

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

|   |   |                  |
|---|---|------------------|
| JEFF BICKERSTAFF, JR., on behalf of         | ) |                  |
| himself and all persons similarly situated, | ) |                  |
|   | ) |                  |
| Plaintiff,                                  | ) |                  |
|   | ) |                  |
| vs.   | ) | Civil Action No. |
|   | ) | 10-EV-010485-H   |
| SUNTRUST BANK,                              | ) |                  |
|   | ) |                  |
| Defendant.                                  | ) |                  |

**ANSWER OF SUNTRUST BANK**

Defendant SunTrust Bank (“SunTrust”) hereby answers Plaintiff’s First Amended Complaint as follows:

**FIRST DEFENSE**

SunTrust responds to the individually numbered paragraphs alleged in Plaintiff’s First Amended Complaint (“Complaint”) as follows:

**NATURE OF THE ACTION**

1.

In response to the allegations in Paragraph 1 of the Complaint, SunTrust admits only that Plaintiff seeks the relief described in that paragraph, but SunTrust denies any wrongdoing and denies that Plaintiff is entitled to the relief sought. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 1 of the Complaint.

2.

SunTrust denies the allegations in Paragraph 2 of the Complaint. SunTrust further denies the description of the alleged Automated Overdraft Program in Paragraph 2 of the Complaint as well as in other paragraphs of the Complaint.

3.

In response to the allegations in Paragraph 3 of the Complaint, SunTrust admits that overdraft coverage is a service provided by SunTrust to certain customers that may authorize some of a customer's ATM and debit card transactions even if the amount of the transactions are more than the customer's available account balance. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 3 of the Complaint.

4.

In response to the allegations in Paragraph 4 of the Complaint, SunTrust admits that overdraft coverage may apply to an account regardless of the amount by which the account's funds are insufficient to cover the customer's ATM and debit transactions. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 4 of the Complaint.

5.

SunTrust denies the allegations in Paragraph 5 of the Complaint.

6.

SunTrust denies the allegations in Paragraph 6 of the Complaint.

7.

In response to the allegations in Paragraph 7 of the Complaint, SunTrust admits that, for ATM and debit card transactions, overdraft fees are not assessed if overdraft coverage is not utilized. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 7 of the Complaint.

8.

SunTrust denies the allegations in Paragraph 8 of the Complaint.

9.

SunTrust denies the allegations in Paragraph 9 of the Complaint.

10.

SunTrust denies the allegations in Paragraph 10 of the Complaint.

11.

In response to the allegations in Paragraph 11 of the Complaint, SunTrust admits that, if overdraft coverage applies and if an overdraft fee that has been assessed against an account remains outstanding and unpaid for seven days, then SunTrust charges an extended overdraft fee. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 11 of the Complaint.

12.

SunTrust denies the allegations in Paragraph 12 of the Complaint.

13.

SunTrust denies the allegations in Paragraph 13 of the Complaint.

14.

SunTrust denies the allegations in Paragraph 14 of the Complaint.

15.

SunTrust denies the allegations in Paragraph 15 of the Complaint.

16.

In response to the allegations in Paragraph 16 of the Complaint, SunTrust admits only that Plaintiff seeks the relief described in that paragraph, but SunTrust denies any wrongdoing and denies that Plaintiff is entitled to the relief sought. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 16 of the Complaint.

## DEMAND FOR PAYMENT

17.

In response to the allegations in Paragraph 17 of the Complaint, SunTrust admits that Plaintiff's original Complaint purported to demand, on behalf of himself and all purported class members, that SunTrust refund and repay certain overdraft charges it has assessed, but SunTrust denies all allegations of wrongdoing and denies that Plaintiff or any purported class member is entitled to the refunds or repayments demanded by Plaintiff. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 17 of the Complaint.

18.

In response to the allegations in Paragraph 18 of the Complaint, SunTrust admits that by letter dated July 16, 2010, Plaintiff purported to demand, on behalf of himself and all purported class members, that SunTrust refund and repay certain overdraft charges it has assessed, but SunTrust denies all allegations of wrongdoing and denies that Plaintiff or any purported class member is entitled to the refunds or repayments demanded by Plaintiff. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 18 of the Complaint.

19.

In response to the allegations in Paragraph 19 of the Complaint, SunTrust admits that it has not previously responded to the demands for refunds and repayments made by Plaintiff in his original Complaint and letter dated July 16, 2010. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 19 of the Complaint.

PARTIES

20.

SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint, and those allegations are therefore denied.

21.

SunTrust admits the allegations in Paragraph 21 of the Complaint.

22.

SunTrust admits the allegations in Paragraph 22 of the Complaint.

JURISDICTION

23.

In response to the allegations in Paragraph 23 of the Complaint, SunTrust admits only that jurisdiction is currently proper before this Court. SunTrust denies that it committed any unlawful acts or that it caused any injury. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 23 of the Complaint.

24.

In response to the allegations in Paragraph 24 of the Complaint, SunTrust admits that Plaintiff purports to disavow any claim under federal law. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 24 of the Complaint.

25.

SunTrust denies the allegations in Paragraph 25 of the Complaint.

26.

In response to the allegations in Paragraph 26 of the Complaint, SunTrust admits that it has not attempted to remove this action on the basis that federal jurisdiction exists over

Plaintiffs' claims as they are currently pled. Except as specifically set forth herein, SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Complaint, and those allegations are therefore denied.

27.

In response to the allegations in Paragraph 27 of the Complaint, SunTrust admits that it has not attempted to remove this action on the basis that federal jurisdiction exists over Plaintiffs' claims as they are currently pled. Except as specifically set forth herein, SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 of the Complaint, and those allegations are therefore denied.

28.

In response to the allegations in Paragraph 28 of the Complaint, SunTrust admits that it is a citizen of Georgia. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 28 of the Complaint.

VENUE

29.

SunTrust admits the allegations in Paragraph 29 of the Complaint.

30.

SunTrust admits the allegations in Paragraph 30 of the Complaint.

31.

SunTrust admits the allegations in Paragraph 31 of the Complaint.

[ALLEGED] COMMON FACTUAL ALLEGATIONS

32.

In response to the allegations in Paragraph 32 of the Complaint, SunTrust admits only that Plaintiff seeks the relief described in that paragraph, but SunTrust denies any wrongdoing and denies that Plaintiff is entitled to the relief sought. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 32 of the Complaint.

33.

SunTrust denies the allegations in Paragraph 33 of the Complaint.

34.

In response to the allegations in Paragraph 34, SunTrust admits that it uses automated systems to assist it in managing its customers' deposit accounts and related products. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 34 of the Complaint.

35.

In response to the allegations in Paragraph 35, SunTrust admits that it maintains control over the automated systems that it uses to assist it in managing its customers' deposit accounts and related products. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 35 of the Complaint.

36.

SunTrust denies the allegations in Paragraph 36 of the Complaint.

37.

SunTrust denies the allegations in Paragraph 37 of the Complaint.

38.

SunTrust denies the allegations in Paragraph 38 of the Complaint.

39.

In response to the allegations in Paragraph 39, SunTrust admits that it uses automated systems to assist it in managing its customers' deposit accounts and related products. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 39 of the Complaint.

40.

SunTrust denies the allegations in Paragraph 40 of the Complaint.

41.

SunTrust denies the allegations in Paragraph 41 of the Complaint.

42.

SunTrust denies the allegations in Paragraph 42 of the Complaint.

43.

SunTrust denies the allegations in Paragraph 43 of the Complaint.

44.

SunTrust denies the allegations in Paragraph 44 of the Complaint.

45.

SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45 of the Complaint, and those allegations are therefore denied.

46.

SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 of the Complaint, and those allegations are therefore denied.



47.

In response to the allegations in Paragraph 47, SunTrust admits that it uses automated systems to assist it in managing its customers' deposit accounts and related products. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 47 of the Complaint.

48.

SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 of the Complaint, and those allegations are therefore denied.

49.

SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 of the Complaint, and those allegations are therefore denied.

50.

SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 of the Complaint, and those allegations are therefore denied.

51.

SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 of the Complaint, and those allegations are therefore denied.

52.

SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52 of the Complaint, and those allegations are therefore denied.

53.

SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 of the Complaint, and those allegations are therefore denied.

54.

SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 of the Complaint, and those allegations are therefore denied.

55.

SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 of the Complaint, and those allegations are therefore denied.

56.

SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56 of the Complaint, and those allegations are therefore denied.

57.

SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 of the Complaint, and those allegations are therefore denied.

58.

SunTrust denies the allegations in Paragraph 58 of the Complaint.

59.

SunTrust denies the allegations in Paragraph 59 of the Complaint.

60.

SunTrust denies the allegations in Paragraph 60 of the Complaint.

61.

In response to the allegations in Paragraph 61, SunTrust admits that the State of Georgia has long had laws protecting its citizens from usurious interest. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 61 of the Complaint.

62.

In response to the allegations in Paragraph 62 of the Complaint, SunTrust admits that Georgia's legislature has passed laws prohibiting the charging of usurious interest, but SunTrust denies that it has violated any such laws. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 62 of the Complaint.

63.

In response to the allegations in Paragraph 63, SunTrust admits that O.C.G.A. § 7-4-2(a)(2) provides, "Where the principal amount involved is \$3,000.00 or less, such rate shall not exceed 16 percent per annum simple interest on any loan, advance, or forbearance to enforce the collection of any sum of money unless the loan, advance, or forbearance to enforce the collection of any sum of money is made pursuant to another law." Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 63 of the Complaint.

64.

In response to the allegations in Paragraph 64, SunTrust admits that O.C.G.A. § 7-4-18(a) provides, "Any person, company, or corporation who shall reserve, charge, or take for any loan or advance of money, or forbearance to enforce the collection of any sum of money, any rate of interest greater than 5 percent per month, either directly or indirectly, by way of commission for advances, discount, exchange, or the purchase of salary or wages; by notarial or other fees; or by any contract, contrivance, or device whatsoever shall be guilty of a misdemeanor; provided, however, that regularly licensed pawnbrokers, as defined in Code Section 44-12-130, are limited in the amount of interest they may charge only by the limitations set forth in Code Section 44-12-131." Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 64 of the Complaint.

65.

In response to the allegations in Paragraph 65 of the Complaint, Georgia's legislature has passed laws prohibiting the charging of usurious interest, but SunTrust denies that it has violated any such laws. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 65 of the Complaint.

66.

In response to the allegations in Paragraph 66 of the Complaint, SunTrust admits that O.C.G.A. § 7-4-2(a)(2) provides, "Where the principal amount involved is \$3,000.00 or less, such rate shall not exceed 16 percent per annum simple interest on any loan, advance, or forbearance to enforce the collection of any sum of money unless the loan, advance, or forbearance to enforce the collection of any sum of money is made pursuant to another law." Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 66 of the Complaint.

67.

In response to the allegations in Paragraph 67, SunTrust admits that O.C.G.A. § 7-4-18(a) provides, "Any person, company, or corporation who shall reserve, charge, or take for any loan or advance of money, or forbearance to enforce the collection of any sum of money, any rate of interest greater than 5 percent per month, either directly or indirectly, by way of commission for advances, discount, exchange, or the purchase of salary or wages; by notarial or other fees; or by any contract, contrivance, or device whatsoever shall be guilty of a misdemeanor; provided, however, that regularly licensed pawnbrokers, as defined in Code Section 44-12-130, are limited in the amount of interest they may charge only by the limitations set forth in Code Section 44-

12-131.” Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 67 of the Complaint.

68.

SunTrust is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 68 regarding the motivations of the Georgia Legislature, and those allegations are therefore denied. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 68 of the Complaint.

#### CLASS ALLEGATIONS

69.

In response to the allegations in Paragraph 69 of the Complaint, SunTrust admits that Plaintiff purports to sue on behalf of a class but denies that any class should be certified in this action and denies that SunTrust has engaged in any wrongful practice. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 69 of the Complaint.

70.

In response to the allegations in Paragraph 70 of the Complaint, SunTrust admits that Plaintiff purports to sue on behalf of a class but denies that Plaintiff has properly defined the class that he seeks to represent, denies that any class should be certified in this action, and denies that SunTrust has engaged in any wrongful practice. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 70 of the Complaint.

71.

In response to the allegations in Paragraph 71 of the Complaint, SunTrust admits that Plaintiff purports to reserve the right to amend the class definition but denies that any class may

be properly certified. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 71 of the Complaint.

72.

In response to the allegations in Paragraph 72 of the Complaint, SunTrust admits that Plaintiff purports to define a class that excludes (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, but SunTrust denies that any class can be certified. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 72 of the Complaint.

73.

SunTrust denies the allegations in Paragraph 73 of the Complaint.

74.

SunTrust denies the allegations in Paragraph 74 of the Complaint.

75.

SunTrust denies the allegations in Paragraph 75 of the Complaint.

76.

In response to the allegations in Paragraph 76 of the Complaint, SunTrust denies that Plaintiff will fairly and adequately protect the interests of the Class. SunTrust is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 76 of the Complaint, and those allegations are therefore denied.

77.

SunTrust denies the allegations in Paragraph 77 of the Complaint.

78.

SunTrust denies the allegations in Paragraph 78 of the Complaint.

79.

SunTrust denies the allegations in Paragraph 79 of the Complaint.

80.

SunTrust denies the allegations in Paragraph 80 of the Complaint.

81.

In response to the allegations in Paragraph 81 of the Complaint, SunTrust admits that a purported class action related to overdraft fees is pending and has been consolidated in *In re: Checking Account Overdraft Litig.*, United States District Court for the Southern District of Florida, Civ. Action No. 1:09-md-02036 (“MDL 2036”). Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 81 of the Complaint.

82.

In response to the allegations in Paragraph 82 of the Complaint, SunTrust admits that MDL 2036 involves actions against several banks and that the order in which those banks post debits to their deposit accounts is at issue in MDL 2036. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 82 of the Complaint.

83.

In response to the allegations in Paragraph 83 of the Complaint, SunTrust admits that MDL 2036 is pending in federal court, that no claims of usury against SunTrust are at issue in MDL 2036 and that the class sought to be certified against SunTrust in MDL 2036 is a nationwide class. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 83 of the Complaint.

84.

SunTrust denies the allegations in Paragraph 84 of the Complaint.

85.

SunTrust denies the allegations in Paragraph 85 of the Complaint.

86.

In response to the allegations in Paragraph 86 of the Complaint, SunTrust admits that, in the ordinary course of business, it creates and maintains information relating to the identities of its deposit account customers and to the assessment of overdraft fees against its customers' deposit accounts. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 86 of the Complaint.

COUNT I: VIOLATION OF GEORGIA'S CIVIL USURY LAWS  
(On Behalf of Plaintiff and all Class Members)

87.

In response to the allegations in Paragraph 87 of the Complaint, SunTrust incorporates its responses to Paragraphs 1 through 86 of the Complaint as if fully set forth herein.

88.

In response to the allegations in Paragraph 88, SunTrust admits that Plaintiff has a deposit account with SunTrust and that SunTrust has issued Plaintiff an ATM/Debit card in connection with that deposit account. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 88 of the Complaint.

89.

In response to the allegations in Paragraph 89 of the Complaint, SunTrust admits that Plaintiff has a deposit account with SunTrust, that Plaintiff has an ATM/Debit card for his deposit account, and that for certain periods of time overdraft coverage has applied to Plaintiff's deposit account. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 89 of the Complaint.



90.

In response to the allegations in Paragraph 90, SunTrust admits that it uses automated systems to assist it in managing its customers' deposit accounts and related products. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 90 of the Complaint.

91.

In response to the allegations in Paragraph 91 of the Complaint, SunTrust admits that, on August 6, 2009, it assessed two NSF Paid Items Penalties against Plaintiff's deposit account. SunTrust further admits that, on August, 20, 2009, it assessed two NSF Paid Items Penalties against Plaintiff's deposit account. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 91 of the Complaint.

92.

SunTrust denies the allegations in Paragraph 92 of the Complaint.

93.

In response to the allegations in Paragraph 93, SunTrust admits that the NSF Paid Items Penalties described in SunTrust's response to Paragraph 91 were imposed pursuant to the overdraft coverage service that applied to Plaintiff's deposit account. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 93 of the Complaint.

94.

In response to the allegations in Paragraph 94 of the Complaint, SunTrust admits that Plaintiff, in accepting the terms of the *Rules and Regulations for Deposit Accounts*, "agree[d] to deposit sufficient funds to cover any overdraft and any penalties assessed immediately upon notice of any overdraft." Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 94 of the Complaint.

95.

SunTrust denies the allegations in Paragraph 95 of the Complaint.

96.

SunTrust denies the allegations in Paragraph 96 of the Complaint.

97.

SunTrust denies the allegations in Paragraph 97 of the Complaint.

COUNT II: VIOLATION OF GEORGIA'S CRIMINAL USURY LAWS  
(On Behalf of Plaintiff and all Class Members)

98.

In response to the allegations in Paragraph 98 of the Complaint, SunTrust incorporates its responses to Paragraphs 1 through 97 of the Complaint as if fully set forth herein.

99.

SunTrust denies the allegations in Paragraph 99 of the Complaint.

100.

SunTrust denies the allegations in Paragraph 100 of the Complaint.

101.

SunTrust denies the allegations in Paragraph 101 of the Complaint.

102.

SunTrust denies the allegations in Paragraph 102 of the Complaint.

COUNT III: CONVERSION  
(On Behalf of Plaintiff and all Class Members)

103.

In response to the allegations in Paragraph 103 of the Complaint, SunTrust incorporates its responses to Paragraphs 1 through 102 of the Complaint as if fully set forth herein.

104.

In response to the allegations in Paragraph 104, SunTrust admits that Plaintiff has deposited money into his deposit account with SunTrust. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 104 of the Complaint.

105.

SunTrust denies the allegations in Paragraph 105 of the Complaint.

106.

SunTrust denies the allegations in Paragraph 106 of the Complaint.

107.

SunTrust denies the allegations in Paragraph 107 of the Complaint.

108.

SunTrust denies the allegations in Paragraph 108 of the Complaint.

109.

In response to the allegations in Paragraph 109 of the Complaint, SunTrust admits that Plaintiff has purported to demand, on behalf of himself and all purported class members, the return of certain personal property but denies that SunTrust has engaged in any wrongful practice and denies that Plaintiff or any purported class member is entitled to the return of any property from SunTrust. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 109 of the Complaint.

110.

In response to the allegations in Paragraph 110, SunTrust admits that it has not previously responded to the demands for refunds and repayments made by Plaintiff in his original

Complaint and letter dated July 16, 2010. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 110 of the Complaint.

COUNT IV: MONEY HAD AND RECEIVED  
(On Behalf of Plaintiff and all Class Members)

111.

In response to the allegations in Paragraph 111 of the Complaint, SunTrust incorporates its responses to Paragraphs 1 through 110 of the Complaint as if fully set forth herein.

112.

SunTrust denies the allegations in Paragraph 112 of the Complaint.

113.

SunTrust denies the allegations in Paragraph 113 of the Complaint.

114.

SunTrust denies the allegations in Paragraph 114 of the Complaint.

115.

SunTrust denies the allegations in Paragraph 115 of the Complaint.

116.

SunTrust denies the allegations in Paragraph 116 of the Complaint.

117.

SunTrust denies the allegations in Paragraph 117 of the Complaint.

118.

In response to the allegations in Paragraph 118 of the Complaint, SunTrust admits that Plaintiff has purported to demand, on behalf of himself and all purported class members, the return of certain money but denies that SunTrust has engaged in any wrongful practice and denies that Plaintiff or any purported class member is entitled to the return of any money.

Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 118 of the Complaint.

119.

SunTrust admits that it has not previously responded to the demands for refunds and repayments made by Plaintiff in his original Complaint and letter dated July 16, 2010. Except as specifically set forth herein, SunTrust denies the allegations in Paragraph 119 of the Complaint.

Except as specifically set forth herein, all allegations in the Complaint are denied, including allegations in any unnumbered paragraphs or headings of the Complaint. SunTrust further denies that Plaintiff is entitled to any of the relief prayed for in the Complaint, or to any other or further relief from the Court.

SunTrust states the following separate defenses without assuming the burden of proof that would otherwise rest with Plaintiff:

#### SECOND DEFENSE

The claims of Plaintiff and of members of the putative classes are subject to a valid and enforceable arbitration agreement. SunTrust requests that Plaintiff immediately dismiss the Complaint and file his claims in arbitration and if he fails to do so, SunTrust moves and requests this Court to order Plaintiff to do so.

#### THIRD DEFENSE

Plaintiff's Complaint fails to state a claim against SunTrust upon which relief can be granted.

#### FOURTH DEFENSE

The claims of Plaintiff and of members of the putative classes are barred by insufficiency of process, insufficiency of service, insufficiency of service of process and/or lack of personal jurisdiction over SunTrust.

#### FIFTH DEFENSE

SunTrust denies that Plaintiff or any members of the putative classes sustained any damages.

#### SIXTH DEFENSE

SunTrust has not caused Plaintiff or any members of the putative classes to suffer any financial injury.

#### SEVENTH DEFENSE

If Plaintiff or any members of the putative classes sustained any damages as alleged in Plaintiff's Complaint, which is specifically denied by SunTrust, then those individuals have failed to mitigate those damages.

#### EIGHTH DEFENSE

Some or all of the claims of Plaintiff and of members of the putative classes are barred by prior payment.

#### NINTH DEFENSE

Some or all of the claims of Plaintiff and of members of the putative classes are barred by the applicable statute(s) of limitation.

#### TENTH DEFENSE

The Complaint fails to adequately define any class of persons who could properly prosecute this action as a class action, fails to allege any claim that can be prosecuted as a class action, and otherwise fails to satisfy the requirements of class certification.

#### ELEVENTH DEFENSE

Plaintiff's claims, including claims made on behalf of the putative class are barred or diminished by SunTrust's right of setoff and/or recoupment.

#### TWELFTH DEFENSE

As discovery of the evidence may show, Plaintiff's claims, including claims made on behalf of the putative class, are barred by the doctrines of estoppel, laches, unclean hands, waiver and/or ratification.

#### THIRTEENTH DEFENSE

As discovery of the evidence may show, some or all of Plaintiff's claims, including claims made on behalf of the putative class, are barred by release.

#### FOURTEENTH DEFENSE

As discovery of the evidence may show, some or all of Plaintiff's claims, including claims made on behalf of the putative class, are barred because Plaintiff and/or members of the putative class lack standing.

#### FIFTEENTH DEFENSE

As discovery of the evidence may show, some or all of Plaintiff's claims, including claims made on behalf of the putative class, are the subject of prior pending action(s).

#### SIXTEENTH DEFENSE

As discovery of the evidence may show, some or all of Plaintiff's claims, including claims made on behalf of the putative class, are barred by principles of res judicata and/or collateral estoppel by virtue of the failure to schedule such claims as assets in prior proceedings under Title 11 of the United States Code.

#### SEVENTEENTH DEFENSE

As discovery of the evidence may show, some or all of Plaintiff's claims, including claims made on behalf of the putative class, are barred by principles of res judicata and/or collateral estoppel by virtue of the failure to assert such claims as compulsory counterclaims in prior litigation.

#### EIGHTEENTH DEFENSE

Plaintiffs' claims are preempted by the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1831d.

SunTrust reserves the right to assert any additional affirmative defenses and matters in avoidance as may be disclosed during the course of additional investigation and discovery.

WHEREFORE, having asserted the above defenses and having fully responded to Plaintiff's Complaint, SunTrust respectfully requests that the Court grant it the following relief:

- (1) that the Court compel arbitration of this matter and stay the action pending the completion of arbitration;
- (2) that the Court enter judgment in favor of SunTrust and against Plaintiff, that Plaintiff take nothing from SunTrust and that Plaintiff's Complaint be dismissed with prejudice;



(3) that the Court award in favor of SunTrust and against Plaintiff the costs and expenses, including reasonable attorney's fees, incurred by SunTrust as a result of this action; and

(4) that the Court grant to SunTrust such other and further relief as it deems just, equitable, and proper.

Respectfully submitted this 13th day of September 2010.

/s/ Lindsey B. Mann

William N. Withrow  
Georgia Bar No. 772350  
Lynette Eaddy Smith  
Georgia Bar No. 236841  
Lindsey B. Mann  
Georgia Bar No. 431819

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**IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA**

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| JEFF BICKERSTAFF, JR., on behalf of         | ) |                  |
| himself and all persons similarly situated, | ) |                  |
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| Plaintiff,                                  | ) |                  |
|   | ) |                  |
| vs.   | ) | Civil Action No. |
|   | ) | 10-EV-010485-H   |
| SUNTRUST BANK,                              | ) |                  |
|   | ) |                  |
| Defendant.                                  | ) |                  |

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of *ANSWER OF SUNTRUST BANK* upon all counsel of record by first class mail, postage-prepaid, addressed as follows:

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This 13th day of September 2010.

/s/ Lindsey B. Mann  
Lindsey B. Mann