

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

CAROLYN LYNN, individually and on)	Case No. 3:12-CV-01137
behalf of all others similarly situated,)	
)	<u>CLASS ACTION</u>
Plaintiffs,)	
)	Judge Todd J. Campbell
v.)	
)	
ARTHUR F. HELF, H. LAMAR COX,)	
MICHAEL R. SAPP, FRANK PEREZ)	
TENNESSEE COMMERCE)	
BANCORP, INC., and KRAFTCPAs,)	
PLLC,)	
)	
Defendants.)	

STIPULATION OF SETTLEMENT

This Stipulation of Settlement dated as of December 1, 2014 (the “Stipulation”) is made and entered into by and among (i) the Lead Plaintiff, individually and on behalf of each of the Settlement Class¹ Members; and (ii) Defendants Arthur F. Helf, H. Lamar Cox, Michael R. Sapp, Frank Perez, and Tennessee Commerce Bancorp., Inc. (the “Settling Defendants,” and, collectively with the Lead Plaintiff, individually and on behalf of each of the Settlement Class Members, the “Settling Parties”), by and through their respective counsel of record in the above-entitled action (the “Litigation”). The Stipulation is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof and the approval of the Court.

¹ The “Settlement Class” is defined *infra* at pp. 8-9, § 1.17 and includes, all Persons, other than the Settling Defendants and certain other specified Persons, who purchased or otherwise acquired the common stock of Tennessee Commerce Bancorp, Inc. between April 18, 2008 and January 27, 2012.

I. THE LITIGATION

On November 2, 2012, Tennessee Commerce Bancorp, Inc. and certain of its officers and directors were named as defendants in a securities class action complaint alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 that was filed in the United States District Court for the Middle District of Tennessee, Nashville Division (the “Court”).

On January 18, 2013, the Court issued an Order appointing Grand Slam Capital Master Fund, Ltd. as Lead Plaintiff and approving the Lead Plaintiff’s selection of Wolf Haldenstein Adler Freeman & Herz LLP (“Wolf Haldenstein”) as Lead Counsel.

On April 18, 2013, Lead Plaintiff filed its First Amended Class Action Complaint for Violation of the Federal Securities Laws. The Complaint alleges that the Settling Defendants violated the securities laws, specifically §§10(b) and 20(a) of the Securities Exchange Act of 1934 and SEC Rule 10b-5, by causing Tennessee Commerce Bancorp, Inc. to issue materially false and misleading statements during the Settlement Class Period.

On June 17, 2013, the Settling Defendants filed a Motion to Dismiss the Complaint. On September 25, 2013, the Court granted leave for the Lead Plaintiff to file a Second Amended Complaint, and on September 30, 2013, Lead Plaintiff filed the Second Amended Class Action Complaint (the “Complaint”) against the Settling Defendants as well as KraftCPAs PLLC (“Kraft”). On December 20, 2013, the Settling Defendants filed a Renewed Motion to Dismiss the Complaint.

On May 6 and 7, 2014, the Settling Parties participated in a two-day mediation session in New York.² Although the mediation concluded without a settlement, the Settling Parties thereafter engaged in ongoing discussions and subsequently reached a settlement.

II. SETTling DEFENDANTS' STATEMENT AND DENIALS OF WRONGDOING AND LIABILITY

The Settling Defendants have denied and continue to deny each and all of the claims and contentions alleged by the Lead Plaintiff in the Litigation. The Settling Defendants also have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation.

The Settling Defendants further deny that the Lead Plaintiff or the Settlement Class have suffered or are entitled to recover damages in any amount, and they deny that the price of Tennessee Commerce Bancorp, Inc.'s common stock was artificially inflated during the relevant period as the result of any alleged misrepresentations, omissions, or otherwise by the Settling Defendants. The Settling Defendants believe that their actions were at all times lawful, appropriate, and taken in good faith. Nonetheless, the Settling Defendants have concluded that further conduct of the Litigation could be protracted and expensive and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation, in order to limit further expense, inconvenience, and distraction, and to dispose of the burden of further litigation. The Settling Defendants have, therefore, determined that it is desirable and beneficial to them that the Litigation be settled in the manner and upon the terms and conditions set forth in this Stipulation.

² Kraft is not a Defendant or a Settling Party and is expressly excluded from this Stipulation. Kraft also did not take part in the May 2014 mediation that took place in New York.

III. CLAIMS OF THE LEAD PLAINTIFF AND BENEFITS OF SETTLEMENT

Lead Plaintiff believed at the time of the filing of this action, and continues to believe, that the claims asserted in the Complaint are meritorious and would have proven to be at trial. Nonetheless, Lead Plaintiff also recognizes and acknowledges the considerable expense and delay to the Settlement Class of continued, prolonged proceedings which would be necessary to prosecute the Litigation against the Settling Defendants through trial. Lead Plaintiff has also taken into account the uncertain outcome and the risk of any litigation to the Settlement Class, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Lead Plaintiff is also mindful of the inherent difficulties of proof under and possible defenses to the securities law violations asserted in the Litigation. Lead Plaintiff believes that the settlement set forth in this Stipulation confers substantial benefits upon the Settlement Class. Based on their evaluation, Lead Plaintiff and Lead Counsel have determined that the settlement set forth in this Stipulation is in the best interests of Lead Plaintiff and the Settlement Class, and that the settlement provided for herein is fair, reasonable, and adequate.

IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Lead Plaintiff (individually and on behalf of each of the respective Settlement Class Members) and the Settling Defendants, by and through their respective counsel or attorneys of record, that, subject to the approval of the Court, the Litigation and the Released Claims, and all matters encompassed within the scope of the releases set forth or referenced in this Stipulation, shall be finally, fully, and forever compromised, settled, and released, and the Litigation shall be

dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of the Stipulation, as follows.

1. Definitions

1.1 “Authorized Claimant” means any Settlement Class Member whose claim for recovery has been allowed pursuant to the terms of the Stipulation.

1.2 “Tennessee Commerce Bancorp, Inc.” means Tennessee Commerce Bancorp, Inc. and its subsidiaries, affiliates, and divisions.

1.3 “Claims Administrator” means the firm of The Garden City Group, Inc. (“Garden City Group”).

1.4 “Effective Date” means the first date by which all of the events and conditions specified in Paragraph 7.1 of the Stipulation have been met and have occurred.

1.5 “Escrow Agent” means Citibank, N.A., acting through its Agency and Trust business or their successor(s), acting as agents for the Settlement Class.

1.6 “Final” means when the last of the following with respect to the Judgment approving the Stipulation, substantially in the form of Exhibit B attached hereto, shall occur: (i) the expiration of three (3) business days after the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) has passed without any such motion having been filed; (ii) the expiration of three (3) business days after the time in which to appeal the Judgment has passed without any appeal having been taken (which date shall be deemed to be thirty-three (33) days following the entry of the Judgment, unless the date to take such an appeal shall have been extended by Court order or otherwise, or unless the thirty-third (33rd) day falls on a weekend or a Court holiday, in which case the date for purposes of this Stipulation shall be deemed to be the next business day after such thirty-third (33rd) day); and (iii) if such

motion to alter or amend is filed and/or if an appeal is taken, three (3) business days after the determination and disposition of that motion and/or appeal (including any petition for writ of certiorari) in such a manner as to permit the consummation of the settlement substantially in accordance with the terms and conditions of this Stipulation. For purposes of this Paragraph, an “appeal” shall not include any appeal that concerns only the issue of attorneys’ fees and expenses, Lead Plaintiff’s request for reimbursement of time and expenses, or the Plan of Allocation of the Settlement Fund. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any Plan of Allocation, the application for an award of attorneys’ fees or expenses and/or Lead Plaintiff’s request for reimbursement of time and expenses, shall not in any way delay or preclude the Judgment from becoming Final.

1.7 “Individual Defendants” means Arthur F. Helf, H. Lamar Cox, Michael R. Sapp, and Frank Perez.

1.8 “Judgment” means the judgment to be rendered by the Court, substantially in the form and content attached hereto as Exhibit B.

1.9 “Lead Counsel” means the law firm of Wolf Haldenstein.

1.10 “Lead Plaintiff” means Grand Slam Capital Master Fund, Ltd.

1.11 “Notice Order” means the order described in Paragraph 3.1 hereof.

1.12 “Person” means a natural person, individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, joint venturer, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.13 “Plan of Allocation” means a plan or formula for the allocation of the Settlement Fund whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of expenses of notice and administration of the settlement, Taxes and Tax Expenses, and such attorneys’ fees, costs, expenses (including expenses awarded to Lead Plaintiff), and interest as may be awarded by the Court. Any Plan of Allocation is not part of the Stipulation, and the Settling Defendants and their Related Parties shall have no responsibility therefore or liability with respect thereto.

1.14 “Related Parties” as to Tennessee Commerce Bancorp, Inc. means each of that entity’s past or present directors, executive officers as defined by Regulation O, 12 C.F.R. 215, partners, members, insurers, co-insurers, reinsurers, principals, agents, controlling shareholders, attorneys, advisors, investment advisors, underwriters, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, privies, related or affiliated corporations or entities, and any entity in which Tennessee Commerce Bancorp, Inc. has a controlling interest. “Related Parties” as to the Individual Defendants shall also include members of an Individual Defendant’s immediate family; present or former spouses; heirs; executors, administrators, agents, insurers, reinsurers, attorneys, personal or legal representatives or other persons acting in a representative capacity for an Individual Defendant; successors; assigns; any entity in which an Individual Defendant and/or any member of an Individual Defendant’s immediate family has or have a controlling interest (directly or indirectly); and any trust of which any Individual Defendant is the settlor or which is for the benefit of any Individual Defendant and/or members of his immediate family. “Related Parties” specifically excludes Kraft.

1.15 “Released Claims” means any and all rights, liabilities, suits, debts, obligations, demands, damages, losses, judgments, matters, issues, claims (including Unknown Claims as defined in Paragraph 1.20 hereof), and causes of action of every nature and description whatsoever, in law or equity, and regardless of upon what legal theory based, whether arising under federal, state, local, statutory, common law, foreign law, or any other law, rule, or regulation, whether fixed, contingent, or absolute, accrued or unaccrued, liquidated or unliquidated, matured or un-matured, known or unknown, discoverable or undiscoverable, concealed or hidden, suspected or unsuspected, disclosed or undisclosed, whether class and/or individual in nature that the Lead Plaintiff or any Settlement Class Member asserted or could have asserted in this Litigation or any other action, court, tribunal, proceeding or forum against any of the Released Persons arising out of or relating in any manner to both (i) the purchase or acquisition of Tennessee Commerce Bancorp, Inc. common stock during the Settlement Class Period, and (ii) the facts, matters, allegations, transactions, events, disclosures, representations, statements, acts, or omissions or failures to act that were alleged or that could have been alleged in the Litigation.

1.16 “Released Persons” means each and all of the Settling Defendants and each and all of their Related Parties.

1.17 “Settlement Class” means all Persons who purchased or otherwise acquired the common stock of Tennessee Commerce Bancorp, Inc. during the Settlement Class Period. Excluded from the Settlement Class are the Settling Defendants and each and all of the Settling Defendants’ Related Parties; Donald J. Carter; and those Persons who timely and validly request exclusion from the Settlement Class pursuant to the Notice of Pendency and Proposed Settlement of Class Action. Notwithstanding anything in the foregoing sentence, specifically included in

the Settlement Class are any Tennessee Commerce Bancorp, Inc. 401(k) Plan or other employee retirement benefit plan established under the Employee Retirement Income Security Act and/or any Person for whom Tennessee Commerce Bancorp, Inc. or any of its Related Parties holds Tennessee Commerce Bancorp, Inc. common stock in a fiduciary capacity, except to the extent any Person excluded above is a participant in such a retirement benefit plan and then such Person will not participate in any distribution to the retirement benefit plan from the Settlement Fund.

1.18 “Settlement Class Members” or “Members of the Settlement Class” means any Person who falls within the definition of the Settlement Class as set forth in Paragraph 1.17 of the Stipulation.

1.19 “Settlement Class Period” means the period between April 18, 2008 and January 27, 2012, inclusive.

1.20 “Unknown Claims” means any and all Released Claims which the Lead Plaintiff or any Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Persons which, if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Persons, or might have affected his, her, or its decision not to object to this settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Lead Plaintiff shall waive, and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Judgment shall have waived, the provisions, rights, and benefits of California Civil Code §1542, which provides:

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.

Lead Plaintiff shall expressly waive, and each of the Settlement Class Members shall be deemed to have by operation of the Judgment expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542. The Lead Plaintiff and Settlement Class Members may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the Released Claims, but the Lead Plaintiff shall expressly fully, finally, and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Lead Plaintiff acknowledges, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

2. The Settlement

a. The Settlement Fund

2.1 In consideration of the terms of this Stipulation, within fifteen (15) business days following the date of entry of the Notice Order (the “Funding Date”), the Settling Defendants shall cause their directors’ and officers’ liability insurer to pay the sum of \$2,600,000.00 in cash

(by check or wire) (the “Settlement Fund”) into a separate interest-bearing account maintained by the Escrow Agent.

2.2 Other than any cost or expense to be incurred by Tennessee Commerce Bancorp, Inc. in providing Tennessee Commerce Bancorp, Inc.’s transfer records to the Claims Administrator, all fees, costs, and expenses incurred by or on behalf of the Lead Plaintiff and the Settlement Class associated with the settlement, including, but not limited to, Taxes (as defined in Paragraph 2.9(c)), Tax Expenses (as defined in Paragraph 2.9(c)), any administrative costs and costs of providing notice of the settlement to Settlement Class Members, and any award of attorneys’ fees and expenses of Lead Counsel or Lead Plaintiff, shall be paid from the Settlement Fund and in no event shall the Settling Defendants bear any responsibility for such fees, costs, or expenses.

2.3 Other than any cost or expense to be incurred by Tennessee Commerce Bancorp, Inc. in providing Tennessee Commerce Bancorp, Inc.’s transfer records to the Claims Administrator, the payments described in Paragraph 2.1 are the only payments to be made by or on behalf of the Settling Defendants in connection with this settlement.

b. The Escrow Agent

2.4 The Escrow Agent will invest the Settlement Fund deposited pursuant to Paragraph 2.1 in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. The Settlement Fund shall bear all risks related to investment of the Settlement Fund.

2.5 The Escrow Agent shall not disburse the Settlement Fund except as provided in the Stipulation, by an order of the Court, or with the written agreement of counsel for the Settling Defendants.

2.6 Subject to further order and/or direction as may be made by the Court, the Escrow Agent is authorized to execute such transactions on behalf of the Settlement Class as are consistent with the terms of the Stipulation.

2.7 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

2.8 Notwithstanding the fact that the Effective Date has not yet occurred, the Escrow Agent may pay from the Settlement Fund the costs and expenses reasonably and actually incurred in connection with providing notice to the Settlement Class, locating Settlement Class Members, administering and distributing the Settlement Fund to Authorized Claimants, and processing Proof of Claim and Release forms. In the event that the settlement does not become Final, any money paid or incurred for the above purposes, including any related fees, shall not be returned or repaid to Settling Defendants or their insurers.

c. Taxes

2.9 (a) The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 2.9, including, if necessary, the “relation-back election” (as defined in Treas. Reg. §1.468B-1(j)(2)) back to the earliest permitted date.

Such elections shall be made in compliance with the procedures and requirements contained in such Treasury regulations promulgated under §1.468B of the Internal Revenue Code of 1986, as amended (the “Code”). It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of §1.468B of the Code and the Treasury regulations thereunder, the Escrow Agent shall be designated as the “administrator” of the Settlement Fund. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in Paragraph 2.9(a) hereof) shall be consistent with this Paragraph 2.9 and in all events shall reflect that all Taxes (including any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 2.9(c) hereof.

(c) All: (i) Taxes (including any estimated Taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Settling Defendants or their Related Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (“Taxes”); and (ii) expenses and costs incurred in connection with the operation and implementation of this Paragraph 2.9 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Paragraph 2.9) (“Tax Expenses”), shall be paid out of the Settlement Fund. In no event shall the Settling Defendants or their Related Parties have any

responsibility for or liability with respect to the Taxes or the Tax Expenses. The Settlement Fund shall indemnify and hold each of the Settling Defendants and their Related Parties harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without further consent of the Settling Defendants, or prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither the Settling Defendants nor their Related Parties are responsible therefore nor shall they have any liability with respect thereto. The Settling Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Paragraph 2.9.

(d) For the purpose of this Paragraph 2.9, references to the Settlement Fund shall include the Settlement Fund and earnings thereon.

d. Termination of Settlement

2.10 In the event that the Stipulation is not approved, or is terminated, canceled, or fails to become effective for any reason, the Settlement Fund (including accrued interest), less expenses paid or incurred pursuant to Paragraph 2.8 and Taxes and Tax Expenses incurred or due and owing pursuant to Paragraph 2.9, shall be refunded to the entity making the contribution as provided in Paragraph 7.3 below.

e. Settlement Class Certification

2.11 Solely for purposes of this settlement, and subject to approval by the Court, the Settling Parties agree that the Settlement Class shall be certified and the Lead Plaintiff and Lead Counsel shall be appointed as representatives of the Settlement Class pursuant to Federal Rule of Civil Procedure 23, as set forth in the Notice Order.

3. Notice Order and Settlement Hearing

3.1 As soon as practicable after execution of the Stipulation, the Lead Plaintiff shall submit the Stipulation together with its Exhibits to the Court and shall move for entry of the Notice Order, substantially in the form of Exhibit A attached hereto, requesting, *inter alia*, the preliminary approval of the settlement set forth in the Stipulation and approval for mailing the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”) and the Proof of Claim and Release form, substantially in the forms of Exhibits A-1 and A-2 attached hereto, and publication of a Summary Notice, substantially in the form of Exhibit A-3 attached hereto.

3.2 Lead Counsel shall request that after notice is given and not earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State officials are provided with notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, if applicable, the Court hold a hearing (the “Settlement Hearing”) and finally approve the settlement of the Litigation as set forth herein. At or after the Settlement Hearing, Lead Counsel may also request that the Court approve the proposed Plan of Allocation, the Fee and Expense Application, and Lead Plaintiff’s request for reimbursement for its time and expenses.

4. Releases

4.1 Upon the Effective Date, as defined in Paragraph 1.4 hereof, the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released

Persons, whether or not such Settlement Class Member executes and delivers a Proof of Claim and Release form.

4.2 The Proof of Claim and Release form to be executed by Settlement Class Members shall release all Released Claims against the Released Persons and shall be substantially in the form contained in Exhibit A-2 attached hereto.

4.3 Upon the Effective Date, as defined in Paragraph 1.4 hereof, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Lead Plaintiff, each and all of the Settlement Class Members, and Lead Counsel from all claims (including Unknown Claims) arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims.

4.4 The Lead Plaintiff agrees and covenants not to file or pursue any Released Claims against the Settling Defendants between the date of this Stipulation and the Effective Date. The Settling Parties agree that, if the settlement does not become Final, the period of time between the date of this Stipulation and the Effective Date shall not be counted for purposes of any defense based on passage of time.

5. Administration and Calculation of Claims, Final Awards, and Supervision and Distribution of the Settlement Fund

5.1 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members and will be subject to such supervision and direction of the Court and/or Lead Counsel as may be necessary or as circumstances may require.

5.2 The Settlement Fund shall be applied as follows:

(a) to pay all the costs and expenses reasonably and actually incurred in connection with publication of the Summary Notice and distribution of the Notice, locating Settlement Class

Members, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, processing Proof of Claim and Release forms, and paying escrow fees and costs, if any, provided, however, that payment of costs and expenses described in this paragraph shall not exceed \$200,000 unless the Court approves such costs and expenses in excess of \$200,000 prior to final approval of the settlement;

(b) to pay Lead Counsel's attorneys' fees and expenses with interest thereon (the "Fee and Expense Award") and Lead Plaintiff's reimbursement for its time and expenses pursuant to 15 U.S.C. §78u-4(a)(4) when, if, and to the extent allowed by the Court;

(c) to pay the Taxes and Tax Expenses described in Paragraph 2.9 hereof; and

(d) to distribute the balance of the Settlement Fund (the "Net Settlement Fund") to Authorized Claimants as allowed by the Stipulation, the Plan of Allocation, or the Court.

5.3 The Settling Defendants and their Related Parties shall have no responsibility for, interest in, or liability whatsoever with respect to, reviewing or challenging claims for payment by Settlement Class Members from the settlement fund.

5.4 Upon the Effective Date and thereafter, and in accordance with the terms of the Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the terms of this Stipulation.

5.5 Within ninety (90) days after such time as set by the Court to mail notice to the Settlement Class, each Person claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim and Release form, substantially in a form contained in Exhibit A-2 attached hereto and as approved by the Court, signed under

penalty of perjury, and supported by such documents as are specified in the Proof of Claim and Release form and as are reasonably available to the Authorized Claimant.

5.6 Except as otherwise ordered by the Court, all Settlement Class Members who fail to timely submit a Proof of Claim and Release form within such period, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to the Stipulation and the settlement set forth herein, but will in all other respects be subject to and bound by the provisions of the Stipulation, the releases contained herein, and the Judgment. Notwithstanding the foregoing, Lead Counsel may, in its discretion, accept for processing late submitted claims so long as the distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed.

5.7 The Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with a Plan of Allocation to be described in the Notice and approved by the Court. If there is any balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), Lead Counsel shall, if feasible, reallocate such balance among Authorized Claimants who cashed or deposited the checks sent in the initial distribution in an equitable and economic fashion. Thereafter, any balance which still remains in the Net Settlement Fund shall be distributed to the Legal Aid Society of Middle Tennessee and the Cumberlands, located at 300 Deaderick Street, Nashville, TN 37201.

5.8 This is not a claims-made settlement. Accordingly, once all conditions of the Stipulation are satisfied and the settlement becomes Final, no portion of the Settlement Fund will be returned to the Settling Defendants or their insurers. The Settling Defendants and their Related Parties shall have no responsibility for, interest in, or liability whatsoever with respect to

the distribution of the Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith.

5.9 No Person shall have any claim against Lead Plaintiff, the Escrow Agent, Lead Plaintiff's Counsel, the Settling Defendants, the Released Persons, the Claims Administrator, or other entity designated by Lead Counsel based on distributions made substantially in accordance with the Stipulation and the settlement contained herein, a Court-approved Plan of Allocation, or further order(s) of the Court.

5.10 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of the Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement set forth in the Stipulation, and any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel the Stipulation or affect the finality of the Court's Judgment approving the Stipulation and the settlement set forth herein, or any other orders entered pursuant to the Stipulation.

6. Lead Plaintiffs Counsel's Attorneys' Fees and Expenses

6.1 Lead Counsel may submit an application or applications (the "Fee and Expense Application") for distributions to them from the Settlement Fund for: (a) an award of attorneys' fees not to exceed 33% of the Settlement Fund; plus (b) payment of reasonable expenses and costs, including the fees of any experts or consultants, incurred in connection with prosecuting the Litigation, plus any interest on such attorneys' fees and expenses at the same rate

and for the same periods as earned by the Settlement Fund (until paid). The Settling Defendants shall take no position with respect to any fee or expense request.

6.2 The attorneys' fees and expenses, as awarded by the Court, shall be paid to Lead Counsel from the Settlement Fund, as ordered, within five (5) calendar days after the Court executes an order awarding such fees and expenses, notwithstanding the existence of any objections thereto, or potential for appeal therefrom, or collateral attack on the settlement or any part thereof. In the event that the Effective Date does not occur, or the Judgment or the order making the Fee and Expense Award is reversed or modified, or the Stipulation is canceled or terminated for any other reason, and in the event that the Fee and Expense Award has been paid to any extent, then Lead Counsel shall within five (5) business days from receiving notice from the Settling Defendants' counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund the fees and expenses previously paid to them from the Settlement Fund plus interest earned thereon, if any, in an amount consistent with such reversal or modification, less any Notice and Administration Costs referred to in ¶ 1.13 actually paid or incurred. Lead Counsel, as a condition of receiving such fees and expenses, on behalf of itself and each partner, shareholder, or member of it, agrees that the law firm and its partners, shareholders, and/or members are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this Paragraph.

6.3 The procedure for and the allowance or disallowance by the Court of any applications by Lead Counsel for attorneys' fees and expenses, including the fees of experts and consultants, and any application by Lead Plaintiff for reimbursement of time and expenses, to be paid out of the Settlement Fund, are not part of the settlement set forth in the Stipulation, and are to be considered by the Court separately from the Court's consideration of the fairness,

reasonableness, and adequacy of the settlement set forth in the Stipulation, and any order or proceeding relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of the Judgment approving the Stipulation and the settlement of the Litigation set forth herein.

6.4 The Settling Defendants and their Related Parties shall have no responsibility for or liability with respect to any payment of attorneys' fees and expenses to Lead Counsel over and above payment from the Settlement Fund.

6.5 The Settling Defendants and their Related Parties shall have no responsibility for or liability with respect to the allocation among Lead Counsel, and/or any other Person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Litigation, and the Settling Defendants and their respective Related Parties take no position with respect to such matters.

7. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

7.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

- (a) the contribution to the Settlement Fund as required by Paragraph 2.1 hereof;
- (b) the Settling Defendants have not exercised their option to terminate the Stipulation pursuant to Paragraph 7.6 hereof;
- (c) the Court has entered the Notice Order, substantially in the form of Exhibit A hereto, as required by Paragraph 3.1 hereof;
- (d) the Court has entered the Judgment, or a judgment substantially in the form of Exhibit B attached hereto; and

(e) the Judgment has become Final, as defined in Paragraph 1.6 hereof.

7.2 Upon the occurrence of all of the events referenced in Paragraph 7.1 hereof, any and all remaining interest or right of the Settling Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished. If all of the conditions specified in Paragraph 7.1 hereof are not met, then the Stipulation shall be canceled and terminated subject to Paragraph 7.4 hereof unless Lead Counsel and counsel for the Settling Defendants mutually agree in writing to proceed with the Stipulation.

7.3 Unless otherwise ordered by the Court, in the event the Stipulation shall terminate, or be canceled, or shall not become effective for any reason, within five (5) business days after written notification of such event is sent by counsel for the Settling Defendants or Lead Counsel to the Escrow Agent, subject to the terms of Paragraph 2.10 hereof, the Settlement Fund (including accrued interest), less expenses and any costs which have either been disbursed or have been incurred pursuant to Paragraph 2.8 hereof and any Taxes and Tax Expenses due or owing pursuant to Paragraph 2.9, shall be refunded by the Escrow Agent to the Persons contributing to it based upon the amounts initially contributed by each. At the request of counsel for the Settling Defendants, the Escrow Agent or its designee shall apply for any tax refund owed on the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, to the Persons contributing to the Settlement Fund.

7.4 In the event that the Stipulation is not approved by the Court or the settlement set forth in the Stipulation is terminated or fails to become effective in accordance with its terms, the Settling Parties shall be restored to their respective positions in the Litigation as of November 30, 2014. In such event, the terms and provisions of the Stipulation, with the exception of

Paragraphs 1.1–1.20, 2.9, 2.10, 7.3–7.5 hereof, shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of any attorneys’ fees, costs, expenses, and interest awarded by the Court to Lead Counsel or Lead Plaintiff shall constitute grounds for cancellation or termination of the Stipulation.

7.5 If the Effective Date does not occur, or if the Stipulation is terminated pursuant to its terms, neither Lead Plaintiff nor Lead Counsel shall have any obligation to repay any amounts actually and properly disbursed pursuant to Paragraph 2.8 or already incurred and properly chargeable pursuant to Paragraph 2.8 at the time of such termination or cancellation, but which have not been paid. Such expenses shall be paid by the Escrow Agent in accordance with the terms of the Stipulation prior to the balance being refunded in accordance with Paragraphs 2.10 and 7.3 hereof.

7.6 If prior to the Settlement Hearing, the aggregate number of shares of Tennessee Commerce Bancorp, Inc. common stock purchased or acquired during the Settlement Class Period by Persons who would otherwise be Members of the Settlement Class, but who request exclusion from the Settlement Class, exceeds the sum specified in a separate supplemental agreement between Lead Plaintiff and the Settling Defendants (the “Supplemental Agreement”), the Settling Defendants shall have, in their sole and absolute discretion (which must be unanimously exercised), the option to withdraw from or terminate this Stipulation in accordance with the procedures set forth in the Supplemental Agreement. The Supplemental Agreement will not be filed with the Court. If required by the Court, the Supplemental Agreement and/or any of

its terms may be disclosed in camera to the Court for purposes of approval of the settlement, but such disclosure shall be carried out to the fullest extent possible in accordance with the practices of the Court so as to preserve the confidentiality of the Supplemental Agreement, particularly the threshold aggregate number of shares.

8. No Admission of Wrongdoing

8.1 This Stipulation, whether or not consummated, and any negotiations, discussions, or proceedings in connection herewith shall not be:

(a) offered or received against any Settling Defendant as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any Settling Defendant of the truth of any fact alleged by the Settlement Class Members or the validity of any claim that has been or could have been asserted in the Litigation, or the deficiency of any defense that has been or could have been asserted in the Litigation, or of any liability, negligence, fault, or wrongdoing of the Settling Defendants;

(b) offered or received against any Settling Defendant as evidence of a presumption, concession, admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any Settling Defendant, or against Lead Plaintiff or any Settlement Class Member as evidence of any infirmity in the claims of Lead Plaintiff and the Settlement Class;

(c) offered or received against any Settling Defendant as evidence of a presumption, concession, or admission of any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against any of the parties to this Stipulation, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this

Stipulation is approved by the Court, the Settling Defendants and their Related Parties may refer to it to effectuate the release granted them hereunder; or

(d) construed against the Settling Defendants, Lead Plaintiff, or the Settlement Class as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial.

9. Miscellaneous Provisions

9.1 The Settling Parties (a) acknowledge that it is their intent to consummate this agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of the Stipulation.

9.2 In the event that any disputes arise as to this Stipulation or its terms, the Settling Parties shall participate in expedited telephonic mediation with Michael Young and, if still unable to reach a resolution, shall then participate in a final, binding, non-appealable mediation. The cost of any such mediation shall be allocated among the Settling Parties by Mr. Young.

9.3 This Stipulation, the Exhibits attached hereto, and the Supplemental Agreement constitute the entire agreement between the Settling Parties as to the subject matter hereof and supersedes any prior or contemporaneous written or oral agreements or understandings between the Settling Parties.

9.4 No modification or amendment of this Stipulation shall be valid unless made in writing and signed by or on behalf of each party hereto or their respective successors-in-interest. No representations, warranties, or inducements have been made to any party concerning the Stipulation, its Exhibits, or the Supplemental Agreement other than the representations,

warranties, and covenants contained and memorialized in such documents. Except as otherwise provided for herein, each party shall bear his, her, or its own costs.

9.5 The settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. Pursuant to 15 U.S.C. §78u-4(c)(1), the Judgment will contain a statement that during the course of the Litigation, the parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11. The Settling Parties agree that the amount paid to the Settlement Fund and the other terms of the settlement were negotiated in good faith by the Settling Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis.

9.6 The Settling Defendants and/or their Related Parties may file the Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense, claim, or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

9.7 The Judgment will contain a contribution bar order consistent with 15 U.S.C. §78u-4(f)(7).

9.8 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Stipulation.

9.9 All of the Exhibits to the Stipulation are material and integral parts hereof and are fully incorporated herein by this reference.

9.10 Lead Counsel, on behalf of the Settlement Class, are expressly authorized by Lead Plaintiff to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to the Stipulation to effectuate its terms and also are expressly authorized to enter into any modifications or amendments to the Stipulation on behalf of the Settlement Class that they deem appropriate.

9.11 Each counsel or other Person executing the Stipulation or any of its Exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

9.12 The Stipulation may be executed in one or more counterparts, including by signature transmitted by facsimile or by e-mail in PDF format. All executed counterparts and each of them shall be deemed to be one and the same instrument.

9.13 The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties hereto.

9.14 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Stipulation, including the results of any mediation or binding resolution pursuant to Paragraph 9.2 hereof, as applicable.


9.15 The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver by any other party or a waiver of any other prior or subsequent breach of this Stipulation.

9.16 This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that it is the result of arm's-length negotiations

between the parties and that all parties have contributed substantially and materially to the preparation of this Stipulation.

9.17 The Stipulation and the Exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Tennessee, and the rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Tennessee without giving effect to that state's choice-of-law principles.

IN WITNESS WHEREOF, the Settling Parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys dated as of December 1, 2014.


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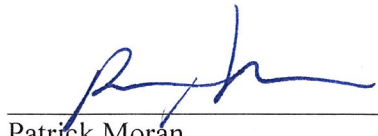
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