

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT)
OVERDRAFT LITIGATION)
)
MDL No. 2036)
<i>Fourth Tranche</i>)
_____)
)
THIS DOCUMENT RELATES TO:)
)
<i>Shane Swift v. BancorpSouth, Inc.,</i>)
S.D. Fla. Case No. 1:10-cv-23872-JLK)
_____)

DEFENDANT BANCORPSOUTH BANK’S AMENDED ANSWER AND DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT

Pursuant to this Court’s June 16, 2011 Stipulation and Order (**DE# 1625**), BancorpSouth Bank (“BancorpSouth” or "Defendant") hereby submits this Amended Answer and Defenses to Plaintiff Shane Swift’s (“Plaintiff”) Second Amended Complaint (the “Complaint”).

INTRODUCTION

1. The allegations contained in Paragraph 1 state legal conclusions that do not require a response from Defendant. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 1.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2, and on this basis denies the allegations in Paragraph 2.

3. Defendant admits that it provides consumer banking services to its customers. Except as expressly admitted, Defendant is without knowledge or information sufficient to form a belief as

to the truth of the allegations contained in Paragraph 3, and on this basis denies the allegations in Paragraph 3.

4. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4, and on this basis denies the allegations in Paragraph 4.

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5, and on this basis denies the allegations in Paragraph 5.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6, and on this basis denies the allegations in Paragraph 6.

7. Defendant admits that it charges customers overdraft fees in accordance with its customer agreements. Insofar as Plaintiff's allegations in Paragraph 7 state conclusions of law, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 7.

8. Defendant admits that it charges customers overdraft fees in accordance with its customer agreements. Insofar as Plaintiff's allegations in Paragraph 8 state conclusions of law, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 8.

9. Defendant denies the allegations contained in Paragraph 9.

JURISDICTION AND VENUE

10. The allegations contained in Paragraph 10 state legal conclusions that do not require a response from Defendant. Except as expressly admitted, Defendant denies the allegations contained

in Paragraph 10.

11. The allegations contained in Paragraph 11 state legal conclusions that do not require a response from Defendant. Defendant admits that it does business in the Northern District of Florida. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 11.

PARTIES

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12, and on this basis denies the allegations in Paragraph 12.

13. Defendant admits that it is incorporated under the laws of the State of Mississippi and that it maintains its principal office in Tupelo, Mississippi. Defendant admits that it provides retail banking services to thousands of customers, including the issuance of debit cards for use by its customers in conjunction with their checking accounts, and that it does business in Alabama, Arkansas, Florida, Louisiana, Mississippi, Missouri, Tennessee, and Texas. Insofar as the remaining allegations state conclusions of law, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 13.

CLASS ALLEGATIONS

14. The allegations contained in Paragraph 14 state legal conclusions that do not require a response from Defendant. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 14.

15. The allegations contained in Paragraph 15 state legal conclusions that do not require a response from Defendant. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 15.

16. The allegations contained in Paragraph 16 state legal conclusions that do not require a

response from Defendant. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 16.

17. The allegations contained in Paragraph 17 state legal conclusions that do not require a response from Defendant. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 17.

18. The allegations contained in Paragraph 18 state legal conclusions that do not require a response from Defendant. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 18.

19. The allegations contained in Paragraph 19 state legal conclusions that do not require a response from Defendant. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 19.

20. The allegations contained in Paragraph 20 state legal conclusions that do not require a response from Defendant. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 20.

21. The allegations contained in Paragraph 21 state legal conclusions that do not require a response from Defendant. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 21.

22. The allegations contained in Paragraph 22 state legal conclusions that do not require a response from Defendant. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 22.

23. The allegations contained in Paragraph 23 state legal conclusions that do not require a response from Defendant. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 23.

24. The allegations contained in Paragraph 24 state legal conclusions that do not require a response from Defendant. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 24, and on this basis denies the allegations in Paragraph 24.

25. The allegations contained in Paragraph 25 state legal conclusions that do not require a response from Defendant. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 25.

26. The allegations contained in Paragraph 26 state legal conclusions that do not require a response from Defendant. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 26.

COMMON FACTUAL ALLEGATIONS

27. Defendant states that the website to which Paragraph 27 refers speaks for itself. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 27.

28. Defendant admits that it provides its customers with a variety of banking services, that such services may include the use of a check, debit, or ATM card which can be used at various locations, and that such services can be and are provided electronically. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 28.

29. Defendant admits that it uses software in connection with the management of deposit accounts. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 29.

30. Defendant states that its actions in connection with Plaintiff's BancorpSouth account(s) are consistent with the contractual relationship between the parties as memorialized by the Deposit Account Terms and Conditions, the Account Information Statement, and other documents. Insofar as the allegations contained in Paragraph 30 state legal conclusions, no response

thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 30.

31. Defendant admits that Plaintiff maintains or maintained a checking account with Defendant. Defendant further states that the document "Deposit Account Terms and Conditions" speaks for itself. Insofar as the allegations contained in Paragraph 31 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 31.

32. Defendant states that the document "Deposit Account Terms and Conditions" speaks for itself. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 32.

33. Defendant states that the document "Account Information Statement" speaks for itself. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 33.

34. Defendant states that the documents "Deposit Account Terms and Conditions" and "Account Information Statement" speak for themselves. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 34.

35. Defendant states that its actions in connection with Plaintiff's BancorpSouth account(s) are consistent with the contractual relationship between the parties as memorialized by the Deposit Account Terms and Conditions, the Account Information Statement, and other documents. Insofar as the remaining allegations contained in Paragraph 35 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 35.

36. Defendant states that its actions in connection with Plaintiff's BancorpSouth account(s) are consistent with the contractual relationship between the parties as memorialized by the Deposit Account Terms and Conditions, the Account Information Statement, and other

documents. Defendant further states that the documents "Deposit Account Terms and Conditions" and "Account Information Statement" speak for themselves. Insofar as the remaining allegations contained in Paragraph 36 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 36.

37. Defendant states that information on its website speaks for itself. Insofar as the remaining allegations contained in Paragraph 37 state legal conclusions, no response thereto is required. Insofar as the remaining allegations contained in Paragraph 37 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 37.

38. Defendant admits that its customers' debit card transactions are processed electronically. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 38.

39. Defendant states that its actions in connection with Plaintiff's BancorpSouth account(s) are consistent with the contractual relationship between the parties as memorialized by the Deposit Account Terms and Conditions, the Account Information Statement, and other documents. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 39.

40. Defendant states that its actions in connection with Plaintiff's BancorpSouth account(s) are consistent with the contractual relationship between the parties as memorialized by the Deposit Account Terms and Conditions, the Account Information Statement, and other documents. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 40.

41. Defendant states that its actions in connection with Plaintiff's BancorpSouth

account(s) are consistent with the contractual relationship between the parties as memorialized by the Deposit Account Terms and Conditions, the Account Information Statement, and other documents. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 41.

42. Defendant states that its actions in connection with Plaintiff's BancorpSouth account(s) are consistent with the contractual relationship between the parties as memorialized by the Deposit Account Terms and Conditions, the Account Information Statement, and other documents. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 42.

43. Insofar as the remaining allegations contained in Paragraph 43 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 43.

44. Defendant denies the allegations contained in Paragraph 44.

45. Defendant states that its actions in connection with Plaintiff's BancorpSouth account(s) are consistent with the contractual relationship between the parties as memorialized by the Deposit Account Terms and Conditions, the Account Information Statement, and other documents. To the extent that the allegations contained in Paragraph 45 relate to alleged actions or policies of banks generally, as opposed to those of BancorpSouth, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 45.

46. Insofar as the allegations contained in Paragraph 46 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 46.

47. Defendant denies the allegations contained in Paragraph 47.

48. Insofar as the allegations contained in Paragraph 48 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 48.

49. Insofar as the allegations contained in Paragraph 49 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 49.

50. Defendant denies the allegations contained in Paragraph 50.

51. Defendant states that information on its website speaks for itself. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 51.

52. Defendant denies the allegations contained in Paragraph 52.

53. Defendant denies the allegations contained in Paragraph 53.

54. Defendant denies the allegations contained in Paragraph 54.

55. Insofar as the allegations contained in Paragraph 55 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 55.

56. Insofar as the allegations contained in Paragraph 56 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 56.

57. On information and belief, Defendant states that Exhibit C does not reflect the legal requirements applicable to Defendant at any time period relevant to Plaintiff's claims. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 57.

58. On information and belief, Defendant states that the language referenced in Paragraph 58 does not reflect legal requirements applicable to Defendant at any time period relevant to

Plaintiff's claims. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 58.

59. On information and belief, Defendant states that Exhibit C does not reflect the legal requirements applicable to Defendant at any time period relevant to Plaintiff's claims. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 59.

60. On information and belief, Defendant states that Exhibit D does not reflect the legal requirements applicable to Defendant at any time period relevant to Plaintiff's claims. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60, and on this basis denies the allegations in Paragraph 60.

61. On information and belief, Defendant states that the language referenced in Paragraph 61 does not reflect the legal requirements applicable to Defendant at any time period relevant to Plaintiff's claims. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 61.

62. On information and belief, Defendant states that Exhibit E does not reflect the legal requirements applicable to Defendant at any time period relevant to Plaintiff's claims. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62, and on this basis denies the allegations in Paragraph 62.

63. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63, and on this basis denies the allegations in Paragraph 63.

64. Defendant states that the "Deposit Account Terms and Conditions," "Account Information Statement," and related documents speak for themselves. Insofar as the allegations contained in Paragraph 64 state legal conclusions, no response thereto is required. Except as

expressly admitted, Defendant denies the allegations contained in Paragraph 64.

65. Defendant denies the allegations contained in Paragraph 65.

66. Defendant admits that Shane Swift currently has a checking account with BancorpSouth.

67. Defendant admits that it issued a debit card to Mr. Swift, that its debit card allows customers to access their checking account funds by using the card to execute a transaction, that its customers' debit card transactions are processed electronically. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 67.

68. Insofar as the allegations contained in Paragraph 68 state legal conclusions, no response thereto is required. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 68, and on this basis denies the allegations in Paragraph 68.

69. Defendant denies the allegations contained in Paragraph 69.

70. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 70, and on this basis denies the allegations in Paragraph 70.

71. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 71, and on this basis denies the allegations in Paragraph 71.

72. Insofar as the allegations contained in Paragraph 72 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 72.

73. Insofar as the allegations contained in Paragraph 73 state legal conclusions, no

response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 73.

74. Insofar as the allegations contained in Paragraph 74 state legal conclusions, no response thereto is required. Defendant further states that the language referenced in Paragraph 74 does not reflect the legal requirements applicable to Defendant at any time period relevant to Plaintiff's claims. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 74.

75. On information and belief, Defendant states that the language referenced in Paragraph 75 does not reflect the legal requirements applicable to Defendant at any time period relevant to Plaintiff's claims. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 75.

76. Insofar as the allegations contained in Paragraph 76 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 76.

77. Insofar as the allegations contained in Paragraph 77 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 77.

78. Insofar as the allegations contained in Paragraph 78 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 78.

79. Insofar as the allegations contained in Paragraph 79 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 79.

ANSWER TO "FIRST CLAIMS FOR RELIEF"

"Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing"

80. Defendant re-alleges and incorporates by reference each and every preceding paragraph of this Answer as if fully set forth herein.

81. Defendant states that the "Deposit Account Terms and Conditions," "Account Information Statement," and related documents speak for themselves. Insofar as the allegations contained in Paragraph 81 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 81.

82. Insofar as the allegations contained in Paragraph 82 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 82.

83. Insofar as the allegations contained in Paragraph 83 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 83.

84. Insofar as the allegations contained in Paragraph 84 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 84.

85. Insofar as the allegations contained in Paragraph 85 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 85.

86. Insofar as the allegations contained in Paragraph 86 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations

contained in Paragraph 86.

87. Insofar as the allegations contained in Paragraph 87 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 87.

ANSWER TO "SECOND CLAIM FOR RELIEF"

"Unconscionability"

88. Defendant re-alleges and incorporates by reference each and every preceding paragraph of this Answer as if fully set forth herein.

89. Defendant states that the "Deposit Account Terms and Conditions," "Account Information Statement," and related documents speak for themselves. Insofar as the allegations contained in Paragraph 89 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 89.

90. Insofar as the allegations contained in Paragraph 90 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 90.

91. Insofar as the allegations contained in Paragraph 91 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 91.

ANSWER TO "THIRD CLAIM FOR RELIEF"

"Conversion"

92. Defendant re-alleges and incorporates by reference each and every preceding paragraph of this Answer as if fully set forth herein.

93. Insofar as the allegations contained in Paragraph 93 state legal conclusions, no

response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 93.

94. Insofar as the allegations contained in Paragraph 94 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 94.

95. Insofar as the allegations contained in Paragraph 95 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 95.

96. Insofar as the allegations contained in Paragraph 96 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 96.

97. Insofar as the allegations contained in Paragraph 97 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 97.

98. Insofar as the allegations contained in Paragraph 98 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 98.

99. Insofar as the allegations contained in Paragraph 99 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 99.

100. Insofar as the allegations contained in Paragraph 100 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 100.

101. Insofar as the allegations contained in Paragraph 101 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 101.

102. Insofar as the allegations contained in Paragraph 102 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 102.

103. Insofar as the allegations contained in Paragraph 103 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 103.

ANSWER TO "FOURTH CLAIM FOR RELIEF"

"Unjust Enrichment"

104. Defendant re-alleges and incorporates by reference each and every preceding paragraph of this Answer as if fully set forth herein.

105. Insofar as the allegations contained in Paragraph 105 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 105.

106. Insofar as the allegations contained in Paragraph 106 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 106.

107. Insofar as the allegations contained in Paragraph 107 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 107.

108. Insofar as the allegations contained in Paragraph 108 state legal conclusions, no

response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 108.

109. Insofar as the allegations contained in Paragraph 109 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 109.

110. Insofar as the allegations contained in Paragraph 110 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 110.

111. Insofar as the allegations contained in Paragraph 111 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 111.

112. Insofar as the allegations contained in Paragraph 112 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 112.

ANSWER TO "FIFTH CLAIM FOR RELIEF"

"Violations of Ark. Code Ann. § 4-88-1-1, et seq."

113. Defendant re-alleges and incorporates by reference each and every preceding paragraph of this Answer as if fully set forth herein.

114. Insofar as the allegations contained in Paragraph 114 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 114.

115. Insofar as the allegations contained in Paragraph 115 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations

contained in Paragraph 115.

116. Insofar as the allegations contained in Paragraph 116 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 116.

117. Insofar as the allegations contained in Paragraph 117 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 117.

118. Insofar as the allegations contained in Paragraph 118 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 118.

119. Insofar as the allegations contained in Paragraph 119 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 119.

120. Insofar as the allegations contained in Paragraph 120 state legal conclusions, no response thereto is required. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 120.

ANSWER TO PLAINTIFF'S "PRAYER FOR RELIEF"

121. Answering Paragraphs 1 through 8 of Plaintiff's "Prayer for Relief," Defendant denies that Plaintiff, and/or any person he purports to represent, is entitled to any relief whatsoever against Defendant, including, but not limited to, class certification, injunctive relief, declaratory relief, restitution, disgorgement or actual, punitive or exemplary damages or any other damages.

Defendant BancorpSouth further denies any and all allegations in Plaintiff's Complaint not expressly admitted herein.

AFFIRMATIVE AND OTHER DEFENSES

Without admitting any of the allegations of the Complaint, Defendant hereby asserts the following affirmative defenses and additional denials to Plaintiff's allegations:

Affirmative Defenses

FIRST AFFIRMATIVE DEFENSE

The claims that Plaintiff or purported class members assert against BancorpSouth are barred, in whole or in part, by the doctrine of unclean hands. Plaintiff and purported class members voluntarily initiated all transactions which caused their accounts to be overdrawn, and some portion of these transactions were undertaken by Plaintiff or purported class members with knowledge that the transaction or transactions at issue would cause their accounts to be overdrawn and incur a fee. Plaintiff or purported class members thus used BancorpSouth's overdraft policies to engage in transactions for which they knew their accounts did not possess the necessary funds. Under such circumstances, to seek compensation through this lawsuit for knowingly incurring such fees is inappropriate due to plaintiffs' unclean hands.

SECOND AFFIRMATIVE DEFENSE

The claims of Plaintiff or purported class members against BancorpSouth are barred, in whole or in part, by applicable statutes of limitations. Due to the early stage of the proceedings in this matter and the fact that discovery has just begun, BancorpSouth is currently unable to determine with precision the specific claims asserted by Plaintiff or on behalf of the purported class which are time-barred. As currently pleaded, the complaint seeks compensation for overdraft charges and other damages that are so far in the past that recovery for those charges is barred by the applicable statutes of limitations in Alabama, Arkansas, Florida, Louisiana, Mississippi, Missouri, Tennessee, or Texas

-- the states in which BancorpSouth does business. To the extent that Plaintiff or purported class members are seeking compensation for alleged improper overdraft charges beyond the number of years governing the limitations period for the claims asserted, such claims are barred.

THIRD AFFIRMATIVE DEFENSE

The claims of Plaintiff or purported class members against BancorpSouth are barred, in whole or in part, by applicable statutes of repose. Due to the early stage of the proceedings in this matter and the fact that discovery has just begun, BancorpSouth is currently unable to determine with precision the specific claims asserted by Plaintiff or on behalf of the purported class which are time-barred. As currently pleaded, the complaint seeks compensation for overdraft charges and other damages that are so far in the past that recovery for those charges is barred. To the extent that Plaintiff or purported class members are seeking compensation for alleged improper overdraft charges beyond the number of years governing the repose period for the claims asserted, such claims are barred.

FOURTH AFFIRMATIVE DEFENSE

The claims of Plaintiff or purported class members against BancorpSouth are barred, in whole or in part, by the doctrine of laches. Due to the early stage of the proceedings in this matter and the fact that discovery has just begun, BancorpSouth is currently unable to determine with precision the specific claims asserted by Plaintiff or on behalf of the purported class which are time-barred. As currently pleaded, the complaint seeks compensation for overdraft charges and other damages that are so far in the past that recovery for those charges is barred. To the extent that Plaintiff or purported class members are seeking compensation for alleged improper overdraft charges so far after the time when Plaintiff or purported class members became aware of such

charges as to make any claim for recovery in this lawsuit prejudicial to BancorpSouth, such claims are barred.

FIFTH AFFIRMATIVE DEFENSE

The claims of Plaintiff or purported class members against BancorpSouth are barred, in whole or in part, by principles of accord and satisfaction. Plaintiff and purported class members voluntarily initiated all transactions which caused their accounts to be overdrawn, and some portion of these transactions were undertaken by Plaintiff or purported class members with knowledge that the transaction or transactions at issue would cause their accounts to be overdrawn and incur a fee, or that a substantial risk existed that such a transaction would cause an overdraft. Plaintiff or purported class members incurred overdraft fees in these situations and paid the fees without protest. Plaintiff's and purported class members' voluntary participation in and acceptance of what they now claim is a compensable wrong bars one or more of their claims.

SIXTH AFFIRMATIVE DEFENSE

The claims of Plaintiff or purported class members against BancorpSouth are barred, in whole or in part, by principles of waiver or license. Plaintiff and purported class members voluntarily initiated all transactions which caused their accounts to be overdrawn, and some portion of these transactions were undertaken by Plaintiff or purported class members with knowledge that the transaction or transactions at issue would cause their accounts to be overdrawn and incur a fee, or that a substantial risk existed that such a transaction would cause an overdraft. Plaintiff or purported class members incurred overdraft fees in these situations and paid the fees without protest. Plaintiff and purported class members failed to cease the practice of voluntarily authorizing transactions that caused overdraft fees after being notified, in both fee notices and monthly statements, that fees were

imposed. Plaintiff's and purported class members' voluntary participation in and acceptance of what they now claim is a compensable wrong bars one or more of their claims.

SEVENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff or purported class members against BancorpSouth are barred, in whole or in part, by consent, including, without limitation, Plaintiff's purported class members' agreement to terms and provisions of contracts with Defendant. Plaintiff or purported class members knowingly incurred overdraft fees and paid the fees without protest. Plaintiff and purported class members failed to cease the practice of voluntarily authorizing transactions that caused overdraft fees after being notified that fees were imposed, in both fee notices and monthly statements; such failure indicates consent to BancorpSouth's practices. Plaintiff's and purported class members' acceptance of and failure to challenge what they now claim is a compensable wrong bars one or more of their claims.

EIGHTH AFFIRMATIVE DEFENSE

The claims of Plaintiff or purported class members against BancorpSouth are barred, in whole or in part, by principles of ratification, acceptance and/or release. Plaintiff and purported class members voluntarily initiated all transactions which caused their accounts to be overdrawn, and some portion of these transactions were undertaken by Plaintiff or purported class members with knowledge that the transaction or transactions at issue would cause their accounts to be overdrawn and incur a fee, or that a substantial risk existed that such a transaction would cause an overdraft. Plaintiff or purported class members knowingly incurred overdraft fees in these situations and paid the fees without protest. Plaintiff and purported class members are estopped from seeking compensation for charges which were previously objected to, and subsequently waived or refunded by BancorpSouth, or accepted by Plaintiff or purported class members after explanation by

BancorpSouth. Plaintiff's and purported class members' voluntary participation in and acceptance of what they now claim is a compensable wrong bars one or more of their claims.

NINTH AFFIRMATIVE DEFENSE

The claims of Plaintiff or purported class members against BancorpSouth are barred, in whole or in part, by principles of *res judicata* and/or judicial estoppel. Any claims relating to purported compensable or wrongful overdraft charges previously raised and resolved by Plaintiff or purported class members cannot form the basis of their claims herein.

TENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff or purported class members against BancorpSouth are barred, in whole or in part, by Plaintiff's failure to satisfy conditions precedent or statutory prerequisites, including any pre-filing requirements under state fair business practices or unfair and deceptive practices laws.

ELEVENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff or purported class members against BancorpSouth are barred, in whole or in part, by Plaintiff's failure to mitigate his damages. Plaintiff and purported class members had complete control over whether to overdraw their checking accounts with BancorpSouth; an overdraft only occurred, and overdraft charges were only assessed, when Plaintiff or purported class members authorized transactions exceeding their account balances. Some portion of these transactions were undertaken by Plaintiff or purported class members with knowledge that the transaction or transactions at issue would cause their accounts to be overdrawn and incur a fee, or that a substantial risk existed that such a transaction would cause an overdraft. Plaintiff's and purported class members' failure to cease the practice of voluntarily authorizing transactions that caused overdraft fees after being notified that fees were imposed, in both fee notices and monthly

statements, constitutes a failure to mitigate any alleged damages that resulted from BancorpSouth's practices.

TWELFTH AFFIRMATIVE DEFENSE

The claims for punitive damages that Plaintiff or purported class members assert against BancorpSouth fail because BancorpSouth did not act maliciously, wantonly, or with intent to defraud.

THIRTEENTH AFFIRMATIVE DEFENSE

The claims for punitive damages that Plaintiff or purported class members assert against BancorpSouth are barred or limited by the Fourteenth Amendment to the United States Constitution and analogous provisions of the Arkansas Constitution.

FOURTEENTH AFFIRMATIVE DEFENSE

The claims of Plaintiff or purported class members against BancorpSouth are barred, in whole or in part, by the voluntary payment doctrine or similar legal theory in that the obligations and fees about which Plaintiff complains were paid voluntarily. Plaintiff or purported class members are barred from recovering for any overdraft charges arising from transactions in which they voluntarily and actively engaged or from which they benefited. Plaintiff or purported class members incurred overdraft fees in these situations and paid the fees without protest. Plaintiff and purported class members are estopped from seeking compensation for charges which were previously objected to, and subsequently waived or reversed by BancorpSouth, or accepted by Plaintiff or purported class members after explanation by BancorpSouth. Plaintiff's and purported class members' voluntary participation in what they now claim is a compensable wrong bars one or more of their claims.

FIFTEENTH AFFIRMATIVE DEFENSE

The claims that Plaintiff asserts against BancorpSouth are barred because Plaintiff acquiesced, as a course of dealing, in Defendant's interpretation, application, and implementation of the contractual terms and provisions, and benefited from Defendant's interpretation, application and implementation of the contractual terms and provisions. At one or more times, Plaintiff or purported class members took advantage of knowledge that BancorpSouth would honor transactions for which Plaintiff's account had insufficient funds. Plaintiff or purported class members are barred from recovering any overdraft charges arising from transactions in which they actively engaged or from which they benefited. Plaintiff's and purported class members' failure to cease the practice of voluntarily authorizing transactions that caused overdraft fees after being notified that fees were imposed, in both fee notices and monthly statements, constituted agreement to a course of dealing between the parties.

Specific Denials

FIRST SPECIFIC DENIAL

The Complaint fails to state a claim upon which relief can be granted, as set forth in BancorpSouth's motion to dismiss Plaintiff's Complaint.

SECOND SPECIFIC DENIAL

Plaintiff or purported class members are not entitled to injunctive, declaratory, or other equitable because they have an adequate remedy at law.

THIRD SPECIFIC DENIAL

The claims that Plaintiff or purported class members assert against BancorpSouth fail because BancorpSouth has acted in good faith.

FOURTH SPECIFIC DENIAL

To the extent that Plaintiff or purported class members have outstanding obligations to defendant, the claims of Plaintiff or purported class members are barred or reduced.

FIFTH SPECIFIC DENIAL

The claims that Plaintiff or purported class members assert against BancorpSouth are barred, in whole or in part, because Defendant's statements, conduct and actions were in conformity with and were made pursuant to statutes, governmental regulations, and industry standards existing at the time of such statements, conduct, and actions.

SIXTH SPECIFIC DENIAL

The claims that Plaintiff or purported class members assert against BancorpSouth are barred by Plaintiff's or purported class members' failure to notify Defendant of any allegedly unauthorized debits in a timely manner following the distribution of account statements.

SEVENTH SPECIFIC DENIAL

Plaintiff or purported class members are barred from challenging Defendant's honoring of debits to his account that he himself initiated or authorized to be initiated, or by Plaintiff's or purported class members' voluntary actions in incurring debits when he knew or should have known that he had entered into a contract the terms of which provided for Defendant to post debits in the order followed by Defendant.

EIGHTH SPECIFIC DENIAL

The claims that Plaintiff or purported class members assert against BancorpSouth are barred because Plaintiff or purported class members exploited the benefit of Defendant's policies and practices regarding acceptance and posting of debits.

NINTH SPECIFIC DENIAL

Plaintiff's lawsuit cannot proceed as a class action because Plaintiff cannot fairly and adequately protect the interests of the class as class representative.

TENTH SPECIFIC DENIAL

Plaintiff's lawsuit cannot proceed as a class action because Plaintiff's claims are not typical of the claims of the class he seeks to represent.

ELEVENTH SPECIFIC DENIAL

Plaintiff's lawsuit cannot proceed as a class action because questions of law and fact common to the proposed class do not predominate over questions affecting only individual members.

TWELFTH SPECIFIC DENIAL

Plaintiff's lawsuit cannot proceed as a class action because a class action is not superior to other methods for fairly adjudicating the controversy between Plaintiff and Defendant, or between the proposed class members and Defendant.

THIRTEENTH SPECIFIC DENIAL

Plaintiff's or purported Arkansas-only class members claims under the Arkansas Deceptive Trade Practices Act (the "ADTPA") fail because the actions they allege were taken by BancorpSouth all fall within the ADTPA's "safe harbor" provision, as set forth in BancorpSouth's motion to dismiss Plaintiff's Complaint.

RESERVATION OF RIGHTS

Defendant reserves the right to identify and assert any further affirmative defenses that may arise, or be identified, in the course of further investigation, discovery, or further litigation of this action.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for the order and judgment of this Court in its favor against Plaintiff as follows:

1. That Plaintiff takes nothing by reason of his Complaint, that judgment be rendered in favor of Defendant;
 2. That Defendant be awarded costs of suit incurred in defense of this action;
 3. That Defendant be awarded its reasonable attorneys' fees as may be allowed by law;
- and
4. For such other relief as the Court deems just and proper.

Respectfully submitted this 6th day of July, 2011.

PARKER, HUDSON, RAINER & DOBBS, LLP

/s/ Eric Jon Taylor

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Counsel for Defendant BancorpSouth Bank

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Eric Jon Taylor
Eric Jon Taylor