

## SETTLEMENT AGREEMENT

1. This Settlement Agreement and Release (“Agreement”) is made and entered into on September 4, 2013 by and among Plaintiff Alice Suryana (“Plaintiff”), for herself and on behalf of the Settlement Class, and Defendant Amegy Bank National Association (“Amegy”) and Defendant Zions Bancorporation (“Bancorp”) (collectively, the “Parties”), subject to preliminary and final Court approval as required by Federal Rule of Civil Procedure 23. In consideration of the Agreement’s promises and covenants, and upon entry of a Final Order and Judgment, Amegy, Bancorp, Class Counsel, and Plaintiff stipulate and agree that all of the Settlement Class’s claims against Amegy and Bancorp in the action entitled *Barlow v. Zions Bancorporation*, No. 2:11-cv-00929-BSJ (D. Utah) shall be settled and compromised according to the terms set forth in the Agreement.

### **I. RECITALS**

2. On October 5, 2011 Melinda Barlow (“Barlow”) filed an action against Zions First National Bank (“ZFNB”) entitled *Barlow v. Zions First National Bank*, No. 2:11-cv-0929-BSJ in the United States District Court for the District of Utah. Barlow sought to represent a class of current and former ZFNB customers allegedly harmed by ZFNB’s practices related to the posting of debit transactions to customers’ deposit accounts.

3. On November 5, 2011, J. David McGee (“McGee”) filed a similar class action, entitled *McGee v. Zions First National Bank*, No. 2:11-cv-01057, against ZFNB and Zions Bancorporation (“Bancorp”), ZFNB’s parent corporation, in the United States District Court for the District of Utah. McGee sought to represent two classes: (1) a class consisting of all customers of ZFNB allegedly harmed by that bank’s transaction posting practices; and (2) a class consisting of all customers of Bancorp’s eight subsidiary banks allegedly harmed by those banks’ practices related to the posting of debit transactions to customers’ deposit accounts.

4. On December 15, 2011, the Utah District Court, Hon. Bruce S. Jenkins, granted Barlow’s motion to consolidate the Barlow and McGee actions into a single action entitled *Barlow v. Zions Bancorporation*, No. 2:11-cv-0929-BSJ (D. Utah) (the “Action”). Kristen Maxwell (“Maxwell”), another ZFNB customer, joined Barlow and McGee (collectively, the “ZFNB Plaintiffs”) as a named plaintiff in the Action.

5. On February 3, 2012, the ZFNB Plaintiffs filed a Consolidated Amended Class Action Complaint (“Consolidated Complaint”) against ZFNB and Bancorp.

6. On March 5, 2012, ZFNB and Bancorp moved to dismiss the Consolidated Complaint or, in the alternative, for a more definite statement. Bancorp separately moved to dismiss for failure to join necessary parties.

7. On May 2, 2012, the District Court granted ZFNB and Bancorp’s motion for a more definite statement, denied Bancorp’s separate motion to dismiss, and denied as moot ZFNB and Bancorp’s motion to dismiss and the ZFNB Plaintiffs’ request for leave to amend the Consolidated Complaint.

8. On May 15, 2012, the ZFNB Plaintiffs filed an Amended Consolidated Class Action Complaint (“Amended Consolidated Complaint”) against ZFNB and Bancorp.

9. On June 4, 2012, ZFNB and Bancorp answered the Amended Consolidated Complaint.

10. On April 4, 2013, the Parties participated in a mediation before Professor Eric D. Green of Resolutions LLC. At the mediation, the Parties discussed four potential settlements that would resolve all claims asserted, or which would be asserted: (1) against ZFNB in the Action; (2) against Amegy in a class action to be filed by Plaintiff; (3) against National Bank of Arizona (“NBAZ”) in a class action to be filed by Donald Newby and Kelly Dowdle; and (4) against Vectra Bank Colorado, N.A. (“Vectra”) in a class action to be filed by Ray Mohrlang. The claims that would be asserted in the actions against Amegy, NBAZ and Vectra would be similar in substance to the claims asserted against ZFNB in the Action.

11. The Parties did not achieve a resolution at the mediation. However, the Parties continued to conduct negotiations through the mediator and, on April 30, reached an agreement, in principle, to resolve the claims asserted against ZFNB in Action and the claims that would be brought against Amegy, NBAZ and Vectra (the “Settlements”).

12. On June 12, 2013, the ZFNB Plaintiffs filed a motion for leave to file a Second Amended Consolidated Class Action Complaint in the Action to add Plaintiff, Newby, Dowdle, and Mohrlang as plaintiffs, and Amegy, NBAZ, and Vectra as defendants.

13. The District Court granted the ZFNB Plaintiffs’ motion to amend and stayed the deadline for defendants to respond to the Second Amended Consolidated Class Action Complaint in an order entered on June 19, 2013.

14. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Settlement Class. The Parties intend this Agreement to bind Plaintiff, Amegy, and all members of the Settlement Class 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 of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

## **II. DEFINITIONS**

15. “Account” means any checking, demand deposit, or savings account maintained by Amegy in the United States accessible by a debit card.

16. “Account Holder” means the individual, or individuals, who own an Account.

17. “Administration Account” means the account established for the purposes of paying administration costs and distributing the Settlement Amount in accordance with the Settlement. The Administration Account shall be an interest-bearing account maintained by the Settlement Administrator at a financial institution mutually selected by the Amegy and Class

Counsel. Until the Effective Date occurs, any funds in the Administration Account shall remain property of, and will be owned by, Amegy.

18. "Class Counsel" means:

**ANDERSON & KARREBERG**

Thomas R. Karrenberg  
Jon V. Harper  
50 West Broadway, Suite 700  
Salt Lake City, Utah 84101-2035

**KELLER ROHRBACK L.L.P.**

Mark A. Griffin  
Karin B. Swope  
1201 Third Avenue, Suite 3200  
Seattle, Washington 98101

**KRONENBERGER ROSENFELD LLP**

Karl Kronenberger  
150 Post Street, Suite 520  
San Francisco, CA 94108-4707

**SHAPIRO HABER & URMY LLP**

Edward F. Haber  
Thomas V. Urmy, Jr.  
Patrick J. Vallely  
53 State Street  
Boston, MA 02109

19. "Class Period" means October 5, 2007 through and including May 6, 2011.

20. "Current Account Holder" means the holder of an Account, individually or jointly, at any time during the Class Period, who continues to hold an Account, individually or jointly, as of the date that the Net Settlement Amount, as defined in paragraph 74 of this Agreement, is distributed to Settlement Class Members pursuant to this Agreement.

21. "Daily Overdraft Fee" means a fee assessed because an account has been overdrawn for a number of consecutive days, by a minimum amount.

22. "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. "Debit Card Transaction" does not include a debit transaction effectuated by check, by preauthorized transaction, by wire transfer, or a transfer to another account such as a credit card account or line of credit.

23. "Effective Date" means either (a) the date thirty (30) days after the entry of Final Judgment and Order Approving Settlement if no motions for reconsideration or no appeals or

other efforts to obtain review have been filed or (b) in the event that a motion for reconsideration, an appeal, or other effort to obtain review of the Final Judgment and Order Approving Settlement has been initiated, the date thirty (30) days after such reconsideration, appeal or review has been finally concluded and is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for writ of certiorari, or otherwise.

24. “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 Plaintiff. 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.

25. “Final Approval Order” means the order and judgment that the Court enters upon Final Approval, substantially in the form annexed hereto as Exhibit 4. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then Final Approval Order includes all such orders.

26. “High-to-Low/High-to-Low Posting” means Amegy’s practice of sequencing an Account’s Debit Card Transactions (along with other debit transactions) from highest-to-lowest dollar amount, which results in some instances in the assessment of additional Overdraft Fees that would not have been assessed if Amegy had used a Low-to-High Posting method or a posting method that sequenced transactions in the chronological order in which the transactions were initiated by Settlement Class Members, or an order that simulated the chronological order in which the transactions were initiated by Settlement Class Members.

27. “Long-Form Notice” means the detailed form of notice that will be posted on the Settlement Website. The Long-Form Notice shall be in a form substantially similar to the form attached hereto as Exhibit 2.

28. “Low-to-High/Low-to-High Posting” means sequencing an Account’s Debit Card Transactions (along with other debit transactions) from lowest-to-highest dollar amount.

29. “Mailed Notice” means the notice that will be mailed to Settlement Class Members by the Settlement Administrator. The Mailed Notice shall be in a form substantially similar to the form attached hereto as Exhibit 1.

30. “Notice Program” means the methods provided in this Agreement for giving notice to Settlement Class Members which consists of the Mailed Notice, and the Long-Form Notice. An additional description of the contemplated Notice Program is provided in Section VIII hereof.

31. “Opt-Out Period” means the period set by the Court during which Settlement Class Members may elect to be excluded from the Settlement.

32. “Overdraft Fee” means any fee assessed to an Account when paying an item at a time the Account has insufficient funds to cover the item. Fees charged to transfer balances from other accounts are excluded.

33. "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 Amount is distributed to Settlement Class Members pursuant to this Agreement.

34. "Preliminary Approval" means the date that the Court enters, without material change, an order preliminarily approving the Settlement.

35. "Preliminary Approval Order" means the Court's order preliminarily approving the Settlement and certifying the Settlement Class, substantially in the form annexed hereto as Exhibit 3.

36. "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.

37. "Released Parties" means those persons released as specified in Section XIV hereof.

38. "Releasing Parties" means Plaintiff and all Settlement Class Members who do not timely and properly opt out of the Settlement, and each of their respective heirs, assigns, beneficiaries, and successors.

39. "Service Award" means the incentive award to the class representative described in Paragraph 88.

40. "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.

41. "Settlement Administrator" means Rust Consulting, Inc. Class Counsel, Bancorp, and Amegy may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, Class Counsel, Amegy, or Bancorp, may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.

42. The "Settlement Amount" is \$2,620,959.37.

43. "Settlement Class" means all holders of any Amegy Account (whether held individually or jointly) within the class defined in Section III.

44. "Settlement Class Member" means any person included in the Settlement Class.

45. "Settlement Website" means the website that the Settlement Administrator will establish as soon as practicable following Preliminary Approval as a means for Settlement Class Members to obtain notice of and information about the Settlement. The Settlement Website shall be established within five (5) days of Preliminary Approval and shall remain active through the Effective Date.

### **III. CERTIFICATION OF THE SETTLEMENT CLASS**

46. For purposes of settlement, Plaintiff shall ask the Court to certify the following class under Federal Rule of Civil Procedure 23(b)(3):

All holders of an Amegy Account who, from October 5, 2007, through and including May 6, 2011, incurred one or more Overdraft Fees as a result of High-to-Low Posting. The class does not include Amegy employees, officers, or directors, or the judge presiding over this Action.

47. Amegy agrees to the certification of the Settlement Class for purposes of this Settlement only. If the Court declines to approve the Settlement, or if the Court changes the Settlement Class composition or the terms of the Settlement in any way not acceptable to Amegy after reasonable consultation with Class Counsel, or if certification of the Settlement Class or approval of the Settlement is reversed, or if certification of the Settlement Class or approval of the Settlement is changed upon appeal or review in any way not acceptable to Amegy after reasonable consultation with Class Counsel, Amegy shall have the right to terminate the Settlement pursuant to Section XVI.

### **IV. SETTLEMENT CONSIDERATION**

48. According to the Agreement's terms and subject to the Court's approval, Amegy shall pay total cash consideration of \$2,620,959.37. This amount shall cover: all compensation to the Settlement Class; all fees, costs, and expenses of class counsel; the Service Award; all costs incurred by the Settlement Administrator in administering the Settlement and Notice Program; all tax liability, if any, arising from the Settlement. In return, Plaintiff and the Settlement Class shall abide by the Releases provided in Section XIV, and the Parties shall comply with all other terms of this Agreement. In no event shall Amegy be required to pay more than \$2,620,959.37 in connection with this Settlement.

### **V. PRELIMINARY SETTLEMENT APPROVAL**

49. Upon execution of this Agreement by all Parties, Class Counsel shall promptly file a motion with the Court requesting that it enter the Preliminary Approval Order certifying a settlement class, granting preliminary approval of this Settlement, and scheduling a Final Approval hearing for a time and date 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 a Service Award to Plaintiff.

50. Once Preliminary Approval is granted, Amegy and Class Counsel, along with their respective experts, shall work together to identify the Settlement Class Members utilizing the methodology outlined in Paragraphs 67(a)-(c) below.

51. Amegy, 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. SETTLEMENT ADMINISTRATOR**

52. The Settlement Administrator shall administer various aspects of the Settlement as described in the following paragraph and perform other functions specified for the Settlement Administrator elsewhere in this Agreement. These functions include, but are not limited to, administering the Notice Program and distributing funds from the Administration Account as provided in this Agreement. Amegy and Class Counsel shall jointly oversee the Settlement Administrator.

53. In addition to other responsibilities described in this Agreement, the Settlement Administrator's duties are as follows:

- a. Obtain from Class Counsel and Amegy the Settlement Class Members' names and addresses (to the extent available), and verify and update the addresses received through the National Change of Address database, for the purpose of administering the Notice Program, 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 Amegy to make the payment by a credit to the Settlement Class Members' Accounts;
- b. Administer the Notice Program as described in Section VIII;
- c. Establish and maintain a Post Office box for requests for exclusion from the Settlement Class;
- d. Establish and maintain the Settlement Website;
- e. Establish and maintain an automated toll-free telephone line for Settlement Class Members to call with Settlement-related questions, and answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- f. Respond to any mailed Settlement Class Member inquiries;
- g. Process all requests for exclusion from the Settlement Class;
- h. Provide weekly reports and, no later than five (5) days after the end of the Opt-Out Period, a final report to Class Counsel and Amegy summarizing the number of requests for exclusion received that week, the total number of exclusion requests received to date, and other pertinent information;
- i. 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;
- j. Process and transmit distributions to Settlement Class Members from the Administration Account;

- k. Pay invoices, expenses and costs approved by Class Counsel as provided in this Agreement; and
- l. Perform any other Settlement-administration-related function at the instruction of Class Counsel and Amegy, including, but not limited to, verifying that Settlement Amount has been distributed as required by Sections XII and XIII of the Agreement.

All costs that the Settlement Administrator incurs which are permitted by this Agreement shall be paid from the Settlement Amount.

## **VII. DISCOVERY**

54. Class Counsel and Amegy have already engaged in significant informal discovery. While complying with its statutory and regulatory obligations to protect its customers' private financial information, Amegy will continue cooperating informally with Class Counsel by providing reasonably available data to permit Class Counsel and their experts to identify Settlement Class Members utilizing the methodology described in Paragraph 67 and to perform the distribution analysis detailed in Section X below.

## **VIII. NOTICE TO SETTLEMENT CLASS MEMBERS**

55. Upon Preliminary Approval of the Settlement, at the direction of Class Counsel and Amegy, the Settlement Administrator shall implement the Notice Program provided herein. Notices provided under or as part of the Notice Program shall not bear or include the Amegy or Bancorp logos or trademarks or the return address of Amegy or Bancorp, or otherwise be styled to appear to originate from Amegy or Bancorp.

56. Any Settlement Class Member who does not timely and validly request to opt out shall be bound by the terms of this Agreement.

57. The Notice Program shall provide notice to Settlement Class Members in two ways: the Mailed Notice and the Long-Form Notice. Additionally, Amegy shall post a link to the Settlement Website on its homepage as long as the Settlement Website remains active.

58. Objections to the Settlement or to the application for fees, costs, expenses, and Service Award must be mailed to the Clerk of the Court, Class Counsel, and counsel for Amegy. For an objection to be considered by the Court, the objection must be mailed first-class postage prepaid and addressed in accordance with the instructions and the postmark date indicated on the envelope must be no later than the last day of the Opt-Out Period, as specified in the Mailed Notice and the Long-Form Notice.

59. 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 his 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 such 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. the number of times in which the objector's counsel and/or counsel's law firm have 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 counsel or the firm has made such objection, and a copy of any orders related to or bearing upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;
- 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 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).

60. Within twenty-eight (28) days after the date the Settlement Administrator receives from Class Counsel and Amegy the data files that identify the names and last known addresses of identifiable Settlement Class Members, the Settlement Administrator shall run the addresses through the National Change of Address Database, and shall mail postcards to all Settlement Class Members containing the Mailed Notice form approved in the Preliminary Approval Order (the "Initial Mailed Notice").

61. The Settlement Administrator shall perform reasonable address traces for all Initial Mailed Notice postcards that are returned as undeliverable. No later than fifty-six (56) 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”).

62. Within ten (10) days after the date the Settlement Administrator completes the Notice Re-mailing Process, the Settlement Administrator shall provide Amegy and Class Counsel an affidavit that confirms that the Mailed Notice was given accordance with the terms of this Agreement. 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.

63. All costs of the Notice Program and the Settlement Administrator’s fees and expenses related thereto shall be paid from the Settlement Amount.

64. Within the parameters set forth in this Section VIII, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and Amegy.

## **IX. FINAL APPROVAL AND ORDER OF JUDGMENT**

65. 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 her motion for final approval of the Settlement, and her application for attorneys’ fees, costs and expenses and for Service Award for Plaintiff, no later than forty-two (42) days prior to 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 Service Award for Plaintiff. 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 filed timely objections that meet all of the requirements listed in Paragraphs 58 and 59. 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 whether to approve Class Counsel’s request for attorneys’ fees, costs, expenses and Service Award.

## **X. CALCULATING THE OVERDRAFT DIFFERENTIAL**

66. Amegy and its experts, in consultation with Class Counsel and their experts, shall identify data – to the extent it exists in reasonably accessible electronic form – sufficient to calculate and implement the allocation of Settlement Amount as provided in Sections X and XII. The calculation and implementation of allocations contemplated by this Section X shall be jointly undertaken by Class Counsel and its experts, and Amegy and its experts. The methodology provided for in Paragraph 67 will be 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 computation. Consistent with its statutory and regulatory obligations to maintain bank security and protect its customers’ private financial information, Amegy shall make available to Class Counsel and to Plaintiff’s experts data and information sufficient to allow Class Counsel and its experts to determine and confirm the calculations and allocations contemplated by this Agreement and Amegy’s implementation of such allocations.

67. The amount of the Settlement Amount to which each identifiable Settlement Class Member is entitled for the Class Period (subject to the availability of data) shall be determined using the following methodology, or such other methodology as would have an equivalent result:

- a. All Accounts will be identified in which, on one or more calendar days during the Class Period, Amegy assessed two or more Overdraft Fees on such day or days during which the Account was subject to High-to-Low Posting.
- b. For each such calendar day on which Amegy assessed two or more Overdraft Fees, all transactions posted in such Accounts on that day will be ordered in the following posting order:
  - i. All credits posted to the Account that day;
  - ii. All Amegy-initiated debits and other high priority debits (including Amegy's priority posting groups 610, 670, 680, 700, and 730), in the order originally posted by Amegy;
  - iii. All Debit Card Transactions, ordered beginning with the lowest dollar amount debit and ending with the highest dollar amount debit; and
  - iv. All remaining debits, including ACH transactions, non-Debit Card-initiated withdrawals, checks, transfers, and bank fees, left in the order originally posted by Amegy.
- c. After ordering the transactions as set forth in subparagraph (b) of this paragraph, each Account – on a daily basis for such calendar days – will be identified in which the number of Overdraft Fees Amegy actually assessed exceeds the number of Overdraft Fees that would have been assessed if the Account had been ordered as set forth in subparagraph (b) (“Additional Overdrafts”).
- d. The dollar amount of the Additional Overdrafts will be calculated (“Additional Overdrafts Amount”).
- e. For each Account in which one or more Additional Overdrafts have been identified, Amegy customer transaction data will be reviewed to identify any instance in which Amegy refunded to an Account an overdraft fee or NSF fee within thirty (30) days following the date on which an Additional Overdraft occurred as to that Account. The identified refunds will be presumed to apply to the Additional Overdraft (“Refunded Additional Overdrafts”).
- f. The dollar amount of the Refunded Additional Overdrafts will be calculated (“Refunded Additional Overdrafts Amount”).
- g. All Accounts will be identified in which on any such calendar day the Additional Overdrafts Amount exceeds the Refunded Additional Overdrafts Amount. The Refunded Additional Overdrafts Amount will be subtracted from the Additional Overdrafts Amount to determine the “Differential Overdraft Fee.”

68. The foregoing allocation formula will yield the identification of all Account Holders whose Accounts experienced a Differential Overdraft Fee greater than zero dollars (“Positive Differential Overdraft Fee”) as well as the amounts of their respective Positive Differential Overdraft Fees.

69. The Parties agree the foregoing allocation formula is exclusively for purposes of computing retrospectively, in a reasonable and efficient fashion, the amount of Positive Differential Overdraft Fees each identifiable Settlement Class Member paid to Amegy for the Class Period as a result of High-to-Low Posting and the amount of any distribution each Settlement Class Member should receive from the Settlement Amount. The fact that this allocation formula is used herein is not intended and shall not be used for any other purpose or objective whatsoever.

## **XI. SETTLEMENT AMOUNT**

70. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases set forth in Section XIV and the dismissal of the Action upon Final Approval, Amegy agrees to pay the Settlement Amount.

71. The Settlement Amount shall be used for the following purposes:

- a. All payments to Settlement Class Members;
- b. Payment of the Court-ordered award of Class Counsel’s attorneys’ fees, costs, and expenses pursuant to Section XV hereof;
- c. Payment of the Court-ordered Service Award to Plaintiff pursuant to Section XV hereof;
- d. Payment of any court-authorized costs incurred by the Settlement Administrator in connection with the Settlement Administrator’s duties described in paragraph 53;
- e. Payment of all Taxes as set forth in paragraph 73; and
- f. Payment of any other fees, costs and expenses not specifically enumerated in subparagraphs (a) through (f) of this paragraph, subject to approval of Class Counsel, Amegy and the Court.

72. Within ten (10) business days of Final Approval, Amegy shall deposit the Settlement Amount into the Administration Account.

73. The Settlement Amount at all times shall be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed upon Bancorp or Amegy or their counsel, or the Settlement Class, Plaintiff or Class Counsel, with respect to income earned by the Settlement Fund for any period during which the

Settlement Fund does not so qualify as a “qualified settlement fund” (collectively the “Taxes”), shall be paid out of the Settlement Fund. The Settlement Class, Plaintiff and Class Counsel, and Bancorp and Amegy and their counsel shall have no personal or other liability or responsibility for any of the Taxes. The Settlement Fund shall indemnify and hold the Settlement Class, Plaintiff, and Class Counsel, and Bancorp and Amegy and their counsel harmless for all Taxes that any of them may be required to pay (including, without limitation, Taxes payable by reason of any such indemnification).

## **XII. DISTRIBUTION OF NET SETTLEMENT AMOUNT**

74. Within fourteen (14) days of the Effective Date, the Settlement Administrator shall determine the Net Settlement Amount. The Net Settlement Amount shall be equal to the Settlement Amount 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 Plaintiff;
- c. all authorized costs incurred by the Settlement Administrator in connection with the Settlement Administrator’s duties described in paragraph 53;
- d. all Taxes set forth in paragraph 73;
- e. a reservation of a reasonable amount of funds for prospective costs of Settlement administration as agreed upon by Class Counsel and Amegy and authorized by the Court; and
- f. all other costs and/or expenses incurred in connection with the Settlement not specifically enumerated in subsections (a) through (d) of this paragraph that are expressly provided for in this Agreement or have been approved by Class Counsel and Amegy.

75. In determining the distribution to be paid to Settlement Class Members, the Settlement Administrator shall divide the Net Settlement Amount by the total amount of all Settlement Class Members’ Positive Differential Overdraft Fees, calculated pursuant to Section X hereof. This calculation shall yield the “Pro Rata Percentage.”

76. The Settlement Administrator shall multiply each Settlement Class Member’s total Positive Differential Overdraft Fees by the Pro Rata Percentage. This calculation shall yield each Settlement Class Member’s “Differential Overdraft Payment Amount.”

77. Every Settlement Class Member shall be paid from the Net Settlement Amount the total Differential Overdraft Payment Amount to which he or she is entitled, calculated as set forth herein (“Settlement Payments”).

78. Settlement Payments to Current Account Holders shall be made by a credit to those Account Holders’ Accounts. Amegy shall notify Current Account Holders of such credit and

provide a brief explanation that the credit has been made as a payment in connection with the Settlement. Amegy shall provide the notice of account credit described in this paragraph in or with the account statement on which the credit is reflected. Amegy will bear any costs associated with implementing the account credits and notification discussed in this paragraph.

79. Any account credits paid pursuant to paragraph 78 shall be paid from the Net Settlement Amount. For each Current Account Holder entitled to a Settlement Payment, the Settlement Administrator shall provide Amegy with the account holder's name, account number, and the amount of account credit to which he or she is entitled. The Settlement Administrator shall also pay to Amegy from the Net Settlement Amount the sum of the total Settlement Payments to be credited to the accounts of all Current Account Holders. Amegy will distribute those funds by crediting the Accounts of the Current Account Holders, following which it will provide written verification to Class Counsel and the Settlement Administrator of the amount of account credits that were given.

80. Settlement Payments to Past Account Holders will be made by check with an appropriate legend, in a form approved by Class Counsel and Amegy, to indicate that it is from the Settlement. Checks will be cut and mailed by the Settlement Administrator, and will be sent to the Past Account Holders' last known addresses, as determined by the Settlement Administrator. Checks shall be valid for one-hundred and eighty (180) days. Checks will be drawn payable to all persons whose names are included in the name of any account and will be mailed addressed to the first Account Holder identified on the name of the Account. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of a Settlement Payment whose check is returned by the Postal Service as undeliverable, and will re-mail it 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 accompanying communication shall be paid from the Settlement Amount.

### **XIII. DISTRIBUTION OF REMAINING FUNDS**

81. Within thirty (30) days after the latest issued check is no longer valid pursuant to Paragraph 80, the Settlement Administrator shall distribute any funds remaining in the Administration Account, at the election of Class Counsel, to either: (a) Settlement Class Members who received Settlement Payments on a pro rata basis, to the extent feasible and practical in light of the costs of administering such payments; or (b) to Texas JumpStart Coalition for Personal Financial Literacy as designated *cy pres* recipient. All costs associated with the disbursement of residual funds pursuant to this Paragraph shall be paid from the Settlement Amount. In the event no money remains in the Settlement Amount within thirty (30) days after the latest issued check is no longer valid pursuant to Paragraph 80, the Settlement Administrator shall have no obligation to make any residual distribution.

### **XIV. RELEASES**

82. As of the Effective Date, Plaintiff and each Settlement Class Member, 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 Amegy and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, including Bancorp, 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 between October 5, 2007 and Preliminary Approval that were or could have been alleged in the Action arising from, either directly or indirectly, Amegy's posting of debits or credits to customer accounts, 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 calculation, assessment, imposition, amount, or collection of one or more Overdraft Fees or Daily Overdraft Fees assessed on an Account as a result of Debit Card Transactions, or (b) Amegy's related policies and practices concerning authorization, processing, sequencing, or posting. The foregoing release includes, by way of example but not limitation, any and all of the following: (1) the authorization, approval, processing, handling, sequencing, or posting of any Debit Card Transaction; (2) Amegy's funds availability policies, including any reduction of an Account's available balance due to pending debits or credits; (3) any failure to clearly to disclose the ability of customers to opt out of overdraft protection; (4) any refusal to allow customers to opt out of overdraft protection; (5) any failure to notify or to obtain affirmative consent from customers prior to processing transactions that would result in Overdraft Fees; (6) any failure to alert a customer that a Debit Card Transaction would trigger an Overdraft Fee; (7) any failure to provide customers with the opportunity to cancel or opt-out of Debit Card Transactions, or to publicize or disclose the ability of the holder of any Account to cancel or opt-out of an Overdraft Fee; (8) any alleged manipulation or reordering of transactions for the purpose of increasing the number of Overdraft Fees; (9) any imposition of an Overdraft Fee when a different system for authorizing or posting transactions would have resulted in fewer such fees; (10) any failure to provide customers with accurate balance information; (11) any assessment of allegedly exorbitant or excessive Overdraft Fees or Daily Overdraft Fees; (12) any failure adequately or clearly to disclose, in one or more agreements, posting order, overdrafts, Overdraft Fees, or the manner in which Debit Card Transactions are or would be approved, processed, or posted; (13) any conduct or statements encouraging the use of Amegy debit cards; or (14) any advertisements related to any of the foregoing.

83. 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 Section XIV, 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 Section XIV. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the releases contained in Section XIV, 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.

84. Nothing in this Agreement shall operate or be construed to release any claims or rights Amegy 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 Amegy, pursuant to the terms and conditions of such accounts, loans, or any other debts.

#### **XV. PAYMENT OF ATTORNEY'S FEES, COSTS, AND SERVICE AWARDS**

85. Bancorp and Amegy understand Class Counsel will request attorneys' fees of up to 33% of the Settlement Amount and full reimbursement of their costs and expenses. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Amount. The determination of Class Counsel's request for attorneys' fees shall be based on controlling Tenth 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.

86. The Settlement Administrator shall pay from the Settlement Amount to Class Counsel all Court-approved attorneys' fees, costs, and expenses of Class Counsel, within ten (10) days after the Effective Date. Upon request of the Settlement Administrator, Class Counsel shall provide the Settlement Administrator with any required tax information or forms before the payment is made.

87. The payment of attorneys' fees, costs, and expenses of Class Counsel pursuant to paragraph 86 shall be made through a deposit by the Settlement Administrator into an Attorney Client Trust Account jointly controlled by Class Counsel. After the fees, costs, and expenses have been deposited into this account, Class Counsel shall be solely responsible for distributing each Class Counsel firm's allocated share of such fees, costs, and expenses to that firm.

88. Class Counsel will ask the Court to approve a service award of \$5,000 to Plaintiff (the "Service Award"). The Service Award is to be paid from the Settlement Amount. Any Service Award approved by the Court shall be in addition to any Settlement Payment which Plaintiff may otherwise be entitled to receive. Amegy agrees not to oppose Class Counsel's request for such Service Award.

89. The Parties negotiated and reached the foregoing agreements regarding attorneys' fees, costs, and Service Award only after reaching agreement on all other material terms of this Settlement.

#### **XVI. TERMINATION OF SETTLEMENT AGREEMENT**

90. This Settlement may be terminated by either Class Counsel or Amegy by serving on counsel for the opposing Party and filing with the Court a written notice of termination within twenty-eight (28) days after any of the following occurrences:



- a. the Court fails to preliminarily approve the Settlement within one-hundred and eighty (180) days after filing of the motion for preliminary approval, or fails to finally approve the Settlement within three-hundred and sixty (360) days of Preliminary Approval by the Court;
- b. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
- c. an appellate court reverses the Final Approval Order, and the Settlement is not reinstated without material change by the Court on remand;
- d. 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 Class Counsel, Plaintiff, the Settlement Class, Amegy or Bancorp reasonably believe to be material to their detriment; or
- e. any other ground for termination provided for elsewhere in this Agreement.

91. Amegy shall also have the right to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within fourteen (14) days of its receipt from the Settlement Administrator of the final report after the opt-out period, if the number of Settlement Class Members who timely request exclusion from the Settlement Class equals or exceeds 5% of the potential Settlement Class.

92. In the event of a termination of the Settlement, the Parties retain all of their pre-Settlement litigation rights and defenses, including Plaintiff's right to seek class certification and Bancorp and Amegy's rights to oppose class certification.

## **XVII. EFFECT OF TERMINATION**

93. The grounds upon which this Agreement may be terminated are set forth above in Section XVI. In the event of a termination, this Agreement shall be considered null and void; all of Amegy's obligations under the Settlement shall cease to be of any force and effect; any funds in the Administration Account shall be returned to Amegy; 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 claims and defenses will be preserved, including, but not limited to, Plaintiff's right to seek class certification and Amegy's right to oppose class certification.

94. In the event of a termination of the Settlement, the Settlement Administrator shall return any funds in the Administration Account to Amegy within seven (7) days of termination.

95. In the event of a termination of the Settlement, Amegy will reimburse the Settlement Administrator for any administrative fees and costs incurred prior to termination.

96. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions of Section XVI.

97. In the event the Settlement is terminated, 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, without prejudice to Plaintiff's right to seek class certification, and Amegy's right to oppose class certification. 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.

### **XIII. NO ADMISSION OF LIABILITY**

98. Amegy and Bancorp dispute the claims alleged in the Action and does not by this Agreement or otherwise admit any liability or wrongdoing of any kind. Amegy and Bancorp have 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 have been asserted in the Action.

99. Class Counsel and Plaintiff 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 have fully investigated the facts and law relevant to the merits of the claims, have conducted informal discovery, and have conducted independent investigation of the challenged practices. Class Counsel and Plaintiff have concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

100. 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.

101. 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.

102. In addition to any other defenses Amegy and Bancorp 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**

103. 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.

104. Binding Effect. This Agreement shall be binding upon, and inure to the benefit the successors and assigns of the Releasing Parties and the Released Parties.

105. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to 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 fully force and effect regardless of events that may occur, or court decisions that may be issued in any other court.

106. 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 done so.

107. Integration. This Agreement 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.

108. 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.

109. Governing Law. The Agreement shall be construed in accordance with, and be governed by, the laws of the State of Texas, without regard to the principles thereof regarding choice of law.

110. 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.

111. 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 and Settlement Administrator. As part of their respective agreements to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

112. Notices. All notices provided under this agreement shall be sent by email and facsimile with a hard copy sent by overnight mail to:

For Plaintiff and the Settlement Class:

**ANDERSON & KARRENBERG**

Thomas R. Karrenberg  
Jon V. Harper  
50 West Broadway, Suite 700  
Salt Lake City, Utah 84101-2035

**KELLER ROHRBACK L.L.P.**

Mark A. Griffin  
Karin B. Swope  
1201 Third Avenue, Suite 3200  
Seattle, Washington 98101

**KRONENBERGER ROSENFELD LLP**

Karl Kronenberger  
150 Post Street, Suite 520  
San Francisco, CA 94108-4707

**SHAPIRO HABER & URMY LLP**

Edward F. Haber  
Thomas V. Urmy, Jr.  
Patrick J. Vallely  
53 State Street  
Boston, MA 02109

For Amegy:

**REED SMITH LLP**

Abraham J. Colman  
Scott H. Jacobs  
Kasey J. Curtis  
355 South Grand Avenue, Suite 2900  
Los Angeles, CA 90071-1514

**CALLISTER NEBEKER AND MCCULLOUGH**

Mark L. Callister, Esq.  
Zions Bank Building, Suite 900  
10 East South Temple  
Salt Lake City, Utah 84133

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.

113. Modification and Amendment. This Agreement may be amended or modified only by a written instrument signed by counsel for Amegy and Class Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

114. 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.

115. Authority. 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.

116. Agreement Mutually Prepared. Neither Amegy 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.

117. 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. Amegy has provided and is providing information that Plaintiff reasonably requests 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.

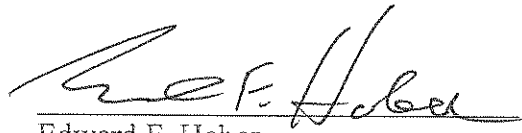
118. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she or it has fully read this Agreement and the Releases contained in Section XIV hereof received independent legal advice with respect to the advisability of entering into this Agreement and the Releases,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

Dated: Aug 30, 2013

Alice Suryana  
Alice Suryana (Aug 30, 2013)

Alice Suryana  
Plaintiff

Dated: 9-4-13



Edward F. Haber  
**Shapiro Haber & Urmy LLP**  
53 State Street  
Boston, MA 02109  
Telephone: (617) 439-3939  
*Class Counsel*

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

Mark A. Griffin  
**Keller Rohrback, L.L.P.**  
1201 Third Avenue, Suite 3200  
Seattle, Washington 98101  
Telephone: (206) 623-1900  
*Class Counsel*

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

Karl Kronenberger  
**Kronenberger Rosenfeld, LLP**  
150 Post Street, Suite 520  
San Francisco, CA 94108-4707  
Telephone: (415) 955-1155  
*Class Counsel*

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

Jon V. Harper  
**Anderson & Karrenberg**  
50 West Broadway, Suite 700  
Salt Lake City, UT 84101  
Telephone: (801) 534-1700  
*Class Counsel*

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

ZIONS BANCORPORATION  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
*Defendant*

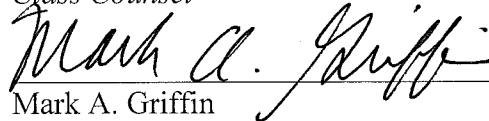
Dated: \_\_\_\_\_

AMEGY BANK NATIONAL ASSOCIATION  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
*Defendant*

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

\_\_\_\_\_  
Edward F. Haber  
**Shapiro Haber & Urmy LLP**  
53 State Street  
Boston, MA 02109  
Telephone: (617) 439-3939

*Class Counsel*



Mark A. Griffin

**Keller Rohrback, L.L.P.**

1201 Third Avenue, Suite 3200  
Seattle, Washington 98101  
Telephone: (206) 623-1900

*Class Counsel*

Dated: 8/30/13

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

\_\_\_\_\_  
Karl Kronenberger  
**Kronenberger Rosenfeld, LLP**  
150 Post Street, Suite 520  
San Francisco, CA 94108-4707  
Telephone: (415) 955-1155

*Class Counsel*

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

\_\_\_\_\_  
Jon V. Harper  
**Anderson & Karrenberg**  
50 West Broadway, Suite 700  
Salt Lake City, UT 84101  
Telephone: (801) 534-1700

*Class Counsel*

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

\_\_\_\_\_  
ZIONS BANCORPORATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

*Defendant*

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

\_\_\_\_\_  
AMEGY BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

*Defendant*


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

\_\_\_\_\_  
Edward F. Haber  
**Shapiro Haber & Urmey LLP**  
53 State Street  
Boston, MA 02109  
Telephone: (617) 439-3939  
*Class Counsel*

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

\_\_\_\_\_  
Mark A. Griffin  
**Keller Rohrback, L.L.P.**  
1201 Third Avenue, Suite 3200  
Seattle, Washington 98101  
Telephone: (206) 623-1900  
*Class Counsel*

Dated: 9-3-13

  
\_\_\_\_\_  
Karl Kronenberger  
**Kronenberger Rosenfeld, LLP**  
150 Post Street, Suite 520  
San Francisco, CA 94108-4707  
Telephone: (415) 955-1155  
*Class Counsel*

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

\_\_\_\_\_  
Jon V. Harper  
**Anderson & Karrenberg**  
50 West Broadway, Suite 700  
Salt Lake City, UT 84101  
Telephone: (801) 534-1700  
*Class Counsel*

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

\_\_\_\_\_  
ZIONS BANCORPORATION  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
*Defendant*

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

\_\_\_\_\_  
AMEGY BANK NATIONAL ASSOCIATION  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
*Defendant*



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

\_\_\_\_\_  
Edward F. Haber  
**Shapiro Haber & Urmy LLP**  
53 State Street  
Boston, MA 02109  
Telephone: (617) 439-3939  
*Class Counsel*

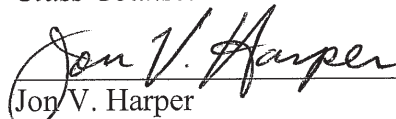
Dated: \_\_\_\_\_

\_\_\_\_\_  
Mark A. Griffin  
**Keller Rohrback, L.L.P.**  
1201 Third Avenue, Suite 3200  
Seattle, Washington 98101  
Telephone: (206) 623-1900  
*Class Counsel*

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

\_\_\_\_\_  
Karl Kronenberger  
**Kronenberger Rosenfeld, LLP**  
150 Post Street, Suite 520  
San Francisco, CA 94108-4707  
Telephone: (415) 955-1155  
*Class Counsel*

Dated: Sept. 3, 2013

\_\_\_\_\_  
  
Jon V. Harper  
**Anderson & Karrenberg**  
50 West Broadway, Suite 700  
Salt Lake City, UT 84101  
Telephone: (801) 534-1700  
*Class Counsel*

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

\_\_\_\_\_  
ZIONS BANCORPORATION  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
*Defendant*

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

\_\_\_\_\_  
AMEGY BANK NATIONAL ASSOCIATION  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
*Defendant*

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

\_\_\_\_\_  
Edward F. Haber  
**Shapiro Haber & Urmy LLP**  
53 State Street  
Boston, MA 02109  
Telephone: (617) 439-3939  
*Class Counsel*

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

\_\_\_\_\_  
Mark A. Griffin  
**Keller Rohrback, L.L.P.**  
1201 Third Avenue, Suite 3200  
Seattle, Washington 98101  
Telephone: (206) 623-1900  
*Class Counsel*


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

\_\_\_\_\_  
Karl Kronenberger  
**Kronenberger Rosenfeld, LLP**  
150 Post Street, Suite 520  
San Francisco, CA 94108-4707  
Telephone: (415) 955-1155  
*Class Counsel*

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

\_\_\_\_\_  
Jon V. Harper  
**Anderson & Karrenberg**  
50 West Broadway, Suite 700  
Salt Lake City, UT 84101  
Telephone: (801) 534-1700  
*Class Counsel*

Dated: Sept. 3, 2013

\_\_\_\_\_  
  
ZIONS BANCORPORATION  
By: Harris A. Simmons  
Its: Chairman, Pres. & CEO  
*Defendant*

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

\_\_\_\_\_  
**AMEGY BANK NATIONAL ASSOCIATION**  
By: Matt Miller  
Its: Chief Executive Officer 8/30/13  
*Defendant*

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

9/4/17

  
\_\_\_\_\_  
Scott H. Jacobs

**Reed Smith LLP**

355 South Grand Avenue, Suite 2900

Los Angeles, CA 90071-1514

Telephone: (213) 457-8000

*Counsel for Defendant*

# Exhibit 1

**If You Paid Overdraft Fees to Amegy Bank, N.A.,  
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 settlement has been reached in a class action lawsuit claiming that Amegy Bank, N.A. (“Amegy”) and Zions Bancorporation (“Bancorp”) improperly posted debit card transactions from highest to lowest dollar amount to increase the number of overdraft fees charged to account holders. Amegy and Bancorp maintain there was nothing wrong with the posting process used. The Court has not decided which side is right.

**Who’s Included?** Amegy’s records show you are a member of the Settlement Class. The Settlement Class includes anyone who (1) had an Amegy deposit account accessible with an Amegy debit card, at any time between October 5, 2007 and May 6, 2011; and (2) were charged one or more overdraft fees because of Amegy’s practice of posting debit card transactions from highest to lowest dollar amount.

**What are the Settlement Terms?** Amegy has established a Settlement Fund of \$2,620,959.37. If you are entitled to receive a cash benefit, and if the Court approves the Settlement, your Amegy account will *automatically* receive a payment or account credit for eligible overdraft fees paid during the period covered by the Settlement. If you no longer maintain an account at Amegy at the time of the payment, a check will be mailed to you at your last known address, so it is important that the settlement administrator be made aware of your current address, if it has changed. Individual payments cannot be determined at this time. Any money left in the Settlement Fund following payments to Class Members and other fees and expenses will either be distributed to Settlement Class Members who have already received a payment or will be paid to the Texas JumpStart Coalition for Personal Financial Literacy, a nonprofit organization approved by the Court.

**Your Rights May be Affected.** If you do not want to be legally bound by the Settlement, you must exclude yourself by \_\_\_\_\_, 2013. If you stay in the Settlement Class, you may object by \_\_\_\_\_, 2013. The Court has scheduled a hearing on \_\_\_\_\_, 2014 to consider whether to approve the Settlement, a request for attorneys’ fees up to 33 1/3 percent of the Settlement Fund, plus expenses, and a service award to the named plaintiff. You may appear at the hearing, but you are not required to attend. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing. For detailed information how to exclude yourself from or object to the Settlement, or where to send your current address if you no longer maintain have an Amegy account, call or visit the website.

**www.AmegyOverdraftSettlement.com 1-800-\_\_\_\_ - \_\_\_\_**

## Exhibit 2

**UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

**If You Paid Overdraft Fees to Amegy Bank, N.A.,  
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 \$2,620,959.37 Settlement has been reached in a class action lawsuit claiming that Amegy Bank N.A. (“Amegy”) and Zions Bancorporation (“Bancorp”) improperly posted debit card transactions from highest to lowest dollar amount to increase the number of overdraft fees charged to account holders. Amegy and Bancorp maintain there was nothing wrong with the posting process used. The Court has not decided which side is right.
- Current and former holders of Amegy deposit accounts may be eligible for a payment or account credit from the Settlement Fund.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

<b>Summary of Your Legal Rights and Options in This Settlement</b>	
<b>Receive a Payment or Account Credit</b>	You do not have to do anything to get a payment or account credit from the Settlement. If the Court approves the Settlement and it becomes final and effective, all identifiable Settlement Class Members who remain in the Settlement Class will <i>automatically</i> receive a payment or account credit.
<b>Exclude Yourself from the Settlement</b>	Get no benefits from the Settlement. This is the only option that allows you to retain your right to bring any other lawsuit against Amegy about the claims in this case.
<b>Object</b>	Write to the Court and the lawyers for both sides if you do not like the Settlement. The Court will consider your objection in determining whether to approve the Settlement.
<b>Go to a Hearing</b>	Ask to speak in Court about the fairness of the Settlement.
<b>Do Nothing</b>	You will receive any payment or account credit to which you are entitled, and give up your rights to participate in further litigation against Amegy about the claims in this case.

- This notice explains these rights and options and the deadlines to exercise them.
- The Court in charge of this case still has to decide whether to approve the Settlement. If it does, and any appeals are resolved, benefits will be distributed to those who qualify. Please be patient.

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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 a 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.

United States District Court Judge Bruce S. Jenkins, of the United States District Court for the District of Utah, is overseeing this case. The case is known as *Barlow v. Zions Bancorporation*, Case No. 2:11-cv-00929-BSJ. The person who sued is Alice Suryana, and she is called the Plaintiff. The Defendants are Amegy Bank, N.A. (“Amegy”) and Bancorp.

### ***2. What is this lawsuit about?***

The lawsuit concerns whether Amegy posted debit card transactions in order from highest to lowest dollar amount to maximize the number of overdraft fees assessed to its customers. The lawsuit claims that, instead of declining certain transactions when an account had insufficient funds to cover a purchase, Amegy authorized the transactions and then processed them in highest to lowest dollar amount order, which had the effect of increasing the number of overdraft fees the bank charged its customers.

The Second Amended Consolidated Class Action Complaint in this lawsuit is posted on the website [www.AmegyOverdraftSettlement.com](http://www.AmegyOverdraftSettlement.com) and contains all of the allegations and claims asserted against Amegy and Bancorp. Amegy and Bancorp maintain there was nothing wrong about Amegy’s approval of transactions or the posting process Amegy used.

### ***3. What is an overdraft fee?***

An overdraft fee is any fee assessed to an account when paying an item because at the time of the payment request or payment the account has insufficient funds to cover the item. Fees charged to transfer balances from other accounts are excluded.

### ***4. Why is this a class action?***

In a class action, one or more people, called class representatives (in this case, one Amegy customer who was assessed overdraft fees), sue on behalf of themselves and other people with similar claims. Together, all the people with similar claims (except those who exclude themselves) are members of a “Settlement Class.”

### ***5. Why is there a Settlement?***

The Court has not decided in favor of either the Plaintiff or Amegy. Instead, both sides agreed to a Settlement. By agreeing to the Settlement, the parties avoid the costs and uncertainty of a trial, and Settlement Class Members immediately receive the benefits described in this notice. The proposed Settlement does not mean that any law was broken or that Amegy or Bancorp did anything wrong. Amegy and Bancorp deny all legal claims in this case. Plaintiff and her attorneys think the Settlement is best for everyone who is affected.

## **WHO IS IN THE SETTLEMENT?**

If you received notice of the Settlement by a postcard addressed to you, then you are a Settlement Class Member. But even if you did not receive a postcard with Settlement notice, you may be a Settlement Class Member, as described below.

**6. Who is included in the Settlement?**

You are a member of the Settlement Class if you:

- Had an Amegy deposit account accessible with an Amegy debit card, at any time between October 5, 2007 and May 6, 2011; and
- Were charged one or more overdraft fees because of Amegy’s practice of posting debit card transactions from highest to lowest dollar amount.

To be included in the Class, you must have had two or more overdraft fees caused by debits posted to your account on a single day during the period listed above.

**THE SETTLEMENT’S BENEFITS**

**7. What does the Settlement provide?**

Amegy has agreed to establish a Settlement Fund of \$2,620,959.37 that will provide payments or account credits to eligible Settlement Class Members, attorneys’ fees and expenses to class counsel, and a service award to the named Plaintiff. The amount any individual Settlement Class Member will receive cannot be determined at this time. Payments will be based, in part, on the number of people in the Settlement Class and the amount of overdraft fees each Settlement Class Member paid to Amegy because of Amegy’s posting order. Any money left in the Settlement Fund following payments to Settlement Class Members, attorneys’ fees and expenses, and a service award to the named Plaintiff, will either be distributed to Settlement Class Members who have already received a payment or will be paid to Texas Jump\$tart Coalition for Personal Financial Literacy, a nonprofit organization approved by the Court.

**8. How do I receive a payment or account credit?**

If you are included in the Settlement Class and entitled to receive a payment or cash benefit, you do not need to do anything to be entitled 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 or account credit.

**9. What am I giving up to stay in the Settlement Class?**

Unless you exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Amegy about the legal issues in this case. Unless you exclude yourself, all of the decisions by the Court will bind you. The Settlement Agreement is available at [www.AmegyOverdraftSettlement.com](http://www.AmegyOverdraftSettlement.com) and describes the claims that you give up if you remain in the Settlement.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want benefits from the Settlement, and you want to keep the right to sue or continue to sue Amegy on your own about the legal issues in this case, 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 postmarked on or before \_\_\_\_ that includes the following:

- Your name, address, and telephone number;
- A statement that you want to be excluded from the Amegy Settlement in *Barlow v. Zions Bancorporation*, Case No. 2:11-cv-00929-BSJ (D. Utah); and
- Your signature.

You must mail your exclusion request, postmarked no later than \_\_\_\_\_, 2013, to:

Checking Account Overdraft Litigation Exclusions  
 P.O. Box \_\_\_\_\_  
 [ City, State, Zip ]

You cannot ask to be excluded on the phone, by email, or at the website.

**11. *If I do not exclude myself, can I sue Amegy for the same thing later?***

No. Unless you exclude yourself, you give up the right to sue Amegy 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 get a payment?***

No. You will not get 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 as Class Counsel a number of lawyers to represent you and other Settlement Class Members. They include:

Thomas R. Karrenberg Jon V. Harper <b>Anderson &amp; Karrenberg</b> 50 West Broadway, Suite 700 Salt Lake City, UT 84101 Telephone: (801) 534-1700 Facsimile: (801) 364-7697 tkarrenberg@aklawfirm.com jharper@aklawfirm.com	Edward F. Haber Thomas V. Urmy, Jr. Patrick J. Vallely <b>Shapiro Haber &amp; Urmy LLP</b> 53 State Street Boston, MA 02109 Telephone: (617) 439-3939 ehaber@shulaw.com turmy@shulaw.com pvallely@shulaw.com
Karl Kronenberger <b>Kronenberger Rosenfeld, LLP</b> 150 Post Street, Suite 520 San Francisco, CA 94108-4707 Telephone: (415) 955-1155 Facsimile: (415) 955-1158 karl@KRInternetLaw.com	Mark A. Griffin Karin B. Swope <b>Keller Rohrback, L.L.P.</b> 1201 Third Avenue, Suite 3200 Seattle, Washington 98101 Telephone: (206) 623-1900 mgriffin@kellerrohrback.com kswope@kellerrohrback.com

You will not be charged for contacting 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 33 1/3 percent of the Settlement Fund for attorneys' fees, plus reimbursement of the costs and expenses of prosecuting the class action. Class Counsel's application for attorneys fees, costs, and expenses will be posted to the website before the deadline for you to object to or exclude yourself from the Settlement. 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 \$5,000 be paid from the Settlement Fund to the named Plaintiff for her service as class representative on behalf of the whole Settlement Class.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the Settlement or some part of it.

**15. How do I tell the Court that I do not like the Settlement?**

If you are a member of the Settlement Class, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel's requests for fees and expenses, and/or the special service payment to the named Plaintiff. To object, you must submit a letter to the Court and other recipients listed below that includes the following:

- The name of the Action, which is *Barlow v. Zions Bancorporation*, Case No. 2:11-cv-00929-BSJ (D. Utah);
- Your full name, address and telephone number;
- An explanation of the basis upon which you claim to be an Amegy Settlement Class Member;
- All grounds for the objection, accompanied by any legal support for the objection known to you or your counsel;
- The number of times, if any, that you have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which you have made such objection, and a copy of any orders related to or ruling upon your prior such 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;
- The number of times in which your counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which the counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;
- 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 representing you who will appear at the Final Approval Hearing;

- A list of all persons who you will call to testify at the Final Approval Hearing in support of your objection;
- A statement confirming whether you intend to appear personally and/or testify at the Final Approval Hearing; and
- Your signature (an attorney's signature is not sufficient).

A complete list of the requirements to object to the Settlement are set forth in the Settlement Agreement at paragraph 59.

You must submit your objection to each of the following addresses, postmarked by \_\_\_\_\_, 2013:

Clerk of the Court U.S. District Court for the District of Utah Judge Bruce S. Jenkins 350 South Main Street Salt Lake City, UT 84101	Amegy Checking Account Overdraft Litigation P.O. Box ____ [City, State, Zip]
Edward F. Haber Shapiro Haber & Urmy LLP 53 State Street Boston, MA 02109	Scott H. Jacobs Reed Smith LLP 355 South Grand Avenue, Suite 2900 Los Angeles, CA 90071-1514

**16. What is 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. Excluding yourself is telling the Court that you do not 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 SETTLEMENT APPROVAL HEARING**

The Court will hold a hearing to decide whether to approve the Settlement and any requests for attorneys' fees and expenses. You may attend and you may ask to speak, but you do not 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 \_\_\_\_\_, \_\_\_\_, 2014, at \_\_\_\_\_ a.m./p.m. in Room 420 of the United States District of Court for the District of Utah at 350 South Main Street, Salt Lake City, Utah. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.AmegyOverdraftSettlement.com](http://www.AmegyOverdraftSettlement.com) for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the request by Class Counsel for attorneys' fees and expenses and for payment of a service award to the Plaintiff. If there are objections, the Court will consider them at this time. At or after the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

**18. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have. But, you are welcome to attend the hearing 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 all of the recipients listed above, and it complies

with the requirements described in this Notice and paragraph 59 of the Settlement Agreement, 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 be heard. 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 Amegy Settlement in *Barlow v. Zions Bancorporation*, Case No. 2:11-cv-00929-BSJ;
- 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 Settlement Approval Hearing; and,
- Your signature.

You must send your Notice of Intention to Appear, postmarked by \_\_\_\_\_, 2013, to the recipients listed in Question 15. You may speak at the hearing if you object to the Settlement, but as noted, if you exclude yourself from the Settlement, you cannot object or speak at the hearing.

**IF YOU DO NOTHING**

**20. *What happens if I do nothing at all?***

If you do nothing, the Court approves the Settlement, and it becomes final and effective, you will receive the benefits to which you are entitled. Unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Amegy relating to the issues in this case.

**21. *How will I receive the settlement benefits?***

If you are entitled to receive a cash benefit, and if the Court approves the Settlement, your Amegy account will automatically receive a payment or account credit for eligible overdraft fees paid during the period covered by the Settlement. If you no longer maintain an account at Amegy at the time of the payment, a check will be mailed to you. To ensure receipt of any settlement benefits due to you, you should contact the settlement administrator to ensure the settlement administrator has your current address.

**GETTING MORE INFORMATION**

**22. *How do I get more information?***

This notice summarizes the proposed Settlement. You can find more details in the Settlement Agreement. You can obtain a copy of the Settlement Agreement at [www.AmegyOverdraftSettlement.com](http://www.AmegyOverdraftSettlement.com). You may also write with questions to Checking Account Overdraft Litigation, P.O. Box \_\_\_\_\_, [City, State, Zip] or call the toll-free number, 1-800-\_\_\_\_\_. Do not contact Amegy or the Court for information.

## Exhibit 3

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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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MELINDA BARLOW, KRISTEN  
MAXWELL, J. DAVID McGEE, ALICE  
SURYANA, KELLEY A. DOWDLE,  
DONALD G. NEWBY II, and RAYMOND  
MOHRLANG JR., individually and on  
behalf of all others similarly situated,  
Plaintiffs,

v.

ZIONS BANCORPORATION, a Utah  
corporation; ZIONS FIRST NATIONAL  
BANK, a federally chartered bank; AMEGY  
BANK NATIONAL ASSOCIATION, a  
national banking association; NATIONAL  
BANK OF ARIZONA, a national banking  
association; and VECTRA BANK  
COLORADO, N.A., a national banking  
association,  
Defendants.

Consolidated Case No. 2:11-cv-00929-BSJ

Judge Bruce S. Jenkins

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**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS  
SETTLEMENT AND CERTIFYING THE AMEGY SETTLEMENT CLASS**

Plaintiff Alice Suryana (“Plaintiff”) and defendants Amegy Bank, N.A. (“Amegy Plaintiff”) and Zions Bancorporation (“Bancorp”) have agreed to a settlement of the class action claims asserted in this action by the Amegy Plaintiff<sup>1</sup> against Amegy and Bancorp, the terms and conditions of which are set forth in an executed Settlement Agreement and Release (the “Amegy Settlement”) that was filed with this Court on or before September 4, 2013. The Parties reached the Amegy Settlement through arms-length negotiations following private mediation. Under the

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<sup>1</sup> Capitalized terms not defined in this order have the meanings set forth in the Amegy Settlement.



Amegy Settlement, and subject to Court approval, the Amegy Plaintiff and the Amegy Settlement Class would fully and finally release all claims asserted in this action against by the Amegy Plaintiff against Amegy and Bancorp in exchange for Amegy's payment of the sum of \$2,620,959.37 into a common fund for the benefit of the Amegy Settlement Class, from which would be paid all amounts due to Class Members under the Settlement, including any attorneys' fees and costs to Class Counsel or Service Award to the Amegy Plaintiff that may hereafter be allowed by the Court.

The Amegy Plaintiff has filed a Motion for Preliminary Approval of Class Settlement and for Certification of an Amegy Settlement Class (the "Motion"). Upon considering the Motion and exhibits thereto, the Amegy Settlement, the record in these proceedings, the representations and recommendations of Class Counsel, and the requirements of law, the Court finds and orders as follows:

**I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the subject matter and parties to this proceeding pursuant to 28 U.S.C. § 1332.
2. Venue is proper in this District.

**II. PROVISIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL**

3. The Court finds, for settlement purposes, that the requirements of Federal Rule of Civil Procedure 23 are satisfied and that certification of the proposed Amegy Settlement Class is appropriate. The Court therefore provisionally certifies the following Amegy Settlement Class (which includes terms defined in the Amegy Settlement):

All holders of an Amegy Account who, from October 5, 2007, through and

including May 6, 2011, incurred one or more Overdraft Fees as a result of High-to-Low Posting. The class does not include Amegy employees, officers, or directors, or the judge presiding over this Action.

4. Specifically, the Court finds, for settlement purposes, that the Amegy Settlement

Class satisfies the following requirements under Federal Rule of Civil Procedure 23:

- (a) the members of the Amegy Settlement Class are so numerous that joinder of all members is impracticable;
- (b) there are questions of law and fact common to the Amegy Settlement Class;
- (c) the claims and defenses of the Amegy Plaintiff are typical of the Amegy Settlement Class;
- (d) the Amegy Plaintiff and Class Counsel will fairly and adequately protect the interests of the Amegy Settlement Class; and
- (e) the Action satisfies the requirements of Fed. R. Civ. P. 23(b)(3) in that there are questions of law and fact common to the members of the Amegy Settlement Class that predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. The Court appoints the following person as class representative: Alice Suryana.

6. The Court appoints the following persons and entities as Class Counsel:

**Anderson & Karrenberg**

Thomas R. Karrenberg, UT Bar No. 3726

Jon V. Harper, UT Bar No. 1378

50 West Broadway, Suite 700

Salt Lake City, UT 84101

Telephone: (801) 534-1700

Facsimile: (801) 364-7697

tkarrenberg@aklawfirm.com

jharper@aklawfirm.com

**Shapiro Haber & Urmy LLP**

Edward F. Haber, *pro hac vice*  
Thomas V. Urmy, Jr., *pro hac vice*  
Patrick J. Vallely, *pro hac vice*  
53 State Street  
Boston, MA 02109  
Telephone: (617) 439-3939  
Facsimile: (617) 439-0134  
ehaber@shulaw.com  
turmy@shulaw.com  
pvallely@shulaw.com

**Kronenberger Rosenfeld, LLP**

Karl Kronenberger, *pro hac vice*  
150 Post Street, Suite 520  
San Francisco, CA 94108-4707  
Telephone: (415) 955-1155  
Facsimile: (415) 955-1158  
karl@KRInternetLaw.com

**Keller Rohrback, L.L.P.**

Mark A. Griffin, *pro hac vice*  
Karin B. Swope, *pro hac vice*  
1201 Third Avenue, Suite 3200  
Seattle, Washington 98101  
Telephone: (206) 623-1900  
Facsimile: (206) 623-3384  
mgriffin@kellerrohrback.com  
kswope@kellerrohrback.com.

**III. PRELIMINARY APPROVAL OF THE AMEGY SETTLEMENT**

7. This Court preliminarily approves the Amegy Settlement as fair, reasonable, and adequate, and as in the best interests of all Amegy Settlement Class Members, for the following reasons: *First*, the Parties negotiated the settlement fairly and honestly at arms' length and with the assistance of an experienced mediator and experienced counsel. *Second*, serious questions of law and fact exist, as reflected in Bancorp's and Zions First National Bank's motions to dismiss the case, and their affirmative defenses asserted in their answers to the complaint. *Third*, an

immediate recovery is valuable to the Amegy Settlement Class, given the potential need for protracted litigation to resolve all factual and legal disputes among the Parties. *Fourth*, the Parties have offered their reasoned and well-supported judgment that the settlement is fair and reasonable to the Amegy Settlement Class.

8. The Court also preliminarily finds that the plan for distribution of the Settlement Fund, as set forth in Sections X and XII of the Amegy Settlement, is fair and equitable.

9. Because the Amegy Settlement is fair, reasonable, and adequate, it is therefore appropriate to order that notice of the Settlement be given to the Amegy Settlement Class and to schedule a Final Approval Hearing to assist the Court in determining whether to grant Final Approval to the Amegy Settlement and enter final judgment.

10. The Court therefore preliminarily approves the Amegy Settlement, and the exhibits appended to that settlement, as fair, reasonable, and adequate.

#### **IV. APPROVAL OF NOTICE AND NOTICE PROGRAM AND DIRECTION TO EFFECTUATE NOTICE**

11. The Court approves the form and content of the Notice to be provided to the Amegy Settlement Class, in the forms appended as Exhibits 1 and 2 to the Amegy Settlement. The Court further finds that the Notice Program, described in section VIII of the Amegy Settlement is the best practicable under the circumstances. The Notice Program is reasonably calculated under the circumstances to apprise the Amegy Settlement Class of (a) the pendency of the Action; (b) the Court's preliminary certification of a Settlement Class; (c) the terms of the Amegy Settlement and the Class Members' rights to opt-out of the Amegy Settlement Class or to object to the Amegy Settlement; (d) the maximum amount of Class Counsel's expected Fee Application; and (e) the expected request for a Service Award for the Amegy Plaintiff. The

Notice and Notice Program constitute sufficient notice to all persons entitled to notice. The Notice and Notice Program satisfy all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the Constitutional requirement of Due Process.

12. The Court appoints Rust Consulting, Inc. as the Settlement Administrator to perform the duties set out in the Settlement Agreement or any further duties ordered by the Court in connection with the administration of the Settlement.

13. The Settlement Administrator shall implement the Notice Program, as set forth below and in the Amegy Settlement, using the forms of Notice appended as Exhibits 1 and 2 to the Amegy Settlement and approved by this order. The Notice Program shall include the Mailed Notice and a Long-Form Notice on the Settlement Website, as described in the Amegy Settlement, the exhibits appended to the Motion, and in this Order.

#### **V. MAILED NOTICE PROGRAM**

14. Within 28 days from the date that the Settlement Administrator receives from Class Counsel and Amegy the data files that identify the names and last known addresses of the identifiable Amegy Settlement Class Members, as set forth in paragraph 60 of the Amegy Settlement, the Settlement Administrator shall run such addresses through the National Change of Address Database and shall mail to all such Amegy Settlement Class Members the Mailed Notice (the “Initial Mailed Notice”).

15. The Settlement Administrator shall perform reasonable address traces for all Initial Mailed Notices that are returned as undeliverable. No later than 56 days before the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Mailed Notice

to those Amegy Settlement Class Members whose new addresses were identified as of that time through address traces (the “Notice Re-mailing Process”).

16. The Settlement Administrator shall complete the Mailed Notice Program (both the Initial Mailed Notice and the Notice Re-mailing Process) no later than 56 days before the Final Approval Hearing. Within 10 days after the date the Settlement Administrator completes the Notice Re-mailing Process, the Settlement Administrator shall provide Class Counsel and Amegy’s counsel an affidavit that confirms the Settlement Administrator has completed in a timely manner the Mailed Notice Program. Class Counsel shall file such affidavit with the Court in conjunction with the Amegy Plaintiff’s Motion for Final Approval of the Amegy Settlement.

#### **VI. SETTLEMENT WEBSITE AND TOLL-FREE SETTLEMENT LINE**

17. As soon as practicable following the entry of this Order, but in no event later than the date of the Initial Mailed Notice, the Settlement Administrator shall establish a Settlement Website as a further means for Amegy Settlement Class Members to obtain notice of, and information about, the Amegy Settlement. The Settlement Website shall include hyperlinks to the Amegy Settlement Agreement, the Long-Form Notice, this order, and such other documents as Class Counsel and counsel for Amegy agree to post or that the Court orders posted on the Settlement Website. These documents shall remain on the Settlement Website at least until 30 days following such time as the Court has entered an order finally approving the Settlement.

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

## VII. FINAL APPROVAL HEARING, OPT-OUTS, AND OBJECTIONS

19. The Court directs that a Final Approval Hearing will take place on \_\_\_\_\_, 2013, at \_\_\_\_\_ a.m./p.m., to assist the Court in determining whether to grant Final Approval to the Amegy Settlement and whether to grant Class Counsel's Fee Application and request for a Service Award for the Amegy Plaintiff.

20. Any person within the Amegy Settlement Class who wishes to be excluded from the Amegy Settlement Class may exercise their right to opt-out of the Amegy Settlement Class by following the opt-out procedures set forth in the Long-Form Notice at any time during the Opt-Out-Period. To be valid and timely, opt-out requests must be postmarked on or before the last day of the Opt-Out Period (the "Opt-Out Deadline"), which is 28 days before the Final Approval Hearing, and mailed to the address indicated in the Long-form Notice. To be considered valid, Opt-Out requests must include:

- (a) the full name, telephone number and address of the person seeking to be excluded from the Amegy Settlement Class;
- (b) a statement that such person wishes to be excluded from the Amegy Settlement in *Barlow v. Zions Bancorporation*, Case No. 2:11-cv-00929-BSJ; and
- (c) the signature of the person seeking to be excluded from the Amegy Settlement Class.

21. The Mailed Notice and Long-Form Notice shall each specify the Opt-Out Deadline. All persons within the Amegy Settlement Class who do not timely and validly opt-out of the Amegy Settlement Class shall be bound by all determinations and judgments in the Action concerning the Amegy Settlement, including, but not limited to, the Releases set forth in section XIV of the Amegy Settlement Agreement.

22. Any person in the Amegy Settlement Class who does not opt out of the Class may object to the Amegy Settlement, Class Counsel's Fee Application and/or the request for a Service Award for the Amegy Plaintiff. Any person so objecting must mail his or her objection to the Clerk of the Court, Class Counsel, and counsel for Amegy, at the addresses indicated in the Long-Form Notice. For the Court to consider such an objection, it must be postmarked no later than \_\_\_\_\_ (28 days before the Final Approval Hearing) and must include the following information:

- (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 an Amegy Settlement Class Member;
- (d) all grounds for the objection, accompanied by any legal support for the objection known to the objector or his 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 such 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 Amegy Settlement or fee application;
- (g) the number of times in which the objector's counsel and/or counsel's law firm have 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 counsel or the firm has made such objection, and a copy of any orders related to or bearing upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;



- (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 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).

**VIII. FURTHER PAPERS IN SUPPORT OF AMEGY SETTLEMENT AND FEE APPLICATION**

23. The Amegy Plaintiff shall file her Motion for Final Approval of the Amegy Settlement, and Class Counsel shall file their Fee Application and request for a Service Award for the Amegy Plaintiff, no later than 42 days before the Final Approval Hearing.

24. The Amegy Plaintiff, Amegy, or Bancorp shall file any responses to timely filed objections to the Motion for Final Approval of the Amegy Settlement and the Fee Application no later than 14 days before Final Approval Hearing.

**IX. STAY/BAR OF OTHER PROCEEDINGS**

25. All proceedings in the Action are hereby stayed until further order of the Court, except as may be necessary to implement the terms of the Amegy Settlement.

**X. SUMMARY OF SCHEDULE FOR SETTLEMENT APPROVAL**

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

- (a) The Settlement Administrator shall establish the Settlement Website and toll-free telephone line within five days of Preliminary Approval;

- (b) The Settlement Administrator shall complete the Mailed Notice Program no later than \_\_\_\_\_, \_\_\_, 2013 [56 days before the Final Approval Hearing];
- (c) The Amegy Plaintiff shall file her Motion for Final Approval of the Amegy Settlement, and Class Counsel shall file their Fee Application and Request for a Service Award for the Amegy Plaintiff, no later than \_\_\_\_\_, \_\_\_, 2013 [42 days before the Final Approval Hearing];
- (d) Amegy Settlement Class Members must file any objections to the Amegy Settlement, the Motion for Final Approval of the Amegy Settlement, Class Counsel's Fee Application and/or the Request for a Service Award no later than \_\_\_\_\_, \_\_\_, 2013 [28 days before the Final Approval Hearing];
- (e) Amegy Settlement Class Members must file requests for exclusion from the Amegy Settlement no later than \_\_\_\_\_, \_\_\_, 2013 [28 days before the Final Approval Hearing];
- (f) The Amegy Plaintiff or Class Counsel shall file any responses to timely filed objections to the Motion for Final Approval of the Amegy Settlement and Fee Application no later than \_\_\_\_\_, \_\_\_, 2013 [14 days before the Final Approval Hearing];
- (g) The Final Approval Hearing will be held on \_\_\_\_\_, \_\_\_, 2014, at \_\_\_\_\_ a.m./p.m. in Room 420 of the United States District of Court for the District of Utah at 350 South Main Street, Salt Lake City, Utah.

DATED: \_\_\_\_\_, \_\_\_, 2013.

**BY THE COURT:**

\_\_\_\_\_  
The Honorable Bruce S. Jenkins

**APPROVED AS TO FORM:**

**SHAPIRO HABER & URMY LLP**

*/s/ Edward F. Haber*

Edward F. Haber

*Attorney for Plaintiffs*

## Exhibit 4

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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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MELINDA BARLOW, KRISTEN  
MAXWELL, J. DAVID McGEE, ALICE  
SURYANA, KELLEY A. DOWDLE,  
DONALD G. NEWBY II, and RAYMOND  
MOHRLANG JR., individually and on  
behalf of all others similarly situated,  
Plaintiffs,

v.

ZIONS BANCORPORATION, a Utah  
corporation; ZIONS FIRST NATIONAL  
BANK, a federally chartered bank; AMEGY  
BANK NATIONAL ASSOCIATION, a  
national banking association; NATIONAL  
BANK OF ARIZONA, a national banking  
association; and VECTRA BANK  
COLORADO, N.A., a national banking  
association,  
Defendants.

Consolidated Case No. 2:11-cv-00929-BSJ

Judge Bruce S. Jenkins

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**[PROPOSED] ORDER FINALLY APPROVING CLASS  
SETTLEMENT AND CERTIFYING THE AMEGY SETTLEMENT CLASS**

This matter came before the Court for hearing pursuant to this Court's Order Preliminarily Approving Class Settlement and Certifying the Amegy Settlement Class dated \_\_\_\_\_, 2013 ("Preliminary Approval Order"), on the application of the Parties<sup>1</sup> for approval of the settlement among (1) Alice Suryana referred to below as the "Amegy Plaintiff," for himself and on behalf of the Amegy Settlement Class; (2) defendant Zions Bancorporation ("Bancorp"); and (3) defendant Amegy Bank, N.A. ("Amegy") that is fully set forth in the

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<sup>1</sup> Capitalized terms not defined in this order have the meanings set forth in the Amegy Settlement.

Settlement Agreement and Release filed with the Court on \_\_\_\_ (the “Amegy Settlement”). The Court having considered all papers filed and proceedings held herein, and having received declarations attesting to the mailing of the Notice and the publication of the Long-Form Notice on the Settlement Website in accordance with the Preliminary Approval Order, and good cause appearing therefore,

**IT IS HEREBY ADJUSTED, DECREED, AND ORDERED:**

**I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the subject matter, the parties to this proceeding, and all Amegy Settlement Class Members, pursuant to 28 U.S.C. § 1332.
2. Venue is proper in this District.

**II. FINAL CERTIFICATION OF THE AMEGY SETTLEMENT CLASS**

3. The Court finds that the requirements of Federal Rule of Civil Procedure 23 are satisfied and that certification of the proposed Amegy Settlement Class is appropriate. The Court therefore grants final certification of the following Amegy Settlement Class (which includes terms defined in the Amegy Settlement):

All holders of an Amegy Account who, from October 5, 2007, through and including May 6, 2011, incurred one or more Overdraft Fees as a result of High-to-Low Posting. The class does not include Amegy employees, officers, or directors, or the judge presiding over this Action.

4. The Amegy Settlement Class excludes those persons who timely and validly filed requests for exclusion from the Amegy Settlement Class pursuant to the Notice sent to Amegy Settlement Class Members as provided in the Court’s Preliminary Approval Order. A list of such persons who have filed timely, completed, and valid requests for exclusion from the Amegy Settlement Class is attached hereto as Exhibit 1. The persons identified in Exhibit 1 are not

bound by this Final Judgment or the terms of the Amegy Settlement, and may pursue their own individual remedies against the Released Parties. Such persons are not entitled to any rights or benefits provided to Amegy Settlement Class Members by the terms of the Amegy Settlement.

5. The Court finds that the Amegy Settlement Class satisfies the following requirements under Federal Rule of Civil Procedure 23:

- (a) the members of the Amegy Settlement Class are so numerous that joinder of all members is impracticable;
- (b) there are questions of law and fact common to the Amegy Settlement Class;
- (c) the claims and defenses of the Amegy Plaintiff are typical of the Amegy Settlement Class;
- (d) the Amegy Plaintiff and Class Counsel will fairly and adequately protect the interests of the Amegy Settlement Class; and
- (e) the Action satisfies the requirements of Fed. R. Civ. P. 23(b)(3) in that there are questions of law and fact common to the members of the Amegy Settlement Class that predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

### **III. FINAL APPROVAL OF THE AMEGY SETTLEMENT**

6. Pursuant to Fed. R. Civ. P. 23(e), this Court finds that the Amegy Settlement is, in all respects, fair, reasonable, and adequate, and is in the best interests of all Amegy Settlement Class Members, for the following reasons: *First*, the Parties negotiated the settlement fairly and honestly at arms' length and with the assistance of an experienced mediator and experienced counsel. *Second*, serious questions of law and fact exist, as reflected in Bancorp's and Zions First National Bank's motions to dismiss the case, and their affirmative defenses asserted in their answers to the complaint. *Third*, an immediate recovery is valuable to the Amegy Settlement Class, given the potential need for protracted litigation to resolve all factual and legal disputes

among the Parties. *Fourth*, the Parties have offered their reasoned and well-supported judgment that the settlement is fair and reasonable to the Amegy Settlement Class.

7. The Court also finds that the plan for distribution of the Settlement Fund, as set forth in Sections X and XII of the Amegy Settlement, is fair and equitable [and overrules any objections to the plan for distribution].

8. The Court therefore finally approves the Amegy Settlement, and the exhibits appended to that settlement, as fair, reasonable, and adequate.

#### **IV. ADEQUACY OF NOTICE**

9. The Court finds that the Amegy Settlement Class members have been given due and adequate notice of the Amegy Settlement and Class Counsel's Fee Application and request for a Service Award for the Amegy Plaintiff, in the manner directed by this Court's Preliminary Approval Order.

10. The Court further finds that the Notice Program approved in the Court's Preliminary Approval Order and implemented in accordance with that order was the best practicable under the circumstances. The Notice Program was reasonably calculated under the circumstances to apprise the Amegy Settlement Class of (a) the pendency of the Action; (b) the Court's preliminary certification of an Amegy Settlement Class; (c) the terms of the Amegy Settlement and the Amegy Settlement Class Members' rights to opt-out of the Amegy Settlement Class or to object to the Amegy Settlement; (d) the maximum amount of Class Counsel's expected Fee Application; and (e) the expected request for a Service Award for the Amegy Plaintiff. The Notice and Notice Program provided sufficient notice to all persons entitled to

notice. The Notice and Notice Program satisfied all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the constitutional requirement of Due Process.

**V. ATTORNEYS FEES AND SERVICE AWARD**

11. This Court hereby awards Class Counsel attorneys' fees in the amount of \$\_\_\_\_\_, which is equal to \_\_\_% of the Settlement Fund, plus reimbursement of their out-of-pocket expenses in the amount of \$\_\_\_\_\_, with interest to accrue thereon at the same rate and for the same periods as has accrued by the Settlement Fund from the date of this Final Judgment to the date of actual payment of said attorneys' fees and expenses to Class Counsel. The Court finds the amount of attorneys' fees and costs awarded herein is fair and reasonable based on: (a) the work performed and costs incurred by Class Counsel; (b) the complexity of the case; (c) the risks undertaken by Class Counsel and the contingent nature of their employment; (d) the quality of the work performed by Class Counsel in this Action and their standing and experience in prosecuting similar class action litigation; (e) awards to successful plaintiffs' counsel in other, similar litigation; (f) the benefits achieved for Amegy Settlement Class Members through the Amegy Settlement; and (g) the absence of [any/a significant number of] objection[s] from [any] Amegy Settlement Class Members to either the application for an award of attorneys' fees or reimbursement of expenses to Class Counsel. The Court also finds that the requested reimbursement of expenses is proper as the expenses incurred by Class Counsel, including the costs of experts, were reasonable and necessary in the prosecution of this Action on behalf of Amegy Settlement Class Members.

12. In accordance with Section XV of the Amegy Settlement, the Settlement Administrator shall pay from the Settlement Fund to Class Counsel all Court-approved attorneys'



fees, costs, and expenses of Class Counsel, including interest accrued thereon, within ten days of the Effective Date.

13. All payments of attorneys' fees and reimbursement of expenses to Class Counsel in this Action shall be made from the Settlement Fund, and Amegy, Bancorp, and the Released Parties shall have no liability or responsibility for the payment of Class Counsel's attorneys' fees or expenses except as provided in the Amegy Settlement.

14. This Court also hereby awards to Alice Suryana a Service Award of \$\_\_\_\_\_. The Court finds the amount of the Service Award is fair and reasonable based upon her service as class representative on behalf of the Amegy Settlement Class.

## **VI. RELEASES AND FINAL JUDGMENT**

15. Pursuant to Federal Rule of Civil Procedure 23(c)(3), all Amegy Settlement Class Members who have not filed timely, completed, and valid requests for exclusion from the Amegy Settlement Class are Amegy Settlement Class Members who are bound by this Final Judgment and by the terms of the Amegy Settlement.

16. The Released Parties are hereby released and forever discharged from any and all of the Released Claims. All Amegy Settlement Class Members are hereby forever barred and enjoined from asserting, instituting, or prosecuting, directly or indirectly, any Released Claim in any court or other forum against any of the Released Persons. All Amegy Settlement Class Members are bound by paragraphs 82 and 83 of the Amegy Settlement and are hereby forever barred and enjoined from taking any action in violation of that provision.

17. The Court hereby dismisses with prejudice all claims of the Amegy Plaintiff and the Amegy Settlement Class against Bancorp and Amegy asserted in the Action and without costs to any of the Parties as against the others, except as provided herein.

18. Neither the Amegy Settlement nor any act performed or document executed pursuant to or in furtherance of the Amegy Settlement: (a) may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Parties; or (b) may be used as an admission of, or evidence of, any fault or omission of any of the Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; or (c) may be admissible in any proceeding except an action to enforce or interpret the terms of the Amegy Settlement or any other documents executed in connection with the performance of the agreements embodied therein. The Released Parties may file the Stipulation and/or this Final Judgment and Order in any action that may be brought against them in order to support a defense or counterclaim based on the principles of res judicata, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

19. The Court finds that during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

20. Without affecting the finality of this Final Judgment in any way, this Court hereby reserves and retains continuing jurisdiction over: (a) implementation and enforcement of any award or distribution from the Settlement Fund (b) disposition of the Settlement Fund or Net

Settlement Fund, including *cy pres* distribution of any funds remaining in the Settlement Fund at the completion of the distribution to Amegy Settlement Class Members; (c) payment of taxes by the Settlement Fund; (d) all parties hereto for the purpose of construing, enforcing, and administering the Amegy Settlement; and (e) any other matters related to finalizing the Amegy Settlement and distribution of the proceeds of the Amegy Settlement.

21. This Final Judgment and Order is a final judgment in the Action as to all claims of the Amegy Plaintiff and the Amegy Settlement Class against Bancorp and Amegy asserted in the Action. This Court finds, for purposes of Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay and expressly directs entry of judgment as set forth herein.

DATED: \_\_\_\_\_, \_\_, 2014.

**BY THE COURT:**

\_\_\_\_\_  
The Honorable Bruce S. Jenkins

**APPROVED AS TO FORM:**

**SHAPIRO HABER & URMY LLP**

/s/ Edward F. Haber

Edward F. Haber

*Attorney for Plaintiffs*