

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
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT
AND CERTIFICATION OF SETTLEMENT CLASS**

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

1. We are Settlement Class Counsel and Class Counsel under the Settlement Agreement and Release ("Settlement" or "Agreement") entered into with BancorpSouth Bank. ("BancorpSouth" or the "Bank").¹ We submit this declaration in support of Plaintiff's and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class. Except as 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 more than five years of hard-fought litigation and settlement negotiations, the Parties entered into the Settlement providing for a Twenty-Four Million and 00/100 Dollars (\$24,000,000.00) cash recovery for the Settlement Class, plus BancorpSouth's payment of up to Five Hundred and 00/100 Dollars (\$500,000.00) in fees, costs and expenses associated with

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

providing Notice to the Settlement Class and the administration of the Settlement. Under the Settlement, all eligible identifiable Settlement Class Members will receive their pro rata share of the Net Settlement Fund without having to submit claim forms or take any other affirmative steps.

3. The Action involved sharply opposed positions on several fundamental legal and factual issues. Plaintiff and Class Counsel maintained that the claims asserted in the Action are meritorious and that Plaintiff would prevail if the Action proceeded to trial. BancorpSouth maintained that Plaintiff's claims were unfounded, denied any liability, and demonstrated that it would litigate its defenses vigorously. Continued litigation and the impending trial presented risks, delays and expenses that include trial, final appellate review, and the countless uncertainties of litigation, particularly in the context of a large and complex multidistrict litigation.

4. In light of the risks, delays and expenses associated with continued litigation, the Settlement represents an outstanding result by providing guaranteed benefits to the Settlement Class in the form of direct cash compensation.

A. Background of the Litigation.

5. Plaintiff sought monetary damages, restitution and declaratory relief from BancorpSouth, on behalf of themselves and all others similarly situated, who incurred Overdraft Fees as a result of BancorpSouth's practice of posting Debit Card Transactions to an Account in the order from highest to lowest dollar amount ("High-to-Low Posting"). 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.

6. BancorpSouth denied all of Plaintiff's 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.

7. 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. The Course of Proceedings.

8. 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, attorney's fees, restitution, and equitable relief.

9. 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 in MDL 2036.

10. 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. DE # 994].

11. 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].

12. On April 11, 2011, BancorpSouth filed its Answer and Affirmative Defenses. [S.D. Fla. DE #1335]. In response, Plaintiff moved to strike a number of BancorpSouth's affirmative defenses as legally insufficient. [S.D. Fla. DE #1390]. Prior to a ruling on that motion, the Court approved the Parties' stipulation authorizing BancorpSouth to file an Amended Answer and Affirmative Defenses. [S.D. Fla. DE # 1693]. Accordingly, the operative pleadings are Plaintiff's Second Amended Complaint and BancorpSouth's Amended Answer and Affirmative Defenses. [DE # 994, 1693].

13. 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 in *Swift*. [S.D. Fla. DE # 1340].

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. 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].

15. Discovery commenced in May 2011. During the course of discovery, Class Counsel deposed approximately six current and former BancorpSouth employees, including several who were designated under Rule 30(b)(6), and three expert witnesses designated by BancorpSouth. BancorpSouth deposed Plaintiff Swift, his wife, and three expert witnesses designated by Plaintiff.

16. During the course of discovery, Class Counsel also 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. Class Counsel and their experts reviewed nearly all the documents and electronic data files and spreadsheets produced by the Bank.

17. In December 2011, Plaintiff filed a Motion for Class Certification. [S.D. Fla. DE # 2271]. In February 2012, BancorpSouth filed its Opposition to Plaintiff's Motion for Class Certification [S.D. Fla. DE # 2446], and Plaintiff filed its Reply in Support of Motion for Class Certification in March 2012 [S.D. Fla. DE # 2576]. On May 4, 2012, following extensive briefing, the Court entered an Opinion and Order Granting Class Certification. [S.D. Fla. DE # 2673].

18. 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].

19. 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 for three years thereafter.

20. 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, in May 2013 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].

21. In May 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.

22. 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].

23. 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:²

- 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 expert witnesses was denied. [S.D. Fla. DE # 3014, 3229];

² 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 for Summary Judgment was denied in its entirety. [S.D. Fla. DE # 2999, 3682]; and
- BancorpSouth's Motion to Strike two of Plaintiff's expert witnesses was denied. [S.D. Fla. DE # 3014, 3229].

24. Upon the conclusion of three years of pretrial proceedings, including substantial fact and expert discovery and pretrial motion practice, 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].

25. 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. DE # 29, 33]. On June 4, 2014, following briefing and oral argument, this Court denied BancorpSouth's Renewed Motion to Transfer Venue. [N.D. Fla. DE # 48].

26. On June 5, 2014, this 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].

27. 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, this 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].

28. On August 27, 2015, this 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].

29. 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 session, 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.

30. 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, the Parties executed a Summary Agreement memorializing their binding and enforceable agreement to settle the Action.

31. Extensive 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 2016. The Parties ultimately agreed on all such terms and conditions, completed the detailed process of drafting the Settlement Agreement and Release and related documents, and executed it immediately thereafter.

D. Settlement Class and Recovery Under the Agreement.

32. The Settlement requires BancorpSouth to deposit Twenty-Four Million and 00/100 Dollars (\$24,00,000.00) into an Escrow Account within fourteen calendar days following Preliminary Approval. Agreement ¶¶ 66, 87. That deposit will create the Settlement Fund.

33. Settlement Class Members do not have to submit claims or take any other affirmative steps to receive relief under the Settlement. Instead, as soon as practicable, but in no later than 60 days from the Effective Date, BancorpSouth and the Settlement Administrator will distribute the Net Settlement Fund to all eligible identifiable Settlement Class Members who do not opt out of the Settlement. Agreement ¶¶ 95-103.

34. Settlement Class Members were identified through a complex analysis of BancorpSouth's data that allowed for the identification of Settlement Class Members who experienced excess Overdraft Fees as a result of BancorpSouth's practice of High-to-Low Posting. Agreement ¶¶ 91-92. BancorpSouth's data for the applicable Class Period was sufficiently complete to identify all Settlement Class Members who had Accounts during that period, and allowed Class Counsel's expert to calculate the amount of each Settlement Class Member's Differential Overdraft Fees under the Settlement. Agreement ¶ 93.

E. Class Release.

35. 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.

F. Settlement Notice.

36. Hilsoft Notifications will serve as the Notice Administrator for the Settlement Agreement ¶ 45. BancorpSouth will pay all fees, costs and expenses of the Notice Administrator incurred in connection with the Notice Program, subject to the maximum set forth in the Agreement. Agreement ¶¶ 67, 83.

37. Notice will be provided in three different ways. Agreement ¶ 77. The Notice Program is reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, Class Counsel's Fee Application and request for Service Award for the Class Representative, and their rights to opt-out of the Settlement Class or object to the Settlement, Class Counsel's Fee Application, and/or the request for a Service Award. The Notice and Notice Program constitute sufficient notice to all persons entitled to notice. The Notice and Notice Program satisfy all applicable requirements of law including, but not limited to, Federal Rule of Civil Procedure 23 and the Constitutional requirements of due process. The Notice Program is designed to reach a high percentage of Settlement Class Members (including most by direct mail, the best possible form of notice), and exceeds the requirements of constitutional due process.

38. Epiq Class Action and Claims Solution, Inc. ("Epiq") will serve as the Settlement Administrator. Agreement ¶ 57. BancorpSouth will pay all fees, costs and expenses of the Settlement Administrator incurred in performing its specified duties under the Settlement, subject to the maximum set forth in the Agreement. Agreement ¶ 67.

39. The Settlement Administrator will administer the Mailed Notice Program. Agreement ¶¶ 78-79. Within 28 days from the date that the Settlement Administrator receives updated data files that identify the names and last known addresses of the Settlement Class

Members, the Settlement Administrator will run such addresses through the National Change of Address Database, and will mail to all such Settlement Class Members postcards that contain the Mailed Notice. Agreement ¶ 78. The postcard will be substantially in the form attached as Exhibit C to Plaintiff's and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class.

40. The Settlement Administrator will perform reasonable address traces for all Initial Mailed Notice postcards that are returned as undeliverable. Agreement ¶ 79. No later than 70 days before the Final Approval Hearing, the Settlement Administrator will 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. *Id.*

41. The Mailed Notice Program (which is composed of both the Initial Mailed Notice and the Notice Re-Mailing Process) will be completed no later than 70 days before the Final Approval Hearing. Agreement ¶ 80. Within seven days after the date the Settlement Administrator completes the Notice Re-mailing Process, it will provide an affidavit that confirms that the Mailed Notice Program was completed in a timely manner. Settlement Class Counsel will file such affidavit with the Court in conjunction with Plaintiff's motion for Final Approval. *Id.*

42. The Notice Administrator will administer the Published Notice Program as set forth in the Agreement, using the Published Notice substantially in the form attached as Exhibit D to Plaintiff's and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class. Agreement ¶ 81. The Published Notice Program will be completed no later than 70 days before the Final Approval Hearing. *Id.* Within seven days after the date the Notice Administrator completes the Published Notice Program, it

will provide one or more affidavits that confirm that Published Notice was given in accordance with the Published Notice Program. Agreement ¶ 82. Settlement Class Counsel will file that affidavit with the Court as an exhibit to or in conjunction with their motion for Final Approval. *Id.*

43. The Settlement Administrator will establish a Settlement Website as a means for Settlement Class Members to obtain notice of, and information about, the Settlement. Agreement ¶ 62. The Settlement Website will be established as soon as practicable following Preliminary Approval, but no later than before commencement of the Notice Program. *Id.* The Settlement Website will include hyperlinks to the Settlement, the Long-Form Notice substantially in the form attached as Exhibit E to Plaintiff's and Class Counsel's Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class, the Preliminary Approval Order, and such other documents as Settlement Class Counsel and counsel for BancorpSouth agree to post or that the Court orders posted on the Settlement Website. These documents will remain on the Settlement Website at least until Final Approval. *Id.*

44. The Settlement Administrator will also establish and maintain 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).

G. Settlement Termination.

45. Either Party may terminate the Settlement if the Settlement 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 BancorpSouth's counsel and Settlement Class Counsel. Agreement ¶ 114. The number or percentage will be confidential except to the Court who, upon request, will be provided a copy of the letter for *in camera* review. *Id.*

H. Service Award and Attorneys' Fees and Costs.

46. Class Counsel will seek, and BancorpSouth will not oppose, a Service Award of \$10,000 for the Class Representative. Agreement ¶ 111. If the Court approves, the Service Award will be paid from the Settlement Fund, and will be in addition to the relief the Class Representative will be entitled to under the terms of the Settlement. *Id.* The requested Service Award will compensate the Class Representative for his time and effort in the Action, and for the risks he assumed in prosecuting the Action against BancorpSouth. Among other things, the Class Representative responded to BancorpSouth's written discovery requests and was deposed.

47. BancorpSouth will not oppose Class Counsel's request for 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 this agreement regarding attorneys' fees and costs only after reaching agreement on all other material terms of this Settlement. Agreement ¶ 112.

I. Considerations Supporting Settlement.

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

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

49. As detailed above, Class Counsel conducted a thorough investigation and analysis of Plaintiff's claims and engaged in extensive discovery with BancorpSouth. Class Counsel's review of that extensive discovery enabled them to gain an understanding of the evidence related to central questions in the Action, and prepared them for well-informed settlement negotiations.

50. Class Counsel were also extremely familiar with similar claims pursued against over 30 banks in MDL 2036 and elsewhere.

2. Risks Associated with Trial Favor Settlement

51. Plaintiff and Class Counsel are confident in the strength of Plaintiff's and the certified Class's case, but are also pragmatic in their awareness of the various defenses available to BancorpSouth, and the risks and uncertainties inherent in trial and appeal. While Plaintiff and the certified Class survived dismissal and summary judgment based on theories advanced during pretrial proceedings, the ultimate success of Plaintiff's and the certified Class's claims would turn on these and other questions that were certain to arise at trial and during a post-judgment appeal.

52. Protracted litigation carries inherent risks, uncertainties, and inevitable delay. Under the circumstances, Class Counsel determined that the Settlement with BancorpSouth outweighed the risks of continued litigation.

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

53. The \$24,000,000 Settlement Fund represents approximately 57% of Plaintiff's and the Settlement Class's most probable maximum damages recovery, *if* Plaintiff and the certified Class were successful in all respects through trial and on plenary appeal. BancorpSouth's payment of up to \$500,000 in fees and costs associated with the Notice Program and administration of the Settlement further increases the recovery under the Settlement. The

recovery achieved by this Settlement, without further litigation risks or delays, is an excellent result for Settlement Class Members in light of the Bank's defenses, and the challenging and unpredictable path of litigation that would have been faced absent the Settlement.

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

54. The proposed Settlement is the best vehicle for Settlement Class Members to receive the relief to which they are entitled in a prompt and efficient manner. Absent the Settlement, Settlement Class Members face the risks, uncertainties and additional delays associated with proceeding to trial and the inevitable post-trial appellate proceedings.

5. Proceedings Are at an Appropriate Stage for Settlement

55. The Settlement was reached following certification of a litigation Class, with the benefit of reviewing approximately 100,000 pages of documents produced by BancorpSouth, as well as deposition testimony from approximately 14 fact and expert witnesses. Review of the documents and deposition testimony positioned Class Counsel to evaluate with confidence the strengths and weaknesses of Plaintiff's and the certified Class's claims and the prospects for success at trial and on appeal.

56. Class Counsel are also highly familiar with the challenged practices and defenses at issue in the Action through their experience litigating similar cases in MDL 2036 and elsewhere.

6. Class Certification of Settlement Purposes

57. The Court previously certified a Class for litigation purposes in the Action. (S.D. Fla. DE # 2673). Based on the Court's prior findings, as supplemented herein, certification of a Settlement Class is likewise appropriate and fully warranted.

58. Certification under Rule 23(a) of the Federal Rules of Civil Procedure requires that (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Under Rule 23(b)(3), certification is appropriate if the questions of law or fact common to the members of the class predominate over individual issues of law or fact and if a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

59. The numerosity requirement of Rule 23(a) is satisfied because the Settlement Class consists of Account Holders of 190,953 BancorpSouth Accounts, less the 238 Account Holders who timely excluded themselves following the May 2013 notice, and joinder of all such persons is impracticable.

60. The commonality requirement is satisfied because there are multiple questions of law and fact – centering on BancorpSouth’s practice of High-to-Low Posting – that are common to the Settlement Class, that are alleged to have injured all Settlement Class Members in the same way, and that would generate common answers central to the viability of the claims were the Action to proceed to trial.

61. Plaintiff is typical of absent Settlement Class Members because he was subjected to the same BancorpSouth practices and suffered from the same injuries, and all benefit from the relief provided by the Settlement.

62. Adequacy is established because Plaintiff’s interests are coextensive with, not antagonistic to, the interests of the Settlement Class; because Plaintiff and absent Settlement Class Members have an equally great interest in the relief offered by the Settlement; and because

absent Settlement Class Members have no diverging interests. Further, Class Counsel are qualified and competent and have extensive experience prosecuting complex class actions, including consumer actions similar to the instant case. Class Counsel devoted substantial time and resources to vigorously litigating the Action from inception through the Settlement.

63. Plaintiff satisfies the predominance requirement because liability questions common to all Settlement Class Members substantially outweigh any possible issues that are individual to each Settlement Class Member. For example, each Settlement Class Member's relationship with BancorpSouth arises from an Account agreement that is the same or substantially similar in all relevant respects to other Settlement Class Members' Account agreements.

* * *

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 Fort Lauderdale, Florida, on February 24, 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 February 24, 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 Fort Lauderdale, Florida, on February 24, 2016.

/s/ Jeffrey M. Ostrow

Jeffrey M. Ostrow