

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

Jeff Bickerstaff, Jr., on behalf of	)	
himself and all persons similarly	)	
situated,	)	
	)	
Plaintiff,	)	CIVIL ACTION
	)	
v.	)	FILE NO. 10-EV-010485-H
	)	
SunTrust Bank,	)	
	)	
Defendant.	)	

**FIRST AMENDED COMPLAINT**

Plaintiff Jeff Bickerstaff, Jr., on behalf of himself and all persons similarly situated, files this First Amended Complaint against Defendant SunTrust Bank (“SunTrust”). Plaintiff respectfully shows the Court as follows:

**NATURE OF THE ACTION**

1.

This is an action to recover damages incurred as a result of SunTrust’s unlawful conduct in collecting from SunTrust customers interest far in excess of the limits permitted for such transactions by Georgia law.

2.

SunTrust’s unlawful conduct occurs in the context of SunTrust’s administration of its automated overdraft program (“Automated Overdraft Program”) in connection with the administration of its “POS/debit” and automated-teller machine (“ATM”) cards (each a “Bank Card” and collectively “Bank Cards”), which Bank Cards SunTrust customers use to access money in their SunTrust accounts.

3.

In a typical transaction in connection with SunTrust's Automated Overdraft Program, a SunTrust customer attempts to use his or her Bank Card to make a purchase (or withdraw cash) in an amount for which such customer's then-available account balance is insufficient.

4.

The amount by which such customer's then-available account balance is insufficient may be very small. For example, a customer may attempt to use his or her Bank Card to purchase a cup of coffee, and his or her then-available account balance may be insufficient by as little as \$1 or even \$.01.

5.

According to SunTrust's written, standardized policies and procedures (SunTrust's "Procedures"), rather than notifying the customer that he or she has insufficient money to cover the transaction and declining the transaction, SunTrust will (a) automatically advance to the customer the amount of money needed to close the transaction (in the example above, the \$1 or \$.01 to purchase the coffee) and (b) approve the transaction. This gives rise to an overdraft in the customer's account (an "Overdraft").

6.

SunTrust then automatically charges the customer an "overdraft fee" in an amount up to \$36 (an "Overdraft Fee").

7.

SunTrust only charges an Overdraft Fee if it advances money to the customer to close the proposed transaction. Thus, in the example above, if the customer has sufficient money to cover the coffee purchase, SunTrust does not charge the customer an Overdraft Fee. Similarly, if the

customer has insufficient money to cover the coffee purchase and SunTrust declines the transaction, SunTrust does not charge the customer an Overdraft Fee. But, if the customer is short by \$.01 and SunTrust advances the \$.01, then SunTrust charges the customer an Overdraft Fee.

8.

Overdraft transactions between SunTrust and its customers are entirely automated. Indeed, from advancing to collecting the Overdraft, Overdraft Fee and other related charges, SunTrust relies upon automated information-technology systems to execute each transaction, and such systems were in place well before the Overdraft took place. As a result, and as described below, SunTrust renders no services in connection with its execution of an Overdraft transaction. Yet, SunTrust charges customers up to a \$36 Overdraft Fee and other related charges per Overdraft.

9.

When, as here, a lender charges a borrower a fee for the use of money advanced, and the lender renders no services in connection with that fee, the “fee” is, in fact, “interest” charged by the lender for the use of the money advanced.

10.

In the context of its Automated Overdraft Program, SunTrust’s Overdraft Fee is interest collected from its customer for SunTrust’s advance of money to close a proposed Bank-Card transaction for which such customer’s then-available account balance was insufficient.

11.

Further, if any portion of the customer’s Overdraft and Overdraft Fee remain outstanding and unpaid on the seventh (7<sup>th</sup>) day following the Overdraft, SunTrust charges such customer

additional interest in the form of an extended Overdraft Fee in the amount of \$36 (“Extended Overdraft Fee”). SunTrust charges this additional fee even though it renders no services in connection with the fee.

12.

In the foregoing example, if the Overdraft is in the amount of \$1, and the Overdraft (\$1) and Overdraft Fee (\$36) are paid on the sixth (6<sup>th</sup>) day after the Overdraft transaction, thereby avoiding the Extended Overdraft Fee, then the Overdraft Fee amounts to a 219,000% annual percentage rate (“APR”) and an 18,000% monthly percentage rate (“MPR”). Further, if the Overdraft is in the amount of \$.01, and the Overdraft (\$.01) and Overdraft Fee (\$36) are paid on the sixth (6<sup>th</sup>) day after the Overdraft transaction, thereby avoiding the Extended Overdraft Fee, then the Overdraft Fee amounts to a 21,900,000% APR and a 1,800,000% MPR.

13.

Alternatively, in the foregoing example, if the Overdraft is in the amount of \$1, and the Overdraft (\$1), Overdraft Fee (\$36) and Extended Overdraft Fee (\$36) are paid on the eighth (8<sup>th</sup>) day after the Overdraft transaction, then the Overdraft Fee and Extended Overdraft Fee combine to amount to a 328,500% APR and a 27,000% MPR. Further, if the Overdraft is in the amount of \$.01, and the Overdraft (\$.01), Overdraft Fee (\$36) and Extended Overdraft Fee (\$36) are paid on the eighth (8<sup>th</sup>) day after the Overdraft transaction, then the Overdraft Fee and Extended Overdraft Fee combine to amount to a 32,850,000% APR and a 2,700,000% MPR.

14.

Such rates grossly exceed Georgia’s civil and criminal usury limits.

15.

Further, while any portion of a customer's Overdraft, Overdraft Fee or Extended Overdraft Fee remains outstanding and unpaid, and on each occasion that the customer deposits new money in his or her account, SunTrust automatically seizes such new money to the extent required to collect the full outstanding and unpaid amount of the Overdraft, Overdraft Fee and Extended Overdraft Fee.

16.

For the reasons set forth in this Complaint, Plaintiff and all other persons similarly situated are entitled to damages for the injuries they have suffered as a result of SunTrust's unlawful conduct. And, Plaintiff hereby brings this action on behalf of himself and all others similarly situated for: (1) violation of Georgia's civil usury laws, O.C.G.A. § 7-4-2; (2) violation of Georgia's criminal usury laws, O.C.G.A. § 7-4-18; (3) conversion; and (4) money had and received.

### **DEMAND FOR PAYMENT**

17.

Plaintiff, on behalf of himself and all Class Members, as defined below, demanded via paragraph 17 of the original Complaint, filed on July 12, 2010 and served on SunTrust on July 14, 2010, that SunTrust refund and repay to each Class Member all of the Overdraft Fees and other charges, including, but not limited to Extended Overdraft Fees, (a) collected by SunTrust from each such Class Member (i) in connection with SunTrust's administration of its Automated Overdraft Program and (ii) within four years of the date Plaintiff filed this Complaint and (b) which Overdraft Fees and other charges combine to amount to an APR in excess of 16% and/or an MPR in excess of 5% on the related advance.

18.

Plaintiff also, on behalf of himself and all Class Members, as defined below, demanded via letter sent to SunTrust on July 16, 2010 that SunTrust return all of the fees that SunTrust collected from Plaintiff and the Class in connection with an advance of money made pursuant to SunTrust's Automated Overdraft Program, as defined in the original Complaint, which fees (1) were collected within four years of July 13, 2010, and (2), when compared to the corresponding advance for which such fees were charged and taking into account the number of days such advance and fees were outstanding and unpaid, amounted to (i) an annual percentage rate exceeding 16% or (ii) a monthly percentage rate exceeding 5%. Plaintiff demanded that SunTrust return these fees, by August 6, 2010, because the fees were money collected from Plaintiff and the Class Members for which SunTrust was not the true owner and which in equity and good conscience SunTrust may not keep.

19.

SunTrust did not respond to Plaintiff's demand. SunTrust failed to return the money that it collected from Plaintiff and the Class Members by August 6, 2010, as demanded by Plaintiff on behalf of himself and the Class Members.

### **PARTIES**

20.

Plaintiff is a natural person and a citizen of Georgia, residing in Muscogee County, Georgia.

21.

SunTrust is a Georgia corporation chartered by Georgia to operate as a Georgia state bank. SunTrust's principal place of business is located in Atlanta, Georgia.

22.

SunTrust may be served with process through its registered agent, Raymond D. Fortin, 303 Peachtree Street NE – Suite 3600, c/o Hasana R. Kelly, Atlanta, Georgia, 30308.

**JURISDICTION**

23.

This Court has original jurisdiction of this action because SunTrust (a) was formed under the laws of Georgia and chartered to operate as a state bank in Georgia, (b) maintains its principal place of business in Georgia, (c) is registered to do business in Georgia, (d) is doing business in Georgia, (e) committed the unlawful acts in Georgia, and (f) caused the resulting injury in Georgia. SunTrust is subject to the personal and general jurisdiction of this Court.

24.

This action presents no federal subject-matter jurisdiction, because Plaintiff asserts no claim under federal law and expressly disavows any claim under federal law.

25.

The Federal Deposit Insurance Act (“FDIA”), 12 U.S.C. § 1831d, is inapplicable to Plaintiff’s claims or otherwise to this action, because, among other reasons, the interest rate SunTrust was permitted to charge under applicable state law was, at all times relevant to this action, more than one per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where SunTrust is located; and therefore the FDIA is inapplicable to Plaintiff’s claims and presents no federal question or right of removal.

26.

The Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), is inapplicable to Plaintiff’s claims or otherwise to this action because neither Plaintiff nor any of the Class Members, as defined below, is a citizen of a state different from SunTrust and Plaintiff, the Class Members, as defined below, and SunTrust are all citizens of Georgia.

27.

This action presents no federal diversity jurisdiction because Plaintiff, the Class Members, as defined below, and SunTrust are all citizens of Georgia.

28.

SunTrust is also prohibited from removing this action to federal court, because SunTrust is a citizen of Georgia. 28 U.S.C. § 1441(b).

**VENUE**

29.

Venue is proper in Fulton County, Georgia, pursuant to O.C.G.A. § 14-2-510(b)(1), because SunTrust maintains its registered office in Fulton County, Georgia.

30.

SunTrust is a domestic corporation authorized to do business in Fulton County, Georgia.

31.

At all times relevant to this action, SunTrust has been doing business in Fulton County, Georgia.



## COMMON FACTUAL ALLEGATIONS

32.

This is a civil action seeking monetary damages from SunTrust arising from its collection of usurious interest in connection with its advance of money to Bank-Card holders, namely Plaintiff and all persons similarly situated, pursuant to SunTrust's administration of its Automated Overdraft Program.

### Bank Cards

33.

SunTrust is in the business of issuing Bank Cards to its customers and collecting interest from those customers when SunTrust advances money to them to enable them to close proposed Bank-Card transactions for which such customers' then-available account balances are insufficient.

34.

SunTrust manages its Bank Cards and related Automated Overdraft Program with automated information-technology systems ("Bank-Card IT Systems") that process (a) credits and debits, (b) account-balance reconciliations, (c) determinations regarding whether to grant or deny advances of SunTrust's money in connection with Overdraft transactions, (d) determinations regarding whether to approve or decline Overdraft transactions, (e) the assessment and collection of interest in connection with advances of money, and (f) other related transactions.

35.

At all times relevant to this action, SunTrust has maintained actual or constructive control over its Bank-Card IT Systems.

36.

Once scripted and programmed, SunTrust's Bank-Card IT Systems take over, and SunTrust's employees play no direct role in connection with such systems' automated execution of Overdraft transactions. This management includes, but is not limited to, the systems' automated advance of SunTrust's money to customers and subsequent, automated collection from those customers of the amount advanced along with interest.

37.

Upon opening, or shortly after opening a new account and issuing a Bank Card, SunTrust establishes the Procedures pursuant to which its Bank-Card IT Systems will manage the Bank Card. The framework of the Procedures is common to all members of the Class.

38.

The Procedures include an advance (Overdraft) limit beyond a customer's then-available account balance, up to which limit SunTrust's Bank-Card IT Systems will advance SunTrust's money to such customer, if such customer attempts a Bank-Card transaction beyond his or her then-available account balance.

39.

Then, with such Procedures reduced to computer scripts and SunTrust's Bank-Card IT Systems programmed according to the scripts, the systems take over. Such systems activate the Bank Card and process (a) credits and debits, (b) account-balance reconciliations, (c) determinations regarding whether to grant or deny advances of SunTrust's money in connection with Overdraft transactions, (d) determinations regarding whether to approve or decline Overdraft transactions, (e) the assessment and collection of interest in connection with

the advances of money, and (f) other related transactions – all with no direct human intervention or related cost.

**SunTrust's Overdraft Fees Are Interest**

40.

When a SunTrust customer proposes a Bank-Card transaction for which he or she has insufficient money, SunTrust's Bank-Card IT Systems will automatically check the customer's then-available advance (Overdraft) limit, and if the shortfall is within that limit, the systems will automatically advance the customer sufficient money to close the transaction (giving rise to an Overdraft). The system then approves the transaction with the merchant or at the ATM and charges the customer a flat fee for the advance of such money (an Overdraft Fee).

41.

SunTrust renders no services in connection with the foregoing automated (a) advance, (b) charge of interest and (c) subsequent collection of both the advance and all interest. The entire process, end to end, is automated; managed by SunTrust's Bank-Card IT systems and based upon the Procedures established before the Overdraft transaction.

42.

Further, SunTrust incurs at most *de minimis* incremental costs in connection with the foregoing automated (a) advance, (b) charge of interest, and (c) subsequent collection of both the advance and all interest. SunTrust's Bank-Card IT Systems instantly execute each transaction in the litaney and any incremental cost per transaction is effectively theoretical (*e.g.*, a fraction of a penny).

43.

When, as here, a lender (SunTrust) charges and collects from a borrower (a SunTrust customer) a fee (namely, an Overdraft Fee and Extended Overdraft Fee, as applicable) for the lender's advance of money and the lender renders no services other than the advance of the money, that "fee" is in fact "interest."

44.

Furthermore, when, as here, a lender (SunTrust) only charges and collects such fee when it makes an advance, and not when it declines to do so, the "fee" is, again, "interest." SunTrust cannot justify and, indeed, does not charge any amount ("interest," "fee" or otherwise) when its Bank-Card IT Systems deny an advance of money to a customer proposing a Bank-Card transaction for which such customer's then-available account balance is insufficient; when such systems deny such an advance, the customer's Bank Card is merely declined at the merchant's register or at the ATM, and SunTrust does not charge the customer anything ("interest," "fee" or otherwise) in connection with that transaction.

**Interest on Bank Card Overdraft Advances is Big Business**

45.

In November 2008, the Federal Deposit Insurance Corporation ("FDIC") published a study entitled *FDIC Study of Bank Overdraft Programs* (the "FDIC's 2008 Study").

46.

The FDIC's 2008 Study surveyed 1,171 FDIC-supervised banks to, among other things, assemble and report data in connection with and in response to the rapid growth in the use of "automated overdraft programs, defined as programs in which the bank honors a customer's

overdraft obligations using standardized procedures to determine whether the ... transaction qualifies for overdraft coverage.” *See* Executive Summary, page II.

47.

As set forth above, when SunTrust approves and issues a Bank Card, it establishes at the outset certain Procedures, the Procedures are reduced to computer scripts and SunTrust’s Bank-Card IT Systems are programmed according to the scripts. Then, the automated systems take over and manage the Bank Card and SunTrust’s Automated Overdraft Program. SunTrust’s Automated Overdraft Program is an “automated overdraft program” like those discussed in the FDIC’s 2008 Study.

48.

The FDIC’s 2008 Study revealed, among other things, that: (i) the vast majority of large banks (banks presenting at least \$1 billion in assets) operated automated overdraft programs, *see* Executive Summary, page II ¶ 1; (ii) the vast majority of large banks automatically enrolled customers in the bank’s automated overdraft programs, *see* Executive Summary, page III ¶ 3; and (iii) the vast majority of large banks established “credit limits for automated overdraft customers in written policies, consistent with the bank’s lending program,” *see* Executive Summary, page III ¶ 5.

49.

Such credit limits “stipulated in such written policies ranged from \$85 to \$10,000, and the median credit limit was \$500.” Executive Summary, page III ¶ 5.

50.

Automated overdraft fees assessed by banks ranged from \$10 to \$38, and the median fee assessed was \$27. *See* Executive Summary, page III ¶ 6.

51.

For the reporting banks, their various forms of overdraft fees represented 74% of all “service charges on deposit accounts reported by these banks,” Executive Summary, page III ¶ 11, and almost half such fees “took place at POS/debit ... and ATM ... terminals.” Executive Summary, page V ¶ 7.

52.

In short, the business of operating automated overdraft programs has become big business and that business has been accelerating since 2001. *See* Executive Summary, page III ¶ 2.

53.

“Accounts held by customers in low-income areas ... were more likely than accounts in higher-income areas to incur overdraft charges.” Executive Summary, page V ¶ 5. Further, “[r]ecurrent overdrafts were also more likely the lower the income group.” Executive Summary, page V ¶ 6.

54.

“Accounts held by young adults (ages 18 to 25) were the most likely among all age groups” to have automated overdraft transactions. *See* Executive Summary, page V ¶ 10.

55.

“Assuming a \$27 overdraft fee (the survey median), a customer repaying a \$20 POS/debit overdraft in two weeks would incur an APR of 3,520 percent;” and, “a customer repaying a \$60 ATM overdraft in two weeks would incur an APR of 1,173 percent.” *See* Executive Summary, page V ¶ 9 (emphasis added). The FDIC calculated such annual percentage rates (“APR’s”) as

follows: “((Fee Charged/Amount Financed)\*365/Term (14 days)).” See Executive Summary, Page V fn. 8.

56.

According to the financial media, in 2009 the combined fees collected by the bank and credit union industry in connection with processing NSF checks and interest on advances of money in connection with Bank Cards, were an estimated \$38 billion.

57.

Further, the customers paying most of the industry’s fees for services processing NSF Checks and interest on the advance of money in connection with Bank Cards are those least able to afford it – *e.g.*, low-income households, young adults and others similarly situated.

58.

The interest SunTrust charges on the advance of money in connection with Bank Cards victimizes the Georgia citizens who most need the protections of Georgia’s usury laws.

**Interest and Fees - from the Customer’s Perspective**

59.

In all or substantially all instances in which SunTrust’s Bank-Card IT Systems advance an Overdraft of \$3,000 or less in connection with SunTrust’s Automated Overdraft Program and subsequently collect the advanced amount and the related Overdraft Fees and Extended Overdraft Fee, as applicable, those fees amount to usurious interest. For example, and as set forth above, if SunTrust advances \$1 to a customer (giving rise to an Overdraft) and collects from that customer the advanced amount and a \$36 Overdraft Fee on the sixth (6<sup>th</sup>) day following the Overdraft, then the Overdraft Fee amounts to a 219,000% APR and an 18,000% MPR. Alternatively, if SunTrust collects from that customer the advanced amount, a \$36

Overdraft Fee and a \$36 Extended Overdraft Fee on the eighth (8<sup>th</sup>) day following the Overdraft, then the Overdraft Fee and Extended Overdraft Fee combine to amount to a 328,500% APR and a 27,000% MPR. These rates of interest grossly exceed Georgia's civil and criminal usury limits.

60.

In this example, SunTrust's customer is paying \$36 to borrow \$1 for six days, or alternatively, \$72 to borrow \$1 for eight days – in each example, a paradigmatic case of usury.

### **Georgia's History Opposing Usury**

61.

Georgia has opposed usury and safeguarded its citizens from the practice since 1759.

62.

Today, 251 years after enactment of Georgia's first legislation safeguarding its citizens from usury, Georgia's legislature has fixed the maximum rate of interest allowed by law and applicable here in connection with advances of money.

63.

The maximum rate of interest allowed by law is 16% APR for advances in the principal amount of \$3,000 or less. O.C.G.A. § 7-4-2(a)(2).

64.

The maximum rate of interest allowed by law is 5% MPR, as an absolute ceiling, on all advances. O.C.G.A. § 7-4-18(a).

65.

While the Georgia legislature largely permits parties to establish their own rates of interest in connection with advances of money, the Georgia legislature has expressly protected



Georgia consumers from two forms of usury applicable here.

66.

The Georgia legislature has expressly protected Georgia consumers in connection with relatively small advances of money, e.g., in the principal amount of \$3,000 or less, from rates of interest in excess of 16% APR, because, among other reasons, such borrowers are often at a material disadvantage in negotiating the terms and conditions in connection with such advances. O.C.G.A. § 7-4-2(a)(2).

67.

Further, the Georgia legislature has expressly protected Georgia consumers in connection with all advances of money from rates of interest in excess of 5% MPR. O.C.G.A. § 7-4-18(a).

68.

Georgia courts have long looked past the labels promoted by lenders to root out the substance of a transaction to determine whether it is usurious.

### **CLASS ALLEGATIONS**

69.

Plaintiff brings this action on behalf of himself and all persons similarly situated pursuant to O.C.G.A. § 9-11-23. This action satisfies the requirements of Georgia law as a damages class action. O.C.G.A. § 9-11-23(b)(3).

70.

Plaintiff proposes to represent all persons who meet the following definition (each member referred to herein a “Class Member” and, collectively, all such members to be referred to as the “Class Members” or the “Class”); a Class Member is a person -

- a. Who was on the date Plaintiff filed this Complaint, and has thereafter

continuously remained through the date this Court certifies this action as a class action, a citizen of Georgia; and

b. To whom SunTrust in the administration of its Automated Overdraft Program made an advance of money in an amount less than \$3,000; and

c. From whom SunTrust collected such advance and one or more charges in connection with the advance, including, but not limited to, an Overdraft Fee and/or Extended Overdraft Fee, as applicable, within four years of the date Plaintiff filed this Complaint.

71.

Plaintiff reserves the right to amend the foregoing class definition before this Court determines whether certification is appropriate.

72.

Excluded from the Class are (1) all Georgia state-court judges and members of their families within the first degree of consanguinity, (2) SunTrust's officers, directors and counsel of record, and (3) any state.

73.

Numerosity. Pursuant to O.C.G.A. § 9-11-23(a)(1), the Class is so numerous that joinder of all Class Members is impracticable. Plaintiff is unable to allege at this time the exact number of Class Members; however, Plaintiff believes there are at a minimum tens of thousands of Class Members. Plaintiff believes that SunTrust's records maintained in the ordinary course will readily reveal the exact number of Class Members.

Commonality. Pursuant to O.C.G.A. § 9-11-23(a)(2), this action presents material questions of law and fact common to the Class. Such questions include, but are not limited to -

a. Civil usury –

i. When SunTrust advanced money to Plaintiff to fund Plaintiff’s proposed Bank-Card transaction for which Plaintiff’s then-available account balance was insufficient, was such advance an “advance” pursuant to O.C.G.A. § 7-4-2(a)(2)?

ii. And, if so -

1. When SunTrust collected from Plaintiff an Overdraft Fee in connection with such advance, was the fee “interest” pursuant to O.C.G.A. § 7-4-2(a)(3)?

2. When SunTrust collected from Plaintiff other charges, including but not limited to, an Extended Overdraft Fee, in connection with such advance, were such other charges “interest” pursuant to O.C.G.A. § 7-4-2(a)(3)?

3. When SunTrust collected the foregoing Overdraft Fee and other charges, did SunTrust know that the fees and other charges would yield an effective APR in excess of 16%?

b. Criminal Usury -

i. When SunTrust advanced money to Plaintiff to fund Plaintiff’s proposed Bank-Card transaction for which Plaintiff’s then-available account balance was insufficient, was such advance an “advance” pursuant to O.C.G.A. § 7-4-18(a)?

ii. And, if so -

1. When SunTrust collected from Plaintiff an Overdraft Fee in connection with such advance, was such fee “interest” pursuant to O.C.G.A. § 7-4-18(a)?

2. When SunTrust collected from Plaintiff other charges, including but not limited to, an Extended Overdraft Fee, in connection with such advance, were such other charges “interest” pursuant to O.C.G.A. § 7-4-18(a)?

3. When SunTrust collected the foregoing Overdraft Fee and other charges did SunTrust know that such fee and other charges would yield an effective MPR in excess of 5%?

75.

Typicality. Pursuant to O.C.G.A. § 9-11-23(a)(3), Plaintiff’s claims are typical of the Class’s claims. All such claims -

- a. Present the same elements and burden of proof;
- b. Rely upon SunTrust’s same course of conduct;
- c. Rely upon the same legal arguments; and
- d. Rely upon the same method to measure damages.

76.

Adequacy. Pursuant to O.C.G.A. § 9-11-23(a)(4), Plaintiff and the undersigned counsel meet the requirement of adequacy.

- a. Plaintiff will fairly and adequately protect the interests of the Class.
- b. The undersigned counsel are qualified, experienced and able to represent Plaintiff and the Class.

77.

Damages Class. Pursuant to O.C.G.A. § 9-11-23(b)(3), this action satisfies the requirements of Georgia law for prosecution as a damages class action, because the questions of law and fact common to the Class Members predominate over any questions affecting only

individual Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

78.

Predominance. Pursuant to O.C.G.A. § 9-11-23(b)(3), the questions of law or fact common to the Class Members predominate over any questions affecting only individual members. SunTrust's course of conduct shall be discovered without any need for participation by individual Class Members. Similarly, this Court's determinations of law shall be made without any need for participation by individual Class Members. The Class's claims present no issues of causation or reliance unique to individual Class Members.

79.

Superiority. Pursuant to O.C.G.A. § 9-11-23(b)(3), a class action is superior to all other available methods for the fair and efficient adjudication of this controversy. This action presents textbook facts and circumstances for the conduct of a class action to afford each individual Class Member a fair and efficient manner by which to prosecute his or her common claims and, likewise, a fair and efficient manner by which SunTrust may defend such claims. Class Members could number in the tens of thousands, hundreds of thousands or millions.

80.

Individual Control. The interests of individual Class Members are overwhelmingly best served by the conduct of a class action. Class Members' individual actual damages probably measure on the order of tens or hundreds of dollars. By contrast, the undersigned counsel believe they will be compelled to invest millions of dollars in time, costs and expenses in the prosecution of this action in order to best prosecute (and win) the Class' claims; and, if the undersigned counsel represented only Plaintiff (versus the entire Class), the undersigned counsel

would nevertheless be compelled to expend substantially all of the same time, costs and expenses in the prosecution of this action on behalf of Plaintiff, individually. Therefore, in the absence of a class action, individual Class Members would, in reasonable probability, be unable to prosecute (and win) their claims.

81.

Other Factors. Plaintiff is aware of one proposed class action pending against SunTrust in connection with its Automated Overdraft Program.

82.

Such action is a part of MDL No. 2036 pending in the Southern District of Florida (the “MDL Action”). The MDL includes a host of actions against more than a dozen banks (including SunTrust) in connection with the manner in which they account for (or post) credits and debits in connection with their automated overdraft programs.

83.

However, the MDL Action is pending in federal court, fails to allege claims for civil or criminal usury, fails to challenge the amount or integrity of SunTrust’s Overdraft Fees or Extended Overdraft Fees (challenging only the frequency of SunTrust Overdraft transactions), is focused upon the manner in which SunTrust accounts for (or posts) credits and debits and alleges claims for a national class.

84.

Therefore, the MDL Action is fundamentally different from this action.

85.

This Court will not experience any material difficulties in its administration of this action as a class action.

86.

SunTrust's records maintained in the ordinary course of business will readily reveal the identity, current or last known address, driver's license number, social security number and other identifying data for each and every Class Member. Such records will also reveal all relevant details in connection with the amounts of money advanced by SunTrust to each Class Member in connection with SunTrust's Automated Overdraft Program and how and when SunTrust collected from the Class Member the money advanced along with Overdraft Fees and other charges, including, but not limited to, Extended Overdraft Fees.

**COUNT I**  
**Violation of Georgia's Civil Usury Laws**  
**(On Behalf of Plaintiff and all Class Members)**

87.

Plaintiff repeats paragraphs 1 through 86, above.

88.

Plaintiff opened a personal bank account with SunTrust and maintains that account today. At the time Plaintiff opened the account, SunTrust offered him a Bank Card, and he accepted the offer.

89.

SunTrust approved and issued a Bank Card to Plaintiff in connection with his account. In doing so, SunTrust established at the outset certain Procedures in connection with Plaintiff's Bank Card, including, but not limited to, an advance (Overdraft) limit up to which SunTrust would advance money to Plaintiff, if he attempted a Bank-Card transaction beyond his then-available account balance.

90.

With the foregoing Procedures reduced to computer scripts and SunTrust's Bank-Card IT System programmed according to those scripts, the systems took over. The systems activated Plaintiff's Bank Card and began processing (a) credits and debits, (b) account-balance reconciliations, (c) determinations regarding whether to grant or deny advances of SunTrust's money in connection with Overdraft transactions, (d) determinations regarding whether to approve or decline Overdraft transactions, (e) the assessment and collection of interest in connection with advances of money and (f) other related transactions – all with no direct human intervention.

91.

On occasions between February 2, 2009 and April 4, 2010, including, but not limited to, occasions on August 6-7, 2009 and August 19-20, 2009, SunTrust Bank, in connection with its Automated Overdraft Program, advanced money to Plaintiff in amounts less than \$3,000 and collected Overdraft Fees from Plaintiff in connection with each such advance.

92.

On each such occasion, SunTrust's Overdraft Fees amounted to rates of interest grossly in excess of Georgia's civil and criminal usury limits. For example, on August 6, 2009, SunTrust charged Plaintiff an Overdraft Fee, and when SunTrust collected same on August 7, 2009, such Overdraft Fee amounted to an APR of 806,135% and an MPR of 66,258%.

93.

SunTrust made such advance pursuant to the foregoing Procedures compelling SunTrust's Bank-Card IT Systems to automatically advance any money required by Plaintiff to close a proposed Bank-Card transaction for which Plaintiff's then-available account balance was



insufficient, so long as such advance was within Plaintiff's then-available advance (Overdraft) limit; in this way, such advance was not, and all other advances by SunTrust to Plaintiff were not, in any way inadvertent.

94.

In connection with each advance by SunTrust to Plaintiff, SunTrust expected and required Plaintiff to repay the principal amount of the advance and pay interest (an Overdraft Fee). And, SunTrust collected from Plaintiff the principal amount of the advance and interest (an Overdraft Fee) in connection with each advance.

95.

On each occasion, such interest (Overdraft Fee) amounted to an APR in excess of 16%, and SunTrust knew, on each occasion, that such interest (Overdraft Fee) amounted to an APR in excess of 16%.

96.

Georgia law prohibited SunTrust from collecting from Plaintiff interest at a rate in excess of 16% APR. Therefore, when SunTrust collected the foregoing interest (Overdraft Fees), SunTrust violated Georgia civil usury laws, and SunTrust is required to forfeit and refund to Plaintiff all of the interest (Overdraft Fees) SunTrust has collected from Plaintiff. O.C.G.A. § 7-4-10.

97.

In a pattern substantially identical to the foregoing facts in connection with Plaintiff, SunTrust advanced money to each Class Member, assessed and collected usurious interest from each Class Member and SunTrust is required by Georgia law to likewise forfeit and refund to each Class Member all of the interest that SunTrust has collected from each Class Member.

**COUNT II**  
**Violation of Georgia's Criminal Usury Laws**  
**(On Behalf of Plaintiff and all Class Members)**

98.

Plaintiff repeats paragraphs 1 through 97, above.

99.

As more fully set forth above and in connection with each advance by SunTrust to Plaintiff, SunTrust expected and required Plaintiff to repay the principal amount of the advance and pay interest (an Overdraft Fee). And, SunTrust collected from Plaintiff the principal amount of the advance and interest (an Overdraft Fee) in connection with each advance.

100.

On each occasion, such interest (Overdraft Fee) amounted to an MPR in excess of 5%, indeed, on one occasion such interest amounted to an MPR in excess of 66,000%. And, SunTrust knew, on each occasion, that such interest amounted to an MPR in excess of 5%.

101.

Georgia law prohibited SunTrust from collecting from Plaintiff interest at a rate in excess of 5% MPR. Therefore, when SunTrust collected the foregoing interest, SunTrust violated Georgia criminal usury laws, and SunTrust is required to forfeit and refund to Plaintiff all of the interest (Overdraft Fees) that SunTrust has collected from Plaintiff.

102.

In a pattern substantially identical to the foregoing facts in connection with Plaintiff, SunTrust advanced SunTrust's money to each Class Member, assessed and collected usurious interest from each Class Member and SunTrust is required by Georgia law to likewise forfeit and

refund to each Class Member all of the interest (Overdraft Fees) that SunTrust has collected from each Class Member.

**COUNT III**  
**Conversion**  
**(On Behalf of Plaintiff and all Class Members)**

103.

Plaintiff repeats paragraphs 1 through 102, above.

104.

Plaintiff owned personal property in the form of money on deposit at SunTrust.

105.

Through the foregoing unlawful conduct, SunTrust committed an unauthorized assumption and exercise of right of ownership over Plaintiff's personal property (to-wit, Plaintiff's money on deposit at SunTrust) and unlawfully appropriated it. SunTrust also substantially and wrongfully interfered with Plaintiff's right to possession of his personal property. SunTrust converted Plaintiff's personal property for SunTrust's use.

106.

Such unlawful taking of Plaintiff's personal property by SunTrust illegally deprived Plaintiff of the use of his personal property.

107.

SunTrust's unlawful conversion of Plaintiff's personal property proximately caused Plaintiff injury, including, but not limited to, interference with his ordinary and intended use of his personal property.

108.

In a pattern substantially identical to the foregoing facts in connection with Plaintiff, SunTrust unlawfully appropriated, and substantially and wrongfully interfered with, the personal property and property rights of each Class Member and SunTrust's conversion of each Class Member's personal property proximately caused such Class Member injury, including, but not limited to, interference with his or her ordinary and intended use of his or her personal property.

109.

Plaintiff, on behalf of himself and all of the Class Members demanded that SunTrust return the personal property of Plaintiff and all Class Members.

110.

SunTrust did not respond to Plaintiff's demand, and SunTrust has not returned the Plaintiff's or the Class Members' personal property.

**COUNT IV**  
**Money Had and Received**  
**(On Behalf of Plaintiff and all Class Members)**

111.

Plaintiff repeats paragraphs 1 through 110, above.

112.

Through its unlawful conduct, as described above, SunTrust has received money of which SunTrust is not the true owner, and which, in equity and good conscience, SunTrust should not be permitted to keep.

113.

Plaintiff is the true owner of the money received by SunTrust in connection with the unlawful conduct described above, including, but not limited to, charging and collecting usurious interest on loans made by SunTrust to Plaintiff through the use of his Bank Card.

114.

By seizing Plaintiff's money to collect usurious interest, SunTrust has received money that in fact belongs to Plaintiff and to which SunTrust has no right.

115.

Plaintiff is entitled to recover in legal damages from SunTrust the sum of money received by SunTrust of which SunTrust is not the true owner, and which, in equity and good conscience, SunTrust should not be permitted to keep. Plaintiff is also entitled to applicable interest and all other remedies available under this claim.

116.

In a pattern substantially identical to the foregoing facts in connection with Plaintiff, SunTrust received money from each Class Member of which SunTrust is not the true owner, and which, in equity and good conscience, SunTrust should not be permitted to keep. The Class Members are the true owners of such money.

117.

The Class Members are entitled to recover in legal damages from SunTrust the sum of money received by SunTrust of which SunTrust is not the true owner, and which, in equity and good conscience, SunTrust should not be permitted to keep. The Class Members are also entitled to applicable interest and all other remedies available under this claim.

118.

Plaintiff, on behalf of himself and all Class Members, has made a demand upon SunTrust for repayment of the money received by SunTrust in connection with the unlawful conduct, as described above.

119.

SunTrust did not respond to Plaintiff's demand for repayment, and SunTrust has not repaid the money it received from Plaintiff or the Class Members in connection with the unlawful conduct described above.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and all Class Members whom he seeks to represent, prays for the following relief -

1. Trial by jury on all issues so triable;
2. Judgment entered in favor of Plaintiff and all Class Members and against SunTrust in the amount to be determined by the jury at trial;
3. Forfeiture and refund of all interest (Overdraft Fees and Extended Overdraft Fees) assessed and collected by SunTrust in connection with SunTrust's advance of money to Plaintiff and the Class Members in connection with SunTrust's Automated Overdraft Program, which interest violated O.C.G.A. §§ 7-4-2(a)(2) and/or 7-4-18(a);
4. Actual damages;
5. Pre-judgment interest at the maximum rate permitted by applicable law; and
6. Such other relief as this Court deems just and proper.

DATED this the 9th day of August, 2010.

Respectfully submitted,

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*Attorney for Plaintiffs*

## CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of August, 2010, a true and correct copy of the foregoing **First Amended Complaint** was caused to be served on SunTrust Bank's counsel by depositing same in the United States mail, with adequate first class postage thereon, addressed as follows:

Lynnette Eaddy Smith  
Troutman Sanders, LLP  
600 Peachtree Street, NE  
Suite 5200  
Atlanta, GA 30308-2216

This 9<sup>th</sup> day of August, 2010.

/s/ Michael B. Terry  
Michael B. Terry