey C. Whitenton, *Ervin v. Movie Gallery, Inc.,* (November 22, 2002) No. 13007 (Tenn. Ch.):

The content of the class notice also satisfied all due process standards and state law requirements…The content of the notice was more than adequate to enable class members to make an informed and intelligent choice about remaining in the class or opting out of the class.

Judge James R. Williamson, *Kline v. The Progressive Corp*., (November 14, 2002) No. 01-L-6 (Ill. Cir. Ct.):

Notice to the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The notice contained the essential elements necessary to satisfy due process…

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (September 13, 2002) No. L-008830.00 (N.J. Super. Ct.):

Here, the comprehensive bilingual, English and Spanish, court-approved Notice Plan provided by the terms of the settlement meets due process requirements. The Notice Plan used a variety of methods to reach potential class members. For example, short form notices for print media were placed…throughout the United States and in major national consumer publications which include the most widely read publications among Cooper Tire owner demographic groups.

Judge Harold Baer, Jr., *Thompson v. Metropolitan Life Ins. Co.,* (September 3, 2002) No. 00 Civ. 5071-HB (S.D.N.Y.):

The Court further finds that the Class Notice and Publication Notice provided in the Settlement Agreement are written in plain English and are readily understandable by Class Members. In sum, the Court finds that the proposed notice texts and methodology are reasonable, that they constitute due, adequate and sufficient notice to all persons entitled to be provided with notice, and that they meet the requirements of the Federal Rules of Civil Procedure (including Fed. R. Civ. P. 23(c)(2) and (e)), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law.

Judge Milton Gunn Shuffield, *Scott v. Blockbuster Inc.,* (January 22, 2002) No. D 162-535 (Tex. Jud. Dist. Ct.) Ultimately withstood challenge to Court of Appeals of Texas. *Peters v. Blockbuster* 65 S.W.3d 295, 307 (Tex. App.-Beaumont, 2001):

In order to maximize the efficiency of the notice, a professional concern, Hilsoft Notifications, was retained. This Court concludes that the notice campaign was the best practicable, reasonably calculated, under all the circumstances, to apprise interested parties of the settlement and afford them an opportunity to present their objections…The notice campaign was highly successful and effective, and it more than satisfied the due process and state law requirements for class notice.

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (October 30, 2001) No. MID-L-8839-00-MT (N.J. Super. Ct.):

The parties have crafted a notice program which satisfies due process requirements without reliance on an unreasonably burdensome direct notification process…The form of the notice is reasonably calculated to apprise class members of their rights. The notice program is specifically designed to reach a substantial percentage of the putative settlement class members.

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (October 29, 2001) No. L-8830-00-MT (N.J. Super. Ct.):

> *I saw the various bar graphs for the different publications and the different media dissemination, and I think that was actually the clearest bar graph I've ever seen in my life…it was very clear of the time periods that you were doing as to each publication and which media you were doing over what market time, so I think that was very clear.*

Judge Stuart R. Pollak, *Microsoft I-V Cases,* (April 1, 2001) J.C.C.P. No. CJC-00-004106 (Cal. Super. Ct.):

> *[C]oncerning dissemination of class notice; and I have reviewed the materials that have been submitted on that subject and basically I'm satisfied. I think it's amazing if you're really getting 80 percent coverage. That's very reassuring. And the papers that you submitted responded to a couple things that had been mentioned before and I am satisfied with all that.*

Judge Stuart R. Pollak, *Microsoft I-V Cases,* (March 30, 2001) J.C.C.P. No. 4106 (Cal. Super. Ct.):

> *Plaintiffs and Defendant Microsoft Corporation have submitted a joint statement in support of their request that the Court approve the plan for dissemination of class action notice and proposed forms of notice, and amend the class definition. The Court finds that the forms of notice to Class members attached hereto as Exhibits A and B fairly and adequately inform the Class members of their rights concerning this litigation. The Court further finds that the methods for dissemination of notice are the fairest and best practicable under the circumstances, and comport with due process requirements.*

LEGAL NOTICE CASES

Hilsoft Notifications has served as a notice expert for planning, implementation and/or analysis in the following partial listing of cases:

Andrews v. MCI (900 Number Litigation)	S.D. Ga., CV 191-175
Harper v. MCI (900 Number Litigation)	S.D. Ga., CV 192-134
In re Bausch & Lomb Contact Lens Litigation	N.D. Ala., 94-C-1144-WW
In re Ford Motor Co. Vehicle Paint Litigation	E.D. La., MDL No. 1063
Castano v. Am. Tobacco	E.D. La., CV 94-1044
Cox v. Shell Oil (Polybutylene Pipe Litigation)	Tenn. Ch., 18,844
In re Amino Acid Lysine Antitrust Litigation	N.D. Ill., MDL No. 1083
In re Dow Corning Corp. (Breast Implant Bankruptcy)	E.D. Mich., 95-20512-11-AJS
Kunhel v. CNA Ins. Companies	N.J. Super. Ct., ATL-C-0184-94
In re Factor Concentrate Blood Prods. Litigation (Hemophiliac HIV)	N.D. Ill., MDL No. 986
In re Ford Ignition Switch Prods. Liability Litigation	D. N.J., 96-CV-3125
Jordan v. A.A. Friedman (Non-Filing Ins. Litigation)	M.D. Ga., 95-52-COL
Kalhammer v. First USA (Credit Card Litigation)	Cal. Cir. Ct., C96-45632010-CAL
Navarro-Rice v. First USA (Credit Card Litigation)	Or. Cir. Ct., 9709-06901

Spitzfaden v. Dow Corning (Breast Implant Litigation)	La. D. Ct., 92-2589
Robinson v. Marine Midland (Finance Charge Litigation)	N.D. Ill., 95 C 5635
McCurdy v. Norwest Fin. Alabama	Ala. Cir. Ct., CV-95-2601
Johnson v. Norwest Fin. Alabama	Ala. Cir. Ct., CV-93-PT-962-S
In re Residential Doors Antitrust Litigation	E.D. Pa., MDL No. 1039
Barnes v. Am. Tobacco Co. Inc.	E.D. Pa., 96-5903
Small v. Lorillard Tobacco Co. Inc.	N.Y. Super. Ct., 110949/96
Naef v. Masonite Corp (Hardboard Siding Litigation)	Ala. Cir. Ct., CV-94-4033
In re Synthroid Mktg. Litigation	N.D. Ill., MDL No. 1182
Raysick v. Quaker State Slick 50 Inc.	D. Tex., 96-12610
Castillo v. Mike Tyson (Tyson v. Holyfield Bout)	N.Y. Super. Ct., 114044/97
Avery v. State Farm Auto. Ins. (Non-OEM Auto Parts Litigation)	Ill. Cir. Ct., 97-L-114
Walls v. The Am. Tobacco Co. Inc.	N.D. Okla., 97-CV-218-H
Tempest v. Rainforest Café (Securities Litigation)	D. Minn., 98-CV-608
Stewart v. Avon Prods. (Securities Litigation)	E.D. Pa., 98-CV-4135
Goldenberg v. Marriott PLC Corp (Securities Litigation)	D. Md., PJM 95-3461
Delay v. Hurd Millwork (Building Products Litigation)	Wash. Super. Ct., 97-2-07371-0
Gutterman v. Am. Airlines (Frequent Flyer Litigation)	Ill. Cir. Ct., 95CH982
Hoeffner v. The Estate of Alan Kenneth Vieira (Un-scattered Cremated Remains Litigation)	Cal. Super. Ct., 97-AS 02993
In re Graphite Electrodes Antitrust Litigation	E.D. Pa., MDL No. 1244
In re Silicone Gel Breast Implant Prods. Liability Litigation, Altrichter v. INAMED	N.D. Ala., MDL No. 926
St. John v. Am. Home Prods. Corp. (Fen/Phen Litigation)	Wash. Super. Ct., 97-2-06368
Crane v. Hackett Assocs. (Securities Litigation)	E.D. Pa., 98-5504
In re Holocaust Victims Assets Litigation (Swiss Banks Litigation)	E.D.N.Y., CV-96-4849
McCall v. John Hancock (Settlement Death Benefits)	N.M. Cir. Ct., CV-2000-2818
Williams v. Weyerhaeuser Co. (Hardboard Siding Litigation)	Cal. Super. Ct., CV-995787
Kapustin v. YBM Magnex Int'l Inc. (Securities Litigation)	E.D. Pa., 98-CV-6599

Leff v. YBM Magnex Int'l Inc. (Securities Litigation)	E.D. Pa., 95-CV-89
In re PRK/LASIK Consumer Litigation	Cal. Super. Ct., CV-772894
Hill v. Galaxy Cablevision	N.D. Miss., 1:98CV51-D-D
Scott v. Am. Tobacco Co. Inc.	La. D. Ct., 96-8461
Jacobs v. Winthrop Financial Associates (Securities Litigation)	D. Mass., 99-CV-11363
Int'l Comm'n on Holocaust Era Ins. Claims – Worldwide Outreach Program	Former Secretary of State Lawrence Eagleburger Commission
Bownes v. First USA Bank (Credit Card Litigation)	Ala. Cir. Ct., CV-99-2479-PR
Whetman v. IKON (ERISA Litigation)	E.D. Pa., 00-87
Mangone v. First USA Bank (Credit Card Litigation)	Ill. Cir. Ct., 99AR672a
In re Babcock and Wilcox Co. (Asbestos Related Bankruptcy)	E.D. La., 00-10992
Barbanti v. W.R. Grace and Co. (Zonolite / Asbestos Litigation)	Wash. Super. Ct., 00201756-6
Brown v. Am. Tobacco	Cal. Super. Ct., J.C.C.P. 4042, 711400
Wilson v. Servier Canada Inc. (Canadian Fen/Phen Litigation)	Ont. Super. Ct., 98-CV-158832
In re Texaco Inc. (Bankruptcy)	S.D.N.Y. 87 B 20142, 87 B 20143, 87 B 20144
Olinde v. Texaco (Bankruptcy, Oil Lease Litigation)	M.D. La., 96-390
Gustafson v. Bridgestone/Firestone, Inc. (Recall Related Litigation)	S.D. Ill., 00-612-DRH
In re Bridgestone/Firestone Tires Prods. Liability Litigation	S.D. Ind., MDL No. 1373
Gaynoe v. First Union Corp. (Credit Card Litigation)	N.C. Super. Ct., 97-CVS-16536
Carson v. Daimler Chrysler Corp. (Fuel O-Rings Litigation)	W.D. Tenn., 99-2896 TU A
Providian Credit Card Cases	Cal. Super. Ct., J.C.C.P. 4085
Fields v. Great Spring Waters of Am., Inc. (Bottled Water Litigation)	Cal. Super. Ct., 302774
Sanders v. Great Spring Waters of Am., Inc. (Bottled Water Litigation)	Cal. Super. Ct., 303549
Sims v. Allstate Ins. Co. (Diminished Auto Value Litigation)	Ill. Cir. Ct., 99-L-393A
Peterson v. State Farm Mutual Auto. Ins. Co. (Diminished Auto Value Litigation)	Ill. Cir. Ct., 99-L-394A
Microsoft I-V Cases (Antitrust Litigation Mirroring Justice Dept.)	Cal. Super. Ct., J.C.C.P. 4106
Westman v. Rogers Family Funeral Home, Inc. (Remains Handling Litigation)	Cal. Super. Ct., C-98-03165

Rogers v. Clark Equipment Co.	Ill. Cir. Ct., 97-L-20
Garrett v. Hurley State Bank (Credit Card Litigation)	Miss. Cir. Ct., 99-0337
Ragoonanan v. Imperial Tobacco Ltd. (Firesafe Cigarette Litigation)	Ont. Super. Ct., 00-CV-183165 CP
Dietschi v. Am. Home Prods. Corp. (PPA Litigation)	W.D. Wash., C01-0306L
Dimitrios v. CVS, Inc. (PA Act 6 Litigation)	Pa. C.P., 99-6209
Jones v. Hewlett-Packard Co. (Inkjet Cartridge Litigation)	Cal. Super. Ct., 302887
In re Tobacco Cases II (California Tobacco Litigation)	Cal. Super. Ct., J.C.C.P. 4042
Scott v. Blockbuster, Inc. (Extended Viewing Fees Litigation)	136th Tex. Jud. Dist., D 162-535
Anesthesia Care Assocs. v. Blue Cross of Cal.	Cal. Super. Ct., 986677
Ting v. AT&T (Mandatory Arbitration Litigation)	N.D. Cal., C-01-2969-BZ
In re W.R. Grace & Co. (Asbestos Related Bankruptcy)	Bankr. D. Del., 01-01139-JJF
Talalai v. Cooper Tire & Rubber Co. (Tire Layer Adhesion Litigation)	N.J. Super. Ct.,, MID-L-8839-00 MT
Kent v. Daimler Chrysler Corp. (Jeep Grand Cherokee Park-to-Reverse Litigation)	N.D. Cal., C01-3293-JCS
Int'l Org. of Migration – German Forced Labour Compensation Programme	Geneva, Switzerland
Madsen v. Prudential Federal Savings & Loan (Homeowner's Loan Account Litigation)	3rd Jud. Dist. Ct. Utah, C79-8404
Bryant v. Wyndham Int'l., Inc. (Energy Surcharge Litigation)	Cal. Super. Ct., GIC 765441, GIC 777547
In re USG Corp. (Asbestos Related Bankruptcy)	Bankr. D. Del., 01-02094-RJN
Thompson v. Metropolitan Life Ins. Co. (Race Related Sales Practices Litigation)	S.D.N.Y., 00-CIV-5071 HB
Ervin v. Movie Gallery Inc. (Extended Viewing Fees)	Tenn. Ch., CV-13007
Peters v. First Union Direct Bank (Credit Card Litigation)	M.D. Fla., 8:01-CV-958-T-26 TBM
National Socialist Era Compensation Fund	Republic of Austria
In re Baycol Litigation	D. Minn., MDL No. 1431
Claims Conference–Jewish Slave Labour Outreach Program	German Government Initiative
Wells v. Chevy Chase Bank (Credit Card Litigation)	Md. Cir. Ct., C-99-000202
Walker v. Rite Aid of PA, Inc. (PA Act 6 Litigation)	C.P. Pa., 99-6210
Myers v. Rite Aid of PA, Inc. (PA Act 6 Litigation)	C.P. Pa., 01-2771
In re PA Diet Drugs Litigation	C.P. Pa., 9709-3162

Harp v. Qwest Communications (Mandatory Arbitration Lit.)	Or. Circ. Ct., 0110-10986
Tuck v. Whirlpool Corp. & Sears, Roebuck & Co. (Microwave Recall Litigation)	Ind. Cir. Ct., 49C01-0111-CP-002701
Allison v. AT&T Corp. (Mandatory Arbitration Litigation)	1st Jud. D.C. N.M., D-0101-CV-20020041
Kline v. The Progressive Corp.	Ill. Cir. Ct., 01-L-6
Baker v. Jewel Food Stores, Inc. & Dominick's Finer Foods, Inc. (Milk Price Fixing)	Ill. Cir. Ct., 00-L-9664
In re Columbia/HCA Healthcare Corp. (Billing Practices Litigation)	M.D. Tenn., MDL No. 1227
Foultz v. Erie Ins. Exchange (Auto Parts Litigation)	C.P. Pa., 000203053
Soders v. General Motors Corp. (Marketing Initiative Litigation)	C.P. Pa., CI-00-04255
Nature Guard Cement Roofing Shingles Cases	Cal. Super. Ct., J.C.C.P. 4215
Curtis v. Hollywood Entm't Corp. (Additional Rental Charges)	Wash. Super. Ct., 01-2-36007-8 SEA
Defrates v. Hollywood Entm't Corp.	Ill. Cir. Ct., 02L707
Pease v. Jasper Wyman & Son, Merrill Blueberry Farms Inc., Allen's Blueberry Freezer Inc. & Cherryfield Foods Inc.	Me. Super. Ct., CV-00-015
West v. G&H Seed Co. (Crawfish Farmers Litigation)	27th Jud. D. Ct. La., 99-C-4984-A
Linn v. Roto-Rooter Inc. (Miscellaneous Supplies Charge)	C.P. Ohio, CV-467403
McManus v. Fleetwood Enter., Inc. (RV Brake Litigation)	D. Ct. Tex., SA-99-CA-464-FB
Baiz v. Mountain View Cemetery (Burial Practices)	Cal. Super. Ct., 809869-2
Stetser v. TAP Pharm. Prods, Inc. & Abbott Laboratories (Lupron Price Litigation)	N.C. Super. Ct., 01-CVS-5268
Richison v. Am. Cemwood Corp. (Roofing Durability Settlement)	Cal. Super. Ct., 005532
Cotten v. Ferman Mgmt. Servs. Corp.	13th Jud. Cir. Fla., 02-08115
In re Pittsburgh Corning Corp. (Asbestos Related Bankruptcy)	Bankr. W.D. Pa., 00-22876-JKF
Mostajo v. Coast Nat'l Ins. Co.	Cal. Super. Ct., 00 CC 15165
Friedman v. Microsoft Corp. (Antitrust Litigation)	Ariz. Super. Ct., CV 2000-000722
Multinational Outreach - East Germany Property Claims	Claims Conference
Davis v. Am. Home Prods. Corp. (Norplant Contraceptive Litigation)	D. La., 94-11684
Walker v. Tap Pharmaceutical Prods., Inc. (Lupron Price Litigation)	N.J. Super. Ct., CV CPM-L-682-01
Munsey v. Cox Communications (Late Fee Litigation)	Civ. D. La., Sec. 9, 97 19571

Gordon v. Microsoft Corp. (Antitrust Litigation)	4th Jud. D. Ct. Minn., 00-5994
Clark v. Tap Pharmaceutical Prods., Inc.	5th Dist. App. Ct. Ill., 5-02-0316
Fisher v. Virginia Electric & Power Co.	E.D. Va., 3:02-CV-431
Mantzouris v. Scarritt Motor Group, Inc.	M.D. Fla., 8:03-CV-0015-T-30-MSS
Johnson v. Ethicon, Inc. (Product Liability Litigation)	W. Va. Cir. Ct., 01-C-1530, 1531, 1533, 01-C-2491 to 2500
Schlink v. Edina Realty Title	4th Jud. D. Ct. Minn., 02-018380
Tawney v. Columbia Natural Res. (Oil & Gas Lease Litigation)	W. Va. Cir. Ct., 03-C-10E
White v. Washington Mutual, Inc. (Pre-Payment Penalty Litigation)	4th Jud. D. Ct. Minn., CT 03-1282
Acacia Media Techs. Corp. v. Cybernet Ventures Inc., (Patent Infringement Litigation)	C.D. Cal., SACV03-1803 GLT (Anx)
Bardessono v. Ford Motor Co. (15 Passenger Vans)	Wash. Super. Ct., 32494
Gardner v. Stimson Lumber Co. (Forestex Siding Litigation)	Wash. Super. Ct., 00-2-17633-3SEA
Poor v. Sprint Corp. (Fiber Optic Cable Litigation)	Ill. Cir. Ct., 99-L-421
Thibodeau v. Comcast Corp.	E.D. Pa., 04-CV-1777
Cazenave v. Sheriff Charles C. Foti (Strip Search Litigation)	E.D. La., 00-CV-1246
National Assoc. of Police Orgs., Inc. v. Second Chance Body Armor, Inc. (Bullet Proof Vest Litigation)	Mich. Cir. Ct., 04-8018-NP
Nichols v. SmithKline Beecham Corp. (Paxil)	E.D. Pa., 00-6222
Yacout v. Federal Pacific Electric Co. (Circuit Breaker)	N.J. Super. Ct., MID-L-2904-97
Lewis v. Bayer AG (Baycol)	1st Jud. Dist. Ct. Pa., 002353
In re Educ. Testing Serv. PLT 7-12 Test Scoring Litigation	E.D. La., MDL No. 1643
Stefanyshyn v. Consol. Indus. Corp. (Heat Exchanger)	Ind. Super. Ct., 79 D 01-9712-CT-59
Barnett v. Wal-Mart Stores, Inc.	Wash. Super. Ct., 01-2-24553-8 SEA
In re Serzone Prods. Liability Litigation	S.D. W. Va., MDL No. 1477
Ford Explorer Cases	Cal. Super. Ct., J.C.C.P. 4226 & 4270
In re Solutia Inc. (Bankruptcy)	S.D.N.Y., 03-17949-PCB
In re Lupron Marketing & Sales Practices Litigation	D. Mass., MDL No. 1430
Morris v. Liberty Mutual Fire Ins. Co.	D. Okla., CJ-03-714
Bowling, et al. v. Pfizer Inc. (Bjork-Shiley Convexo-Concave Heart Valve)	S.D. Ohio, C-1-91-256

Thibodeaux v. Conoco Philips Co.	D. La., 2003-481
Morrow v. Conoco Inc.	D. La., 2002-3860
Tobacco Farmer Transition Program	U.S. Dept. of Agric.
Perry v. Mastercard Int'l Inc.	Ariz. Super. Ct., CV2003-007154
Brown v. Credit Suisse First Boston Corp.	C.D. La., 02-13738
In re Unum Provident Corp.	D. Tenn., 1:03-CV-1000
In re Ephedra Prods. Liability Litigation	D.N.Y., MDL No. 1598
Chesnut v. Progressive Casualty Ins. Co.	Ohio C.P., 460971
Froeber v. Liberty Mutual Fire Ins. Co.	Or. Cir. Ct., 00C15234
Luikart v. Wyeth Am. Home Prods. (Hormone Replacement)	W. Va. Cir. Ct., 04-C-127
Salkin v. MasterCard Int'l Inc. (Pennsylvania)	Pa. C.P., 2648
Rolnik v. AT&T Wireless Servs., Inc.	N.J. Super. Ct., L-180-04
Singleton v. Hornell Brewing Co. Inc. (Arizona Ice Tea)	Cal. Super. Ct., BC 288 754
Becherer v. Qwest Commc'ns Int'l, Inc.	Ill. Cir. Ct., 02-L140
Clearview Imaging v. Progressive Consumers Ins. Co.	Fla. Cir. Ct., 03-4174
Mehl v. Canadian Pacific Railway, Ltd	D.N.D., A4-02-009
Murray v. IndyMac Bank. F.S.B	N.D. Ill., 04 C 7669
Gray v. New Hampshire Indemnity Co., Inc.	Ark. Cir. Ct., CV-2002-952-2-3
George v. Ford Motor Co.	M.D. Tenn., 3:04-0783
Allen v. Monsanto Co.	W. Va. Cir. Ct., 041465
Carter v. Monsanto Co.	W. Va. Cir. Ct., 00-C-300
Carnegie v. Household Int'l, Inc.	N. D. Ill., 98-C-2178
Daniel v. AON Corp.	Ill. Cir. Ct., 99 CH 11893
In re Royal Ahold Securities and "ERISA" Litigation	D. Md., MDL No. 1539
In re Pharmaceutical Industry Average Wholesale Price Litigation	D. Mass., MDL No. 1456
Meckstroth v. Toyota Motor Sales, U.S.A., Inc.	24th Jud. D. Ct. La., 583-318
Walton v. Ford Motor Co.	Cal. Super. Ct., SCVSS 126737
Hill v. State Farm Mutual Auto Ins. Co.	Cal. Super. Ct., BC 194491

First State Orthopaedics et al. v. Concentra, Inc., et al.	E.D. Pa. 2:05-CV-04951-AB
Sauro v. Murphy Oil USA, Inc.	E.D. La., 05-4427
In re High Sulfur Content Gasoline Prods. Liability Litigation	E.D. La., MDL No. 1632
Homeless Shelter Compensation Program	City of New York
Rosenberg v. Academy Collection Service, Inc.	E.D. Pa., 04-CV-5585
Chapman v. Butler & Hosch, P.A.	2nd Jud. Cir. Fla., 2000-2879
In re Vivendi Universal, S.A. Securities Litigation	S.D.N.Y., 02-CIV-5571 RJH
Desportes v. American General Assurance Co.	Ga. Super. Ct., SU-04-CV-3637
In re: Propulsid Products Liability Litigation	E.D. La., MDL No. 1355
Baxter v. The Attorney General of Canada (In re Residential Schools Class Action Litigation)	Ont. Super. Ct., 00-CV-192059 CPA
McNall v. Mastercard Int'l, Inc. (Currency Conversion Fees)	13th Tenn. Jud. Dist. Ct., CT-002506-03
Lee v. Allstate	Ill. Cir. Ct., 03 LK 127
Turner v. Murphy Oil USA, Inc.	E.D. La., 2:05-CV-04206-EEF-JCW
Carter v. North Central Life Ins. Co.	Ga. Super. Ct., SU-2006-CV-3764-6
Harper v. Equifax	E.D. Pa., 2:04-CV-03584-TON
Beasley v. Hartford Insurance Co. of the Midwest	Ark. Cir. Ct., CV-2005-58-1
Springer v. Biomedical Tissue Services, LTD (Human Tissue Litigation)	Ind. Cir. Ct., 1:06-CV-00332-SEB-VSS
Spence v. Microsoft Corp. (Antitrust Litigation)	Wis. Cir. Ct., 00-CV-003042
Pennington v. The Coca Cola Co. (Diet Coke)	Mo. Cir. Ct., 04-CV-208580
Sunderman v. Regeneration Technologies, Inc. (Human Tissue Litigation)	S.D. Ohio, 1:06-CV-075-MHW
Splater v. Thermal Ease Hydronic Systems, Inc.	Wash. Super. Ct., 03-2-33553-3-SEA
Peyroux v. The United States of America (New Orleans Levee Breech)	E.D. La., 06-2317
Chambers v. DaimlerChrysler Corp. (Neon Head Gaskets)	N.C. Super. Ct., 01:CVS-1555
Ciabattari v. Toyota Motor Sales, U.S.A., Inc. (Sienna Run Flat Tires)	N.D. Cal., C-05-04289-BZ
In re Bridgestone Securities Litigation	M.D. Tenn., 3:01-CV-0017
In re Mutual Funds Investment Litigation (Market Timing)	D. Md., MDL No. 1586
Accounting Outsourcing v. Verizon Wireless	M.D. La., 03-CV-161

Hensley v. Computer Sciences Corp.	Ark. Cir. Ct., CV-2005-59-3
Peek v. Microsoft Corporation	Ark. Cir. Ct., CV-2006-2612
Reynolds v. The Hartford Financial Services Group, Inc.	D. Or., CV-01-1529 BR
Schwab v. Philip Morris USA, Inc.	E.D.N.Y., CV-04-1945
Zarebski v. Hartford Insurance Co. of the Midwest	Ark. Cir. Ct., CV-2006-409-3
In re Parmalat Securities Litigation	S.D.N.Y., MDL No. 1653 (LAK)
Beasley v. The Reliable Life Insurance Co.	Ark. Cir. Ct., CV-2005-58-1
Sweeten v. American Empire Insurance Company	Ark. Cir. Ct., 2007-154-3
Govt. Employees Hospital Assoc. v. Serono Int., S.A.	D. Mass., 06-CA-10613-PBS
Gunderson v. Focus Healthcare Management, Inc.	14th Jud. D. Ct. La., 2004-2417-D
Gunderson v. F.A. Richard & Associates, Inc., et al.	14th Jud. D. Ct. La., 2004-2417-D
Perez v. Manor Care of Carrollwood	13th Jud. Cir. Fla., 06-00574-E
Pope v. Manor Care of Carrollwood	13th Jud. Cir. Fla., 06-01451-B
West v. Carfax, Inc.	Ohio C.P., 04-CV-1898 (ADL)
Hunsucker v. American Standard Ins. Co. of Wisconsin	Ark. Cir. Ct., CV-2007-155-3
In re Conagra Peanut Butter Products Liability Litigation	N.D. Ga., MDL No. 1845 (TWT)
The People of the State of CA v. Universal Life Resources (Cal DOI v. CIGNA)	Cal. Super. Ct., GIC838913
Burgess v. Farmers Insurance Co., Inc.	D. Okla., CJ-2001-292
Grays Harbor v. Carrier Corporation	W.D. Wash., 05-05437-RBL
Perrine v. E.I. Du Pont De Nemours & Co.	W. Va. Cir. Ct., 04-C-296-2
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Brookshire Bros. v. Chiquita (Antitrust)	S.D. Fla., 05-CIV-21962
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In re: Guidant Corp. Plantable Defibrillators Prod's Liab. Litigation	D. Minn., MDL No. 1708
Clark v. Pfizer, Inc (Neurontin)	C.P. Pa., 9709-3162
Angel v. U.S. Tire Recovery (Tire Fire)	W. Va. Cir. Ct., 06-C-855
In re TJX Companies Retail Security Breach Litigation	D. Mass., MDL No. 1838
Webb v. Liberty Mutual Insurance Co.	Ark. Cir. Ct., CV-2007-418-3
Shaffer v. Continental Casualty Co. (Long Term Care Ins.)	C.D. Cal., SACV06-2235-PSG
Palace v. DaimlerChrysler (Defective Neon Head Gaskets)	Ill. Cir. Ct., 01-CH-13168
Lockwood v. Certegy Check Services, Inc. (Stolen Financial Data)	M.D. Fla., 8:07-cv-1434-T-23TGW
Sherrill v. Progressive Northwestern Ins. Co.	18th D. Ct. Mont., DV-03-220
Gunderson v. F.A. Richard & Assocs., Inc. (AIG)	14th Jud. D. Ct. La., 2004-2417-D
Jones v. Dominion Resources Services, Inc.	S.D. W. Va., 2:06-cv-00671
Gunderson v. F.A. Richard & Assocs., Inc. (Wal-Mart)	14th Jud. D. Ct. La., 2004-2417-D
In re Trans Union Corp. Privacy Litigation	N.D. Ill., MDL No. 350
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Miller v. Basic Research (Weight-loss Supplement)	D. Utah, 2:07-cv-00871-TS

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Trombley v. National City Bank (Overdraft Fees)	D.D.C., 1:10-CV-00232
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Williams v. Hammerman & Gainer, Inc. (SIF Consultants)	27th Jud. D. Ct. La., 11-C-3187-B
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McKinley v. Great Western Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Wolfgeher v. Commerce Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Harris v. Associated Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
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Opelousas General Hospital Authority v. FairPay Solutions	27th Jud. D. Ct. La., 12-C-1599-C
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In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010—Medical Benefits Settlement	E.D. La., MDL No. 2179
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Mosser v. TD Bank, N.A. (Overdraft Fees)	S.D. Fla., MDL No. 2036
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Casayuran v. PNC Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Anderson v. Compass Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
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Opelousas General Hospital Authority v. Qmedtrix Systems, Inc.	27th Jud. D. Ct. La., 12-C-1599-C
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Fontaine v. Attorney General of Canada (Mistassini Hostels Residential Schools)	Qué. Super. Ct., 500-06-000293-056 & No. 550-06-000021-056 (Hull)
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Price v. BP Products North America	N.D. III, 12-cv-06799
National Trucking Financial Reclamation Services, LLC et al. v. Pilot Corporation et al.	E.D. Ark., 4:13-cv-00250-JMM
Johnson v. Community Bank, N.A. et al. (Overdraft Fees)	M.D. Pa., 3:12-cv-01405-RDM
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McGann, et al., v. Schnuck Markets, Inc. (Data Breach)	Mo. Cir. Ct., 1322-CC00800
Simmons v. Comerica Bank, N.A. (Overdraft Fees)	S.D. Fla., MDL No. 2036

George Raymond Williams, M.D., Orthopedic Surgery, a Professional Medical, LLC, et al. v. Bestcomp, Inc., et al.	27th Jud. D. Ct. La., 09-C-5242-B
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Swift v. BancorpSouth Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036

Leland Small v. BOKF, N.A.	D. Col., 13-cv-01125
Anamaria Chimeno-Buzzi & Lakedrick Reed v. Hollister Co. & Abercrombie & Fitch Co.	S.D. Fla., 14-cv-23120-MGC
In re: HSBC Bank USA, N.A., Checking Account Overdraft Litigation	Sup. Ct. N.Y., No. 650562/11

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Attachment 2

Case 1:10-cv-00090-MP-GRJ Document 94-4 Filed 05/12/16 Page 48 of

If You Paid Overdraft Fees to BancorpSouth Bank, You May Be Eligible for a Payment from a Class Action Settlement.

A $24 million Settlement has been reached in a class action lawsuit about the order in which BancorpSouth Bank ("BancorpSouth") posted Debit Card Transactions to customer Accounts, and the alleged effect the posting order had on the number of Overdraft Fees charged to Account holders. BancorpSouth maintains that there was nothing wrong with the posting process it used and that it complied, at all times, with applicable laws and regulations and the terms of the account agreements with its customers.

Who's Included? BancorpSouth's records show you are a member of the Settlement Class. The Settlement Class includes BancorpSouth customers in the states of Alabama, Arkansas, Florida, Louisiana, Mississippi, Missouri, Tennessee, and Texas who had one or more consumer (non-business) Accounts and incurred an Overdraft Fee(s) during the applicable Class Periods as a result of BancorpSouth Bank's practice of posting Debit Card and ATM transactions from highest to lowest dollar amount. The relevant Class Periods are listed on the opposite side of this notice. A "Notice of Pendency of Class Action" was mailed and/or emailed to you in May of 2013. This current notice is to inform you of the proposed Settlement of the case.

What Are the Settlement Terms? BancorpSouth has agreed to establish a Settlement Fund of $24 million from which Settlement Class Members will receive payments or Account credits. Once the Court approves the Settlement, you will automatically receive a payment by check or Account credit for your pro rata portion of eligible Overdraft Fees paid during the period covered by the Settlement. You can see an estimate of your pro rata payment or Account credit by visiting the website and inputting this unique identification number: 3GFV8NSY

Your Rights May Be Affected. If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement Class by **June 2, 2016**. If you do not timely exclude yourself, you will release your Overdraft Fee related claims against BancorpSouth and will not be able to sue BancorpSouth for any claim relating to the lawsuit. If you stay in the Settlement Class, you may object to it by **June 2, 2016.** The Detailed Notice available at the website below explains how to exclude yourself from or object to the Settlement. The Court will hold a hearing on **July 7, 2016**, to consider whether to approve the Settlement and a request for attorneys' fees of up to 35% of the Settlement Fund, plus expenses and a class representative Service Award. You may appear at the hearing, but you are not required to attend. You must object in writing pursuant to the instructions in the Settlement Agreement. You may also hire your own attorney, at your own expense, to appear or speak for you at the hearing.

www.BancorpSouthOverdraftLitigation.com • 1-800-420-2916

BancorpSouth Overdraft Settlement
P.O. Box 3719
Portland, OR 97208-3719

PRESORTED
FIRST-CLASS MAIL
AUTO
U.S. POSTAGE
PAID
PORTLAND, OR
PERMIT NO. 2882

RETURNED TO SENDER

NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD
JACKSON, MS 39205-9998

Important Notice About A Class Action Settlement.

The Settlement Class Periods are as follows:

- Alabama—May 18, 2004 to August 13, 2010
- Arkansas—May 18, 2005 to August 13, 2010
- Florida—May 18, 2006 to August 13, 2010
- Louisiana—May 18, 2003 to August 13, 2010
- Mississippi—May 18, 2007 to August 13, 2010
- Missouri—May 18, 2007 to August 13, 2010
- Tennessee—May 18, 2004 to August 13, 2010
- Texas—May 18, 2006 to August 13, 2010

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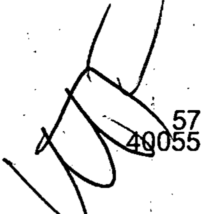

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Attachment 3

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

If You Paid Overdraft Fees to BancorpSouth Bank, You May Be Eligible for a Payment from a Class Action Settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- A $24 million Settlement has been reached in a class action about the order in which BancorpSouth Bank ("BancorpSouth") posted Debit Card and ATM transactions to customer Accounts, and the alleged effect the posting order had on the number of Overdraft Fees charged to Account holders. BancorpSouth maintains that there was nothing wrong with the posting process it used and that it complied, at all times, with applicable laws and regulations and the terms of the account agreements with its customers.
- Certain current and former holders of BancorpSouth consumer checking Accounts are eligible for a payment or Account credit from the Settlement Fund.
- A "Notice of Pendency of Class Action" was mailed and/or emailed to all Class Members in May 2013. You are included in the Settlement Class if you received a copy of the Pendency of Class Action sent in May 2013 and did not previously opt-out before the Court-ordered deadline. This current notice is intended to inform the same group of Class Members of the proposed Settlement of the case.
- Your legal rights are affected whether you act or don't act. Read this notice carefully.

Summary of Your Legal Rights and Options in this Settlement	
Receive a Payment or Account Credit	If you are entitled under the Settlement to a payment or Account credit, you do not have to do anything to receive it. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, you will automatically receive a payment by check or Account credit.
Exclude Yourself from the Settlement	Receive no benefit from the Settlement. This is the only option that allows you to retain your right to bring any other lawsuit against BancorpSouth about the claims in this case.
Object	Write to the Court if you do not like the terms of the Settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the Settlement.
Do Nothing	You will receive any payment or Account credit to which you are entitled, and will give up your right to bring your own lawsuit against BancorpSouth about the claims in this case.

- These rights and options — **and the deadlines to exercise them** — are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments and Account credits will be provided if the Court approves the Settlement and after any appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

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BASIC INFORMATION

1. Why is there a notice?

A Court authorized this notice because you have a right to know about the proposed Settlement of this class action lawsuit, and about all of your options, before the Court decides whether to give Final Approval to the Settlement. This notice explains the lawsuit, the Settlement and your legal rights.

Senior Judge Maurice Paul of the U.S. District Court for the Northern District of Florida is overseeing this case. The case is known as *Shane Swift v. BancorpSouth,* N.D. Fla. Case No. 1:10-cv-00090-MP-GRJ (the "Action"). The Action is one of a number of similar lawsuits previously consolidated in proceedings known as *In Re: Checking Account Overdraft Litigation*, 1:09-MD-02036-JLK. The person who sued is called the "Plaintiff." The Defendant is BancorpSouth Bank.

2. What is this lawsuit about?

The lawsuit claims that BancorpSouth posted Debit Card Transactions in the order of highest to lowest dollar amount, which Plaintiff argues results in an increased number of Overdraft Fees assessed to customers. The complaint is posted on the Settlement Website and contains all of the allegations and claims asserted against BancorpSouth. BancorpSouth maintains that there was nothing wrong with the posting process it used and that it complied, at all times, with applicable laws and regulations and the terms of the account agreements with its customers.

3. What do "Account," "Overdraft Fee," "Debit Card" and "Debit Card Transaction" mean?

"**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.

"**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.

"**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.

"**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.

4. Why is this a class action?

In a class action, one or more people called class representatives (in this case, Plaintiff Shane Swift) sue on behalf of people who have similar claims. The Court previously certified this case to proceed as a class action, and designated Plaintiff Swift as class representative. All Class Members of the previously certified class are members of the Settlement Class, except for those who timely excluded themselves from the class by the Court-ordered deadline.

5. Why is there a Settlement?

The Court has not decided in favor of either the Plaintiff or BancorpSouth. Instead, both sides agreed to the Settlement. By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial, and Settlement Class Members receive the benefits described in this notice. The Class Representative and Class Counsel believe the Settlement is best for everyone who is affected.

WHO IS IN THE SETTLEMENT?

If you previously received a "Notice of Pendency of Class Action" that was mailed and/or emailed to all Class Members in May 2013, and you did not previously opt-out before the Court-ordered deadline, you are included in the Settlement Class. Also, if you recently received a notice of the Settlement from a postcard addressed to you, you are in the Settlement Class. If you did not receive a postcard with Settlement notice, you may still be in the Settlement Class, as described below.

6. Who is included in the Settlement?

You are included in the Settlement Class if you were a BancorpSouth Bank customer in the states of Alabama, Arkansas, Florida, Louisiana, Mississippi, Missouri, Tennessee, and Texas who had one or more consumer (non-business) Accounts and incurred an Overdraft Fee(s) during the applicable Class Periods set forth below as a result of BancorpSouth Bank's practice of sequencing Debit Card and ATM transactions from highest to lowest dollar amount.

The Class Periods are as follows:

- Alabama—May 18, 2004 to August 13, 2010
- Arkansas—May 18, 2005 to August 13, 2010
- Florida—May 18, 2006 to August 13, 2010
- Louisiana—May 18, 2003 to August 13, 2010
- Mississippi—May 18, 2007 to August 13, 2010
- Missouri—May 18, 2007 to August 13, 2010
- Tennessee—May 18, 2004 to August 13, 2010
- Texas—May 18, 2006 to August 13, 2010

In order to have incurred an Overdraft Fee as a result of BancorpSouth's practice of posting Debit Card Transactions from highest to lowest dollar amount, you must have had two or more Overdraft Fees assessed on one or more days during the time periods listed above. If this happened to you, you may be in the Settlement Class. If it did not happen to you, you are not a member of the Settlement Class. You may contact the Settlement Administrator if you have any questions as to whether you are in the Settlement Class.

A "Notice of Pendency of Class Action" was mailed and/or emailed to all identifiable Class Members in May 2013. That notice informed Class Members of the Court's decision to certify the case to proceed as a class action and established the definition of the Class. Another notice in the form of a postcard was recently sent to the same group of Settlement Class Members, except those who previously opted-out of the Class before the deadline, to inform them of the Settlement of the Action and their rights under the Settlement.

THE SETTLEMENT'S BENEFITS

7. What does the Settlement provide?

BancorpSouth has agreed to establish a Settlement Fund of $24 million from which Settlement Class Members will receive payments or Account credits. The Settlement Fund will also pay all attorneys' fees, costs and expenses awarded to Class Counsel, and any Service Award to the Class Representative. The exact amount of Settlement Class Members' payments or Account credits cannot be determined at this time. The exact amount cannot be determined until the notice process is complete and the Court makes a final decision on the amount of attorneys' fees, costs and expenses awarded to Class Counsel and any Service Award to the Class Representative. However, if you received notice of the Settlement via a postcard in the mail, you were given a unique identifying number that you can use on the Settlement Website to see an *estimate* of the amount of your payment or Account credit.

BancorpSouth will also pay up to $500,000 for Settlement administration and related costs separately; any remaining amounts will come out of the $24 million Settlement Fund.

8. How do I receive a payment or Account credit?

If you are in the Settlement Class and entitled to receive a cash benefit, you do not need to do anything to receive a payment or Account credit. If the Court approves the Settlement and it becomes final and effective, you will automatically receive a payment by check or Account credit for your *pro rata* portion of eligible Overdraft Fees you paid during the time period covered by the Settlement.

9. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the Settlement Class, you cannot sue or be part of any other lawsuit against BancorpSouth about the legal issues in this Action. It also means that all of the decisions by the Court will bind you. The "Release of Claims" included in the Settlement Agreement describes the precise legal claims that you give up if you remain in the Settlement. The Settlement Agreement is available at www.BancorpSouthOverdraftLitigation.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want benefits from the Settlement, and you want to keep the right to sue BancorpSouth on your own about the legal issues in this Action, then you must take steps to get out of the Settlement. This is called excluding yourself — or it is sometimes referred to as "opting-out" of the Settlement Class.

10. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter that includes the following:

- Your printed or typed name, address and telephone number;
- A short statement that you want to be excluded from the BancorpSouth Overdraft Settlement; and
- Your signature.

You must mail your exclusion request, postmarked no later than **June 2, 2016**, to:

BancorpSouth Overdraft Settlement
P.O. Box 3719
Portland, OR 97208-3719

11. If I do not exclude myself, can I sue BancorpSouth for the same thing later?

No. Unless you exclude yourself, you give up the right to sue BancorpSouth for the claims that the Settlement resolves. You must exclude yourself from this Settlement Class in order to try to pursue your own lawsuit.

12. If I exclude myself from the Settlement, can I still receive a payment?

No. You will not receive a payment or Account credit if you exclude yourself from the Settlement.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has appointed a number of lawyers to represent you and others in the Settlement Class as "Settlement Class Counsel," including:

Robert C. Gilbert Grossman Roth, P.A. 2525 Ponce de Leon Blvd., Suite 1150 Coral Gables, FL 33134	Jeffrey M. Ostrow Kopelowitz Ostrow Ferguson Weiselberg Gilbert One West Las Olas Blvd, 5th Floor Ft. Lauderdale, FL 33301

Settlement Class Counsel will represent you and others in the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Class Counsel intends to request up to 35% of the money in the Settlement Fund for attorneys' fees, plus reimbursement of their expenses incurred in connection with prosecuting this Action. The fees and expenses awarded by the Court will be paid out of the Settlement Fund. The Court will determine the amount of fees and expenses to award. Class Counsel will also request that up to $10,000 for the Class Representative be paid from the Settlement Fund for his service to the entire Settlement Class.

OBJECTING TO THE SETTLEMENT

15. How do I tell the Court that I don't like the Settlement?

If you are a Settlement Class Member, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel's requests for fees and expenses and/or Class Counsel's request for a Service Award for the class representative. To object, you must submit a letter that includes the following:

- The name of this Action, which is BancorpSouth Overdraft Litigation;

- Your printed or typed full name, address and telephone number;
- An explanation of why you claim to be a Settlement Class Member;
- The reasons for your objection, accompanied by any legal support for the objection known to you or your counsel;
- The number of times you have objected to a class action settlement within the last 5 years, the caption of each case in which you have made such objection and a copy of any orders or opinions related to or ruling upon the prior objections that were issued by the trial and appellate courts in each listed case;
- The identity of all counsel who represent you, 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;
- 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 your counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;
- Any and all agreements that relate to the objection or the process of objecting—whether written or oral—between you or your counsel and any other person or entity;
- The identity of all counsel (if any) representing you who will appear at the Final Approval Hearing;
- A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- A statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; and
- Your signature (an attorney's signature is not sufficient).

You must submit your objection to all the people listed below, postmarked no later than **June 2, 2016**.

Clerk of the Court U.S. District Court for the Northern District of Florida United States Courthouse 401 SE First Ave. Gainesville, FL 32601	BancorpSouth Overdraft Settlement P.O. Box 3719 Portland, OR 97208-3719
Robert C. Gilbert Grossman Roth P.A. 2525 Ponce de Leon Blvd., Suite 1150 Coral Gables, FL 33134	Eric Jon Taylor HUNTON & WILLIAMS LLP Bank of America Plaza, Suite 4100 600 Peachtree Street, NE Atlanta, GA 30308

Note that, if you object, you may be subject to discovery requests, such as answering questions in writing, producing documents, or providing testimony, consistent with the Federal Rules of Civil Procedure.

16. What's the difference between objecting and excluding?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you don't want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement, and the request for attorneys' fees, expenses and Service Award for the Class Representative. You may attend and you may ask to speak, but you don't have to do so.

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 1 p.m. on **July 7, 2016**, at the United States District Court for Northern District of Florida, Gainesville Division, located at 401 SE First Ave., Gainesville, FL 32601, Room 243. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.BancorpSouthOverdraftLitigation.com for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. The Court will also consider any request by Class Counsel for attorneys' fees and expenses and for a Service Award for the Class Representative. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know when the Court will make its decision. It is a good idea to check www.BancorpSouthOverdraftLitigation.com for updates.

18. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But, you may come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you submit your written objection on time, to the proper address and it complies with the requirements set forth previously, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

19. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must send a letter saying that you intend to appear and wish to speak. Your Notice of Intention to Appear must include the following:

- Your name, address and telephone number;
- A statement that this is your "Notice of Intention to Appear" at the Final Approval Hearing for the BancorpSouth Settlement in *Shane Swift v. BancorpSouth,* N.D. Fla. Case No. 1:10-cv-00090-MP-GRJ;
- The reasons you want to be heard;

- Copies of any papers, exhibits, or other evidence or information that is to be presented to the Court at the Final Approval Hearing; and
- Your signature.

You must submit your Notice of Intention to Appear so that it is postmarked no later than **June 2, 2016**, to all of the addresses in Question 15.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you do nothing, you will still receive the benefits to which you are entitled under the Settlement Agreement. Unless you exclude yourself, you will not be able to start a lawsuit or be part of any other lawsuit against BancorpSouth relating to the issues in this Action.

GETTING MORE INFORMATION

21. How do I get more information?

This Detailed Notice summarizes the proposed Settlement. More details can be found in the Settlement Agreement. You can obtain a copy of the Settlement Agreement at www.BancorpSouthOverdraftLitigation.com. You may also write with questions to BancorpSouth Overdraft Settlement, P.O. Box 3719, Portland, OR 97208-3719, or call the toll-free number, 1-800-420-2916. Do not contact BancorpSouth or the Court for information.

Attachment 4

1:10-cv-00090-MP-GRJ Document 94-4 Filed 05/12/16 Page 61

If You Paid Overdraft Fees to BancorpSouth Bank, You May Be Eligible for a Payment from a Class Action Settlement.

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Who's Included? The Settlement Class includes BancorpSouth customers in the states of Alabama, Arkansas, Florida, Louisiana, Mississippi, Missouri, Tennessee, and Texas who had one or more consumer (non-business) Accounts and incurred an Overdraft Fee(s) during the applicable Class Periods as a result of BancorpSouth Bank's practice of posting Debit Card and ATM transactions from highest to lowest dollar amount. The relevant Class Periods are:

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What Are the Settlement Terms? BancorpSouth has agreed to establish a Settlement Fund of $24 million from which Settlement Class Members will receive payments or Account credits. Payments will be based on the number of Settlement Class Members and the amount of Additional Overdraft Fees each Settlement Class Member paid as a result of BancorpSouth's posting order. Settlement Class Members were mailed a postcard notice that included a unique identification number that could be used at the Settlement website to see an estimate of their pro rata payment or Account credit.

How do I get a Payment? If you are included in the Settlement Class and entitled to a payment or Account credit, once the Court approves the Settlement, you will automatically receive a payment by check or Account credit for your pro rata portion of eligible Overdraft Fees paid during the period covered by the Settlement.

Your Rights May Be Affected. If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement Class by **June 2, 2016**. If you do not timely exclude yourself, you will release your Overdraft Fee related claims against BancorpSouth and will not be able to sue BancorpSouth for any claim relating to the lawsuit. If you stay in the Settlement Class, you may object to it by **June 2, 2016**. The Detailed Notice available at the website below explains how to exclude yourself from or object to the Settlement. The Court will hold a hearing on **July 7, 2016**, to consider whether to approve the Settlement and a request for attorneys' fees of up to 35% of the Settlement Fund, plus expenses and a Class Representative Service Award. You may appear at the hearing, but you are not required to attend. You must object in writing pursuant to the instructions in the Settlement Agreement. You may also hire your own attorney, at your own expense, to appear or speak for you at the hearing.

www.BancorpSouthOverdraftLitigation.com • 1-800-420-2916

Attachment 5

The world in brief

QUOTE OF THE DAY

"A true Muslim will always consider that he has freedom of expression."

Minhaz Mannan Emon, at the funeral for his brother, Xulhaz Mannan, an activist for gay rights in Bangladesh whose killing was claimed by Ansar-al Islam, an al-Qaida branch

Article, this page

Arrests at rallies in Cairo put at 250

CAIRO — An Egyptian coalition of rights groups said Tuesday that police arrested nearly 250 people during the previous day's protests in Cairo against the government's decision to hand over two Red Sea islands to Saudi Arabia.

Amnesty International condemned the arrests, the latest criticism of Egypt's human-rights record under President Abdel-Fattah el-Sissi by a leading international advocacy group.

Rights lawyers Gamal Eid and Mohammed Abdel-Aziz — both members of the Front for the Defense of Egyptian Protesters — said all those detained were in custody by midnight Monday, when the front made its last tally.

The number of those still held could be lower, since police have been intermittently releasing the detainees, they said. It's unclear whether anyone has been referred to prosecutors or formally charged with a crime.

Interior Ministry spokesmen declined to comment or say how many people were arrested.

Thousands of police were deployed Monday across much of Cairo to stifle plans for mass demonstrations against el-Sissi's policies, particularly the transfer of the two islands. Faced with the police's overwhelming numbers, protesters resorted to staging flash demonstrations, drawing tear gas and birdshot from the riot police.

Mexico obstacles troubling at U.N.

MEXICO CITY — The U.N. Office of the High Commissioner for Human Rights said Tuesday that it is troubled by a group of international experts' complaints of obstacles to their investigation into the disappearance of 43 students in Mexico.

Spokesman Rupert Colville said in a statement that the office is "concerned about the many challenges and obstacles reported by the experts," including the ability to examine other lines of investigation such as the possible roles of the military and other officials in the case.

He called on the Mexican government to "take into serious consideration" the recommendations of the group of experts from the Inter-American Commission on Human Rights.

The group's report from Sunday criticized the government's investigation of the 2014 disappearances. It said suspects were apparently tortured and key pieces of evidence were not investigated or handled properly.

Repairs to silence Big Ben for months

LONDON — The chimes of Big Ben, which have rung out across the British capital for more than 150 years, are set to fall silent for "several months" to make "urgent" repairs, Parliament announced Tuesday.

The clock tower that houses Big Ben is one of London's most famous icons, and its "bongs" are broadcast live on BBC Radio.

But British officials say that urgent repairs are needed on the clock and the tower.

The entire Palace of Westminster is in need of refurbishment, and lawmakers are examining options that could see them move to another site for as many as six years. But that work won't begin until the early 2020s, and the House of Commons said repairs to the tower and its clock cannot wait that long.

The repairs, set to begin in 2017, are estimated to take three years.

— COMPILED BY DEMOCRAT-GAZETTE STAFF FROM WIRE REPORTS

AP

Locals gather Tuesday outside a building where two people, gay-rights activist Xulhaz Mannan and his friend Tanay Majumder, were killed by assailants in Dhaka, Bangladesh.

Militants claim activist's killing in Bangladesh

Al-Qaida arm: Writer, friend targeted for gay-rights work

THE ASSOCIATED PRESS

NEW DELHI — The Bangladeshi branch of al-Qaida claimed responsibility Tuesday for the killing of a gay-rights activist and his friend, undermining the prime minister's insistence hours earlier that her political opponents were to blame for the attack and for a rising tide of violence against secular activists and writers.

The claim by Ansar-al Islam — which said it targeted the two men Monday night because they were "pioneers of practicing and promoting homosexuality" — raised doubts about Prime Minister Sheikh Hasina's repeated assurances that authorities have the security situation under control.

The victims of the attack were identified as Xulhaz Mannan, an activist who also worked for the U.S. Agency for International Development, and his friend, theater actor Tanay Majumder. Mannan, a cousin of former Foreign Minister Dipu Moni of the governing party, was also an editor of Bangladesh's first gay-rights magazine, *Roopbaan*. Majumder sometimes helped with the publishing, local media said.

At the White House, spokesman Josh Earnest took note of Mannan's advocacy for lesbian, gay, bisexual and transgender causes and said there were "reports that indicate that he was targeted because of his advocacy for these human rights, and that makes his death even more tragic than it seems." He said the U.S. government had been in touch with the government of Bangladesh to make clear that a thorough criminal investigation should be a priority.

At a funeral for Mannan on Tuesday, his brother said free speech was something Islam should protect.

"A true Muslim will always consider that he has freedom of expression," Minhaz Mannan Emon said. "We should respect that opinion. We hope — particularly I, on behalf of the family — hope that no other family loses their child or brother like us in the future."

Mannan had written openly about the frustration of living "in the closet" as a gay man in Bangladesh, where homosexual relations are considered a crime. In a May 2014 blog, he said gay people in Bangladesh experience a "country where the predominant religions say you are a sinner, the law of the land says you are a criminal, the social norms say you are a pervert, the culture considers you as imported."

He launched the magazine in 2014, giving the country's small LGBT community its first open platform. Earlier this month, he tried to organize a rally in the capital but was foiled when police briefly detained him and three others.

Ansar-al Islam claimed responsibility in a Twitter message on Tuesday for what it called a "blessed attack" on Mannan and Majumder.

It said the two were killed because they were "working day and night to promote homosexuality ... with the help of their masters, the U.S. crusaders and its Indian allies."

State Department spokesman Mark Toner told reporters the U.S. could not confirm the claim of responsibility but did not have a reason to believe "this was not the case."

But hours before the group's claim of responsibility, the prime minister had pointed the finger at her political opponents, the fundamentalist Jamaat-e-Islami group and its ally, the opposition Bangladesh Nationalist Party.

"Everybody knows who are behind these killings," Hasina told policymakers in her secular Awami League party Monday night, repeating her government's allegation that the opposition was orchestrating the attacks. "The BNP-Jamaat clique has been involved in such secret and heinous murders to destabilize the country."

The opposition denied the allegations, saying they are being scapegoated for Hasina's failure to maintain security and placate the country's desire for Islamic rule.

Police said no arrests had been made in connection with Monday's attack, which involved at least five young men who posed as courier service employees to gain access to Mannan's apartment building.

A security guard working at the building said he was injured when one of the attackers hit him with a knife while fleeing.

Crime scene investigators recovered a mobile phone and bag apparently left by the attackers. The national police chief, A.K.M. Shahidul Hoque, expressed confidence that the attackers would be caught and acknowledged there were similarities in how the killings were being carried out. He said authorities were making progress in cracking down on radicals' hideouts and weapons caches.

"We are investigating all the cases very seriously," Hoque said. "Many arrests have been made involving previous killings; we have busted their dens for making bombs."

Security analysts warned that the government could lose the people's trust if it does not act quickly to curb the attacks.

"It is high time to set up special tribunals to handle these cases," said retired Maj. Gen. Abdur Rashid. "It has to be dealt with more seriously and with a clearer and quicker process. ... There has been a lack of confidence among people about the investigation and justice system. We must fix these issues immediately."

U.S. Secretary of State John Kerry condemned the "barbaric" killings in a statement. Earlier this month, the U.S. said it was considering granting refuge to a select number of secular bloggers in Bangladesh facing imminent danger. The State Department said Monday that that remains an option.

Norway appeals mass killer's win

THE ASSOCIATED PRESS

COPENHAGEN, Denmark — Norway's government on Tuesday filed an appeal against the Oslo district court's ruling that Norwegian authorities had violated the human rights of mass killer Anders Behring Breivik.

Justice Minister Anders Anundsen says the government disagrees with the April 20 ruling that said the isolation of Breivik, who faces prison for killing 77 people in a bomb-and-gun massacre in 2011, breaches the European Convention on Human Rights.

"I have today asked the Office of the Attorney General to appeal the verdict," Anundsen said in a statement.

Breivik, 37, sued the government last month, saying his isolation and the fact that he was often handcuffed violated his human rights. He is held in solitary confinement in a three-cell complex where he can play video games, watch TV and exercise.

N. Korea's 5th nuke test nearly ready, South says

HYUNG-JIN KIM
THE ASSOCIATED PRESS

SEOUL, South Korea — South Korea's president said Tuesday that North Korea has almost completed preparations for a fifth nuclear test, and the country has reportedly placed a new midrange missile on standby for an impending launch.

North Korea said Sunday that it had successfully test-fired a ballistic missile from a submarine in a continuation of its weapons tests during ongoing South Korea-U.S. military drills. Officials in the South said they could not confirm whether Saturday's test-firing was a success.

Meeting with senior South Korean journalists, President Park Geun-hye said South Korea believes that the North can conduct a nuclear test anytime it decides to do so.

Other South Korean officials have made similar recent comments without elaborating after media reports of increased activity at the country's main nuclear test site. Park said last week there were signs that North Korea was preparing for a new nuclear test.

Speculation about a fifth nuclear test increased last month when the North's state media cited leader Kim Jong Un as ordering a test of a nuclear warhead and ballistic missiles capable of carrying warheads.

North Korea conducted a fourth nuclear test in January and a long-range rocket launch in February, and the country was subsequently slapped with tough U.N. sanctions. Park said Tuesday that a further provocation by North Korea would only speed up its collapse, according to her office.

The United States in recent years has deployed additional missile defense technology to the region to counter North Korean threats and is in talks with Seoul about deploying the Terminal High-Altitude Area Defense system to the country. President Barack Obama, in a CBS News interview released Tuesday, said the goal of the stepped-up U.S. efforts is to create a "shield" against the North.

More information on the Web

North Korea's nuclear program
arkansasonline.com/northkorea

"Our first priority is to protect the American people and our allies, [South] Korea and Japan," Obama said. "One of the things that we have been doing is spending a lot more time positioning our missile defense systems, so that even as we try to resolve the underlying problem of nuclear development inside of North Korea, we're also setting up a shield that can at least block the relatively low-level threats that they're posing right now."

Obama told interviewer Charlie Rose that North Korea's Kim is "personally irresponsible" and that "we don't want them to get close, but it's not something that lends itself to an easy solution."

The president added that "we could obviously destroy North Korea with our arsenal, but aside from the humanitarian costs of that, they are right next door to our vital ally," South Korea.

White House spokesman Josh Earnest was asked about the comments and said the U.S. would "continue to ramp up the pressure on the North Korean regime."

"We're going to continue to work closely with the Chinese government, which has more influence with the North Korean government than any other country in the world, and we're going to continue to make clear that the path that North Korea must choose to rejoin the international community is one that involves them committing to denuclearize the Korean peninsula and come into compliance with their international obligations," Earnest said.

Obama also talked about China, which the international community has asked to exert greater pressure on North Korea, its ally.

Obama said China tends to view regional issues and disputes as a "zero-sum game" and that the Asian power bullies its neighbors in the South China Sea.

"Rather than operate under international norms and rules, their attitude is, 'We're the biggest kids around here, and we will push aside the Philippines or the Vietnamese,'" Obama said. "That doesn't mean we are trying to act against China. We just want them to be partners with us. Where they break out of international rules and norms, we will hold them to account."

Analysts say North Korea could conduct a fifth test before it holds a ruling Workers' Party congress in early May so that leader Kim Jong Un can burnish his image at home and further cement his grip on power.

Earlier Tuesday, South Korea's Yonhap news agency cited an unidentified Seoul official as saying that the South's military had unspecified evidence indicating North Korea would likely soon launch a midrange Musudan missile.

Seoul's Defense Ministry said it had no such intelligence. South Korean officials often refuse to discuss North Korea's weapons programs publicly because they involve confidential military intelligence.

Yonhap said the missile on standby is one of two Musudan missiles North Korea had earlier deployed in the northeast before it fired one earlier this month. U.S. officials said the earlier launch ended in failure.

A Musudan has a potential reach of 2,180 miles, putting U.S. military installments in Asia in range.

North Korea typically conducts more weapons tests when South Korean and U.S. troops conduct annual springtime drills that the North views as a rehearsal for an invasion. This year's drills end later this week.

Information for this article was contributed by Josh Lederman of The Associated Press.

LEGAL NOTICE

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Who's Included? The Settlement Class includes BancorpSouth customers in the states of Alabama, Arkansas, Florida, Louisiana, Mississippi, Missouri, Tennessee, and Texas who had one or more consumer (non-business) Accounts and incurred an Overdraft Fee(s) during the applicable Class Periods as a result of BancorpSouth Bank's practice of posting Debit Card and ATM transactions from highest to lowest dollar amount. The relevant Class Periods are:

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www.BancorpSouthOverdraftLitigation.com • 1-800-420-2916

Veterans vent frustrations at Gulf Coast VA director

By WESLEY MULLER
wmuller@sunherald.com

WESLEY MULLER/SUN HERALD
Vietnam veteran Donald Schielder listens as fellow veterans voice grievances during a town hall meeting at the Gulf Coast Veterans Health Care System in Biloxi on Tuesday.

BILOXI — Gulf Coast Veterans Health Care System Director Anthony Dawson received a tongue-lashing from unhappy military veterans during a town hall meeting Tuesday afternoon.

"Why doesn't the VA care about its people?" said Biloxian Donald Schielder, a disabled Vietnam War veteran. "That's the way I feel. Y'all don't care about us. I fought for my country to keep my country free. I expect a little more respect."

Dawson

He complained about the difficulty in making appointments with his doctor.

He said the VA scheduled his appointments for him until about a year ago, when he was told he had to start scheduling his own appointments.

"I haven't seen a doctor in over a year-and-a-half," he said.

Like Schielder, veteran John Robinson said the Gulf Coast VA medical staff are disrespectful and don't seem to care about his problems.

He said his doctor prescribed him a cholesterol medication that resulted in a burning sensation in his throat.

He complained about it several times but nothing was done until he said he was going to stop taking the pills. That's when his doctor told him to take the issue up with his pharmacist, he said.

When Robinson told his pharmacist about it, the pharmacist was shocked: "He said, 'What? After all this time, it's been burning your throat and you told your doctor?'"

Robinson went to a private doctor who diagnosed him with cancer of the esophagus, he said.

"Now, I still have to come here and see the same doctor," he said. "I'm being screamed at — like this man just said a minute ago, disrespected."

Veteran Ginni McCann said she notices how fellow veterans can easily slip through the cracks if they don't know how to work the system.

She said she is fortunate to be very familiar with how the VA medical system works, but for others, she said, tasks like scheduling appointments can be very problematic.

She recommended the Gulf Coast VA implement a three-day patient-orientation program to teach the bureaucratic complexities. Such a program is in use at VA systems in Denver, she said.

"For those individuals who have not utilized the system as much," Dawson said, "they'll come in, and yes, there are some confusing things that are going on at this particular time.

"We have some orientation programs that are going on as we speak, but to get the specifics on what (other VA systems) are doing versus what we're doing is what we have to look at."

Others directed their grievances at Dawson, saying they can never get in touch with him or meet with him in his office.

In an interview later, McCann also criticized Dawson for being inaccessible to the average veteran. She said his priorities seem to be on things such as promoting recycling on the VA campus.

In response, Dawson gave out his email address and office number.

"There are many, many ways in which a veteran can indeed touch bases with me," Dawson said in a later interview, listing a variety of communication channels. "But the one thing about it is once they understand the system, they will know how to work those ways better."

Following the meeting, Dawson said the most important thing he took away from the veterans' concerns was the issue of respect.

"The veterans don't feel they're getting the respect that they deserve when they come into the organization," he said. "That's a key thing, and that's the one thing I have to go back and do some more things about."

SALE STARTS THURSDAY, APRIL 28
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Maximum discount $100. Offer good only when using your Dillard's Credit Card.

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www.MuellerInc.com
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Legal Notice

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Tornado

From page A1

or Mitchell."

After being blown out of the house, Johns remembers being "tumbled around and hitting stuff."

"Mitchell remembers a roof or part of a building falling on him and breaking his arm," she said. "We ended up in a big field. It was so confusing to be in this field that I didn't recognize, to see trees laying down. It was hard to tell where we were, or what was going on."

Her car was flattened, the windows were shattered, the lights were flashing, and the horn was going off.

"My mom's car, as it turned out, was found in a tree, and my husband's truck was blown into a pond nearby," she recalled.

As Johns tried to figure out where she was, she tried to make some sense out of what had just occurred and the chaos around her.

She looked up and saw the tail of the tornado still on the ground, and the lasting effects it was leaving as it trailed a path of destruction through Phil Campbell and headed to the East Franklin area.

"I saw a washing machine and stairs come tumbling past me. I still don't know where they came from," she said.

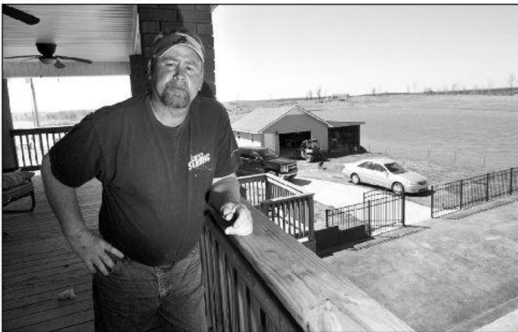
And then her "angel appeared."

"A man from out of nowhere walked up to me, asked if I was OK, and handed me the door of a cabinet," Johns said. "He said, 'You'll need this; put the door over your head.' Then he was gone. Almost instantly, it started hailing.

"I honestly thought it was an angel," Johns said. "I found out a few years later the man was a preacher from Winston County who came to help."

Some time later, when searchers and first responders arrived, they found her husband. It wasn't until the next day, however, that they found her mother.

"I didn't ask where or what happened. I didn't want to know," Johns said.



Matt McKean/TimesDaily photos

Jerry Lolley stands on the back porch of his new home overlooking the pond where a huge amount of debris from his and other homes and the body of a neighbor was found when the EF5 tornado struck Hackleburg in April 2011 and devastated the town.

Overwhelming task

Those first responders were doing all they could to locate the injured and the dead.

"We had to rely on four-wheel drive trucks to get around. We actually stopped a couple of residents to use their trucks," Phil Campbell Volunteer Fire Chief Mike Rice said.

Rice said first responders were "overwhelmed" with the number of injuries and fatalities.

"Our main objective was to get out in the rumble and try to help those in need, and get them to the (Phil Campbell) rescue squad building, which wasn't damaged," Rice said. "We sent 90 people (to the rescue squad building) that night, and that's not counting bodies."

When Franklin County District Attorney Investigator Terry Zills heard the tornado had hit Phil Campbell, he was told to go help. He wasn't ready for what he saw when he arrived.

Mike Rice, the chief of the Phil Campbell volunteer fire department, stands in a vehicle bay at the station and talks about the need of better communications in case another tornado strikes the area.

"I got there 15 minutes after the tornado went through," Zills said. "You had to be careful where you stepped or what you grabbed. You couldn't drive, you had to walk around and listen for people yelling for help, and hope you heard them in time."

After the storm passed, Johns tried to fight her way out of the debris and brush that had been blown on top of her. It was then she realized she was injured.

"I had sticks all in me. My legs had been cut open like a watermelon from all of the debris," she said. "Some people came to help me and started trying to check me.

"I found out I had a 6-inch piece of wood or limb stuck in my back and I couldn't get up," she said. "My ankle was shattered." It had to be repaired with screws and by attaching the leg bone directly to the foot.

Johns said her husband landed behind her, but she didn't recognize him at first.

"He was unconscious and all of his clothes had been ripped off," she said. "One of the rescue people asked me if I knew him, and I said 'no.' "

At the time of the tornado, her husband still was wearing his pajamas. As the rescue people worked on the man she said she didn't know, Johns recognized a small piece of his pajamas on his ankle.

"That's how I identified him," she said.

A limb had gone through her husband's earlobe and punctured his cheek, damaging his left eye.

"His arm was broken, almost in half. His elbow was broken, and it's always bent now," Johns said.

Search for others

The chaos and the carnage of the storm and its aftermath pushed everyone in the small community into survival mode as families searched for each other, and neighbors searched for neighbors.

After the storm hit Jerry Lolley's house on U.S. 43 in Hackleburg, and he realized his family was safe, he immediately began to think about his neighbors — Donna and Kaarlo Jokela.

Lolley had looked out his back door and saw the tornado hit the Jokelas' house and blow it into the pond behind his house. He said the Jokelas had told him they moved from Arkansas to Phil Campbell to get away from storms.

"I went to their house. I knew it was bad, and I wanted to see if I could help," Lolley said. "I walked by her two or three times before I spotted her body. She was covered in mud, leaves and debris. I found a Bible next to her. That's really how I found her."

Jolley said Kaarlo Jokela's body was found the next day in the pond behind the spot where the Jolleys' house once stood. It was amid the shattered debris that was once two homes, as well as tractors, vehicles and even a recreational vehicle.

"Everybody was trying to locate neighbors and get them any help they needed," Lolley said.

Emergency surgery

Still somewhat dazed, Amanda Johns remembers rescue personnel putting her in an ambulance. She expected her mom to be next to her.

Because of her pregnancy, Johns and her husband were transported to Eliza Coffee Memorial Hospital in Florence. It wasn't until she got to the hospital that medical personnel found debris from the storm had punctured her stomach, and she was leaking amniotic fluid.

"They were afraid I would miscarry and I would lose the baby," Johns said.

Doctors did emergency surgery to repair the wound.

"When they got inside to fix the hole," she said, "it had closed on its own. It was a miracle."

Despite the trauma of being blown around in the debris of the storm and her injuries, Johns carried her baby to term. Caden was born in August. When Caden was 1, he was diagnosed with cerebral palsy.

Caden can't walk, but he can stand, and with the use of a wheelchair he is mobile.

"He's an active little boy," Johns said.

Two years after Caden was born, Johns gave birth to his little brother, Ethan.

"God sent him for Caden, I know he did," Johns said. "He has taught Caden so many things; he taught Caden how to be a child. They are very close."

Always on her mind

Johns said her mother is constantly on her mind, and she dearly wishes she was a part of the boys' lives.

"The hard part is my mom didn't get to see them. They know who NinaNee is. I'm going to make sure they know she's my hero," Johns said. "What she did, giving me that pillow, showed her love. My boys are going to know and love her as much as I do."

Johns and her two sons are frequent visitors to a park in Phil Campbell where a memorial is engraved with the names of those killed in the tornado that ripped through the area five years ago, and changed the face of Hackleburg and Phil Campbell forever.

The first name on that memorial is Donna Berry.

Each time they visit the park, Johns and her sons stop by the memorial.

"I want the boys to understand who she was, and what happened to her," Johns said.

Johns and her family still live in Phil Campbell, but not on Franklin 81 where they were living when the storm hit. She still goes by that spot on occasion, and each time she does she thinks about that fateful day and everything that has happened since.

She thinks about her mother, the kind of woman she was, and the love she showed her daughter.

"I have two sisters, and my mom loved her family," Johns said. "We're always getting together and having a good time. We had a lot of good times growing up together, and even after we all got older and moved out, we still were close and still are. I know my mom is still with us, watching over us."

tom.smith@TimesDaily.com or 256-740-5757. Twitter @TD_TomSmith.

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- Tigers
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- Watch the Monkeys Play!
- See the Tiger eat at 7:30pm!
- Have your picture taken with one of our little friends!

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SUN PAPER

Chinese paper company plans $1 billion mill in Arkadelphia

Facility to employ about 250 people

By John Lyon
Arkansas News Bureau
jlyon@arkansasnews.com

LITTLE ROCK — Chinese pulp and paper manufacturer Sun Paper will spend more than $1 billion to build a mill in Arkadelphia that will employ about 250 people, Gov. Asa Hutchinson and the company's chairman and founder, Li Hongxin, announced Tuesday.

The mill, which will be Sun Paper's first in North America, will turn Arkansas timber into pulp, most of which will be shipped to China for use in paper and other products.

The company hopes to begin construction sometime in the first half of 2017 and begin production in late 2019.

In a ceremony at the state Capitol, Hutchinson and Li signed a memorandum of understanding stating that Sun Paper agrees to hire up to 250 people within four years at average annual salaries of $52,000 and that it will receive a variety of economic incentives for the project.

"This is one of the largest private investments in the history of the state of Arkansas," Hutchinson said. "It will result in the creation over time of 250 direct jobs, but in a broader context, it will result in a real boost to the economy of South Arkansas throughout the timber industry."

Li said, through an interpreter, that the company will invest between $1 billion and $1.3 billion in the project. In addition to the 250 people directly employed by the plant, more than 2,000 construction jobs will be created during the construction phase and up to 1,000 new jobs are expected to be created indirectly, he said.

As officials from Arkansas and China look on at the state Capitol on Tuesday, Gov. Asa Hutchinson, seated at left, and Li Hongxin, chairman and founder of China-based Sun Paper, sign a memorandum of understanding for a $1 billion mill the company plans to build in Arkadelphia. The mill is expected to employ about 250 people. DALE ELLIS/SPECIAL TO THE ARKANSAS NEWS BUREAU

"This project will be the most modern, the highest-efficiency and the most environmentally progressive factory in the pulp and paper industry in all of North America," he said.

Li said the company considered many possible locations in North America but chose Arkadelphia because of its rich timber resources and the personal relationships the company established over the past several years with Hutchinson, former Gov. Mike Beebe and Arkadelphia and Clark County officials.

Hutchinson said he discussed the project with Sun Paper officials during a trade mission to China in November.

The project will require approval from regulators with the Arkansas Department of Environmental Quality and the federal Environmental Protection Agency. Arkansas will expedite the state permitting process, Hutchinson said.

HEALTH RISK

Measles confirmed in Memphis

Arkansas News Bureau

LITTLE ROCK — Arkansas health officials said Tuesday the Shelby County Health Department in Tennessee has confirmed six cases of measles in the Memphis area and said some Arkansans may have been exposed to the infectious disease.

Arkansans should make sure they are up to date on their measles, mumps and rubella, or MMR, vaccine and should be aware of the risks of measles, especially for the very young and people with a weakened immune system, including pregnant women, the Arkansas Health Department said in a news release.

Measles is a viral infection that starts with a high fever, runny nose, cough and red eyes, followed a few days later by a rash that starts on the head and gradually moves down the body.

About one in four people in the U.S. who get measles will be hospitalized. One out of every 1,000 people with measles will develop brain swelling, which can lead to permanent brain damage, and one or two out of 1,000 people who get measles will die, even with medical care.

The first dose of the MMR vaccine is recommended for children between 12 and 15 months of age, and a second dose should be given at 5 to 6 years of age, the Health Department said.

SEBASTIAN, LOGAN COUNTIES

AG to hold mobile offices in western Arkansas

Times Record Staff

Representatives of Arkansas Attorney General Leslie Rutledge will offer consumer services in mobile offices in Sebastian and Logan counties in May.

Mobile offices are designed to bring services to residents outside of central Arkansas. At the mobile office, residents will be able to file consumer complaints against scam artists. Staff member will be available to answer questions about the office and its services.

Recently the AG's mobile offices have begin to offer Prescription Drug Take Back boxes. Rutledge is partnering with local law enforcement agencies across the state who will handle a secure box and properly dispose of the pills collected.

In Sebastian County, a mobile office will be held from 10:30 a.m. to 12:30 p.m. May 5 at the Fort Smith Senior Activity Center, 2700 Cavanaugh Road. Another will be 10:30 a.m. to 12:30 p.m. May 23 at the Paris Senior Center, 331 S. First St., in Logan County.

BIRTH DEFECTS

Two more cases of Zika confirmed in Arkansas

Arkansas News Bureau

LITTLE ROCK — Two more cases of the Zika virus have been confirmed in Arkansas, bringing the total to four, the state Health Department said Tuesday.

All four cases involved people who had recently traveled out of the United States, the Health Department said. The first case was reported in January and the second was reported earlier this month.

The virus is spread through mosquito bites and through sexual contact. The most common symptoms are fever, rash, joint pain and red, itchy eyes. Symptoms are usually mild and last several days to a week.

The U.S. Centers for Disease Control and Prevention is investigating a possible link between the virus and children born with birth defects. There is currently no vaccine or treatment for the virus.

The CDC also has issued travel guidelines for woman who are pregnant or may become pregnant, available at www.cdc.gov/travel.

The CDC has urged people who travel to an area where Zika is present to go to a doctor if they experience any of the symptoms associated with Zika within three to seven days of their return. It also has said men who have recently traveled to an area where Zika is present and have a partner who is pregnant or may become pregnant should avoid sex or use a condom.

FORT SMITH REGIONAL CHAMBER OF COMMERCE

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7:30 AM-9:00 AM FIRST FRIDAY BREAKFAST
FEATURING: THE COMPASS REPORT

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MONEY

TUESDAY MARKETS

INDEX	CLOSE		CHG
Dow Jones Industrial Avg.	**17,990**	▲	**13.08**
Nasdaq composite	4888.31	▼	7.48
S&P 500	2091.70	▲	3.91
T- note, 10-year yield	1.93%	▲	0.01
Oil, light sweet crude	$44.04	▲	1.40
Euro (dollars per euro)	$1.1291	▲	0.0030
Yen per dollar	111.41	▲	0.13

SOURCES USA TODAY RESEARCH, MARKETWATCH.COM

STEVE MITCHELL/USA TODAY SPORTS

SPORTS

SAGER KEEPS THE FAITH

"I KNOW THE SEVERITY. BUT I HAVE FAITH. ... HOPE IS AS IMPORTANT AS BREATH."

— NBA broadcaster Craig Sager, in an interview with "Sports Illustrated" about his cancer treatment. He got the disease in 2014 and said in March it had returned.

Nation & World Watch

From Gannett and wire reports

▶Washington: Trump to Sanders: Go independent

Donald Trump offered some campaign advice to Bernie Sanders, as the Vermont senator's chances of winning the Democratic presidential nomination grow increasingly slim.

Trump tweeted Tuesday that Sanders "has been treated terribly by the Democrats — both with delegates & otherwise." Trump added: "He should show them, and run as an Independent!"

Presumably, Trump was referring to the Democrats' use of superdelegates in its nomination process, party leaders and elected officials who are free to support any candidate. So far, they've overwhelmingly favored Hillary Clinton.

▶Minneapolis: Prince died without will, sister says

Prince left no will, according to documents filed Tuesday by his sister, Tyka Nelson, in probate court for Carver County, Minnesota, where the beloved pop icon died last week at his Paisley Park compound.

"The Decedent died intestate," Nelson wrote in her petition for the appointment of a special administrator to deal with Prince's estate, which is widely reported to be valued at $300 million.

▶South Korea: N. Korea preps nuclear, missile tests

South Korea's president said Tuesday that North Korea has almost completed preparations for a fifth nuclear test, and the country has reportedly placed a new midrange missile on standby for an impending launch.

President Park Geun-hye said South Korea believes North Korea can conduct a nuclear test anytime it decides to do so.

Gulf states at front line of battle to stop Zika's spread

US lacks plan for virus-carrying mosquito

Liz Szabo
USA TODAY

As mosquito season descends on millions of Americans who live on the Gulf Coast and in Southern states, the United States has no coordinated, national plan to control the insect that transmits the Zika virus.

With no approved Zika vaccine or treatment, experts said the best way to prevent the spread of the virus is to control the mosquito, a species called Aedes aegypti. The stakes are high: If the virus gains a foothold in the U.S., as it has in Brazil and elsewhere in Latin America, children born of infected mothers could suffer catastrophic birth defects. The virus may also increase the risk of Guillain-Barre syndrome, which causes paralysis.

Fighting mosquitoes is fundamentally a local battle led by a patchwork of 700 mosquito-control districts and more than 1,000 other programs within local governments. In some cities, mosquito control is handled by professionals with multi-million-dollar budgets. In other communities, mosquito control is more of an afterthought, tacked onto other programs, such as parks and recreation.

KELLY JORDAN/USA TODAY

Florida Keys Mosquito Control District field inspector Patti Sprague checks a fountain for mosquito larvae in Key West. Officials hope to control the spread of Zika virus.

More than 60 million Americans live in the five states along the Gulf Coast — Florida, Alabama, Mississippi, Louisiana and Texas — which could bear the brunt of Zika outbreaks.

Communities along the Gulf and elsewhere must control their mosquito populations and cannot depend solely on federal public health agencies, such as the Centers for Disease Control and Prevention, said Michael Osterholm, director of the University of Minnesota's Center for Infectious Disease Research and Policy.

"There's not going to be some national team to come in and save you," Osterholm said. "That would be like asking the FBI to provide local police service."

President Barack Obama asked Congress for nearly $1.9 billion in emergency Zika funding in February, but Congress has not approved the request. As an emergency measure, Obama transferred $510 million in unspent Ebola funds to the Zika fight.

The CDC wants communities to draw up Zika action plans. It will release grants for Zika planning and response but only to states that submit a "checklist of readiness activities," CDC spokesman Tom Skinner said.

Many cities are ramping up mosquito control.

» New York City said last week it will spend $21 million over three years to fight Aedes aegypti, which also spread West Nile Virus. A pillar of the plan is to reduce the mosquito population, Mayor Bill de Blasio said.

» In Key West, mosquito inspectors go door to door, inspecting flowerpots, birdbaths and other containers for larvae, which may be treated with chemicals. Mosquito inspectors also pass out mosquito-eating fish, which devour larvae.

» In New Orleans, officials will work with nonprofit groups to clean up neighborhoods and eliminate trash that can collect standing water, where mosquitoes breed, said Claudia Riegel, director of the New Orleans Mosquito, Termite and Rodent Control Board.

Still, mosquito-control programs have limitations. Almost no one tests mosquito populations to see whether they're infected with Zika because the process is so labor-intensive, said Michael Doyle, executive director of the Florida Keys Mosquito Control District. That means communities may not learn they have Zika-carrying mosquitoes until a case is diagnosed in humans.

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Own a gun? Real-life training scenarios eye-opening

Therese Apel
NEWS

Mississippi is, without a doubt, a place where people love their guns.

With legislation broadening the places and ways that Mississippians can carry their guns, law enforcement and firearms instructors are putting more and more emphasis on training as an important way to make sure that those who carry are as safe as they can possibly be.

As a gun owner, I have taken training. I've often envisioned what I would do if I had to use my weapon in real life. I think a lot of gun owners have.

On Sunday, I was able to go through several very lifelike scenarios with a use-of-force simulator at Boondocks Firearms Training Academy in Raymond, and as instructors there told me it would be, it was a real eye-opener.

There were some law enforcement-type scenarios, and there were some scenarios that could involve regular daily life. In each one, however, there was at least one moment where you have to make a choice whether to use your weapon. In that moment, what matters is a clear head and a steady hand, and those are often hard to maintain when your heart rate is through the roof.

The scenarios can be manipulated by instructors using the computer, and they can make the characters react based on the user's words and actions.

In one scenario, a girl ran out of a house and said her boyfriend was trying to attack her with a baseball bat. She got into an SUV parked in front of the house to hide from him, and he came out with his baseball bat and smashed one of the windows. During that time, I was talking to him, telling him to drop the bat. He pointed the bat at me and told me it was none of my business, to which I replied that now it is, and that he needed to drop the bat.

Finally, he did, and I didn't have to shoot him.

In another scenario, the user is awakened from a deep sleep by the sound of a breaking window.

I walked downstairs and wandered through a living room that was supposed to be mine, and as I rounded a corner, I could see a door open. "Scenario Me" paused there for a minute, and suddenly a man came out from behind a corner and took a shot at me. I think I put that guy down in four shots. Instructors reminded me throughout not to drop my guard or my gun just because the bad guy is down. Make sure the threat is subdued.

In a third situation, two men and a woman were standing by a car. The scenario opened up just in time to show the man with his back to me shooting another man, so seeing lethal force used, I opened fire. As the girl kneeled over him, you could hear me on the video say, "I hope he wasn't being robbed by the guy he just killed or something."

One split second: Training for use-of-force scenarios, photo gallery of facility, clarionledger.com

That scenario ended with the girl rushing at me for killing the man, screaming that she was going to "kick my a--," which apparently she did, because I wouldn't shoot at her and the screen went dark.

That "Gunfighter software," made by TI Training, is controlled by training weapons that use lasers to communicate with the console. Using CO2 cartridges, the guns even have a little kick, similar to actual weapons. The software runs everything from paper targets to the described scenarios.

TI Training has focused on simulator software for law enforcement and military, but now it's branched out, said firearms instructor David Bunger.

"We can put you in fight-or-flight mode and still remind you of your fundamentals, and your scanning and movement, and talking to the target and those kind of things," Bunger said. "That way you can practice that and be in that environment and work on those skills."

NRA firearms instructor Cliff Cargill said it's important to know how your body will react.

"When you're in that situation, the gunfight will never turn out the way you think it will. Your body reacts, things happen to your fine motor skills," he said. "When you get an adrenaline dump, your pulse rate doubles. Your ability to shoot, they say, will fall off about 50 percent, and that's why it illustrates the importance of training because if you put your 100 percent way high, then when you're in a situation, your 50 percent will be better than the bad guys."

The software can also help with security plans in places such as schools, businesses and churches. The layout can be videoed, and then "bad guys" can be inserted for practice.

"It's a lot different than being on a range shooting at cardboard targets. You have decisions to make," Cargill said. "Sometimes you're supposed to shoot, sometimes you shouldn't shoot, sometimes the answer is to verbally control the situation."

Contact Therese Apel at tapel@gannett.com.

81-year-old shot, killed at Macon funeral home

SARAH FOWLER
THE CLARION-LEDGER

A man was shot and killed at a Macon funeral home Tuesday.

William Boyd McCollum, 81, died Tuesday afternoon at Cockrell Funeral home of a single gunshot wound to the head, according to Noxubee County Coroner R.L. Calhoun. McCollum was pronounced dead on the scene at 2:55 p.m.

Calhoun said the funeral director was inside when he heard a shot outside the building. When he walked outside, he discovered McCollum slumped over.

The incident is being investigated by the Macon Police Department. Calhoun said it was not yet known why McCollum was at the funeral home.

When reached by telephone Tuesday afternoon, a person who answered the phone at Cockrell Funeral home directed all phone calls to Macon Police Department and the Noxubee County Coroner.

McCollum's body will be transported to Jackson for an autopsy.

Funeral arrangements are incomplete at this time.

Contact Sarah Fowler at sfowler@gannett.com or 601-961-7303. Follow her on Facebook and Twitter.

Watkins

Continued from Page 3A

tery in Schlater, a Delta dot on the map that is about 15 miles northwest of Greenwood. My wife and I drove the 1 hour and 40 minutes to attend the service of my uncle, 91-year-old Harold Coleman, who for 68 years was married to my mother's sister.

It was a beautiful, touching ceremony. A World War II veteran who served in the Navy, Uncle Harold received a three-volley salute — nine shots fired in unison by three uniformed riflemen. Taps was played by a buglar. The U.S. flag covering the casket was folded and presented to my Aunt Dorothy.

It was chilling, and perhaps the loud crack of the gunshots jolted my memory.

I asked Uncle Harold a few years ago something about my maternal grandfather, who I loved deeply. Uncle Harold was one of the few still alive who knew the answer and the only one I felt comfortable asking about it. Understand, it wasn't concerning anything illegal or shameful. It was merely something I wanted to know about my grandfather.

"I'll tell you," Uncle Harold said to me. "But you have to drive to Schlater to hear it."

It was his way of inviting me to come see him.

I never made that trip. So whatever he would have said to me was lowered with him into the black Delta earth late Saturday afternoon.

My ignorance, arrogance and apathy haunt me.

The handshake

My sons may not know this, but they have benefited from Uncle Harold marrying our aunt.

When I was young, maybe 9 years old, I shook hands with him one day. A broad-shouldered man who was country strong and had no problem giving his opinion, looked at me as if I had kicked dirt on his boots.

"Boy … don't hand me no dead fish," he said. "When you shake somebody's hand, you grip it like a man, and you look them in the eyes."

I never shake a hand without hearing Uncle Harold's words. I taught my boys the same thing, using those exact words. And they listened. He would be proud of their handshakes.

After the funeral, family and friends gathered at the home of his son and daughter-in-law, Hal and Kathy Coleman. As I looked around the kitchen and den, I saw aunts and uncles who were good to my brother and me after our father died so young, so unexpectedly. I was 7, my brother was 12.

I summoned my cousin in Kaye. "I want you to be with me when I say something to your dad."

Farris Foresman also married one of my mother's sisters, Ernestine. They lived much of their adult life just outside Atlanta. My brother spent a majority of one summer with them. I also visited them for a couple of weeks during my teenage summers.

I reached out my hand to Uncle Farris, gave him a firm handshake, and said this: "I want to thank you for giving me one of the greatest gifts of my life. You took me to my first Major League baseball game.

"I don't remember much about it … other than it was on July 28, 1967. The St. Louis Cardinals beat the Atlanta Braves 9-1. Orlando Cepeda hit two home runs. The first player I saw when I entered the stadium was Roger Maris. He hit a double in the game. Lou Brock caught the last out right in front of us. You gave me a pen and a program, and I got Phil Niekro's autograph.

"You didn't have to take me to that game. You didn't have to buy my ticket. But you did. And you'll never know how much I appreciate it."

He smiled and patted my shoulder. Aunt Ernestine hugged me. So did Kaye.

Across the room, I spotted my mother's brother, Billy West. He was eating caramel cake and talking to my wife.

He served in the Air Force as a tail gunner in World War II. Flew countless combat missions. While he made it back, his brother — my Uncle Wardell — did not. That has to be a lot to live with.

In 1969, Uncle Billy and his wife, Jeanette, brought me to Jackson for a football doubleheader at Veterans Memorial Stadium — LSU vs. Ole Miss in the afternoon, Alabama vs. Mississippi State at night. I had been to State games in Starkville many times, but it was my first time to attend an Ole Miss game. Archie Manning played quarterback for the Rebels that day. Bear Bryant coached Alabama that night.

But 24 hours earlier, I was given an ultimatum: I either learned how to thread a tie into an acceptable knot, or I would listen to the games on the car radio outside the stadium. Yes, many fans wore suits to ballgames back then.

I can hear Uncle Billy's words to this day. *"You wrap it once, wrap it twice, thread it through the back …. "*

I don't wear a tie often, but when I do Uncle Billy is still telling me how to tie it.

Dodger tribute

Hal and Kathy's son, Louis, spoke at the funeral.

Louis is a relief pitcher for the Los Angeles Dodgers. I read on the team website the night before: "Louis Coleman has been placed on the bereavement list following the death of his grandfather. Also, the Dodgers called up … "

One line. I wish all Dodger fans could've heard Louis' tribute. He didn't dance around the fact that his "Pappy" was "always right" and, at times, not the easiest person to get along with. He called him "a man's man."

"But he had a way of making things simple," Louis said. "I used to throw at a tater sack hung across a barbed wire fence when I was growing up. That was my target."

As a member of the Kansas City Royals in 2011, Louis earned his first save at Yankee Stadium in New York and his first win at Fenway Park in Boston.

"And to this day, if I can't find my control, I can hear Pappy saying, 'Just hit the tater sack.' "

A little more than 48 hours after delivering that talk, Louis was back with the Dodgers, back on the mound in a one-run game against the Miami Marlins in the seventh inning. Louis was perfect. Three up, three down. He struck out slugger Giancarlo Stanton for the third out. I came out of my recliner and pumped my fist.

And this June, at our family reunion, a bunch of us will probably discuss Louis' first outing after the death of his grandfather.

I look forward to it.

Contact Billy Watkins at 769-257-3079 or bwatkins@jackson.gannett.com .

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Date: April 30, 2016 • Time: 10:00am - 12:00pm
Location: Flowood Library, 103 Winners Circle, Flowood, MS 39232
We will cover various home buying topics in clear easy to understand language that will include:
• Preparing for Your Home Purchase
• Getting Pre-Approved for a Mortgage
• Down Payment Assistant Programs
• When to Start Looking for a Home
• Finding the Right Home
• Legal Aspects of Purchasing and Owning a Home
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LOCAL NEWS

Fellowship

Continued from Page 3A

can tell you now to stay away from all of that because the sinful lifestyle I lived when I was your age led me down the path all sin leads to. That's nothing but death and destruction."

Jacob grew up in California and served multiple prison sentences after getting caught doing and producing drugs.

"I started out just drinking as a teenager, but then that developed into smoking weed, then LSD and then speed," Jacob said. "Every time, I always said I'd never do the next thing because I could see how bad it was.

"But sin is seductive. That's the way it works. It makes you do things you know you shouldn't because of the consequences you see it will bring."

Jacob said he spent years getting his hands on whatever he could to get the next high, even after he'd gotten caught and was serving a four-year sentence.

"Then I got out of jail and got in a worse shape," Jacob said. "It was so bad that I said when I got arrested again, I'd quit doing drugs at that point."

Jacob said it worked for a while. He stayed off while being incarcerated to the point that he was self-righteous toward other inmates who hadn't got off drugs. Then he got a new cellmate who brought some speed into the county jail where he was housed.

"He came in and held up a bag of it and asked if I wanted to get high, which I did," Jacob said. "And I was in bad shape again."

Jacob was later released from jail, but it was then he started to figure out he couldn't quit drugs anytime he wanted.

"It was like that parable Jesus told about the prodigal son," Jacob said. "He'd run off and was living wild and then finally came to his senses one day.

"I had a moment like that after the house I was living in and cooking speed in got raided and I got arrested again in April of 2006."

Jacob began to read the Bible because of a Bible study that was being held among inmates at the foot of his bed. At first he wanted nothing to do with it, but then he started participating and reading on his own. He developed a relationship with Jesus to the point he felt Jesus' presence in his cell one night.

"I was reading late one night, and not because of anything I did or because I'm special or anything, but I could just feel the presence of the Lord there in my room," Jacob said. "All I could do was bow my head, and it was like I could feel him looking over my left shoulder.

"When you're in a moment like that with Jesus, there's no place for you to hide. You're in the presence of God, and your life is flat. He shows you your faults, and we're all in that same position compared to Him."

Jacob said after that he's devoted his life to Jesus. To the point that when he was released from jail, his mom and stepfather were there to pick him up, and they noticed a physical change about him when he walked into the room.

"That change was Jesus, and I've followed him ever since," Jacob said. "And he's always taken care of me. He'll do the same for you if you don't already know him."

Brandon Shields, 425-9751

KENNETH CUMMINGS/THE JACKSON SUN

Students of the Lexington Chapter of Fellowship of Christian Athletes welcomed Jacob Chamberlin as their guest speaker during their meeting Tuesday.

Briefly

Continued from Page 5A

facial injuries in the attack, resulting in reconstructive surgery, Byrd said.

Correctional officer faces multiple charges

A correctional officer at the South Central Correctional Facility in Clifton faces several charges after police said she accepted marijuana with the intent to introduce it into the prison system, according to court documents.

Holly Kiddy-Williams, 26, is charged with money laundering, possession of marijuana with intent to deliver, criminal conspiracy and criminal responsibility. She was arraigned this week in Jackson City Court.

The location of the exchange of the drugs on Feb. 27 was outside the Burger King on South Highland Avenue in Jackson, court documents said.

Kiddy-Williams provided police with records of drug sales and proceeds that were a result of her introducing and trafficking drugs into the prison, court documents said.

The prison in Clifton is operated by Corrections Corporation of America.

Police ask for help to find missing woman

Jackson Police Department investigators are asking for the public's help to find a missing woman.

Donna Sue Hollis has been missing since Sunday, according to a news release. Hollis is a 57-year-old white woman with brown hair and brown eyes. She is 5 feet 1 inch tall and weighs about 105 pounds. She was last seen in the area of Lambuth and Airways boulevards.

Hollis

Hollis has no known medical issues, but her family says she is forgetful at times, according to police.

If anyone has seen or makes contact with Hollis, call the Jackson Police Department at (731) 425-8400.

Severe weather possible today

A spring storm in the Great Plains will bring a threat for severe weather across the Midsouth starting late through this evening, according to the National Weather Service in Memphis.

More than one round of storms appears likely, especially to areas along and north of Interstate 40. The greatest threats will be for very large hail — golfball size or larger — and damaging winds. There is a lesser threat for a weak tornado, mainly during the late morning and afternoon hours Wednesday. Storms will exit the Midsouth later Wednesday night.

In addition a wet and stormy weekend is beginning to look more likely, with the potential for severe weather and periods of heavier rainfall, the weather service said.

Bratcher

Continued from Page 5A

put folks around you, listen to them.

Another responsibility often overlooked is in the area of relationship building. The leader has to know the people inside the organization. Not just their names, but also what makes each one of them tick.

The larger the organization, the more difficult it is to know everyone. At a minimum, the leader needs to know who reports to them, and what their desires are. In addition to relationships inside, it is the CEO's responsibility to grow connections outside the organization too. Whether it is with suppliers, customers, or the community-at-large, relationships matter.

It is often said, you can only grow in two ways: by how many books you have read and how many people you have met.

Finally, the vision of tomorrow squarely rests on the shoulders of the CEO. This does not include all the nuts and bolts of, "how?" It includes the reasons for "why?" The team is in place to put together the details, but it is not their responsibility to cast the overall vision. This is the requirement of a leader. The ability to take a complicated subject, simplify it, and get buy-in is critical to the overall success.

Answering the question of "why," provides a great foundation for a vision.

Give me a person who surrounds themselves with good people and listens to them, builds relationships every day inside and out, and can answer the question of "why," and you will have the makings of a great CEO.

Dave Bratcher is the founder of www.davebratcher.com, speaker, teacher and trainer in the area of leadership and organizational development. He serves as president of the STAR Center. He can be contacted at dave@davebratcher.com.

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N. Korea nearly finishes nuclear test preparation

BY HYUNG-JIN KIM
Associated Press

SEOUL, South Korea — South Korea's president said Tuesday that North Korea has almost completed preparations for a fifth nuclear test, and the country has reportedly placed a new midrange missile on standby for an impending launch.

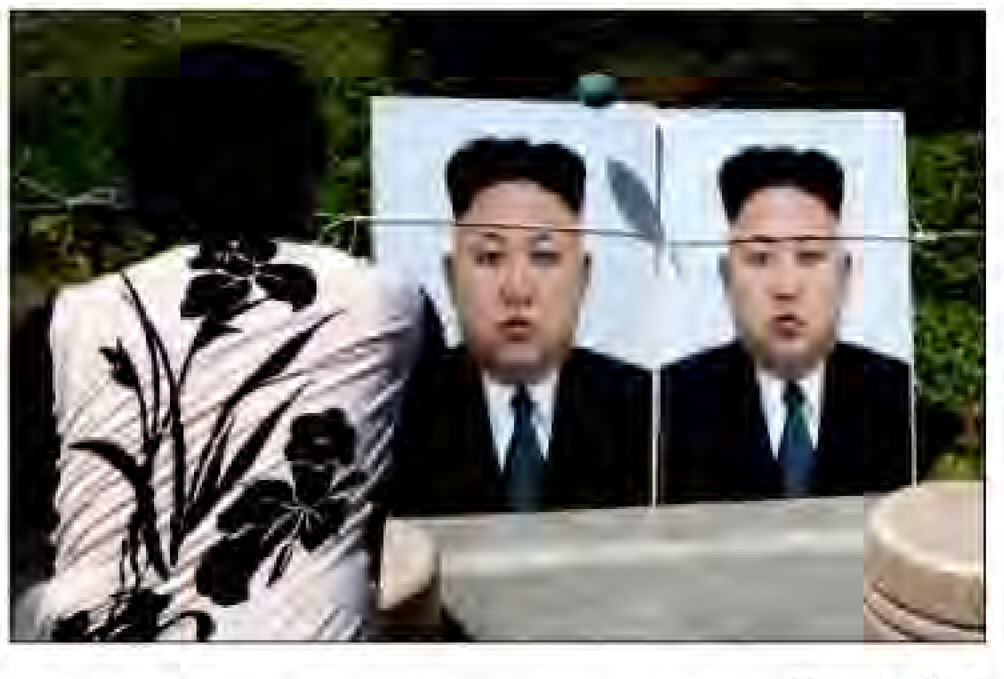
North Korea said two days ago it had successfully test-fired a ballistic missile from a submarine in a continuation of its weapons tests during ongoing South Korea-U.S. military drills. Seoul officials said they could not confirm whether Saturday's test-firing was a success.

Meeting with senior South Korean journalists, President Park Geun-hye said South Korea believes North Korea can conduct a nuclear test anytime it decides to do so. She didn't elaborate on why South Korea made such an assessment.

Other South Korean officials have made similar recent comments without elaborating amid media reports of increased activity at the country's main nuclear test site. Park said last week there were signs North Korea was preparing for a new nuclear test.

Speculation about a fifth nuclear test increased last month when the North's state media cited leader Kim Jong Un as ordering a test of a nuclear warhead and ballistic missiles capable of carrying warheads.

North Korea conducted a fourth nuclear test in January and a long-range rocket launch in February, and the country was subsequently slapped with tough U.N. sanctions. Park said Tuesday a further provocation by North Korea would only speed up its collapse, according to her office.



Associated Press

A North Korean defector throws a balloon containing a colored liquid against portraits of North Korean leader Kim Jong Un during a rally against North Korea in Seoul, South Korea, Tuesday. South Korea's president said Tuesday that North Korea has almost completed preparations for a fifth nuclear test.

Associated Press

Ukraine's President Petro Poroshenko lays flowers at a monument to the victims of the Chernobyl tragedy outside the nuclear power plant in Ukraine, Tuesday. Ukraine on Tuesday marked the 30th anniversary of the explosion.

Chernobyl memories still painful

Associated Press

KIEV, Ukraine — As Ukraine and Belarus on Tuesday marked the 30th anniversary of the Chernobyl nuclear accident with solemn words and an angry protest, some of the men who were sent to the site in the first chaotic and frightening days were gripped by painful memories.

Ukrainian President Petro Poroshenko led a ceremony in Chernobyl, where work is underway to complete a 2 billion euro ($2.25 billion) long-term shelter over the building containing Chernobyl's exploded reactor. Once the structure is in place, work will begin to remove the reactor and its lava-like radioactive waste.

The disaster shone a spotlight on lax safety standards and government secrecy in the former Soviet Union. The explosion on April 26, 1986, was not reported by Soviet authorities for two days, and then only after winds had carried the fallout across Europe and Swedish experts had gone public with their concerns.

"We honor those who lost their health and require a special attention from the government and society," Poroshenko said. "It's with an everlasting pain in our hearts that we remember those who lost their lives to fight nuclear death."

About 600,000 people, often referred to as Chernobyl's "liquidators," were sent in to fight the fire at the nuclear plant and clean up the worst of its contamination. Thirty workers died either from the explosion or from acute radiation sickness within several months.

Iraq OKs partial Cabinet reshuffle

BY SINAN SALAHEDDIN
Associated Press

BAGHDAD — Iraq's parliament approved a partial Cabinet reshuffle proposed by Prime Minister Haider al-Abadi on Tuesday, bowing to mounting public pressure for reform, including mass protests led by an influential Shiite cleric.

Thousands of followers of Shiite cleric Muqtada al-Sadr had earlier massed outside the capital's heavily fortified Green Zone, calling for political reform and an end to corruption.

The protesters back al-Abadi's planned reshuffle, which would hand key portfolios to independent technocrats in a bid to root out patronage and corruption that have hindered the provision of public services since the 2003 U.S.-led invasion.

Last month, al-Abadi proposed reducing the number of Cabinet ministers to 16, from the previous 21-member government. He submitted the names of independent technocrats for 14 ministerial positions, but said he would hold off on replacing the defense and interior ministers because of the tense security situation.

His plans have faced opposition from Iraq's entrenched political blocs as well as dozens of lawmakers who have demanded the resignation of al-Abadi and other top officials, and who interrupted the parliamentary session earlier Tuesday.

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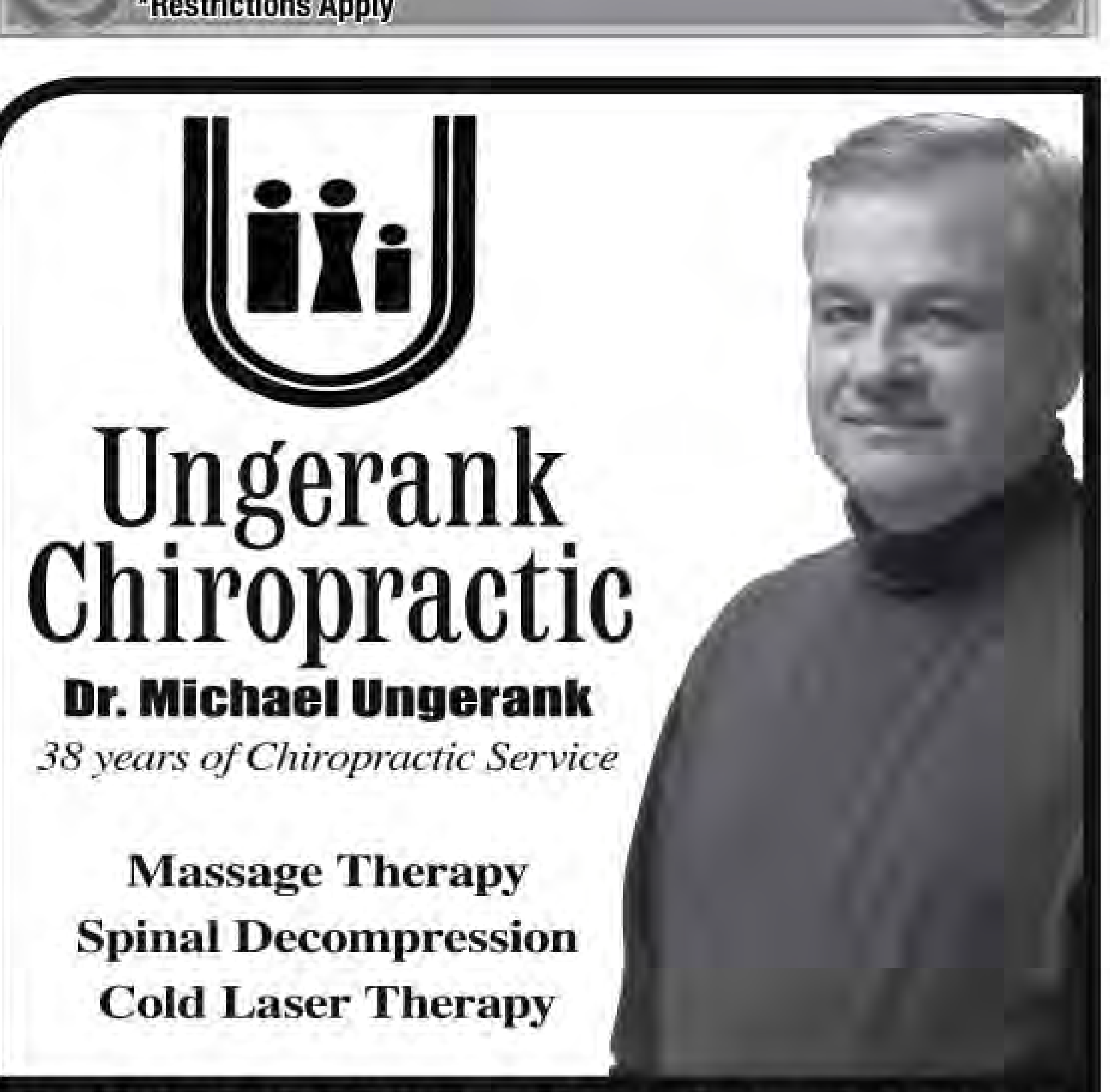

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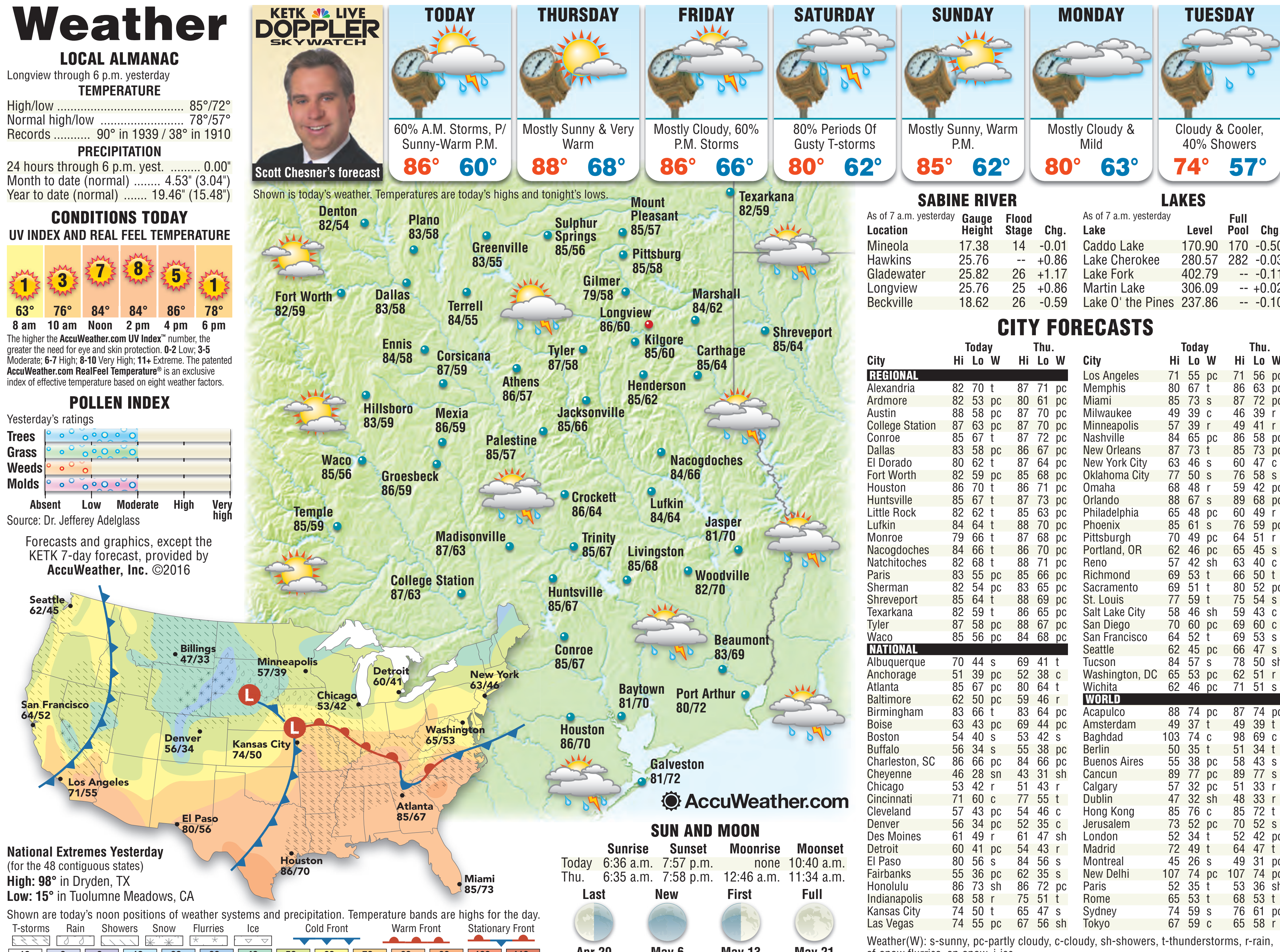


SUN AND MOON

	Sunrise	Sunset	Moonrise	Moonset
Today	6:36 a.m.	7:57 p.m.	none	10:40 a.m.
Thu.	6:35 a.m.	7:58 p.m.	12:46 a.m.	11:34 a.m.

Last	New	First	Full
Apr 29	May 6	May 13	May 21

SABINE RIVER

As of 7 a.m. yesterday

Location	Gauge Height	Flood Stage	Chg.
Mineola	17.38	14	-0.01
Hawkins	25.76	--	+0.86
Gladewater	25.82	26	+1.17
Longview	25.76	25	+0.86
Beckville	18.62	26	-0.59

LAKES

As of 7 a.m. yesterday

Lake	Level	Full Pool	Chg.
Caddo Lake	170.90	170	-0.50
Lake Cherokee	280.57	282	-0.03
Lake Fork	402.79	--	-0.11
Martin Lake	306.09	--	+0.02
Lake O' the Pines	237.86	--	-0.10

CITY FORECASTS

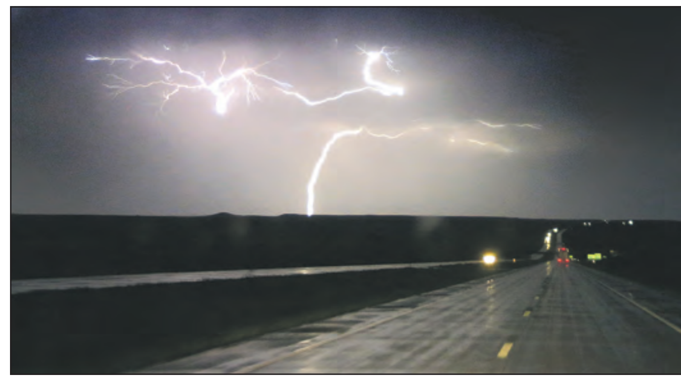
City	Today Hi	Lo	W	Thu. Hi	Lo	W
REGIONAL						
Alexandria	82	70	t	87	71	pc
Ardmore	82	53	pc	80	61	pc
Austin	88	58	pc	87	70	pc
College Station	87	63	pc	87	70	pc
Conroe	85	67	t	87	72	pc
Dallas	83	58	pc	86	67	pc
El Dorado	80	62	t	87	64	pc
Fort Worth	82	59	pc	85	68	pc
Houston	86	70	t	86	71	pc
Huntsville	85	67	t	87	73	pc
Little Rock	82	62	t	85	63	pc
Lufkin	84	64	t	88	70	pc
Monroe	79	66	t	87	68	pc
Nacogdoches	84	66	t	86	70	pc
Natchitoches	82	68	t	88	71	pc
Paris	83	55	pc	85	66	pc
Sherman	82	54	pc	83	65	pc
Shreveport	85	64	t	88	69	pc
Texarkana	82	59	t	86	65	pc
Tyler	87	58	pc	88	67	pc
Waco	85	56	pc	84	68	pc
NATIONAL						
Albuquerque	70	44	s	69	41	t
Anchorage	51	39	pc	52	38	c
Atlanta	85	67	pc	80	64	t
Baltimore	62	50	pc	59	46	r
Birmingham	83	66	t	83	64	pc
Boise	63	43	pc	69	44	pc
Boston	54	40	s	53	42	s
Buffalo	56	34	s	55	38	pc
Charleston, SC	86	66	pc	84	66	pc
Cheyenne	46	28	sn	43	31	sh
Chicago	53	42	r	51	43	r
Cincinnati	71	60	c	77	55	t
Cleveland	57	43	pc	54	46	c
Denver	56	34	pc	52	35	c
Des Moines	61	49	r	61	47	sh
Detroit	60	41	pc	54	43	r
El Paso	80	56	s	84	56	s
Fairbanks	55	36	pc	62	35	s
Honolulu	86	73	sh	86	72	pc
Indianapolis	68	58	r	75	51	t
Kansas City	74	50	t	65	47	s
Las Vegas	74	55	pc	67	56	sh
Los Angeles	71	55	pc	71	56	pc
Memphis	80	67	t	86	63	pc
Miami	85	73	s	87	72	pc
Milwaukee	49	39	c	46	39	r
Minneapolis	57	39	r	49	41	r
Nashville	84	65	pc	86	58	pc
New Orleans	87	73	t	85	73	pc
New York City	63	46	s	60	47	c
Oklahoma City	77	50	s	76	58	s
Omaha	68	48	r	59	42	pc
Orlando	88	67	s	89	68	pc
Philadelphia	65	48	pc	60	49	r
Phoenix	85	61	s	76	59	pc
Pittsburgh	70	49	pc	64	51	r
Portland, OR	62	46	pc	65	45	s
Reno	57	42	sh	63	40	c
Richmond	69	53	t	66	50	t
Sacramento	69	51	t	80	52	pc
St. Louis	77	59	t	75	54	s
Salt Lake City	58	46	sh	59	43	c
San Diego	70	60	pc	69	60	c
San Francisco	64	52	t	69	53	s
Seattle	62	45	pc	66	47	s
Tucson	84	57	s	78	50	sh
Washington, DC	65	53	pc	62	51	r
Wichita	62	46	pc	71	51	s
WORLD						
Acapulco	88	74	pc	87	74	pc
Amsterdam	49	37	t	49	39	t
Baghdad	103	74	c	98	69	c
Berlin	50	35	t	51	34	t
Buenos Aires	55	38	pc	58	43	s
Cancun	89	77	pc	89	77	s
Calgary	57	32	pc	51	33	r
Dublin	47	32	sh	48	33	r
Hong Kong	85	76	c	85	72	t
Jerusalem	73	52	pc	70	52	s
London	52	34	t	52	42	pc
Madrid	72	49	t	64	47	t
Montreal	45	26	s	49	31	pc
New Delhi	107	74	pc	107	74	pc
Paris	52	35	t	53	36	sh
Rome	65	53	t	68	53	t
Sydney	74	59	s	76	61	pc
Tokyo	67	59	c	65	58	r

Weather(W): s-sunny, pc-partly cloudy, c-cloudy, sh-showers, t-thunderstorms, r-rain, sf-snow flurries, sn-snow, i-ice

Storms bring hail, strong winds, twisters to Plains

OKLAHOMA CITY (AP) — Thunderstorms bearing hail as big as grapefruit and winds approaching hurricane strength lashed portions of the Great Plains on Tuesday, but arrived without the grand tornadoes that many had worried about for days.

A rope tornado brushed fields south of Wichita, Kansas, and another small twister touched down in southwestern Indiana. As the sun went down on the western prairie, the Storm Prediction Center had received reports of bad weather from Texas to Nebraska to West Virginia, but none of them deadly.



AP Photo

Lightning strikes Tuesday along Interstate 70 near Junction City, Kan. Thunderstorms bearing hail as big as grapefruit and winds approaching hurricane strength lashed portions of the Great Plains on Tuesday.

"It's never straightforward when you're sitting here talking about (predicting) large tornadoes," meteorologist Matt Mosier said as the forecast was taking shape.

But it's not like the weather wasn't bad or scary. It was both.

Hail 4 inches in diameter fell in northern Kansas, northwest of Marysville, and winds hit 70 mph in Missouri and Texas while storms went through. Residents of Topeka, Kansas, eyed the sky nervously during rush hour after forecasters warned that a supercell thunderstorm could produce a tornado at any moment.

As night fell, small twisters accompanied a line of thunderstorms as it rolled into Oklahoma City. Telltale power flashes from failing transformers pierced the twilight as another neighborhood lost power.

Forecasters posted a tornado watch for Oklahoma and Texas until midnight, saying the atmosphere could still be unsettled enough for twisters to develop.

"This is a particularly dangerous situation," the Storm Prediction Center alerted in red type in an afternoon advisory. It uses such language on only about 7 percent of its tornado watches. Forecasters had predicted a 90 percent chance of tornadoes and said 80 percent could have winds above 111 mph in much of Oklahoma and northern Texas.

In the days ahead of the storm, forecasters had said a severe weather outbreak was possible Tuesday, perhaps including tornadoes that could stay on the ground for miles. Bad weather is expected Wednesday in Arkansas and Missouri, then later in the week in Oklahoma, Texas and Louisiana.

Bill Schwindamann, the emergency management chief for Marshall County, Kansas, said large hail damaged roofs and broke car windows near the town of Bremen, near Marysville. The hail started small about 5 p.m. but grew to as much as 4 inches in diameter.

Mid-Del Public Schools, in the Oklahoma City suburb of Midwest City, said in a statement that the safety of students and staff is a priority, noting that it reworked its tornado safety plan three years ago.

Officials ponder how to move dead whale

SAN CLEMENTE, Calif. (AP) — The massive carcass of a whale was rotting Tuesday at a popular California surfing spot while authorities were deciding whether to tow it out to sea or cut it into pieces and load them on trucks.

Meanwhile, crowds braved the overpowering stench to pose for photos in front of the adult gray whale that's about 40 feet long and weighs up to 60,000 pounds.

Either option for removal will be a difficult, messy process, said Rich Haydon, state parks superintendent at San Onofre State Beach.

"I don't think the carcass could have landed on a worse stretch of beach," he said, citing its limited access for vehicles and the popularity of the beach known as Lower Trestles south of San Clemente.

Using a boat would require "just the right wave" to make it out to sea during high tide, he said.

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BUSINESS

Petition to boycott Target gains support

By Hadley Malcolm
USA TODAY

A conservative Christian activist group has gained more than three-quarters of a million signatures and counting from people pledging to boycott Target over its transgender bathroom policy.

The petition started by the American Family Association last Wednesday raises concerns that Target's inclusive stance on transgender rights encourages sexual predators and puts women and young girls in danger, because "a man can simply say he 'feels like a woman today' and enter the women's restroom."

According to the group's website, the boycott had more than 760,000 signatures as of Tuesday afternoon.

"This is the best response we've ever had this quick," said AFA president Tim Wildmon, attributing the protest's viral nature to the fact that "everybody knows who Target is, and it's an easy-to-understand issue."

Wildmon said Target stands "to lose a lot of customers who won't come back." But Target is standing by its policy.

"We certainly respect that there are a wide variety of perspectives and opinions," said Target spokeswoman Molly Snyder. "As a company that firmly stands behind what it means to offer our team an inclusive place to work — and our guests an inclusive place to shop — we continue to believe that this is the right thing for Target."

She added that hundreds of Target stores "have single-stall, family restrooms for those who may be more comfortable with that option."

Target made its position public in a blog post last week, stating that the company welcomes "transgender team members and guests to use the restroom or fitting-room facility that corresponds with their gender identity." The announcement comes as legislation on transgender issues in multiple states has spurred several major corporations and businesses to take a stance on LGBT rights.

The American Family Association, a nonprofit based in Tupelo, Mississippi, frequently protests on issues that target what it considers traditional family values.

Target says it's standing behind its transgender bathroom policy despite pledges to boycott. ASSOCIATED PRESS FILES

KNAUSS

from 7A

four years has leased two small office buildings at 11870 Cranston, just off Airline Road in Arlington, a Memphis suburb. Next week, site work should start on a new headquarters building about five miles away at 3211 Cypress Drive in Arlington's Cypress Ridge Business Park, near U.S. 64.

The UrbanArch architecture firm has designed a modern building of 10,200 square feet, substantially larger than the current headquarters.

Just as important as the added space will be how the new space is designed for work flow. The existing configuration of employee offices in two buildings is too chopped up to be as efficient as Knauss wants.

LabExpress relies heavily on commercial airlines, with couriers often driving the specimens from clinics to the airport. The company does business with 39 different laboratories across the nation.

"People think it's local labs," Knauss said. "But nine times out of 10 it's not. ... We'll pick it up from hospitals, clinics, veterinary clinics, kidney dialysis units. We keep it temperature-controlled. We'll transport it to whatever lab to test."

Knauss went to high school at Raleigh-Egypt and graduated from Christian Brothers University. He majored in finance, intending to become an investment banker. But when the market crashed in the late 1980s, he looked for other work and landed with a truck-shipping company.

That experience gave him insight into the "major problem" many of the national labs had with the proper handling and timing involving specimen shipments.

He first opened a specimen-shipping business in Houston, Texas, before moving back to Memphis.

PRINCE

from 7A

in the top 10 of Billboard 200's chart, Billboard reported.

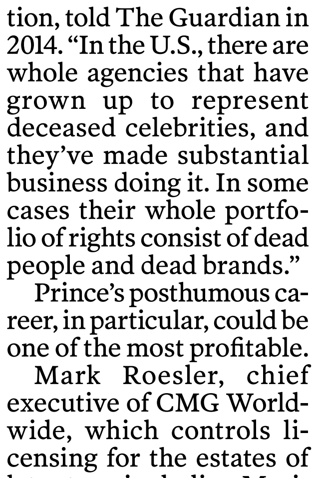
Sales of David Bowie's records increased by more than 5,000 percent in the week following his death in January, Billboard reported.

Some artists continue to have lengthy careers long after death takes them, so much so that Forbes long had an annual "Top-Earning Dead Musicians" list (which appears to have morphed into a "Top-Earning Dead Celebrities" list last year).

According to Forbes, Bob Marley has sold more than 75 million records since his death in 1981. In fact, his 2015 earnings — these include record sales, licensing deals and other items — of $20 million were up by $2 million from the preceding year. John Lennon's sales hit $12 million in 2015. He was killed in 1980.

For some high-profile artists, death can prove extremely profitable.

"It's massive business," Kelvyn Gardner, U.K. managing director of the Licensing Industry Merchandisers' Association, told The Guardian in 2014. "In the U.S., there are whole agencies that have grown up to represent deceased celebrities, and they've made substantial business doing it. In some cases their whole portfolio of rights consist of dead people and dead brands."



Prince's posthumous career, in particular, could be one of the most profitable.

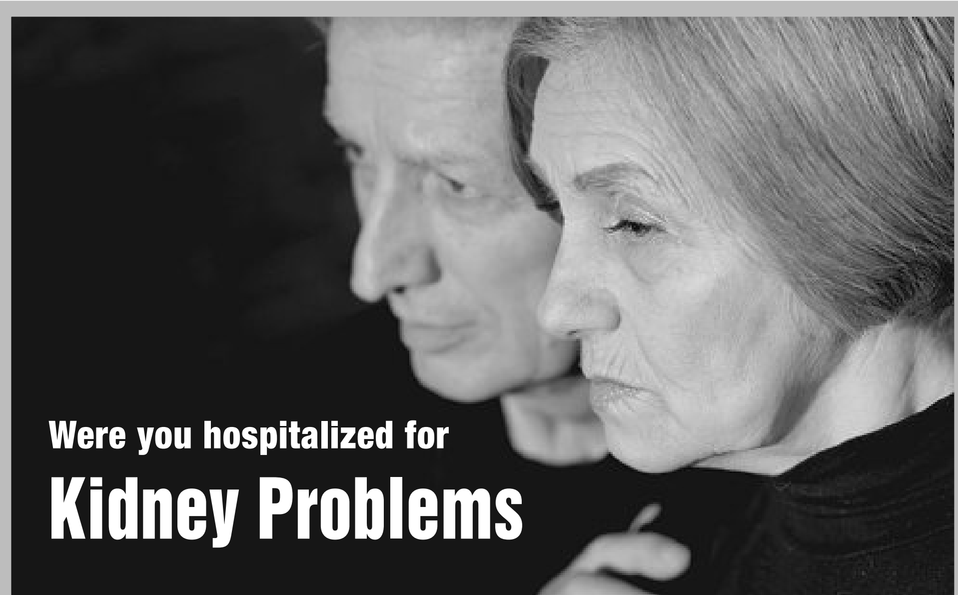
Mark Roesler, chief executive of CMG Worldwide, which controls licensing for the estates of late stars, including Marilyn Monroe and James Dean, predicts Prince's posthumous career will be similar to that of Elvis Presley, who has repeatedly held one of the top slots on the Forbes's annual list. In 2015, his estate earned $55 million.

"He was as big as they get," Roesler told the Associated Press. "Will there be a business built up around Prince 60 years from now like James Dean? The answer is unequivocally yes."

Though record companies normally see a financial reward after an artist's death, that might not be the case this time. Prince had recently taken full control of his music rights, including copyrights for songwriting, the New York Times reported.

CHRIS O'MEARA/ASSOCIATED PRESS FILES

Prince is on track for a profitable posthumous career, says Mark Roesler, chief executive of CMG Worldwide. Prince's record sales spiked 40,000 percent after his death last Thursday.



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No charges filed in Winnsboro officer-involved shooting death

STAFF REPORT

No charges will be filed in relation to the officer-involved shooting death of a Monroe man, according to a news release from the 5th Judicial District Attorney.

Schuylar Gunning was shot by deputies on Christmas Eve just south of Winnsboro on U.S. 425 in Franklin Parish.

Fifth Judicial District Attorney Mack Lancaster said Louisiana State Police conducted a thorough investigation that began the morning of the shooting and included interviewing more than 20 people; studying the crime scene; collecting evidence; documenting the scene; taking photographs and measurements; reviewing radio, telephone and desk log records; obtaining cellphone GPS coordinates; reviewing autopsy and toxicology reports; and obtaining and reviewing firearm and ballistic reports.

The investigation concluded March 2. The LSP report later was submitted to the Fifth District Attorney's Office for review and a decision on charges.

Lancaster reported ...the investigative ...dings said Gunning
...t his parents' home in ...ton Rouge unan...unced in their white ...ep between 7:03 a.m. ...nd 7:44 a.m. Christmas ...ve.

The incident started on U.S. 425 when a depu...y was northbound and noticed a vehicle approaching southbound in the northbound lane at a high rate of speed, according to the initial report provided to The News-Star in January.

At that time, a funeral was being held for a 3-year-old boy who had drowned. The funeral had a number of visitors with vehicles parked on both shoulders of U.S. ...25 with pedestrian traf...ic going to the funeral.

According to the re...ort, Gunning continued ...rough the area at a ...gh rate of speed as a ...ranklin Parish sheriff's ...eputy attempted to ...tch up while alerting ...her police of the pur...it.

Gunning reportedly ...ove through several ...d lights and six inter...ctions, all in the oppos... lane of traffic at ...eeds of 80 mph or fast... in 35 mph to 45 mph ...ed zones.

Gunning reportedly ...ve around a road...ck and through a ...ch, where he con...ued to evade pursuit.

Police attempted to ...able the vehicle with ...fire and shot out the ...s, but he continued on ... rims, according to ... report.

...unning reportedly ...ck two sheriff's ve...es at another road...k, spun his vehicle ...nd and headed to...d deputies who were ...ide their vehicles, while attempting to reenter traffic in the wrong direction.

NEWS-STAR FILE PHOTO

Schuylar Gunning, pictured for The News-Star article about his business winning a Scott Award, was the man killed in an officer-involved shooting Christmas Eve in Franklin Parish.

As he drove toward the officers, they reportedly feared for their lives and opened fire, according to the initial report from state police.

Gunning was shot while inside the vehicle and died.

Gunning was owner of Monroe's Kingfish/Crawfish Junkie. He also was the creator of Spice Junkie, a Cajun seasoning, which he sold to underwrite the cost of opening a restaurant.

Lancaster said he and his assistant district attorney were notified that morning immediately after the shooting incident. Further, that it is standard procedure for the investigation reports to be forwarded to his office for review.

Lancaster said after reviewing the report, interviewing witnesses and examining the scene with investigative officers, he determined there was no reason to call for a grand jury as it was reasonable for the officers involved in the shooting to believe that Gunning's actions would have caused grave injury or death unless the officers had taken the actions they did.

"My assistant D.A., Will Barham, my investigator, Owen Rockett, and I met with the parents of Schuylar Gunning prior to this public announcement to inform them of my decision that no criminal charges will be filed," Lancaster said. "That family has my deepest sympathies in the loss of their son and brother. This was an unfortunate incident that cost a young man his life.

"Law enforcement officers are often forced to make split second decisions in tense, uncertain and rapidly progressing circumstances. The officers' conduct must be judged from their prospective of what was occurring in those split seconds at the scene and not with hindsight. I do not see any probable cause to seek criminal charges against any of the officers involved and am thankful none of the officers nor any other members of the public were killed or injured."

BLOTTER

Man pleads guilty to aggravated incest

A Monroe man pleaded guilty to one count of aggravated incest in 4th Judicial District Court.

An amended bill of indictment filed on Tuesday for Melvin Harper, 44, Monroe, altered Harper's charges from two counts of aggravated rape to one count of first-degree incest and one count of aggravated rape.

Melvin Harper

The charges on the amended bill of indictment state Harper "did willfully and unlawfully commit aggravated incest upon his stepdaughter."

The plea deal Harper accepted dismissed the aggravated rape charge. He was sentenced to 30 years hard labor, 25 years without benefit of probation, parole or suspension of sentence. Harper will receive credit for time served since his initial arrest on May 1, 2015.

WM man faces drug charges

Union Parish deputies, while serving an arrest warrant, arrested a second person on a narcotics charges.

Sheriff Dusty Gates said that deputies went to 2650 Louisiana 828 Sunday afternoon to serve an arrest warrant on Alaina Kay Spruell for failure to appear on a charge of accessory after the fact, simple escape.

Deputies said that a visitor, Christopher Gerald Adkerson, 32, 1725 Lee Anding Road, West Monroe, was patted down for officer safety purposes.

The deputies gained permission from Adkerson to look into a cigarette package where a half-pill of Lortab was reportedly found and also a plastic bag with a small amount of suspected methamphetamine.

Total bond on the two drug counts was set at $6,000.

2 women accused of drug possession

A West Monroe woman and a Monroe woman were booked into Ouachita Correctional Center on multiple drug charges Monday.

Jessica Lane Hubbard, 26, 704 Bres Ave., Monroe and Brandi McBeth, 36, 145 Craft Road, Lot 1, West Monroe were arrested after West Monroe Police Department officers responded to a report of an erratic driver on Trenton Street.

Jessica Hubbard

Brandi McBeth

Officers reported making contact with the complainant, who said a vehicle was swerving all over the road before the passenger opened a door and jumped from the moving vehicle.

Arrest records identify McBeth as the driver of the vehicle and Hubbard as the passenger. Officers reported Hubbard had a busted lip and a scratch on her elbow.

A search of McBeth yielded six suspected Suboxone packages and a suspected meth pipe, according to the arrest affidavit, while a search of Hubbard yielded a bag containing suspected marijuana and a pipe.

McBeth was booked on charges of possession of a controlled dangerous substance, schedule III and prohibited acts, drug paraphernalia. Hubbard was booked on charges of possession of a controlled dangerous substance first offense, possession of a controlled dangerous substance schedule III and prohibited acts, drug paraphernalia.

OPSO: Child's lunchbox held pot

A suspect accused of two drug related charges had marijuana stored inside a child's lunchbox, according to an arrest affidavit.

Jerry Johnson

Jerry Johnson, 27, 1271 Entrance Road, Leesville, was stopped on Louisiana 34 at Bawcom for a traffic infraction.

According to arrest reports, the deputy said the odor of marijuana was detected during the stop, and the passenger reportedly told the officer the marijuana belonged to him and its location in the vehicle.

The marijuana was located inside a child's lunchbox in the back seat.

A child was also in the back seat of the car.

Johnson was booked on charges of possession of a controlled dangerous substance, schedule I marijuana and possession of a controlled dangerous substance in the presence of a juvenile.

Man accused of theft at construction site

A West Monroe man who reportedly said he was seeking employment at the construction site of the new D'Arbonne Woods Charter School was arrested on theft and criminal trespass charges Friday.

Union Parish Sheriff Dusty Gates identified the suspect as Brandon Leigh Harrell, 36, 214 Hilbert Drive, Lot 4.

Several of the subcontractors on the job reportedly followed the suspect to his vehicle where they confronted him until a deputy arrived.

The subcontractors reportedly identified a number of items, including copper fittings, a Makita grinder and a car headlamp, which were found on the suspect or in the car. The items were valued at just under $750.

The subcontractors did not wish to press charges, Gates said. However, the general contractor asked that the suspect be arrested.

The suspect reportedly told the deputy he picked up the items so he could buy gas for his car.

Harrell was booked into the parish detention center April 22 with bond set at $3,750.

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Legislature

FROM 1A

amount to a permanent solution, he added.

"We have a Plan B, and it's a partial fix, but it's not a complete fix or as good a fix as what we were trying to do," Brett said. "We can kind of shift some things around and make more efficient use of some of our personnel. That will help the problem but not solve the problem."

McMahan and Brett both indicated the Mississippi Judiciary had some concerns about the legislation introduced this year.

According to McMahan, he was told that the Judiciary wanted to see his legislation introduced as a general bill next year rather than as a local and private bill.

Based on talks he has participated in, Brett said he believes the Judiciary would prefer to see judges available to hear youth court cases on a full-time basis.

"In theory, it's great," Brett said, highlighting that protection cases in particular call for quick action.

As always, however, funding remains a looming question mark. Brett said he advocated this session for a referee because such a position is cheaper.

However, plans to seek a referee are probably on hold while the Judiciary works through a strategy to implement its preferred system, Brett said.

As County Court judge, Brett had jurisdiction over local eminent domain cases as well as some civil and criminal cases.

According to Brett, of the eight most populous counties in Mississippi as ranked by 2010 census numbers, Lee County, which ranks seventh, has the only County Court system with only one judge.

In the 21 Mississippi counties with a County Court, the County Court judge, or judges, preside over Youth Court.

In counties with no Youth Court, Chancery Court judges preside over Youth Court but are empowered by state statute to appoint an attorney to serve as a Youth Court referee.

According to data provided by the Mississippi Judiciary, 59 counties have Youth Courts served by referees

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Twitter: @CalebBedillion

Kemper project to cost Mississippi Power another $61 million

ASSOCIATED PRESS

GULFPORT – Mississippi Power Co. says it will spend another $61 million on its overrun-plagued Kemper County power plant, pushing its total cost above $6.7 billion.

Although the unit of Atlanta-based Southern Co. will absorb $35 million of the cost, customers could pay for $26 million in interest if the Mississippi Public Service Commission eventually approves.

The utility is absorbing $2.7 billion in overruns so far, and Southern Co. will write off $53 million before taxes from its quarterly earnings, which will be announced Wednesday. After taxes, the write-off is projected to cost $33 million.

The plant and associated lignite coal mine were originally supposed to cost $2.9 billion at most, and the earliest estimates were even lower. Customers could be asked to pay as much as $4.3 billion for the plant.

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Case 1:10-cv-00090-MP-GRJ Document 94-4 Filed 05/12/16 Page 75 of 78

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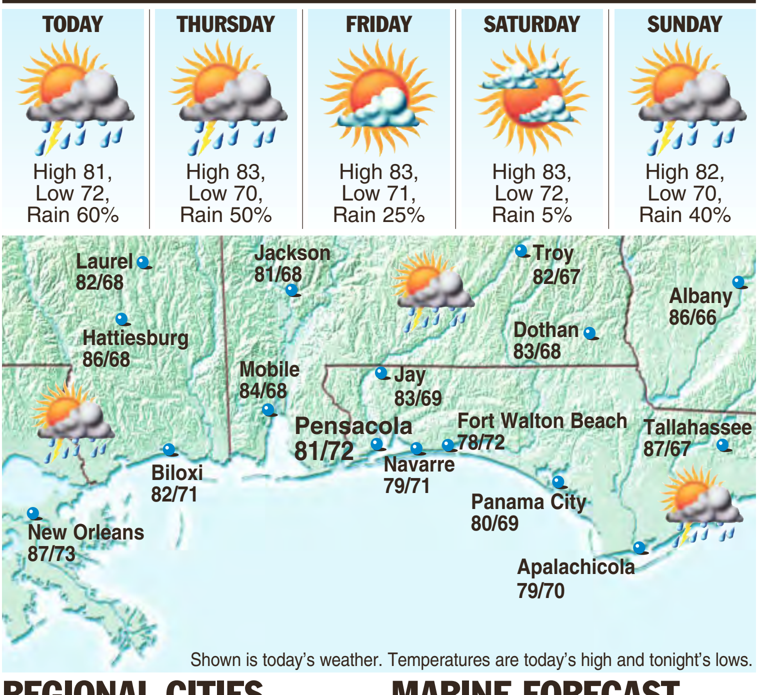
FIVE-DAY FORECAST



Shown is today's weather. Temperatures are today's high and tonight's lows.

LOCAL ALMANAC

24-hour period for Pensacola through 4 p.m. Tuesday

High temperature .... 81°
Low temperature .... 69°
Normal high .... 78°
Normal low .... 61°
Relative humidity at 3 p.m. 58%
Barometer at 3 p.m. .... 29.93 in.
Record high .... 86° in 1970
Record low .... 39° in 1964
Air quality .... 43 (Good)
Gulf temperature .... 75°F, 24°C

Precipitation for Ellyson Field for 24 hrs through 4 p.m. Tuesday

Rain .... 0.00"
Rain this month .... 5.94"
Normal rain month to date .... 3.80"
Rain year to date .... 22.24"
Normal rain year to date .... 19.48"

Precipitation for Whiting Field for 24 hrs through 4 p.m. Tuesday

Rain .... 0.00"
Rain this month .... 4.46"
Normal rain month to date .... 4.22"
Rain year to date .... 21.71"
Normal rain year to date .... 20.93"

RIVER STAGES

Readings at 7 a.m.	Actual	Flood
Alabama River at Claiborne Dam	17.79 ft.	42 ft.
Escambia River at Century	10.19 ft.	17 ft.
Choctawhatchee River at Caryville	9.08 ft.	12 ft.
Apalachicola River at Blountstown	11.37 ft.	15 ft.
Pascagoula River at Merrill, Miss.	11.95 ft.	22 ft.
Tombigbee River at Coffeeville, Ala.	10.75 ft.	29 ft.

REAL FEEL

The patented **AccuWeather.com RealFeel Temperature®** is an exclusive index of the effects of temperature, wind, humidity, sunshine intensity, cloudiness, precipitation, pressure and elevation on the human body.

8 a.m.	noon	4 p.m.
78	85	85

UV INDEX TODAY

The higher the **AccuWeather.com UV Index™** number, the greater the need for eye and skin protection.

10 a.m. .... 4, moderate
Noon .... 7, high
2 p.m. .... 7, high
4 p.m. .... 5, moderate

0-2 Low, 3-5 Moderate, 6-7 High, 8-10 Very High, 11+ Extreme

REGIONAL CITIES

City	Today Hi	Today Lo	Today W	Thursday Hi	Thursday Lo	Thursday W
Alabaster	81	67	t	81	64	t
Apalachicola	79	70	t	81	70	t
Auburn	82	65	t	78	63	t
Birmingham	83	66	t	83	64	pc
Crestview	83	66	t	84	65	t
Daytona Bch	85	65	s	87	67	t
Dothan	83	68	t	81	66	t
Florence	84	66	t	86	59	pc
Ft. Lauderdale	84	73	s	86	73	sh
Gadsden	84	62	t	82	57	pc
Gainesville	88	63	s	87	65	pc
Gulf Shores	79	71	t	79	70	t
Huntsville	85	66	t	87	62	t
Jacksonville	86	64	s	87	67	pc
Key West	83	75	s	83	75	pc
Lakeland	87	66	s	88	67	pc
Melbourne	84	66	s	86	68	pc
Miami	85	73	s	87	72	sh
Mobile	84	68	t	84	68	t
Montgomery	85	69	t	83	66	t
Naples	86	70	pc	87	70	pc
Ocala	86	64	s	87	65	pc
Orlando	88	67	s	89	68	pc
Panama City	80	69	t	82	69	t
Punta Gorda	88	66	pc	89	66	pc
Sarasota	86	69	sh	87	68	pc
St. Augustine	82	67	s	85	69	t
St. Petersburg	86	70	s	87	70	pc
Talladega	83	65	t	80	62	t
Tampa	86	71	pc	87	71	pc
Tuscaloosa	80	65	t	84	65	t
Vero Beach	84	64	s	86	67	pc
W. Palm Beach	83	70	s	86	71	sh

SUN AND MOON

Sunset today: .... 7:24 p.m.
Sunrise tomorrow: .... 6:08 a.m.
Sunset tomorrow: .... 7:25 p.m.
Moonrise: .... none
Moonset: .... 10:13 a.m.

Last	New	First	Full
Apr 29	May 6	May 13	May 21

MARINE FORECAST

Wind from the south-southeast at 7-14 knots. Seas 1-3 feet. Inland waters a light chop. Visibility less than 2 miles in an afternoon shower or thunderstorm.

PENSACOLA TIDES

	High tide	Low tide
Thursday	2:59 p.m. -----	1:39 a.m. -----
Friday	3:55 p.m. -----	2:29 a.m. -----
Saturday	5:04 p.m. -----	3:11 a.m. -----
Sunday	6:41 p.m. -----	3:46 a.m. -----
Monday	12:25 p.m. 8:53 p.m.	4:09 a.m. 3:19 p.m.
Tuesday	10:50 a.m. 11:30 p.m.	4:15 a.m. 5:20 p.m.
Wednesday	10:21 a.m. -----	3:41 a.m. 6:33 p.m.

AREA TIDES TODAY

	High tide	Low tide
Pensacola	2:10 p.m. -----	12:41 a.m. -----
East Pass	1:43 p.m. -----	2:01 a.m. -----
Warrington	1:43 p.m. -----	12:11 a.m. -----
Lora Point	2:46 p.m. -----	1:44 a.m. -----
East Bay	2:54 p.m. -----	1:58 a.m. -----
Bay Point	3:33 p.m. -----	2:08 a.m. -----
Milton	3:50 p.m. -----	2:28 a.m. -----
P'cola Pass	12:47 p.m. -----	12:07 a.m. -----
Bon Secour	2:58 p.m. -----	1:05 a.m. -----
Ft. Gaines	2:20 p.m. -----	12:33 a.m. -----
Mobile Point	2:25 p.m. -----	12:50 a.m. -----

NATIONAL FORECAST

-10s -0s 0s 10s 20s 30s 40s 50s 60s 70s 80s 90s 100s 110s

Seattle 62/45 · Billings 47/33 · Minneapolis 57/39 · Detroit 60/41 · New York 63/46 · HIGH WINDS · Chicago 53/42 · San Francisco 64/52 · Denver 56/34 · Kansas City 74/50 · Washington 65/53 · SEVERE T-STORMS · Los Angeles 71/55 · Atlanta 85/67 · El Paso 80/56 · Houston 84/70 · Miami 85/73

Shown are noon positions of weather systems and precipitation. Temperature bands are highs for the day.

Precipitation: Showers, T-storms, Rain, Flurries, Snow, Ice
Fronts: Cold, Warm, Stationary

U.S. CITIES

City	Today Hi	Today Lo	Today W	Thursday Hi	Thursday Lo	Thursday W
Albuquerque	70	44	s	69	41	t
Anchorage	51	39	pc	52	38	c
Asheville	80	58	pc	80	55	t
Atlanta	85	67	pc	80	64	t
Atlantic City	58	42	pc	58	44	r
Austin	88	58	pc	87	70	pc
Baltimore	62	50	c	59	46	r
Boise	63	43	pc	69	44	pc
Boston	54	40	s	53	42	s
Buffalo	56	34	s	55	38	pc
Charlotte	86	65	pc	84	62	t
Chicago	53	42	r	51	43	r
Cincinnati	71	60	c	77	55	t
Cleveland	57	43	pc	54	46	c
Columbia, SC	90	68	pc	85	65	t
Dallas	83	58	pc	86	67	pc
Denver	56	34	pc	52	35	c
Des Moines	61	49	r	61	47	sh
Detroit	60	41	pc	54	43	r
Fairbanks	55	36	pc	62	35	s
Honolulu	86	73	sh	86	72	pc
Houston	84	70	t	86	71	pc
Indianapolis	68	58	r	75	51	t
Jackson, MS	83	67	t	86	65	pc
Kansas City	74	50	t	65	47	s
Las Vegas	74	55	pc	67	56	sh
Little Rock	82	62	t	85	63	pc
Los Angeles	71	55	pc	71	56	pc
Louisville	78	63	t	82	61	t
Memphis	80	67	t	86	63	pc
Minneapolis	57	39	r	49	41	r
Nashville	84	65	pc	86	58	pc
New Orleans	87	73	t	85	73	pc
New York	63	46	s	60	47	c
Oklhma. City	77	50	s	76	58	s
Omaha	68	48	r	59	42	pc
Philadelphia	65	48	pc	60	49	r
Phoenix	85	61	s	76	59	pc
Pittsburgh	70	49	pc	64	51	r
Portland, ME	51	29	s	53	31	s
Portland, OR	62	46	pc	65	45	s
Rapid City	39	27	sn	43	29	sn
Richmond	69	53	t	66	50	t
Sacramento	69	51	t	80	52	pc
St. Louis	77	61	t	75	54	s
Salt Lake City	58	46	sh	59	43	c
San Antonio	90	60	pc	88	72	pc
San Diego	70	60	pc	69	60	c
S. Francisco	64	52	t	69	53	s
Seattle	62	45	pc	66	47	s
Wash., DC	65	53	c	62	51	r

CANADA CITIES

City	Today Hi	Today Lo	Today W	Thursday Hi	Thursday Lo	Thursday W
Calgary	57	32	pc	51	33	r
Edmonton	60	33	s	54	34	r
Halifax	48	36	s	45	32	pc
Montreal	45	26	s	49	31	pc
Ottawa	48	24	s	52	31	s
St. John's	48	28	r	45	27	c
Saskatoon	55	36	c	53	37	c
Toronto	54	31	s	49	35	pc
Vancouver	59	44	pc	60	46	s
Winnipeg	57	36	pc	56	38	pc

WORLD CITIES

City	Today Hi	Today Lo	Today W	Thursday Hi	Thursday Lo	Thursday W
Athens	71	57	s	74	58	s
Baghdad	103	74	c	98	69	c
Beijing	68	52	c	79	52	pc
Berlin	50	35	t	51	34	t
Dublin	47	32	sh	48	33	r
Frankfurt	48	32	t	53	33	t
Havana	91	67	pc	91	66	s
Hong Kong	85	76	c	85	72	t
Jerusalem	73	52	pc	70	52	s
London	52	34	t	52	42	pc
Mexico City	84	51	pc	86	51	pc
Moscow	58	49	r	62	43	c
New Delhi	106	72	pc	107	72	pc
Paris	52	35	t	53	36	sh
Rio de Janeiro	84	71	t	75	70	t
Riyadh	100	78	pc	98	79	pc
Rome	65	53	t	68	53	t
Sarajevo	58	36	t	62	41	t
Seoul	68	48	pc	70	48	pc
Singapore	90	79	pc	90	81	pc
Stockholm	45	36	sh	46	35	sh
Sydney	74	59	s	76	61	pc
Tokyo	68	59	c	65	58	r

Weather (W): s-sunny, **pc**-partly cloudy, **c**-cloudy, **sh**-showers, **t**-thunderstorms, **r**-rain, **sf**-snow flurries, **sn**-snow, **i**-ice.

TUESDAY'S EXTREMES:

For the 48 contiguous states

Highest temperature:
97° at Dryden, TX

Lowest temperature:
15° at Tuolumne Meadows, CA

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PJ-0000378541

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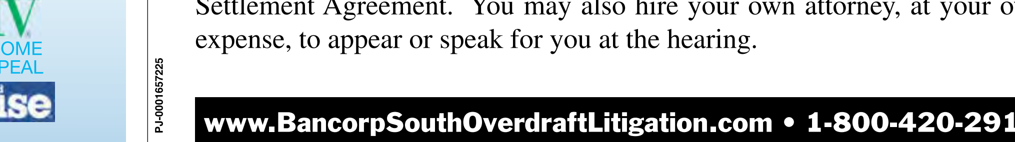

ELECTIONS 2016

Trump, Clinton win big in Northeast primaries

GOP competition to keep fighting; Democrat Sanders weakened

JULIE PACE
AND CATHERINE LUCEY
ASSOCIATED PRESS

PHILADELPHIA — In a front-runner's rout, Republican Donald Trump roared to victory Tuesday in five contests across the Northeast, keeping the billionaire firmly on his narrow path to the GOP nomination. Hillary Clinton was dominant in four Democratic races, ceding only Rhode Island to rival Bernie Sanders.

Trump's and Clinton's wins propelled them ever closer to a general election showdown. Still, Sanders, as well as Republicans Ted Cruz and John Kasich, have vowed to keep running, even as opportunities to topple the leaders dwindle.

"I consider myself the presumptive nominee," Trump declared at his victory rally in the lobby of Trump Tower in New York.

Clinton entered having already accumulated 82 percent of the delegates needed to win her party's nomination. While she can't win enough delegates to officially knock Sanders out of the race this week, she can erase any lingering doubts about her standing.

With her win in Connecticut and counting superdelegates, Clinton has at least 90 percent of the delegates she needs to become the first woman nominated by a major party. Clinton kept her focus firmly on the general election during an enthusiastic victory rally, urging Sanders' loyal supporters to help her unify the Democratic Party and reaching out to GOP voters who may be unhappy with their party's options.

"If you are a Democrat, an independent or a thoughtful Republican, you know that their approach is not going to build an America where we increase opportunity or decrease inequality," Clinton said of the GOP candidates. She spoke in Philadelphia, where Democrats will gather in July for their nominating convention.

MEL EVANS/AP

Donald Trump speaks at a campaign rally Monday in Wilkes-Barre, Pa., ahead of Tuesday's presidential primaries. Trump had a solid day in five states that voted in the Republican race.

TRACIE VAN AUKEN/EPA

Hillary Clinton greets supporters during a primary night event at the Pennsylvania Convention Center in Philadelphia. According to media reports, Clinton won four out of five Democratic presidential primaries Tuesday.

Trump's victories in Maryland, Pennsylvania, Connecticut, Delaware and Rhode Island padded his delegate totals, yet the Republican contest remains chaotic. The businessman is the only candidate left in the three-person race who could possibly clinch the nomination through the regular voting process, yet he could still fall short of the 1,237 delegates he needs.

Cruz and Kasich are desperately trying to keep him from that magic number and push the race to a convention fight, where complicated rules would govern the nominating process. The Texas senator and Ohio governor even took the rare step plans to coordinate upcoming contests to try to minimize Trump's delegate totals.

Cruz spent Tuesday in Indiana, which votes next week. Indiana is one of Cruz's last best chances to slow Trump, and Kasich's campaign is pulling out of the state to give him a better opportunity to do so.

"Tonight this campaign moves back to more favorable terrain," Cruz said during an evening rally in Knightstown, Indiana. His event was held at the "Hoosier gym," where some scenes were filmed for the 1986 movie, "Hoosiers," starring Gene Hackman as the coach of a small town Indiana basketball team that wins the state championship.

Trump has railed against his rivals' coordination, panning it as "pathetic," and has also cast efforts to push the nomination fight to the convention as evidence of a rigged process that favors political insiders.

Yet there's no doubt Trump is trying to lead a party deeply divided by his candidacy. In Pennsylvania, exit polls showed nearly 4 in 10 GOP voters

See ELECTION, Page 9A

Avoid Nursing Home Costs Without Buying Insurance

10 am May 4th – Wednesday
Broadmoor Branch Library
1212 Capt. Shreve Drive - Shreveport

Think it's too late?

We routinely help patients already paying thousands monthly for long-term care to save 65-100% of their estates

Come and Learn:

- Ways to avoid paying $4,500 to $6,500 each month for a nursing home stay that could go on for years
- Ways to avoid losing your savings and even your home
- Ways a spouse can often draw up to $2,980 per month of a nursing home patient's income or keep much more
- Ways to protect even very substantial estates without having to buy long-term care insurance

Reserve your seats today
By phone: 1-888-836-2738
Online: safeplanning.net/event

EXPERIENCE COUNTS: For over fifteen years we've helped hundreds of clients save their estates from devastating nursing home costs. **Come hear the truth!**

Shreveport Area: Can you answer "Yes" to all of the questions below? If not, call and reserve your seat!

- Did you know that if you have a spouse who needs long-term care that it's almost always possible to save practically everything with proper planning even if they're already in a nursing home?
- Do you know why you SHOULD NOT have your children's names listed on your accounts? It's amazing how many unexpected problems it can cause!
- **Do you know how a living trust or irrevocable trust can make you ineligible for long-term care benefits?**
- Do you know what estate planning documents are needed and, most importantly, what they need to say to help protect your estate from courts and unintended consequences?
- Do you know there are benefits available to many **veterans and widows of veterans** that can help pay for long-term care and that many VA employees aren't aware of them?
- Do you know the common mistakes many families make when they have a loved one that is qualified for Medicaid that can knock them off their benefits?
- Did you know that the state has the right to recover money they spent on your care after you die and before it goes to your heirs ? Do you know how to keep this from happening?
- Did you know that the nicest facilities in the area accept Medicaid patients and that you can choose your facility, not Medicaid?
- Have you implemented an estate plan that not only protects assets while you are alive but also passes them to your heirs in an efficient, low-cost, and tax-preferred manner?
- Do you have someone to guide you in the process of obtaining benefits you deserve who can guarantee results?
- If you or a family member is in a nursing home, do you want someone to cut through bureaucracy and red tape to help you save thousands of dollars a month on their care?

Louisiana Texas
Arkansas

SH-1000599780

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US lacks national plan against Zika

LIZ SZABO
USA TODAY

LUIS ROBAYO/AFP/GETTY IMAGES
The Aedes aegypti mosquito can spread the Zika virus. Experts say the best way to prevent the spread of the virus is to control the mosquito.

As mosquito season descends on millions of Americans who live on the Gulf Coast and in Southern states, the United States has no coordinated, national plan to control the insect that transmits the Zika virus.

With no approved Zika vaccine or treatment, experts said the best way to prevent the spread of the virus is to control the mosquito, a species called Aedes aegypti. The stakes are high: If the virus gains a foothold in the U.S., as it has in Brazil and elsewhere in Latin America, children born of infected mothers could suffer catastrophic birth defects. The virus may also increase the risk of Guillain-Barre syndrome, which causes paralysis.

Fighting mosquitoes is fundamentally a local battle led by a patchwork of 700 mosquito-control districts and more than 1,000 other programs within local governments. In some cities, mosquito control is handled by professionals with multimillion-dollar budgets. In other communities, mosquito control is more of an afterthought, tacked onto other programs, such as parks and recreation.

More than 60 million Americans live in the five states along the Gulf Coast — Florida, Alabama, Mississippi, Louisiana and Texas — which could bear the brunt of Zika outbreaks.

Communities along the Gulf and elsewhere must control their mosquito populations and cannot depend solely on federal public health agencies, such as the Centers for Disease Control and Prevention, said Michael Osterholm, director of the University of Minnesota's Center for Infectious Disease Research and Policy.

"There's not going to be some national team to come in and save you," Osterholm said. "That would be like asking the FBI to provide local police service."

President Barack Obama asked Congress for nearly $1.9 billion in emergency Zika funding in February, but Congress has not approved the request. As an emergency measure, Obama transferred $510 million in unspent Ebola funds to the Zika fight.

The CDC wants communities to draw up Zika action plans. It will release grants for Zika planning and response but only to states that submit a "checklist of readiness activities," CDC spokesman Tom Skinner said.

Many cities are ramping up mosquito control.

» New York City said last week it will spend $21 million over three years to fight Aedes aegypti, which also spread West Nile Virus. A pillar of the plan is to reduce the mosquito population, Mayor Bill de Blasio said.

» In Key West, mosquito inspectors go door to door, inspecting flowerpots, birdbaths and other containers for larvae, which may be treated with chemicals. Mosquito inspectors also pass out mosquito-eating fish, which devour larvae.

» In New Orleans, officials will work with nonprofit groups to clean up neighborhoods and eliminate trash that can collect standing water, where mosquitoes breed, said Claudia Riegel, director of the New Orleans Mosquito, Termite and Rodent Control Board.

Still, mosquito-control programs have limitations. Almost no one tests mosquito populations to see whether they're infected with Zika because the process is so labor-intensive, said Michael Doyle, executive director of the Florida Keys Mosquito Control District. That means communities may not learn they have Zika-carrying mosquitoes until a case is diagnosed in humans.

Dillard's

Cardmember Preview Shopping Day!

Wednesday, April 27

Use your Dillard's Credit Card on Wednesday's purchases and

take an extra 30% off

entire stock

...of all permanently reduced merchandise throughout the store.

Don't have a Dillard's Credit Card?
Apply to take advantage of the Dillard's Cardmember Preview Shopping Day.
Receive a 10% Off All-Day Welcome Shopping Pass in your 1st statement when you spend $100 on your Dillard's Card the day you open your account.
Maximum discount $100. Offer good only when using your Dillard's Credit Card.

Prince's sister says he didn't have a will

MARIA PUENTE
USA TODAY

ALEX BRANDON/AP
Prince performs during the halftime show at the 2007 Super Bowl in Miami. The musician, who died last week, left no will.

Prince left no will, according to documents filed Tuesday by his sister, Tyka Nelson, in probate court for Carver County, Minnesota, where the beloved pop icon died suddenly last week at his Paisley Park compound.

"The Decedent died intestate," Nelson wrote in her petition for the appointment of a special administrator to deal with Prince's estate, which has been widely reported to be valued at $300 million.

Nelson said her brother left no surviving spouse, no children and no parents. Besides Nelson — his full sister — he is survived by half-brothers and half-sisters, whom Nelson names in her petition as "interested parties" to the estate to her knowledge thus far.

She named Bremer Bank, National Association, of St. Cloud, as Prince's longtime banker, which would be in "the best position of any corporate trust company to protect the Decedent's assets pending the appointment" of an executor. Its office is listed as at 1100 West St. Germain St.

The adult half-siblings are John Nelson, Norrine Nelson, Sharon Nelson, Alfred Jackson and Omar Baker. She also listed another half-sister, Lorna Nelson, who has died and did not have children.

There was at least one other sibling identified as a stepbrother, Duane Nelson, who also has died, but Tyka Nelson did not list him as an interested party.

"I do not know of the existence of a Will and have no reason to believe that the Decedent executed testamentary documents in any form," Tyka Nelson stated in the petition.

It's possible there is a will and Nelson doesn't know about it, but no one has come forward yet to say so. Calls to the office of Prince's longtime attorney, L. Londell McMillan, were not answered.

When someone dies intestate — without a will — a probate court takes over the administration of the decedent's estate and distribution of assets, which Nelson listed as "Homestead, other real estate, cash, securities and Other."

Her petition said Prince had "substantial assets consisting of personal and real property that requires protection." He "owned and controlled business interests that require ongoing management and supervision." And he "has heirs whose identities and addresses need to be determined."

She said "an emergency exists to the extent that the appointment should be made without notice because immediate action and decisions need to be made to continue the ongoing management and supervision of Decedent's business interests; and because the names and addresses of all interested parties are currently unknown."

According to estate lawyers contacted by USA TODAY, when there is no will, state laws on inheritance prevail. In Minnesota, for instance, half-siblings are treated the same as full siblings for the purposes of inheritance.

Nelson's filings Tuesday come as a surprise. Estate lawyers and Prince's former manager, Owen Husney, said they would have expected Prince to have drawn up a will and an estate plan long ago.

Husney said he was too smart to have overlooked something that crucial and he had teams of lawyers, business managers and accountants over the years who would have advised him it was crucial.

"It's astonishing, absolutely astonishing that he did not have a will," said Jerry Reisman, an estate lawyer on Long Island who's been following the case. He predicted trouble ahead.

"You're going to have 'siblings' coming out of the woodwork alleging they are siblings," he said. "Everyone is going to be fighting over this estate. Let this be a lesson to everyone: People should run out and make their will."

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CALIFORNIA IDENTITY REVEALED

Death of Jane Doe found near Manson killings being probed

By Amanda Lee Myers
The Associated Press

Charles Manson is seen in court in 1986. California authorities recently interviewed Manson, now 81, about whether a woman found stabbed 150 times is connected to the Manson family killings. ASSOCIATED PRESS FILE PHOTO

LOS ANGELES – Los Angeles police said Wednesday they're investigating whether a newly identified young woman found stabbed 150 times in 1969 is connected to the Manson family killings.

Investigators have interviewed Charles Manson, 81, about the woman and are now trying to track down a man known as either "John," or the name's French pronunciation, "Jean," Detective Luis Rivera said.

The Manson interview, which took place a few months ago, turned up no new information, Rivera said.

In December, police used DNA to identify the woman as 19-year-old Reet Jurvetson of Montreal.

Her identity had gone unknown for 46 years, and she had become known as Jane Doe No. 59 until her sister recognized a photo of the young woman's body posted online.

People magazine was first to report that Jane Doe No. 59 had been identified as Jurvetson.

"After all these years, we are faced with hard facts," Jurvetson's sister, Anne Jurvetson, said in a statement released through police.

"My little sister was savagely killed. ... I am horrified to think of how terribly frightened and alone she must have felt as she died."

Though detectives haven't found any concrete link between Jurvetson's murder and the Manson family killings, they can't rule it out either, Rivera said.

> **"After all these years, we are faced with hard facts. My little sister was savagely killed. ... I am horrified to think of how terribly frightened and alone she must have felt as she died."**
>
> —Reet Jurvetson's sister, Anne Jurvetson, in a statement released through police. Reet was identified using DNA as the victim of a 1969 killing. Authorities are investigating whether her death is linked to the Manson family killings.

He pointed out that Jurvetson was stabbed like most other victims, and that her body was found near the site of some of the Manson family killings within a three-month period.

"We don't rule anything out," Rivera said. "Everything is on the table until proven otherwise."

Jurvetson's body was found Nov. 16, 1969, by a birdwatcher in dense brush off the iconic Mulholland Drive. She didn't have identification.

Her body was about 6 miles from the site of the most notorious Manson family killings, that of pregnant actress Sharon Tate, the wife of director Roman Polanski.

Tate was killed in her home, along with four others, on Aug. 9, 1969, three months before Jurvetson's killing. All but one of the victims had been stabbed to death.

Rivera said the best lead detectives have is a man named "John," whom Jurvetson met in Toronto before flying to Los Angeles to see him the summer of 1969.

He said police hope renewed media attention on the case helps generate tips that identify "John" and lead to additional possible witnesses.

"The challenge is the fact that we have people that might know but are no longer around or have forgotten," Rivera said. "The longer you wait, the more things decay."

MICHIGAN FLINT WATER CRISIS

Governor seeks tougher lead limit for state, nation

By David Eggert and John Seewer
The Associated Press

Gov. Rick Snyder speaks to the press in Lansing, Mich. Months after officials conceded that a series of bad decisions had caused a disaster, charges were filed against a pair of state Department of Environmental Quality employees and a local water treatment supervisor. Snyder is seeking to turn the crisis into a national model for dealing with lead. JULIA NAGY/LANSING STATE JOURNAL VIA AP

LANSING, Mich. – In proposing a tougher limit for lead in drinking water, Gov. Rick Snyder wants to lift Michigan from the depths of the Flint crisis to being a national model for lead monitoring that could help assess whether current rules are too lax.

Nearly 1,500 water systems serving 3.3 million Americans have exceeded the Environmental Protection Agency's lead cap of 15 parts per billion at least once in the past three years. If Michigan's proposed new standard of 10 ppb were applied across the country, that number jumps to more than 2,500 systems with 18.3 million customers – a fivefold increase, according to an Associated Press analysis of federal data.

Reducing the limit and adopting other proposed changes would give Michigan the world's toughest protections "by far," Virginia Tech University environmental engineering professor Marc Edwards said.

"This new rule is going to be very, very tough to meet, and it's going to cost money. It's a huge step forward if we're able to pull it off," said Edwards, who helped expose the contamination in Flint and devise Snyder's plan.

Other steps would involve gradually replacing 460,000 lead service lines, strengthening sampling procedures to catch problems in the highest-risk houses and requiring testing in schools and day-care centers.

New York, Denver, Boston and Pittsburgh are among the cities that are within the current lead limit but would exceed the one proposed in Michigan. The number of violations would more than double in 19 states.

Snyder, who has apologized for his administration's failures that caused and prolonged the Flint crisis, made the proposal on April 15. He called the current national rule "dumb and dangerous."

The EPA limit has been in place since 1991 and was established based on what corrosion controls can reliably achieve, not on what is considered a safe amount of lead in water. The previous standard allowed for 50 ppb where water entered a distribution system.

If more than 10 percent of sampled high-risk homes are above the federal level, agencies must inform customers and take steps such as adding chemicals to prevent corrosion and potentially replacing underground lead pipes that connect to homes.

Supporters of a lower limit say it would bring Michigan and the U.S. in line with World Health Organization guidelines adopted by other countries, including Canada and members of the European Union. But water experts agree that the current EPA rule is more protective even though the standard is set at 15 ppb, compared with the international level of 10 ppb.

That is because the testing methods are different. The U.S. requires water samples to be taken at a time when lead is at higher levels. The international guideline allows for testing of running water that is more likely to show lower amounts of lead.

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EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

SHANE SWIFT, on Behalf of Himself and All Others Similarly Situated, **Plaintiff,** **vs.** **BANCORPSOUTH BANK,** **Defendant.**	**Case No. 1:10-cv-90-MMP**

DECLARATION OF ARTHUR OLSEN IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT WITH BANCORPSOUTH BANK

I, Arthur Olsen, declare as follows:

Summary of My General Qualifications

1. I have nearly 20 years of professional information technology experience, specializing in the areas of data analysis, database development, and database administration and support. I have received extensive training related to Oracle Corporation ("Oracle") database software in the areas of relational database design, architecture and administration, as well as SQL and PL/SQL, application tuning, database tuning and advanced database concepts. I was also trained by Microsoft Corporation ("Microsoft") in database architecture and administration, database tuning and TSQL.

2. For three years, I worked as a database engineer for Microsoft where my responsibilities primarily involved database design and administration. Among other duties at Microsoft, I participated in the design, implementation and support of an extensive

data warehousing solution for Microsoft's licensing division, and managed and supported numerous databases throughout the company. I received multiple awards and recognitions from Microsoft for my database-related work at the company.

3. In addition to my experience working for Microsoft, I worked for six years at Hewlett-Packard Company ("Hewlett-Packard") as a database engineer. Among other responsibilities at Hewlett-Packard, I served as the primary database administrator for both Oracle and SQL Server systems that supported multiple divisions. My responsibilities at Hewlett-Packard also included serving as lead analyst in charge of compiling, analyzing and processing data from various internal database systems throughout the company for use in litigation support.

4. In addition to my work for Microsoft and Hewlett-Packard, I have provided database services to a number of other large corporations, including Cisco Systems, Inc. My responsibilities in that regard have included utilizing database systems for financial reporting services. I have also managed the development of data integration solutions for small to mid-size companies, and developed a solution for integrating an automated process for the calculation of inventory reserves with Oracle Financials.

5. My qualifications and background are set forth in more detail in my consultant profile, which is attached hereto as **Exhibit A**.

6. In addition to my general qualifications set forth above and in the attached consultant profile, I have specific experience that is directly relevant to my assignments in this litigation. In September 2008, I was retained by plaintiffs as a consultant and expert in the case *Gutierrez v. Wells Fargo Bank, N.A.*, Case No. 07-05923WHA (N.D. Cal.) ("*Gutierrez*"), a class action brought on behalf of Wells Fargo California customers

challenging Wells Fargo's high-to-low re-sequencing practices. Similar to my assignment here, in *Gutierrez* I was asked to review and analyze the historical transactional data maintained by Wells Fargo, and to provide my opinion regarding the feasibility of using such data to recreate alternative posting orders for the customers' transactions (*i.e.*, where the same transactions are sequenced in a different order than the order in which the bank actually posted them) for the purpose of comparing the number of overdraft fees Wells Fargo assessed each customer pursuant to its actual posting order with the number of overdraft fees Wells Fargo would have assessed had the alternative posting order been used. Having determined that it was, in fact, feasible to do so on an automated basis using the available data, I was ultimately asked to perform calculations using class-wide data to: (a) identify the Wells Fargo California customers who were assessed additional overdraft fees due to Wells Fargo's high-to-low posting order (as compared with certain alternative posting orders) during the class period in that case (November 15, 2004 through June 30, 2008); and (b) calculate the amount of the additional overdraft fees that each such customer was charged during that time period.

7. After I completed my comprehensive analysis and it was provided to Wells Fargo in advance of trial, Wells Fargo sought to exclude my analysis from trial, submitting competing expert testimony and raising various challenges to my qualifications and the methodology that I used to perform my analysis. U.S. District Judge William H. Alsup, who presided over *Gutierrez*, rejected Wells Fargo's attacks on my methodology and found that, given my background and experience, I was "clearly qualified to perform" the tasks I was asked to perform.

8. I presented my comprehensive analysis at the *Gutierrez* bench trial on April 29, 2010. I was subjected to cross-examination by Wells Fargo's counsel during the trial. Moreover, Wells Fargo presented competing testimony from its own experts who attempted to challenge my methodology and the reliability of my results. After trial, both sides submitted proposed findings to the Court. In its proposed findings, Wells Fargo again sought to discredit my analysis and the methodology I used.

9. On August 10, 2010, Judge Alsup issued his findings in *Gutierrez*. Judge Alsup found that I did "a professional and careful job in laying out the impacts of various alternative posting protocols," and adopted one of my analyses as the basis for his $203 million class restitution award. After multiple appeals, these findings were upheld and the matter was finally concluded on April 4, 2016, when the U.S. Supreme Court declined Wells Fargo's request to review its loss at trial.

10. In addition to my work in *Gutierrez*, I have performed similar work in the related multidistrict litigation known as *In re Checking Account Overdraft Litigation*, MDL 2036, over the past five years. Among other things, I analyzed the historical transactional data maintained by a number of banks named as defendants in MDL 2036, including Associated Bank, Bank of America, Bank of the West, Capital One, Citizens Bank, Comerica, Commerce Bank, Compass Bank, Great Western Bank, Harris Bank, JPMorgan Chase, M&T Bank, PNC Bank, TD Bank, Union Bank, US Bank, Wachovia, and Wells Fargo, to determine the feasibility of identifying the customers affected by those banks' debit card sequencing practices and the amount of such harm, have conducted damages analyses, and submitted numerous declarations in those cases supporting motions for class certification and/or settlements.

Scope of My Assignments in This Litigation

11. Class counsel retained me to perform data extraction, data analysis and damage calculations in connection with the litigation, settlement negotiations, and the proposed class action settlement ("Settlement") with defendant BancorpSouth Bank ("BancorpSouth").

12. The scope of my assignment was to: (1) determine whether it was possible, using historical customer data maintained by BancorpSouth, to identify on a class-wide basis the BancorpSouth consumer accounts affected by high-to-low debit card sequencing and to calculate each such account's corresponding harm; (2) analyze sample transactional customer data and aggregate overdraft fee data and provide estimated damage calculations; (3) review and analyze historical customer transactional data that BancorpSouth maintained for the litigation class periods by (a) identifying those BancorpSouth consumer accounts that were assessed additional overdraft fees as a result of the practice of posting debit card transactions in the order of high-to-low by dollar amount instead of in chronological order, and (b) calculate the amount of corresponding harm each such consumer account incurred as a result of such practice; and (4) confirm that my prior analysis for purposes of the litigation class periods of (a) identifying BancorpSouth consumer accounts that were assessed additional overdraft fees as a result of the practice of posting debit card transactions in the order of high-to-low by dollar amount instead of in chronological order, and (b) calculating the amount of corresponding harm each such consumer account incurred as a result of such practice, is the same for purposes of effectuating the Settlement.

Use of Historical Data to Determine Affected Accounts on a Class-Wide Basis

13. In October 2011, I embarked on the assignment described above (*i.e.*, identify BancorpSouth consumer accounts that paid additional overdraft fees as a result of high-to-low debit-card transaction sequencing and calculate each such account's corresponding harm). After conferring with class counsel, I received and reviewed several preliminary documents that were produced by BancorpSouth. I also reviewed the transcript of the deposition of Mr. Jeff Jaggers, which concerned BancorpSouth's transaction processing systems, transactional databases and other sources of historical transactional information, and other issues relevant to my assignment in this litigation.

14. In December 2011, I received and reviewed sample transactional data provided by BancorpSouth regarding the transactions of the named Plaintiff in this litigation. In addition, I received and reviewed documents provided by BancorpSouth that identified and described the various transaction codes, (*i.e.*, the type of transactions that are described by each transaction code), included in the data sources that BancorpSouth provided.

15. Based on the testimony of Mr. Jaggers, as well as a detailed analysis of the sample data and information, I determined that BancorpSouth maintained data sufficient to perform a class-wide analysis to identify which accounts were charged additional overdraft fees as a result of high-to-low debit card sequencing and calculate each such account's corresponding harm. In December 2011, I submitted a declaration in support of Plaintiffs' motion for class certification summarizing these findings.

16. In May 2012, the Court granted Plaintiffs' motion for class certification based, in part, on my opinions that BancorpSouth maintained data sufficient to perform a

class-wide analysis to identify which accounts were charged additional overdraft fees as a result of high-to-low debit card sequencing and calculate each such account's corresponding harm.

Analysis of Sample Data and Aggregate Data to Estimate Potential Damages

17. In late 2011, I performed an analysis of summary data received from BancorpSouth regarding overdraft fees it charged to customer accounts between January 2003 and December 2010 ("Aggregate Data"), as well as three random months of transactional data for all BancorpSouth customer accounts ("Sample Data").

18. The Aggregate Data included yearly fee totals, including both overdraft fees (fees charged on paid items) and NSF fees (fees charged on returned items). It also included the percentage of fees that were over overdraft fees, as opposed to NSF fees, and the percentage of fees caused by debit card transactions.

19. The Sample Data had the following characteristics:

a. Transactions for all BancorpSouth accounts for three sample months;
b. The following data fields were included for each transaction:
   i. Account number;
   ii. Transaction code;
   iii. Posting date;
   iv. Transaction amount;
   v. Daily account balance.

20. I analyzed the Aggregate Data and Sample Data, and provided class counsel with a series of potential damage scenarios for use in possible future settlement discussions.

Analysis of Data for Purposes of the Litigation

21. As detailed below, between June 2012 and November 2012, my associate Ed Hamilton (who works under my direct supervision) and I performed the class-wide analysis of the BancorpSouth data. Through that analysis, I was able to determine that the

data maintained by BancorpSouth was sufficient to make the required calculations and, thereafter, I performed the full analysis in order to identify the accounts that were charged additional overdraft fees as a result of high-to-low debit card sequencing, as well as the corresponding amount of that harm.

22. The BancorpSouth demand deposit accounting system is an online system that is designed for day-to-day processing, and not for the storage of large amounts of data. As a result, historical data that the bank considers relevant is periodically copied into their data archival systems prior to being purged from the online system. So even though the data used in this analysis originated in the online system, it was all extracted from the data archival systems into daily text-based reports.

23. BancorpSouth maintains two distinct data repositories, one called "TreeV" (which contains historical reports prior to 2007) and another called "XNet" (which contains reports from 2007 until the present). Both repositories contain reports that originated from the bank's production systems, but the TreeV repository was replaced by the XNet system sometime in early 2007. While the reports produced for this analysis originated from two distinct data repositories, the content of the reports remained consistent across the class period.

24. For the XNet period (1/1/2007 through 8/13/2010), the bank provided external access to the XNet system, which allowed for the reports to be downloaded directly. I oversaw the activities of my associate, Ed Hamilton, and two employees of class counsel, who assisted me in downloading the reports considered for this analysis.

25. Because the bank was unable to provide external access to the TreeV system, the bank downloaded the reports for the TreeV period (5/18/2003 through 12/31/2006) and provided the reports on external hard drives.

26. The following reports were produced:

a. The Transaction Journal (IM34IMTJ) reports contained all of the transactions for all customer accounts.

b. The Trial Balance (IM31TRLS) reports contained daily balance information, both ledger balance and available balance, for all customer accounts.

c. The Exception Item Processing (FIIMNSR1) reports contained detailed information on all posted transactions that resulted in a negative balance.

d. The Cardholder Activity (EF500192) reports contained a record of all authorization requests made to the bank by a customer attempting to initiate a PIN-based transaction utilizing a debit card.

e. The ON/2Terminal Activity (BAPS102) reports contained a record of all authorization requests made to the bank by a customer attempting to initiate a transaction at a BancorpSouth owned ATM.

27. BancorpSouth's reports included the following relevant information for all of the customer transactions, including the overdraft transactions:

a. The posting date of the transaction;

b. The dollar amount of the transaction;

c. A "transaction code," which identified the type of transaction;

d. The date and time of authorization for a majority of the PIN-based and ATM debit card transactions.[1]

28. In addition, the reports included the daily account balances, both ledger balance and available balance.

29. With the available data from these sources, I was able to: (a) identify the specific customers who were affected by BancorpSouth's high-to-low debit card posting practice during the various class periods, as compared to an alternative posting order; and (b) calculate the amount of harm to each such customer.

30. In general, my analysis consisted of the following steps:

a. The transaction detail was reviewed, and based upon the transaction code, overdraft fees were identified. This allowed me to identify all instances where a customer was assessed multiple overdraft fees on a given day;

b. For each instance where a customer was assessed multiple overdraft fees on a given day, using software code that I developed, I programmatically re-sorted the transactions to match the alternative posting order that I was provided, and calculated the number of overdraft fees that would have been assessed under the alternative posting order;

c. Specifically, transactions were re-sorted in the following order:

i. All credits/deposits;

ii. All bank initiated debits;

[1] As the parties stipulated, the authorization date and time information for signature-based transactions was not available.

iii. All debit card transactions with date/time information in chronological order;

iv. All debit card transactions without date/time information in low-to-high order; and

v. All other customer initiated debits, including cash withdrawals, checks, and ACH transactions, in high-to-low order.

d. Next, I calculated the differential between the overdraft fees that would have been assessed to each customer under the alternative posting order and the overdraft fees that BancorpSouth actually assessed under its actual posting order. I then added up the differentials for all of the customers to calculate the gross damages.

31. Through this analysis, I was able to identify the customers who would have had fewer overdrafts under the alternative posting order, and the corresponding amount of harm during the class period. I memorialized the foregoing analysis and findings in my original expert report dated November 8, 2012.

32. Subsequent to presenting my original analysis, BancorpSouth made available additional reports that distinguished business accounts from consumer accounts. These reports were used to remove business accounts from the original analysis. Additionally, minor adjustments were made to the process that was used to determine the date and time of authorization for PIN-based debit card and ATM transactions. I memorialized these adjustments to my original analysis and findings in my supplemental expert report dated August 28, 2014.

33. Based on my analysis of the data produced by BancorpSouth, I identified a total of 190,953 accounts that were affected by BancorpSouth's high-to-low debit card sequencing. I also determined that the 190,953 accounts sustained damages totaling $42,295,560.69.

Confirmation of Analysis of Data to Effectuate the Settlement

34. Sometime after completing my supplemental expert report, I was advised by class counsel that the parties had reached an agreement to resolve the litigation through Settlement. At that time, I was asked by class counsel to confirm that my prior analysis for purposes of the litigation of (a) identifying BancorpSouth consumer accounts that were assessed additional overdraft fees as a result of the practice of posting debit card transactions in the order of high-to-low in dollar amount instead of in chronological order, and (b) calculating the amount of corresponding harm each such consumer account incurred as a result of such practice, is the same for purposes of effectuating the Settlement.

35. To provide such confirmation, I compared the various class periods and the formula detailed in paragraphs 32 and 93 of the Settlement Agreement, respectively, to my expert reports to be sure they are the same as those used in conducting my analysis for purposes of the litigation. I confirmed that the (a) BancorpSouth consumer accounts I previously identified that were assessed additional overdraft fees as a result of the practice of posting debit card transactions in the order of high-to-low in dollar amount instead of in chronological order, and (b) the amounts I previously calculated of corresponding harm that each such consumer account incurred as a result of such practice, are the same.

36. Accordingly, for purposes of effectuating the Settlement, I confirmed that a total of 190,953 accounts were affected by BancorpSouth's high-to-low debit card

sequencing. I also confirmed that, during the class periods set forth in paragraph 32 of the Settlement Agreement, the 190,953 accounts sustained damages totaling $42,295,560.69.

37. I understand that the Settlement Administrator mailed individual notice to substantially all of the persons named on the 190,953 accounts that I identified. I also understand that if the Settlement becomes effective, *pro rata* payments will be made to the 190,953 eligible account holders pursuant to the Settlement Agreement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 10th day of May, 2016, at Seattle, WA.

ARTHUR OLSEN

EXHIBIT A

IT CONSULTANT PROFILE: ARTHUR OLSEN

BACKGROUND

Specializing in the areas of data analysis, database development, and database administration, Mr. Olsen has nearly 20 years of professional IT experience. He has a strong background in both Oracle and Microsoft database technologies, with a focus in developing large-scale applications and designing reporting solutions for publicly traded corporations. Additionally, he has had valuable experience in analyzing and processing massive amounts of data for use in litigation support.

SKILLS

- Considerable experience compiling, analyzing and processing data in support of corporate and class-action litigation.
- Extensive training and experience creating functional designs and logical data models.
- Proficient in the wide range of database development and administration technologies including: Microsoft SQL Server; Oracle RDBMS; and Teradata RDBMS.
- Relevant experience designing, implementing and maintaining large scale database solutions on Oracle and SQL Server, including both online transaction based systems and data warehouses.
- Reporting specialist with experience developing custom reporting solutions based on financial systems such as Microsoft Dynamics and Oracle Financials, as well as custom applications.

AWARDS

- Award for Operational Excellence | Microsoft
  Recognized for outstanding contribution to the design and implementation of the data warehousing solution for the Microsoft Licensing division.

CERTIFICATIONS

- Oracle Certified Professional
- Certified Oracle Database Administrator

EXPERIENCE

Data Expert: Litigation Specialist | retained by various law firms

- Data expert supporting massive multi-district class action litigation, (MDL No. 2036 – *In Re: Checking Account Overdraft Litigation*).
- Processed and analyzed data in support of class action litigation, (*Arnett v. Bank of America, N.A.*, D. Or. Case No. 3:11-CV-01372).
- Processed and analyzed data in support of class action litigation, (*Sheila I. Hofstetter et. al. v. JP Morgan Chase Bank, N.A.,* N.D. Cal. Case No. CV-10-1313 WHA).
- Processed and analyzed data in support of class action litigation, (*Veronica Gutierrez et. al. v. Wells Fargo Bank, N.A.*, N.D. Cal. Case No. 07-05923 WHA), that resulted in a $203 million class restitution award.

Database Engineer: Reporting Specialist | under contract at various clients

- Developed a custom Chart of Accounts management solution that integrates with Microsoft Great Plains for small to mid-size companies.
- Designed and implemented several custom financial reporting solutions, including one for a Fortune 500 company, based on Microsoft Business Intelligence, MOSS, and Excel Services.
- Architected a solution for a large corporation that integrated with Oracle Financials and automated the process of calculating inventory reserves.

Database Administrator, Developer & Litigation Support Specialist | under contract at Hewlett Packard, Cupertino, CA

- Primary Database Administrator responsible for both Oracle and SQL Server support for three divisions, including 20+ applications spread out over a total of 30+ development, test and production servers.
- Lead analyst responsible for compiling, analyzing and processing data from various systems throughout HP for use in litigation support.
- Participated as the principal authority in the composition and implementation of SQL Server database standards across the three divisions, including security models, backup and recovery plans, programming standards, and general database naming conventions.

Database Engineer | Microsoft Licensing, Inc., Reno, NV

- Participated in the design, implementation and support of an extensive data warehousing solution for Microsoft's licensing division. System included nearly twenty data sources and several thousand end users, including select customers who accessed the system remotely via the Internet.
- Developed numerous DTS packages to pull delta information from various source systems, process and denormalize data and push it to one of several data repositories.
- Created and documented plans for database maintenance, backup and recovery, and high availability.

Database Engineer | under contract at Microsoft Corporation, Redmond, WA

- Lone Oracle database administrator and general Oracle resource for all teams associated with an enterprise level online end user billing system, including: Management, Development, Testing, Production Support and Infrastructure.
- Primary owner of a 24 x 7 production database that resided on a DEC Alpha failover cluster.
- Designed replication model using Oracle replication to satisfy extensive reporting requirements.
- Tuned SQL statements as written by members of the development team. Developed PL/SQL triggers, stored procedures, SQL scripts and NT scripts as needed to enhance applications and to correct problems as discovered.
- Acted as liaison between Microsoft and Oracle for all technical issues related to the databases, and between Microsoft and Digital for all technical issues related specifically to the Alpha cluster.

EDUCATION

- Microsoft Internal Training – Redmond, WA | March 2000
  Instructor led SQL Server training, including courses on Database Architecture and Administration, Database Tuning, and Microsoft's TSQL
- ARIS Education Center – Bellevue, WA | June 1996
  Oracle DBA Program, including courses on Relational Database Design, Database Architecture and Administration, SQL and PL/SQL, Application Tuning, Database Tuning, and Advanced Database Concepts
- University of Washington – Seattle, WA | June 1989
  BA in Business Administration with a concentration in Finance.

EXHIBIT F

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

SHANE SWIFT, on behalf of himself
and all others similarly situated,

Plaintiff,

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

v.

BANCORPSOUTH BANK,

Defendant.

DECLARATION OF JOHN A. DeVAULT, III

My name is John A. DeVault, III. I make this declaration in support of Class Counsel's application for attorneys' fees arising from the Settlement Agreement and Release with Defendant, BancorpSouth Bank ("BancorpSouth" or the "Bank").

1. I have been a member in good standing of The Florida Bar since 1967. I graduated from the University of Florida undergraduate school in 1964 and received a juris doctorate from the College of Law in 1967, where I was an Executive Editor of the Law Review and member of the Moot Court Team and Florida Blue Key. A copy of my resume is attached as Exhibit "A."

2. Following graduation from the University of Florida College of Law, I served as a Judicial Law Clerk for United States District Judge William A. McRae, Jr. Following my clerkship, I became an associate with the firm then known as Bedell, Bedell, Dittmar & Smith and served as an associate attorney under Chester Bedell and Harris Dittmar. I am currently Managing Partner of the law firm of Bedell, Dittmar, DeVault, Pillans & Coxe, P.A. ("Bedell Firm") and have held that position for more than 25 years.

3. I am presently admitted to practice and have successfully argued cases in the Supreme Court of the United States and in the United States Courts of Appeals for the Fifth, Sixth, Eleventh and Federal Circuits. I am admitted to practice and have handled cases in the United States District Courts for the Middle, Southern, and Northern Districts of Florida; the United States Claims Court; and in Circuit Courts throughout the State of Florida. My practice has been limited to litigation, a substantial portion of which has consisted of complex commercial litigation in state and federal courts, including antitrust, securities, contract, business torts, products liability, white collar criminal, professional malpractice and similar matters.

4. I served as a member of the Board of Governors of The Florida Bar for six years and as President of The Florida Bar from 1995-96. I served as a member of the House of Delegates of The American Bar Association from 1994-

2000. I am past Chair of the Trial Lawyers Section of The Florida Bar, am Board Certified in Civil Trial and Business Litigation, served as a member of The Florida Bar Commission on Lawyer Professionalism, am a founding Master of the Chester Bedell Inn of Court, served as Chair of the Advisory Committee on Rules, U.S. District Court, Middle District of Florida, from 1990-93, and served on the Federal Judicial Nominating Commission of Florida from 1997-2000. I am a Fellow of the American College of Trial Lawyers, and a member of the International Society of Barristers and the American Board of Trial Advocacy. I have been continuously listed in Best Lawyers in America since 1987 and in Chambers USA, America's Leading Lawyers for Business, in each of its editions. I have been listed in Florida Super Lawyers each year of publication and in Florida Trend's Legal Elite.

5. My practice has to a large extent involved complex litigation in federal court, and I have been involved in MDL litigation on both the plaintiff and the defense side. Currently, I am local counsel for Class Plaintiffs in MDL No. 2626, *In re: Disposable Contact Lens Antitrust Litigation*, No. 3:15-MD-02626-HES-JRK, Middle District of Florida, pending before The Honorable Harvey E. Schlesinger, Senior United States District Judge.

6. From my experience as a practitioner, I am familiar with fees charged by attorneys in this jurisdiction, including fees requested and awarded in class action cases. I am also familiar with the case law regarding the reasonableness of attorneys'

fees in the Eleventh Circuit and, in particular, *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768 (11th Cir. 1991), which established that attorneys' fees awarded from a common fund would be based on a percentage of the fund created for the class.

7. I have been asked by Class Counsel in this case to render an opinion on their request for attorneys' fees arising from the settlement on behalf of plaintiff, Shane Swift, individually, and on behalf of the settlement class, with BancorpSouth. Specifically, I have been asked whether Class Plaintiffs' request for attorneys' fees equal to thirty-five percent (35%) of the twenty-four million dollar ($24,000,000) common fund secured through the settlement is reasonable under the law and the facts of the case.

8. I am familiar with the background of this action originally filed in this Court on May 18, 2010, and transferred to the Southern District of Florida by the Judicial Panel on Multidistrict Litigation ("JPML") on October 18, 2010, for inclusion in MDL No. 2036. (S.D. Fla. DE# 847, 848). MDL No. 2636 consolidated actions against approximately forty (40) banks, including Defendant BancorpSouth Bank, that assessed overdraft fees for debit card and ATM transactions using a high to low re-sequencing scheme. *See In re Checking Account Overdraft Litig.*, 626 F. Supp. 2d 1333, 1335 (J.P.M.L. 2009) (JPML consolidation order).

9. The JPML appointed United States District Judge James Lawrence King to preside over MDL No. 2036. Judge King's Order denying the Omnibus Motion to Dismiss of various other banks (S.D. Fla. DE #217) is reported at *In re Checking Account Overdraft Litigation*, 694 F. Supp. 2d 1302 (S.D. Fla. 2010). Judge King approved attorneys' fee awards ranging from thirty percent (30%) to thirty-four percent (34%) of the common fund in connection with other settlements reached and approved in MDL No. 2036. *See*, *e.g.*, *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1358-68 (S.D. Fla. 2011).

10. Following the JPML's transfer of this action (S.D. Fla. DE# 847), Judge King presided over pretrial proceedings for over three (3) years, which included the following trial and appellate court rulings in this action:

- The District Court denied BancorpSouth Bank's motion to dismiss the Second Amended Complaint (S.D. Fla. DE# 1305);
- The District Court granted Plaintiffs' motion for class certification (S.D. Fla. DE# 2673);
- The United States Court of Appeals for the Eleventh Circuit denied BancorpSouth's original petition for permission to appeal pursuant to Federal Rule of Civil Procedure 23(f) (S.D. Fla. DE# 3294);

- The District Court approved the implementation and completion of the class notice plan to 185,280 members of the certified class, of which 238 members timely opted out (S.D. Fla. DE# 3242, 3338, 3342, 3589);

- The District Court denied BancorpSouth's motion to decertify the class (S.D. Fla. DE# 3455, 3540);

- The Eleventh Circuit denied BancorpSouth's second petition for permission to appeal pursuant to Federal Rule of Civil Procedure 23(f) (*See* 11th Cir. Case No. 13-90019-E);

- The District Court denied BancorpSouth's and Plaintiffs' respective motions to strike expert witnesses (S.D. Fla. DE# 3229);

- The District Court granted in part and denied in part Plaintiffs' motion for summary judgment as to certain affirmative defenses (S.D. Fla. DE# 2997, 3655, 3682);

- The District Court denied BancorpSouth's motion for summary judgment (S.D. Fla. DE# 2999, 3655, 3682);

- The District Court granted Plaintiffs' motion in limine (S.D. Fla. DE# 2996, 3258); and

- The District Court denied BancorpSouth's original motion to transfer venue (S.D. Fla. DE# 3000, 3195).

11. Following the conclusion of pretrial proceedings and on Plaintiffs' motion, Judge King entered a Suggestion of Remand. (S.D. Fla. DE# 3683, 3707). Thereafter, the JPML remanded the action to this Court. (N.D. Fla. DE# 25, 26).

12. In rendering my opinion, in addition to the pleadings before Judge King while this action was pending in the Southern District, I have reviewed various materials filed following transfer back to this Court including:

a. BancorpSouth's Renewed Motion to Transfer Venue (N.D. Fla. DE# 29);

b. Plaintiffs' Opposition to BancorpSouth Bank's Renewed Motion to Transfer Venue (N.D. Fla. DE# 33);

c. Plaintiffs' Motion for Status Conference and Incorporated Memorandum of Law (N.D. Fla. DE# 34);

d. BancorpSouth's Response to Plaintiffs' Motion for Status Conference (N.D. Fla. DE# 38);

e. Order Denying Motion to Transfer (N.D. Fla. DE# 48);

f. Order for Pre-Trial Conference and Setting Trial (N.D. Fla. DE# 49);

g. Plaintiffs' Pretrial Issues Memorandum (N.D. Fla. DE# 54);

h. BancorpSouth's Initial Memorandum Regarding Pretrial Issues (N.D. Fla. DE# 55);

i. BancorpSouth's Response to Plaintiffs' Pretrial Issues Memorandum (N.D. Fla. DE# 56);

j. Plaintiffs' Response to BancorpSouth Bank's Initial Memorandum Regarding Pretrial Issues (N.D. Fla. DE# 57);

k. BancorpSouth's Reply Brief in Support of Its Initial Memorandum Regarding Pretrial Issues (N.D. Fla. DE# 60);

l. Plaintiffs' Reply in Support of Plaintiffs' Pretrial Issues Memorandum (N.D. Fla. DE# 61);

m. Joint List of Additional Matters to be Addressed at Pretrial Conference (N.D. Fla. DE# 62);

n. Pretrial Stipulation (N.D. Fla. DE# 63);

o. Order (N.D. Fla. DE# 77);

p. Plaintiffs' Report on Status of Mediation (N.D. Fla. DE# 81);

q. Joint Notice of Settlement (N.D. Fla. DE# 83); and

r. Plaintiff's and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class, and Incorporated Memorandum of Law (N.D. Fla. DE# 89).

13. I have also reviewed the Declaration of Professor Brian T. Fitzpatrick of Vanderbilt University that will be submitted in support of the settlement and Class Counsel's application for fees.

14. In connection with rendering my opinion, I have also spoken to Robert C. Gilbert, one of the Settlement Class Counsel, to obtain specific background about this case and the settlement.

15. Based on my review of the materials and my experience with the award of attorney's fees and the law in our Circuit, it is my opinion that Class Counsel's request for attorney's fees of thirty-five percent (35%) of the twenty-four million dollar ($24,000,000) common fund created by the settlement in this case is reasonable and well justified.

16. In *Camden I*, the Eleventh Circuit announced that in cases where a common fund has been created, attorney's fees were to be awarded based on a percentage of the fund that had been created for the benefit of the class, and not the lodestar method: "Henceforth in this [C]ircuit, attorney's fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I*, 946 F.2d at 774. The Eleventh Circuit went on to note that while twenty-five percent (25%) appeared to be the "benchmark" percentage for a fee award, that benchmark "may be adjusted in accordance with the individual circumstances of each case." *Id*. at 775.

17. *Camden I* also concluded that in determining the appropriate percentage, a district court should consider the factors identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). Those factors are the following:

a. time and labor required;

b. novelty and difficulty of the questions involved;

c. the skill requisite to perform the legal services properly;

d. the preclusion of other employment by the attorney due to acceptance of the case;

e. the customary fee;

f. whether the fee is fixed or contingent;

g. time limitations imposed by the client or the circumstances;

h. the amount involved and the results obtained;

i. the experience, reputation, and ability of the attorneys;

j. the undesirability of the case;

k. the nature and length of the professional relationship with the client; and

l. awards in similar cases.

18. In my opinion, an analysis of these factors strongly supports Class Counsel's request for a fee equal to thirty-five percent (35%) of the twenty-four

million dollar ($24,000,000) common fund that resulted from their efforts in this case.

19. **Time and labor required:** It is quite evident and beyond legitimate dispute that substantial time and labor were required of Class Counsel in this case.

The history of this litigation is detailed in Plaintiff's and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class (N.D. Fla. DE# 89), and will be re-counted in Plaintiff's and Class Counsel's Motion for Final Approval of Class Settlement and Application for Service Awards, Attorneys' Fees and Expenses. For the sake of brevity, I summarize the history of the proceedings here.

This is a class action case alleging that BancorpSouth engaged in a scheme to defraud customers out of tens-of-millions of dollars in overdraft fees.

Plaintiff challenged BancorpSouth's systematic practice of posting debit card transactions in high-to-low order in a manner that Plaintiff alleged was designed to increase the number of overdraft fees incurred by its customers. Plaintiff alleged that as a result of BancorpSouth's manipulation of the order in which debit card transactions were posted, customers' funds were depleted more rapidly than they should have been, and that Plaintiffs and settlement class members paid more overdraft fees than they should have paid.

BancorpSouth denied Plaintiff's allegations of wrongdoing. From the outset, the Bank defended its conduct by, *inter alia*, arguing that language in the relevant Account agreements expressly advised customers of and permitted the high-to-low posting practice at issue.

In June 2009, the Judicial Panel on Multidistrict Litigation ("JPML") created MDL No. 2036, and appointed United States District Judge James Lawrence King of the Southern District of Florida to preside over pretrial proceedings in a series of cases against numerous banks challenging the practice of assessing overdraft fees against their customer account holders using a high-to-low re-sequencing scheme for debit card and ATM transactions. *See In re Checking Account Overdraft Litig.*, 626 F. Supp. 2d 1333, 1335 (J.P.M.L. 2009). Cases against approximately 40 banks were eventually transferred to MDL No. 2036 for coordinated pretrial proceedings before Judge King.

On May 18, 2010, Plaintiff Shane Swift filed this case against Defendant BancorpSouth Bank. In October 2010, the JPML transferred this case to the Southern District of Florida for inclusion in MDL No. 2036. (S.D. Fla. DE# 847, 848). Extensive pretrial proceedings were conducted before Judge King following transfer to MDL No. 2036.

On December 6, 2010, Plaintiff 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 violation of Arkansas' Deceptive Trade Practice Act (Count V). (S.D. Fla. DE# 994). BancorpSouth Bank moved to dismiss the Second Amended Complaint. (S.D. Fla. DE# 1068). Following briefing and oral argument, Judge King denied BancorpSouth Bank's motion to dismiss the Second Amended Complaint. (S.D. Fla. DE# 1305).

On April 11, 2011, BancorpSouth Bank filed its Answer and Affirmative Defenses, denying liability and asserting numerous defenses. (S.D. Fla. DE# 1335). Plaintiff moved to strike a number of BancorpSouth Bank's defenses as legally insufficient. (S.D. Fla. DE# 1390). Prior to a ruling on that motion, the Court approved the parties' stipulation authorizing BancorpSouth Bank to file amended affirmative defenses. (S.D. Fla. DE# 1613). On July 6, 2011, BancorpSouth Bank filed its Amended Answer and Affirmative Defenses. (S.D. Fla. DE# 1693). As a result, the operative pleadings in this case are Plaintiff's Second Amended Complaint and BancorpSouth Bank's Amended Answer and Affirmative Defenses (the conversion claim was dismissed pursuant to stipulation). (S.D. Fla. DE# 994, 1693).

Discovery commenced in May 2011. During the course of discovery, Plaintiffs reviewed over 100,000 pages of documents produced by BancorpSouth Bank, and Plaintiffs' data expert analyzed voluminous electronic data produced by

BancorpSouth Bank pertaining to its consumer account holders' banking transactions during the class period. Plaintiffs deposed six BancorpSouth Bank employees, including Derek Caswell, Patty Farris, Jeff Jaggers (as corporate representative and individually), Michael Lindsey (as corporate representative and individually), and Lee McAllister. BancorpSouth Bank propounded written discovery and deposed Plaintiff Shane Swift and his wife, Trina Swift.

Both sides disclosed experts on various topics. Plaintiffs designated Arthur Olsen, an expert in database analysis, data extraction, and data analysis, who first provided a declaration in support of class certification and later performed a class-wide calculation of damages suing the voluminous electronic banking data produced by BancorpSouth Bank; Bruce McFarlane, a damages methodology expert, who opined about alternative posting orders as a reliable measure of class members' damages; and Steven Fried, a banking expert, who opined about BancorpSouth Bank's debit re-sequencing practices and the motivation of banks such as BancorpSouth Bank in adopting debit re-sequencing like the one at issue in this lawsuit.

BancorpSouth Bank designated Steven Visser, an expert in the field of data management and analysis, who opined about the methodologies employed by Mr. Olsen; Michael Barone, an expert in marketing – specifically consumer behavior and consumer psychology – who opined about purported consumer benefits from

sequencing and overdraft payment policies like the ones used by BancorpSouth Bank; and Paul A. Carrubba, an attorney specializing in banking law and legal and operational issues, who opined about the purported reasonableness of BancorpSouth Bank's processes and procedures relating to the posting sequence of transactions to deposit accounts, account disclosures, and information. All experts were deposed.

On December 20, 2011, Plaintiffs filed their motion for class certification. (S.D. Fla. DE# 2271). Following extensive briefing and oral argument, the Court entered an Opinion and Order Granting Class Certification on May 12, 2012. (S.D. Fla. DE# 2673). In the Order, the Court certified the following class:

> All BancorpSouth Bank customers in the United States who had one or more accounts and who, from the applicable statute of limitations through August 13, 2010 (the "Class Period"), incurred an overdraft fee as a result of BancorpSouth's practice of sequencing debit card transactions from highest to lowest.

Additionally, the Court certified the following five subclasses:

> One good faith and fair dealing subclass (encompassing Alabama, Arkansas, Florida, Louisiana, Mississippi, and Tennessee); one unjust enrichment subclass (encompassing Arkansas and Mississippi); two unconscionability subclasses (one encompassing Alabama, Arkansas, Florida, Louisiana, Tennessee, and Texas; and the other encompassing Mississippi and Missouri); and one subclass [sic] for Plaintiff's Arkansas Deceptive Trade Practices Act claims.

BancorpSouth Bank then filed a petition with the United States Court of Appeals for the Eleventh Circuit, pursuant to Federal Rule of Civil Procedure 23(f), seeking permission to appeal the Opinion and Order Granting Class Certification. *See* 11th Cir. Case No. 12-90024-E. Following briefing, the Eleventh Circuit denied BancorpSouth Bank's petition for permission to appeal. (S.D. Fla. DE# 3294). On May 3, 2013, BancorpSouth Bank moved to decertify the class. (S.D. Fla. DE# 3455). Following briefing, the District Court denied BancorpSouth Bank's motion to decertify the class. (S.D. Fla. DE# 3540). BancorpSouth Bank then filed a second petition pursuant to Federal Rule of Civil Procedure 23(F), seeking permission to appeal the Order Denying Motion to Decertify, which the Eleventh Circuit denied. *See* 11th Cir. Case No. 13-90019-E.

In February 2013, the District Court approved the implementation and completion of the class notice plan to 185,280 members of the certified class. (S.D. Fla. DE# 3242, 3338, 3342). Two hundred and thirty-eight (238) class members timely exercised their right to opt out of the certified class. (S.D. Fla. DE# 3589).

20. **The novelty and difficulty of the questions involved:** This factor, along with the results obtained, are the most compelling factors supporting the attorney's fees requested in this case. This was no ordinary class action. The novelty and difficulty of the issues involved created significant risks for Class Counsel.

- BancorpSouth Bank moved for summary judgment against all of Plaintiffs' claims for relief, arguing that:
  - the claim for breach of contract/implied covenant of good faith and fair dealing fails because the deposit agreement and related disclosures expressly authorized the high to low re-sequencing of debit card transactions; Arkansas law does not recognize the implied covenant claim; and that even if Arkansas recognized the claim, BancorpSouth Bank did not breach the covenant because the deposit agreement and related disclosures permitted the re-sequencing;
  - no affirmative claim for unconscionability exists under Arkansas law, and, even if it did, there is no evidence of procedural and substantive unconscionability to support the claim;
  - no facts support the conversion claim, a claim that Plaintiffs did not seek to certify for class purposes, and which the parties dismissed by stipulation (S.D. Fla. DE# 3667, 3668);
  - Arkansas law does not recognize a claim for unjust enrichment by or against parties to a written contract;
  - as to the Arkansas Deceptive Trade Practice Act, BancorpSouth Bank's conduct fell within the safe harbor provision for conduct

which complies with any rule, order, or statute administered by the Federal Trade Commission or to actions or transactions permitted under laws administered by a regulatory body or officer acting under statutory authority of Arkansas or the United States; and its conduct otherwise was not deceptive or misleading because the deposit agreement and disclosures informed Plaintiffs of the re-sequencing policy and there was no evidence of injury arising from BancorpSouth Bank's posting policies;

- BancorpSouth Bank's waiver affirmative defense bars Plaintiffs' claims because they continued to accept the benefits of BancorpSouth Bank's overdraft protection service; and
- all of the class claims would fail because Plaintiff's individual claims fail.

(S.D. Fla. DE# 2999). Following extensive briefing and oral argument, the District Court denied BancorpSouth Bank's motion for summary judgment in its entirety.

- Plaintiffs moved in limine to preclude BancorpSouth Bank from offering evidence regarding:
  - Plaintiff's control over other bank accounts or sources of payments when his account was overdrawn;

- Plaintiff's purpose and use of transactions on which overdraft fees were assessed, to buttress the bank's argument that high to low posting benefits customers by giving priority to more important items;
- BancorpSouth Bank purportedly acted in compliance with Office of the Comptroller of Currency ("OCC") Interpretive Letters because no such letters authorized debit card transactions posting in high to low order to increase fees, and that BancorpSouth Bank should not be permitted to rely on the "Q and A" section of the OCC's website because such information does not have the force of law;
- BancorpSouth Bank's expert's, Paul Carrubba, opinion that BancorpSouth Bank's posting practices and account disclosures about those practices are common in the banking industry and used by competitors; and
- BancorpSouth Bank's expert's, Michael Barone, opinion that high to low posting of debit card transactions in general might be objectively reasonable to some consumers.

(S.D. Fla. DE# 2996). The Court granted Plaintiffs' motion in limine in its entirety, finding all of the above-described evidence irrelevant to the claims, with the

qualifier that, consistent with the Court's *Daubert* order (S.D. Fla. DE# 3229), that any issues related to expert testimony, as well as any other evidentiary issues, may be further considered at the final pre-trial conference. (S.D. Fla. DE# 3258).

Following remand to this Court, BancorpSouth Bank moved to transfer venue pursuant to 28 U.S.C. § 1404(a). (N.D. Fla. DE# 29, 33). On June 4, 2014, this Court entered an Order Denying Defendant's Motion to Transfer Venue. (N.D. Fla. DE# 48).

On June 5, 2014, based on the pretrial proceedings conducted prior to remand, including the filing and disposition of all pretrial motions pursuant to the District Court's Revised Scheduling Order (S.D. Fla. DE# 2834), this Court entered its Order for Pre-Trial Conference and Setting Trial. (N.D. Fla. DE# 49).

21. **The skill requisite to perform the legal services properly, and the reputation and experience of the attorneys:**[1] Undoubtedly, Class Counsel had the skill required to perform the services required in this complex class action. I know and have been in litigation with Co-Leads Robert Gilbert and Bruce Rogow. They are among the finest lawyers in Florida. Their reputation as highly skilled and ethical advocates precedes them. I am also familiar with some of the other lawyers and firms that represent Plaintiff and the Certified Class, including Jeffrey Ostrow

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[1] For the sake of brevity and because they overlap, I have consolidated the two factors with the skills, experience and reputation of the attorneys handling the case into a single discussion.

and the firm of Lieff Cabraser Heinmann & Bernstein, LLP. They are all known for the high quality of their work, especially in complex and sophisticated litigation, including class actions. Working closely with the other firms that comprise Class Counsel, this talented team of lawyers accomplished outstanding results for the Settlement Class in the face of substantial risks. Had they not had the requisite skill to perform the necessary services, it is highly doubtful Class Counsel could have achieved the results obtained for the Settlement Class in this case.

22. **Preclusion of other employment because of this case:** I understand from my discussions with Class Counsel that this case has taken up a significant amount of time of a number of firms designated as Class Counsel, precluding Class Counsel's involvement in or acceptance of other work. This, in my opinion, is not surprising given the complexity and difficulty of the issues involved, as well as the amount at stake.

23. **The customary fee:** In contingency cases such as this one, the fees agreed between client and counsel normally range between twenty-five percent (25%) and forty percent (40%). Accordingly, the request of thirty-five percent (35%) being made by Class Counsel is within the range of customary fees for similar work in our community.

24. **A contingent or fixed fee:** This case, like virtually all consumer class actions, was undertaken – with great risk I might add – on a contingency basis. Up

to this point, Class Counsel have spent an enormous amount of their time and advanced substantial dollars in expenses without receiving any compensation. Given their work and the result in this case, it is now time they be compensated appropriately.

25. **Time limitations:** This complex class action was resolved following a contested motion to dismiss, the completion of substantial pretrial discovery, disposition of final pretrial motions, including motions for summary judgment, and protracted settlement discussions. Generally, these cases tend to take longer to resolve. Clearly, and based on my conversations with Class Counsel, they met all of the deadlines that this Court and Judge King established to ensure that this case was litigated expeditiously. All deadlines and time limitations imposed by this Court, which is well known for its diligence and efficiency, were met and is another factor that should be considered.

26. **Amount involved and results obtained:** The result obtained in this case, when coupled with the risks undertaken by Class Counsel, is the most significant factor to be considered when assessing Class Counsel's fee request.

Under the settlement, BancorpSouth will pay twenty-four million dollars ($24,000,000) in cash (plus up to $500,000 toward the cost of providing notice of the settlement and settlement administration). This sum represents the common fund created for the benefit of the Settlement Class. *See Camden I*, 946 F.2d at 774.

According to Class Counsel, the twenty-four million dollar ($24,000,000) common fund represents approximately fifty-seven percent (57%) of the damages sustained by the Settlement Class under the most probable damage theory, assuming this case were to successfully proceed to final judgment in favor of the Settlement Class and that judgment was affirmed on appeal.

At the time of settlement, after six years of difficult litigation, the parties were on the brink of trial. Had the parties not settled they would have had to complete preparations for trial, try the case, litigate post-trial motions, and then handle an almost certain appeal to the Eleventh Circuit. All of this would have not only delayed payment to the class members, but would have come with great risks. To achieve damages in excess of 50% of the most probable damage theory in a class action is extraordinary.

The result obtained by Class Counsel in this case for the Settlement Class is excellent. Class Counsel are to be commended, as well as appropriately compensated, for such a result.

27. **The undesirability of the case:** This case was undesirable not because it was controversial, but because of the number of significant legal risks it presented. Very few lawyers, when this case was first brought, would have placed their reputations and finances at risk given the obstacles in the case. That Class Counsel did so in light of those risks should weigh in favor of their fee request.

28. **The nature and length of the professional relationship with the client:** In some cases, having either a longstanding or strong relationship with a client justifies accepting a case with significant risks because other benefits may come from the relationship. In this case, however, no such client relationship previously existed with the named Plaintiff or members of the Class. This lack of an existing relationship with the clients heightened the risks since Class Counsel did not know their client prior to this case. The lack of an existing relationship also made it unlikely that any other benefit would result from the representation.

29. **Awards in similar cases:** Based on my experience as a long-time practitioner in Florida, I believe that Class Counsel's fee request of thirty-five percent (35%) of the twenty-four million dollar ($24,000,000) common fund in this case is consistent with other fee awards in MDL No. 2036 and in other cases in Florida. Those other fee awards include, but are not limited to, the following:

a. *Gevaerts v. TD Bank, N.A.*, No. 11:14-cv-20744-RLR, 2015 WL 6751061 (S.D. Fla. Nov. 5, 2015) (awarding fees of 30% on settlement of $20 million);

b. *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006) (awarding fees of 31-1/3% on settlement of $1.06 billion);

c. *In re: Terazosin Hydrochloride Antitrust Litigation*, No. 99-1317-MDL-Seitz (S.D. Fla. April 19, 2005) (awarding fees of 33.3% on settlement of over $30 million);

d. *In re: Managed Care Litig. V. Aetna.*, MDL No. 1334, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003) (awarding fees and costs of 35.5% on settlement of $100 million);

e. *Gutter v. E.I. Dupont De Nemours & Co.*, No. 95-2152-Civ-Gold (S.D. Fla. May 30, 2003) (awarding fees of 33.3% on settlement of $77.5 million); and

f. *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999) (affirming fee award of 33.3% on settlement of $40 million.

30. In conclusion, based on my experience and my assessment of the work done by Class Counsel, their fee request of thirty-five percent (35%) of the twenty-four million dollar ($24,000,000) common fund is reasonable and justified. Class Counsel undertook an incredibly risky and undesirable case and, through their diligence, perseverance and skill, obtained an outstanding result for the Settlement Class. Class Counsel are to be commended for such an excellent result and should be compensated in accord with their request because it is warranted and reasonable given similar awards.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 12, 2016

John A. DeVault, III

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JOHN A. DEVAULT, III received his undergraduate and law degrees from the University of Florida, where he was a member of Florida Blue Key, Executive Editor of the Law Review, and a member of the Moot Court team. Following a clerkship with the United States District Court, he joined the firm in 1968 where he has since practiced. He was President-Elect of The Florida Bar from 1994-95 and President from 1995-96. He served for six years as a member of the Board of Governors. He served as a member of the House of Delegates of the American Bar Association from 1994-2000. He is past chair of the Trial Lawyers Section of The Florida Bar, a member of The Florida Bar Commission on Lawyer Professionalism, a founding Master of the Bench of the Chester Bedell Inn of Court and Florida Bar Board Certified in Civil Trial and Business Litigation. He was chair of the Advisory Committee on Rules, U.S. District Court, Middle District of Florida, from 1990-93, and a member of the Federal Judicial Nominating Commission of Florida from 1997-2000. He is a Fellow of the American College of Trial Lawyers and served as state chair. He is a member of the International Society of Barristers, and the American Board of Trial Advocacy. He has been continuously listed in The Best Lawyers in America since 1987. Chambers USA America's Leading Business Lawyers (www.ChambersandPartners.com/usa) listed him as one of the state's "first tier" litigators in each of its editions. He has been listed in Florida Super Lawyers each year of publication and in Florida Trend's Legal Elite, where he was recently selected for the Legal Elite Hall of Fame. He has tried cases in federal courts in each of Florida's three districts and in state courts throughout the state. He has argued appeals in the Eleventh, Fifth, Sixth, and Federal Circuit Courts of Appeals, and before the Supreme Court of the United States. Mr. DeVault focuses on trial and appeal of complex commercial litigation and legal malpractice defense.

EXHIBIT A

Areas of Practice:
Trial and Appeal of Complex Commercial Litigation
Legal Malpractice Defense

Litigation Percentage:
100% of Practice Devoted to Litigation

Certification/Specialties:
Civil Trial and Business Litigation, Florida Bar Board Certified

Bar Admissions:
Florida, 1967
U.S. Court of Appeals 11th Circuit
U.S. Court of Appeals 5th Circuit
U.S. Court of Appeals 6th Circuit
U.S. Court of Appeals Federal Circuit
U.S. Supreme Court

Education:
University of Florida College of Journalism
University of Florida College of Law
Member, Debate Team
Member, Florida Blue Key
Member, Moot Court Team
Executive Editor, University of Florida Law Review

Honors and Awards:
Fellow, American College of Trial Lawyers

Fellow, International Society of Barristers

Member, American Board of Trial Advocacy

The Best Lawyers in America, 1987 - Present

Chambers USA America's Leading Business Lawyers 2003 - present

Florida Trend's Legal Elite, 2005 – present

Professional Associations and Memberships:
The Florida Bar
President-Elect, 1994-1995

The Florida Bar
President, 1995-1996

The Florida Bar
Member, Board of Governors, 1990-1996

The Florida Bar, Trial Lawyers Section
Chair, 1988-1989

American Bar Association, 1994 - 2000
Member, House of Delegates

The Florida Bar Commission on Lawyer Professionalism
Member

Chester Bedell Inn of Court
Founding Master of the Bench, 1985

U.S. District Court, Middle District of Florida, 1990 - 1993
Chair, Advisory Committee on Rules

Federal Judicial Nominating Commission of Florida, 1997 - 2000
Member

Past Employment Positions:
U.S. District Court, Middle District of Florida, Law Clerk, Hon. William A. McRae, 1967 - 1968