

UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY

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<b>In the Matter of:</b>		)	
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First Tennessee Bank, N.A.		)	AA-EC-2017-8
Memphis, Tennessee		)	
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**CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”), through his national bank examiners and other staff of the Office of the Comptroller of the Currency (“OCC”), has conducted an examination of First Tennessee Bank, National Association, Memphis, Tennessee (“FTB” or “Bank”). The OCC has identified deficiencies in the Bank’s practices that resulted in a violation of Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a)(1), related to billing practices with regard to an identity protection product, and has informed the Bank of the findings resulting from the examination.

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a Stipulation and Consent to the Issuance of a Consent Order, dated February 8, 2017, that is accepted by the Comptroller (“Stipulation”). By the Stipulation, which is incorporated herein by reference, the Bank has consented to the issuance of this Consent Cease and Desist Order (“Order”) by the Comptroller.

## ARTICLE I

### COMPTROLLER'S FINDINGS

The Comptroller finds, and the Bank neither admits nor denies, the following:

(1) From 2000 to 2006, the Bank and an Identity Protection Product Vendor, on behalf of the Bank, marketed and sold PrivacyGuard, an identity protection product, to Bank customers. The PrivacyGuard product included credit monitoring and credit report retrieval services, among others.

(2) The Bank customers who enrolled in the PrivacyGuard product were required to provide sufficient personal verification information and consent before their credit monitoring services could begin and their credit bureau reports could be accessed. Customers could not receive the credit monitoring and/or credit report retrieval services of the PrivacyGuard product in which they were enrolled until the information and consent were submitted.

(3) From 2000 to August 2013, the Identity Protection Product Vendor, on behalf of the Bank, billed PrivacyGuard customers for the full fee of the product, even though not all customers were receiving the credit monitoring and/or credit report retrieval services of the product.

(4) From 2000 to August 2013, the Bank retained a portion of the fees paid by the PrivacyGuard customers, including fees paid by the customers who were not receiving the credit monitoring and/or credit report retrieval services.

(5) By reason of the foregoing billing practices for the PrivacyGuard product, as described in Paragraphs (1) to (4) of this Article, which were the result of deficient vendor

management practices, the Bank engaged in unfair practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1).

(6) The Bank's violation of Section 5 of the FTC Act caused substantial consumer injury or was likely to cause substantial consumer injury.

## ARTICLE II

### COMPLIANCE COMMITTEE

(1) Within thirty (30) days of the date of this Order, a Compliance Committee of at least three (3) members shall be appointed by the Board. The majority of this Compliance Committee will be comprised of outside directors. The Compliance Committee shall be responsible for monitoring and overseeing the Bank's compliance with the provisions of this Order. The Compliance Committee shall maintain minutes of its meetings at which compliance with this Order is discussed.

(2) Within one hundred twenty (120) days of the effective date of this Order, and thereafter within thirty (30) days after the end of each quarter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail the actions taken to comply with each Article of this Order, and the results and status of those actions. The progress report shall include information sufficient to validate compliance with this Order.

(3) Upon receiving the Compliance Committee's report, the Board shall forward a copy of the report, with any additional comments by the Board, to the Assistant Deputy Comptroller within ten (10) days of the first Board meeting following receipt of such report, unless additional time is granted by the Assistant Deputy Comptroller through a written determination of no supervisory objection. The Assistant Deputy Comptroller may, in writing, discontinue the requirement for progress reports or modify the reporting schedule.

### ARTICLE III

#### CONSUMER REIMBURSEMENT FOR UNFAIR BILLING PRACTICES

(1) The Bank shall make full reimbursement, as defined in Paragraph (3) of this Article, in accordance with the Reimbursement Plan required by Article IV of this Order, to all Eligible Customers as defined in Paragraph (2) of this Article.

(2) For the purposes of this Order, the following definitions shall apply:

- (a) “Eligible Customer” includes: Any PrivacyGuard Customer who was enrolled in PrivacyGuard and was billed during any portion of the period between 2000 and August 2013 and has not previously received reimbursement from the Identity Theft Protection Product Vendor; and
- (b) “Identity Protection Product Vendor” refers to the third party, Trilegiant Corporation<sup>1</sup>, which provided marketing, sales, delivery, servicing, billing, and/or fulfillment of the PrivacyGuard product to the Bank’s customers.
- (e) “PrivacyGuard” refers to an identity protection product, which included credit monitoring and credit report retrieval features, marketed to the Bank’s customers by the Bank and the Identity Protection Product Vendor.
- (f) “PrivacyGuard Customer” is a Bank customer who enrolled in the PrivacyGuard product.

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<sup>1</sup> Trilegiant Corporation is a subsidiary of the Affinion Group.

- (g) “Product Fees” are the fees charged by the Identity Protection Product Vendor for the PrivacyGuard product.
  - (h) “Reimbursement End Date” is the date on which the Eligible Customer’s billing for the PrivacyGuard product ceased.
  - (i) “Reimbursement Start Date” is the date on which the Eligible Customer was first billed.
- (3) The reimbursement amount paid to each Eligible Customer shall include, as applicable to each Eligible Customer:
- (a) The sum of:
    - (i) The full amount of Product Fees paid by an Eligible Customer from his or her Reimbursement Start Date through his or her Reimbursement End Date;
    - (ii) The full amount of the credit card over-limit fees, as calculated pursuant to the methodology in the Reimbursement Plan, paid by an Eligible Customer from his or her Reimbursement Start Date through his or her Reimbursement End Date because the amount of the Product Fees assessed resulted in the Eligible Customer exceeding his or her credit limit;
    - (iii) The amount of the overdraft fees, as calculated pursuant to the methodology in the Reimbursement Plan, paid by an Eligible Customer from his or her Reimbursement Start Date through his or her Reimbursement End Date because the amount of the Product

Fees resulted in the Eligible Customer overdrawing his or her deposit account; and

(iv) The amount of the finance charges, as calculated pursuant to the methodology in the Reimbursement Plan, paid by an Eligible Customer on Product Fees billed to a Bank credit card from his or her Reimbursement Start Date through his or her Reimbursement End Date.

(b) Less any amount of the fees and/or charges described above in section (a) of this paragraph that was previously refunded by the Bank or the Identity Protection Product Vendor, as determined by the methodology in the Reimbursement Plan.

#### ARTICLE IV

##### REIMBURSEMENT PLAN

(1) Within sixty (60) days of the effective date of this Order, the Bank shall develop a Board-approved reimbursement plan (“Reimbursement Plan”) and submit it to the Assistant Deputy Comptroller for prior determination of no supervisory objection. The Reimbursement Plan shall include the following:

- (a) A description of the methods used and the time necessary to compile a list of potential Eligible Customers.
- (b) A description of the methods used to calculate the amount of reimbursement to be paid to each Eligible Customer as required by Article III.

- (c) A description of the procedures for the issuance and tracking of reimbursement payments to Eligible Customers.
- (d) With regard to Eligible Customers who receive the reimbursement required by Article III of this Order in the form of a check, a description of procedures:
  - (i) for reporting updated balances, as applicable, to each credit reporting agency to which the Bank had previously furnished balance information for the account; and
  - (ii) with regard to accounts sold to unaffiliated third parties, for requesting such third parties to report updated balances, as applicable, to each credit reporting agency to which the Bank or the third party had previously furnished balance information for the account.
- (e) A description of the procedures for monitoring compliance with the Reimbursement Plan.
- (f) Assurance that internal audit will validate the implementation of this plan.

(2) Upon receipt of a determination of no supervisory objection to the Reimbursement Plan, the Board shall ensure that the Bank implements and adheres to the Reimbursement Plan. Any proposed changes to or deviations from the approved Reimbursement Plan shall be submitted in writing to the Assistant Deputy Comptroller for prior supervisory review and non-objection.

## ARTICLE V

## ASSESSMENT OF REIMBURSEMENT

(1) Within ninety (90) days from the completion of reimbursement under the Reimbursement Plan, as detailed in Article IV, the Bank's internal audit department shall review and assess compliance with the terms of the Reimbursement Plan ("Reimbursement Review").

(2) The Reimbursement Review shall include an assessment of the Reimbursement Plan and the methodology used to determine the population of Eligible Customers, the amount of reimbursement for each Eligible Customer, the procedures used to issue and track reimbursement payments, the procedures used for reporting and requesting the reporting of updated balances to the credit reporting agencies, and the work of any independent consultants that the Bank has used to assist and review its implementation of the Reimbursement Plan.

(3) The Reimbursement Review shall be completed and summarized in a written report (the "Reimbursement Review Report"), which shall be completed within sixty (60) days of completion of the Reimbursement Review. Within ten (10) days of its completion, the Reimbursement Review Report shall be submitted to the Assistant Deputy Comptroller and the Board.

(4) Any (including all draft and finalized) communications, workpapers, or work product related to the Reimbursement Review shall be made available to the OCC immediately upon request of the Assistant Deputy Comptroller.

## ARTICLE VI

### OTHER PROVISIONS

(1) Although this Order requires the Bank to submit certain actions, plans, and reports for the review or prior written determination of no supervisory objection by the Assistant Deputy



Comptroller, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(3) This Order constitutes a settlement of the cease and desist proceeding against the Bank contemplated by the Comptroller, based on the practices and violation of law described in the Comptroller's Findings set forth in Article I of this Order. The Comptroller releases and discharges the Bank from all potential liability for a cease and desist order that has been or might have been asserted by the Comptroller based on the practices and violation described in Article I of this Order, to the extent known to the Comptroller as of the effective date of the Order.

Nothing in the Stipulation or the Order, however, shall prevent the Comptroller from:

- (a) instituting enforcement actions, other than a cease and desist order, against the Bank based on the findings set forth in Article I of this Order;
- (b) instituting enforcement actions against the Bank based on any other findings;
- (c) instituting enforcement actions against the Bank's institution-affiliated parties based on the findings set forth in Article I of this Order, or any other findings; or
- (d) utilizing the findings set forth in Article I of this Order in future enforcement actions against the Bank or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

Further, nothing in the Stipulation or this Order shall affect any right of the Comptroller to determine and ensure compliance with the terms and provisions of the Stipulation or this Order.

(4) This Order is and shall become effective upon its execution by the Comptroller, through his authorized representative whose hand appears below. The Order shall remain effective and enforceable, except to the extent that, and until such time as, any provision of this Order shall be amended, suspended, waived, or terminated in writing by the Comptroller or his authorized representative.

(5) Any time limitations imposed by this Order shall begin to run from the effective date of this Order, as shown below, unless the Order specifies otherwise. The time limitations may be extended in writing by the Assistant Deputy Comptroller for good cause upon written application by the Board. Any request to extend any time limitation shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with the time limitation, and shall be accompanied by relevant supporting documentation. The Assistant Deputy Comptroller's decision regarding the request is final and not subject to further review.

(6) The terms and provisions of this Order apply to the Bank and its subsidiaries, even though those subsidiaries are not named as parties to this Order. The Bank shall integrate any activities done by a subsidiary into its plans, policies, programs, and processes required by this Order. The Bank shall ensure that its subsidiaries comply with all terms and provisions of this Order.

(7) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding the Comptroller or the United States. Without limiting the foregoing, nothing in this Order shall affect any action against the Bank or its institution-affiliated parties by a bank

regulatory agency, the United States Department of Justice, or any other law enforcement agency.

(8) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

IT IS SO ORDERED, this eighth day of February, 2017.

/s/ William D. Haas

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William D. Haas  
Associate Deputy Comptroller  
Midsize Bank Supervision

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY**

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**In the Matter of:**

First Tennessee Bank, N.A.  
Memphis, Tennessee

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AA-EC-2017-8

**STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER**

**WHEREAS**, the Comptroller of the Currency of the United States of America (“Comptroller”), based upon information derived from the exercise of his regulatory and supervisory responsibilities, intends to issue a cease and desist order to First Tennessee Bank, National Association, Memphis, Tennessee (“FTB” or “Bank”), pursuant to 12 U.S.C. § 1818(b), for the Bank’s violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), related to billing practices with regard to an identity theft protection product;

**WHEREAS**, in the interest of cooperation and to avoid additional costs associated with administrative and judicial proceedings with respect to the above matter, the Bank, through its duly elected and acting Board of Directors (the “Board”), has agreed to execute this Stipulation and Consent to the Issuance of a Consent Order (“Stipulation”), that is accepted by the Comptroller, through his duly authorized representative;

**NOW, THEREFORE**, in consideration of the above premises, it is stipulated by the Bank that:

## ARTICLE I

### JURISDICTION

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

## ARTICLE II

### CONSENT

(1) The Bank, without admitting or denying any wrongdoing, consents and agrees to issuance of the accompanying Consent Order by the Comptroller.

(2) The terms and provisions of the Consent Order apply to FTB and all of its subsidiaries, even though those subsidiaries are not named as parties to the Consent Order.

(3) The Bank consents and agrees that the Consent Order shall be deemed an “order issued with the consent of the depository institution” pursuant to 12 U.S.C. § 1818(h)(2), and consents and agrees that the Consent Order shall become effective upon its execution by the Comptroller through his authorized representative, and shall be fully enforceable by the Comptroller pursuant to 12 U.S.C. § 1818(i).

(4) Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(b), and not as

a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(5) The Bank declares that no separate promise or inducement of any kind has been made by the Comptroller, or by his agents or employees, to cause or induce the Bank to consent to the issuance of the Consent Order and/or execute this Stipulation.

(6) The Bank expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the United States Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller's exercise of his supervisory responsibilities.

(7) The Consent Order constitutes a settlement of the cease and desist proceeding against the Bank contemplated by the Comptroller, based on the practices and violations of law described in the Comptroller's Findings set forth in Article I of the Consent Order. The Comptroller releases and discharges the Bank from all potential liability for a cease and desist order that has been or might have been asserted by the Comptroller based on the practices and violation described in Article I of the Consent Order, to the extent known to the Comptroller as of the effective date of the Consent Order. Nothing in this Stipulation or the Consent Order, however, shall prevent the Comptroller from:

- (a) instituting enforcement actions, other than a cease and desist order, against the Bank based on the findings set forth in Article I of the Consent Order;
- (b) instituting enforcement actions against the Bank based on any other findings;
- (c) instituting enforcement actions against the Bank's institution-affiliated

parties based on the findings set forth in Article I of the Consent Order, or any other findings; or

- (d) utilizing the findings set forth in Article I of the Consent Order in future enforcement actions against the Bank or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

Further, nothing in this Stipulation or the Consent Order shall affect any right of the Comptroller to determine and ensure compliance with the terms and provisions of this Stipulation or the Consent Order.

### ARTICLE III

#### WAIVERS

- (1) The Bank, by executing this Stipulation and consenting to the Consent Order, waives:
  - (a) Any and all rights to the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
  - (b) Any and all procedural rights available in connection with the issuance of the Consent Order;
  - (c) Any and all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and (h), 12 C.F.R. Part 19;
  - (d) Any and all rights to seek any type of administrative or judicial review of the Consent Order;
  - (e) Any and all claims for fees, costs, or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or the Consent Order, whether arising under common law or under

the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412;

- (f) Any and all rights to assert this proceeding, this Stipulation, consent to the issuance of the Consent Order, and/or the issuance of the Consent Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity; and
- (g) Any and all rights to challenge or contest the validity of the Consent Order.

#### ARTICLE IV

##### ELIGIBLE BANK – OTHER PROVISIONS

- (1) As a result of the Consent Order:
  - (a) The Bank is an “eligible bank” pursuant to 12 C.F.R. § 5.3(g)(5) for the purposes of 12 C.F.R. Part 5 regarding rules, policies, and procedures for corporate activities, unless otherwise informed in writing by the Office of the Comptroller of the Currency (“OCC”);
  - (b) The Bank is not subject to the limitation of 12 C.F.R. § 5.51(c)(7)(ii) for the purposes of 12 C.F.R. § 5.51 requiring OCC approval of a change in directors and senior executive officers, unless otherwise informed in writing by the OCC;
  - (c) The Bank is not subject to the limitation on golden parachute and indemnification payments provided by 12 C.F.R. § 359.1(f)(1)(ii)(C) and 12 C.F.R. § 5.51(c)(7)(ii), unless otherwise informed in writing by the



OCC;

- (d) The Bank's status as an "eligible bank" remains unchanged pursuant to 12 C.F.R. § 24.2(e)(4) for the purposes of 12 C.F.R. Part 24 regarding community and economic development, unless otherwise informed in writing by the OCC; and
- (e) The Consent Order shall not be construed to be a "written agreement, order, or capital directive" within the meaning of 12 C.F.R. § 6.4, unless the OCC informs the Bank otherwise in writing.

## ARTICLE V

### CLOSING

(1) The provisions of this Stipulation and the Consent Order shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(2) Nothing in this Stipulation or the Consent Order shall preclude any proceedings brought by the Comptroller to enforce the terms of the Consent Order, and nothing in this Stipulation or the Consent Order constitutes, nor shall the Bank contend that it constitutes, a release, discharge, compromise, settlement, dismissal, or resolution of any actions, or in any way affects any actions that may be or have been brought by any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice.

(3) The terms of this Stipulation, including this paragraph, and of the Consent Order are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of First Tennessee Bank, National Association, Memphis, Tennessee, have hereunto set their hands on behalf of the Bank.

<u>/s/ John C. Compton</u> John C. Compton	<u>2-8-17</u> Date
<u>/s/ Mark A. Emkes</u> Mark A. Emkes	<u>2-8-17</u> Date
<u>/s/ Corydon J. Gilchrist</u> Corydon J. Gilchrist	<u>2-8-17</u> Date
<u>/s/ D. Bryan Jordan</u> D. Bryan Jordan	<u>2-8-17</u> Date
<u>/s/ R. Brad Martin</u> R. Brad Martin	<u>2-8-17</u> Date
<u>/s/ Scott M. Niswonger</u> Scott M. Niswonger	<u>2-8-17</u> Date
<u>/s/ Vicki R. Palmer</u> Vicki R. Palmer	<u>2-8-17</u> Date
<u>/s/ Colin V. Reed</u> Colin V. Reed	<u>2-8-17</u> Date
<u>/s/ Cecelia D. Stewart</u> Cecelia D. Stewart	<u>2-8-17</u> Date
<u>/s/ Rajesh Subramaniam</u> Rajesh Subramaniam	<u>2-8-17</u> Date

/s/ Luke Yancy, III  
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Luke Yancy, III

2-8-17  
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Date