

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 MOTION FOR SUMMARY JUDGMENT

BancorpSouth Bank¹ (“BancorpSouth”) hereby moves, pursuant to Federal Rule of Civil Procedure 56, for summary judgment against Plaintiff Shane Swift (“Plaintiff”). In support of this Motion for Summary Judgment, BancorpSouth submits the following:

- (A) BancorpSouth's Memorandum of Law in Support of Motion for Summary Judgment with exhibit;
- (B) BancorpSouth's Statement of Material Facts As To Which There is No Genuine Issue to Be Tried with exhibits;
- (C) All other evidence properly before this court on the hearing of this Motion.

WHEREFORE, BancorpSouth asks that its Motion be granted, and that judgment be entered by the court in its favor.

¹ BancorpSouth, Inc. previously asserted that it is not a proper defendant in this matter and, as a result, Plaintiff Swift named BancorpSouth Bank as the sole defendant in the Second Amended Complaint (DE #994).

Respectfully submitted this 9th day of October, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record entitled to receive service.

This 9th day of October, 2012.

/s/ Eric Jon Taylor
Eric Jon Taylor

UNITED STATES DISTRICT COURT
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Shane Swift v. BancorpSouth, Inc.,)
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**DEFENDANT BANCORPSOUTH BANK'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

BancorpSouth Bank¹ (“BancorpSouth” or the “Bank”) hereby moves, pursuant to Federal Rule of Civil Procedure 56, for summary judgment against Plaintiff Shane Swift (“Plaintiff” or “Swift”), individually and as class representative for the certified classes, on all claims in his Second Amended Complaint (the “Complaint” or “Compl.”).²

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff Shane Swift alleges that he, and a class of BancorpSouth customers he represents,³ paid more overdraft fees to BancorpSouth than he would have otherwise paid, as a result of the method by which BancorpSouth posts transactions to consumer checking accounts. Swift alleges that two BancorpSouth policies caused this allegedly wrongful increase in overdraft fees: (1) posting debit transactions on each banking day from highest-dollar-amount to lowest-dollar-amount; and (2) providing an Overdraft Payment Service through which BancorpSouth paid certain debit transactions even though the customers did not have enough money in their accounts to cover all of their transactions, up to a predetermined customer-specific limit. Swift asserts claims for breach of contract and/or breach of the covenant of good faith and fair dealing; unconscionability; conversion; unjust enrichment; and violation of the Arkansas Deceptive Trade Practices Act (“ADTPA”).

Each of Plaintiff’s claims fails as a matter of law and BancorpSouth should be granted summary judgment on Plaintiff’s entire lawsuit. First, Plaintiff unequivocally removed one of the two factual legs on which his lawsuit stands, because he admitted that, far from being harmful, BancorpSouth’s Overdraft Payment Service provides a valuable benefit to him and other class members. Second, and most critically, the undisputed material facts are that, at all relevant times, BancorpSouth explicitly disclosed that it would post transactions in an order of its choosing, and that the order it chose could result in more overdraft fees than would result from some other order. It is undisputed that BancorpSouth made this disclosure; Plaintiff has admitted as much and has stated that he fully understands the meaning and import of this disclosure. This

¹ BancorpSouth, Inc. previously asserted that it is not a proper defendant in this matter and, as a result, Plaintiff Swift named BancorpSouth Bank as the sole defendant in the Second Amended Complaint (DE #994).

² BancorpSouth hereby incorporates its contemporaneously-filed Statement of Material Facts As To Which There Is No Genuine Issue To Be Tried (“Statement of Facts” or “Stmt. Facts”), and all exhibits thereto. All defined terms used herein are defined in the Statement of Facts.

³ BancorpSouth has petitioned the Eleventh Circuit for permission to immediately appeal this Court’s class certification order, pursuant to Federal Rule of Civil Procedure 23(f).

straightforward state of facts – that BancorpSouth explicitly disclosed, and Plaintiff agreed to, the very terms that Plaintiff is now complaining about, dooms four of Plaintiff’s claims: breach of contract/breach of good faith and fair dealing, unconscionability, unjust enrichment, and alleged ADTPA violation. Third, Plaintiff’s conversion claim fails because deposits with a bank cannot serve as the basis for a conversion claim by the depositor against the bank. Fourth, Plaintiff’s breach of good faith and fair dealing, unconscionability, and unjust enrichment claims fail because, under Arkansas law, such claims either do not exist or do not exist where, as here, a written contract governs the parties’ relationship. Finally, Plaintiff’s ADTPA claim further fails because he has proved neither any conduct that violates that ADTPA nor any qualifying injury under the statute, and because BancorpSouth’s conduct, approved under state and federal law, falls within the ADTPA’s safe harbor provision. Because Plaintiff cannot meet at least one element of any of his claims, every claim should be dismissed.

II. ARGUMENT AND CITATION OF AUTHORITY

A. Standard on a Motion for Summary Judgment

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Peppers v. Coates*, 887 F.2d 1493, 1497 (11th Cir. 1989); *Everett v. Napper*, 833 F.2d 1507, 1510 (11th Cir. 1987); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986).

The party moving for summary judgment is entitled to judgment as a matter of law if the nonmoving party fails to show sufficiently any element of the case to which the nonmoving party has the burden of proof. *Everett*, 833 F.2d at 1510. The nonmoving party may not rest upon the mere allegations or denials in its complaint. It must set forth by affidavits, discovery, or other admissible evidence specific facts showing that there is a genuine issue for trial. *See Fed. R. Civ. P. 56(e)*. If the party's response consists of nothing more than a repetition of its conclusory allegations, the district court must enter summary judgment in the moving party's favor. *Morris v. Ross*, 663 F.2d 1032, 1034 (11th Cir. 1981).

Further, a summary judgment order in a certified and properly-noticed class action binds that class as a whole. Generally, class action judgments bind all members of the class. *Juris v.*

Inamed Corp., 685 F.3d 1294 (11th Cir. 2012).⁴ Swift, as representative of a certified class, binds all members of the certified class: if Plaintiff Swift's claims fail, so do all of the claims for the remaining class members. *Antenor v. D&S Farms*, 39 F. Supp. 2d 1372, 1377 (S.D. Fla. 1999) ("Defendants' request for summary judgment against the class as a whole will rise or fall depending on the class representative's proof."); *Brennan v. Midwestern United Life Ins. Co.*, 450 F.2d 999, 1005 (7th Cir. 1971) ("[T]he absent class member's interests are identical with those of the named plaintiff and his rights and liabilities are adjudicated in the principal suit"); *see also Cooper v. Southern Co.*, 390 F.3d 695, 713 (11th Cir. 2004) ("the common bond between the class representatives' claims and those of the class is strong enough so that it is fair for the fortunes of the class members to rise or fall with the fortunes of the class representatives"); *Helms v. Consumerinfo.com, Inc.*, 436 F.Supp.2d 1220, 1227 n. 7 (N.D. Ala. 2005) ("[b]ecause this court has yet to rule on class certification in this case, a summary judgment ruling against Plaintiff will not bind the as yet unnamed class members").

BancorpSouth need not disprove each element of Plaintiff's claims; BancorpSouth only must demonstrate by reference to the record the absence of evidence to support at least one essential element of Plaintiff's case. As shown below, the undisputed facts conclusively establish that Plaintiff cannot prove each and every essential element of each of his claims. This Court should therefore grant summary judgment to BancorpSouth, as dictated under Arkansas law.⁵

B. Plaintiff's Breach of Contract Claim Fails to State a Claim.⁶

Plaintiff's principal claim is for common law breach of contract. Plaintiff contends that BancorpSouth breached a contract by posting debits from his BancorpSouth checking account in

⁴ This Court's rulings are not binding on the class members unless and until they receive adequate notice. *Juris, supra*. As such, to the extent that adequate notice has not been provided to absent class members at the time this Court considers or rules on summary judgment motions, BancorpSouth reserves the right to reassert, as necessary, the arguments contained herein as to absent class members, and to assert summary judgment arguments applicable to absent class members that have not been asserted herein.

⁵ It is undisputed that Arkansas law governs Plaintiff's claims. (DE #1068-1 at 9); (DE #1192). This Court has not previously addressed in MDL 2036 the issues raised herein under Arkansas law. Although the Court denied BancorpSouth's motion to dismiss Plaintiff's Second Amended Complaint and stated that "the Court's earlier ruling encompassed and disposed of the same defenses," (DE #1305), BancorpSouth respectfully states that neither the Court's earlier Order Ruling on Omnibus Motions (DE #305) nor this Court's ruling on BancorpSouth's motion to dismiss (DE #1305), directly addressed Arkansas law.

⁶ Plaintiff's breach of contract class includes BancorpSouth account holders only in Arkansas,

high-to-low order, which resulted in his incurring more overdraft fees than would otherwise have been the case. Plaintiff does **not** contend, however, that the actual terms of his written contract with BancorpSouth required a posting order different from what BancorpSouth actually used. Nevertheless, Plaintiff claims that the implied covenant of good faith and fair dealing prohibits the posting order used by BancorpSouth despite the unambiguous terms of the contract. Because there is no dispute that the contract between the parties specifically allows BancorpSouth to post transactions in any order it chooses, including high-to-low, and for the other reasons set forth below, Plaintiff's contract-based claims must be dismissed.

1. BancorpSouth's Contract Specifically Authorizes Debits to Be Posted in Any Order, Even If That Order Results in More Fees.

To state a claim for breach of contract, Plaintiff must have evidence that a contract term has in fact been breached. This is where Plaintiff's breach of contract claim fails. Plaintiff acknowledges receipt of the Deposit Agreement, Account Information Statement, and other disclosures, and agreed to the terms therein. (Stmt. Facts ¶¶ 13-14). Plaintiff concedes that his account is controlled by the Deposit Agreement: his claim is for breach of that contract. (Stmt. Facts ¶ 14). Plaintiff testified that the Deposit Agreement expressly authorizes BancorpSouth to post debits in any order, including high-to-low, and agreed to those terms. (Stmt. Facts ¶¶ 17, 21, 29); (Deposit Agreement at 4 ("If more than one item or order is presented for payment against this account on the same day and the available balance is insufficient to pay them all, we may pay any of them ***in any order we choose***")) (emphasis added). Similarly, at all times during the class period, the Account Information Statement clearly disclosed that BancorpSouth may pay transactions in any order it chooses, ***even if the order the bank chose resulted in greater overdraft or insufficient funds fees***. (Stmt. Facts ¶¶ 16, 18).

Further, there is no dispute that Plaintiff received the relevant contracts and disclosures and understood from them that BancorpSouth reserved the right to post transactions in any order. (Stmt. Facts ¶¶ 13, 19, 21, 23). Moreover, Plaintiff acknowledged that he understood BancorpSouth's ordering policies by simply reading his account statements – but that he did not do this until 2010. (*Id.* ¶¶ 32, 36).⁷

Alabama, Florida, Mississippi and Tennessee.

⁷ In fact, Plaintiff's wife acknowledged that if she or Plaintiff had reviewed their monthly statements earlier, they would have understood the posting order at an earlier time. (Stmt. Facts ¶ 25).

Therefore, insofar as Plaintiff is purporting to assert a straightforward breach-of-contract claim, any such claim fails because Plaintiff has not presented any evidence that posting high-to-low is inconsistent with the actual contract terms between him and BancorpSouth. Plaintiff fails to identify any obligation provided in the contract that BancorpSouth has breached. Put simply, breach is an essential element of a breach of contract claim. *See, e.g., Burger King Corp. v. Weaver; M-W-M, Inc.*, 169 F.3d 1310, 1318 (11th Cir. 1999) (claim for breach of the implied covenant failed as a matter of law because the plaintiff cited no contract provision that had been breached); *Alan's of Atlanta, Inc. v. Minolta Corp.*, 903 F.2d 1414, 1429 (11th Cir. 1990) (same); *cf. Keys Jeep Eagle v. Chrysler Corp.*, 897 F. Supp. 1437, 1443 (S.D. Fla. 1995) (dismissing breach of contract claims on summary judgment where "Plaintiffs do not identify a single contract term or provision that [defendant] allegedly breached"). Because Plaintiff has not identified any breach of the governing contract, BancorpSouth should be granted summary judgment on Plaintiff's breach of contract claim.

2. *The Implied Covenant of Good Faith and Fair Dealing Does Not Preclude High-To-Low Posting.*

(a) Plaintiff's Contract Claim based on the Implied Covenant of Good Faith and Fair Dealing Fails Because Such Claim Is Not Recognized Under Arkansas Law.

This Court should dismiss Plaintiff's contract claim to the extent it is based on the implied covenant of good faith and fair dealing because Arkansas courts do not recognize such a claim where, as here, parties adhere to the plain language of the contract. *See Preston v. Stoops*, 285 S.W.3d 606, 609-10 (Ark. 2008). Just last year, the Arkansas Supreme Court specifically rejected such a claim, stating that "[w]e simply see no reason to now recognize a separate contract claim for breach of the duty of good faith and fair dealing. Therefore, a breach of the implied covenant of good faith and fair dealing remains nothing more than evidence of a possible breach of a contract between parties." *Arkansas Research Med. Testing, LLC v. Osborne*, 2011 Ark. 158, *2 (2011). So, too, recent federal court decisions have "overwhelmingly predicted that Arkansas would not recognize such a cause of action." *B&B Hardware, Inc. v. Fastenal Co.*, 2011 U.S. Dist. LEXIS 21516, at *9 (Mar. Ed. Ark. 3, 2011) (dismissing plaintiff's claim for breach of covenant of good faith and fair dealing); *see, e.g., Williams v. State Farm Mutual Auto. Ins. Co.*, 2010 U.S. Dist. LEXIS 61613, at *13-14 (June 22, 2010) (citing several federal district court decisions interpreting Arkansas law which have not recognized such a claim, and

dismissing plaintiff's breach of contract claim based on the implied covenant of good faith and fair dealing). Neither Arkansas state nor federal courts allow an independent breach of contract claim based on an alleged breach of the implied covenant when no breach of the express terms of the contract has occurred. There is no evidence of a breach of any contract term by BancorpSouth; therefore there is no claim. Accordingly, this Court should grant BancorpSouth summary judgment on Plaintiff's breach of good faith and fair dealing claim.

(b) The Implied Covenant of Good Faith and Fair Dealing Cannot Vary Actual Contract Terms Authorizing High-to-Low Posting.

Even if Arkansas did recognize a breach of contract claim arising out of an alleged violation of the implied covenant of good faith and fair dealing, Plaintiff's claim fails because the implied covenant is not breached when, as here, the contract at issue permits the actions of which Plaintiff complains. As the Arkansas Supreme Court recently held, the implied covenant of good faith and fair dealing "should not be used to limit an expressly bargained-for term." *See Gunn v. Farmers Ins. Exch.*, 2010 Ark. LEXIS 542, *6 (Ark. Nov. 11, 2010); *see also* 23 Williston on Contracts § 63:22 (4th ed.) ("as a general principle, there can be no breach of the implied promise or covenant of good faith and fair dealing where the contract expressly permits the actions being challenged, and the defendant acts in accordance with the express terms of the contract"); *Weaver*, 169 F.3d at 1316 ("the implied obligation of good faith cannot be used to vary the terms of an express contract") (citation and quotation marks omitted).

As this Court stated, "*Weaver* held that a cause of action for breach of the implied covenant of good faith cannot be maintained in derogation of the express terms of the underlying contract or in the absence of breach of an express term of the underlying agreement." *Marathon Resort & Marina, Ltd. v. Promus Hotels, Inc.*, No. 02-cv-10085 (S.D. Fla. Dec. 9, 2002) (King, J.) (attached hereto as Exhibit A). This is so because the implied covenant is simply a tool to effectuate the parties' actual bargain – not to change it. *See Kham & Nate's Shoes No. 2, Inc. v. First Bank of Whiting*, 908 F.2d 1351, 1357 (7th Cir. 1990) ("'[g]ood faith' is a compact reference to an implied undertaking not to take opportunistic advantage in a way that could not have been contemplated at the time of drafting"); *cf. Keys Jeep Eagle*, 897 F. Supp. at 1444 (claim failed as a matter of law where the parties' contract "specifically authorized all of [defendant's] actions").

In light of this well-settled rule, the implied covenant cannot be applied to prohibit high-

to-low posting.⁸ The Deposit Agreement and Account Information Statement specifically address posting order and *explicitly authorize* BancorpSouth to post debits in any order, even if that order results in more overdraft and insufficient funds fees. (Deposit Agreement at 4); (Stmt. Facts ¶¶ 17, 18). Precisely this reasoning has been applied to reject claims similar to those of Plaintiff:

We find that the contract clearly and unambiguously provides that the Bank will charge \$20 per day for overdrafts.... The bank charged the overdraft fee within the parameters of the parties' agreement. Thus Saunders' awareness of the Bank's right to charge the overdraft fee negates any inference that the Bank's actions were so far outside the parties' reasonable expectations as to constitute a breach of good faith.

Saunders v. Michigan Ave. Nat'l Bank, 662 N.E.2d 602, 610 (Ill. App. 1996).

BancorpSouth disclosed all of its fees and charges to Plaintiff, including both the standard overdraft fee and continuous overdraft fee. (Stmt. Facts ¶¶ 11, 13, 15-21). BancorpSouth also disclosed throughout the class period that it could post transactions in any order, **even if the BancorpSouth-chosen order resulted in more overdraft fees than some other order.** (*Id.* ¶¶ 17-19). Plaintiff testified that he received these disclosures, and he explicitly agreed to BancorpSouth's policies. (*Id.* ¶¶ 13, 23, 25, 29, 32-33). Plaintiff easily understood from the governing account documents that BancorpSouth reserved the right to post transactions in any order it chose (including high-to-low), and he understood that BancorpSouth did in fact post debit transaction in high-to-low order. (*Id.* ¶ 21, 25, 29, 33). He also understood that whatever posting order BancorpSouth chose could result in more overdrafts and fees on his account. (*Id.* ¶ 33). At the same time, there is no evidence that BancorpSouth ever represented to Plaintiff that it would post transactions in any order other than high-to-low. Swift cannot credibly claim that a posting order that resulted in additional overdraft fees on his account was not within what the

⁸ Nearly every court to face the issue has held that, as a matter of law, posting high-to-low does not violate the implied covenant of good faith and fair dealing. *See, e.g., Landstar Global Logistics, Inc. v. Haskins*, 2012 U.S. Dist. LEXIS 2389 (M.D. Fla. Jan. 9, 2012); *Hassler v. Sovereign Bank*, 644 F. Supp. 2d 509 (D.N.J. 2009); *Hill v. St. Paul Fed. Bank for Sav.*, 768 N.E.2d 322 (Ill. App. 2002); *Fetter v. Wells Fargo Bank Tex., N.A.*, 110 S.W.3d 683 (Tex. App. 2003); *Daniels v. PNC Bank, N.A.*, 738 N.E.2d 447 (Ohio App. 2000); *Smith v. First Union Nat'l Bank*, 958 S.W.2d 113 (Tenn. Ct. App. 1997); *Torres v. Wells Fargo*, 2008 WL 2397460 (N.D. Cal. Jun. 11, 2008); *Riddle v. Star Bank*, No. 98-CI-4098 (Ky. Cir. Ct. Mar. 19, 1999); *Stephens v. PNC Bank of Ky., Inc.*, No. 98-CI-04051 (Ky. Cir. Ct. Oct. 20, 1998); *but see Gutierrez v. Wells Fargo & Co.*, 622 F. Supp. 2d 946, 954 (N.D. Cal. 2009) (jury could conclude that allegation of high-to-low posting as violation of duty of good faith and fair dealing meets definition of "unfair" for state statutory claim); *White v. Wachovia Bank, N.A.*, 563

parties contemplated when they entered the contract, when it is undisputed that this exact possibility was disclosed to him. No claim of breach of good faith and fair dealing is possible on this record.

C. Swift's Unconscionability Claim Fails Because No Such Claim Exists Under Arkansas Law, and Because He Has Not Proven Unconscionability.⁹

Plaintiff asserts a cause of action for "unconscionability," contending that the specific contract terms providing for high-to-low posting are unconscionable, and that the dollar amount of the overdraft fees is itself unconscionable when the fee exceeds the amount of the overdraft itself. (Compl. ¶ 88). Plaintiff's unconscionability claim fails because Arkansas law does not recognize a cause of action for unconscionability; rather, unconscionability is only a *defense* to a contract action. Moreover, it is undisputed that BancorpSouth's posting policies are spelled out in a detailed contract, and that Plaintiff read and understood these terms. (Stmt. Facts ¶¶ 23, 29, 33). Even if recognized under Arkansas law, Plaintiff's unconscionability claim would fail because Plaintiff cannot prove either substantive or procedural unconscionability.

I. Unconscionability Is Not an Affirmative Cause of Action.

Unconscionability is not an affirmative right of recovery or private right of action under Arkansas law. Although unconscionability is a defense to a contract action, it has never been recognized as a separate, offensive cause of action under Arkansas law. *See Hughes v. Wet Seal Retail, Inc.*, 2010 U.S. Dist. LEXIS 121710, *5 (W.D. Ark. Nov. 16, 2010) (interpreting Arkansas law) (recognizing that unconscionability is a state law contract defense). *See, e.g., Parker v. Frazer's, Inc.*, 1998 Ark. App. LEXIS 795, *5 (Nov. 18, 1998) (recognizing that the "defense of unconscionability is in the nature of the confession and avoidance and is therefore an affirmative defense under Ark. R. Civ. P. 8(c)"). In fact, no state recognizes an affirmative cause of action for unconscionability:

[T]he equitable theory of unconscionability has never been utilized to allow for the affirmative recovery of money damages. ...[N]either the common law of Florida, *nor that of any other state*, empowers a court addressing allegations of unconscionability to do more than refuse *enforcement* of the unconscionable section or sections of the contract so as to avoid an unconscionable result.

Cowin Equip. Co. v. Gen. Motors Corp., 734 F.2d 1581, 1582 (11th Cir. 1984) (first emphasis

F.Supp.2d 1358 (N.D. Ga. 2008) (motion to dismiss breach of contract claim denied).

⁹ Plaintiff's unconscionability class includes BancorpSouth account holders only in Arkansas, Alabama, Florida, Louisiana, Mississippi, Missouri, Tennessee and Texas.

added; quoting *Bennett v. Behring Corp.*, 466 F. Supp. 689, 00 (S.D. Fla. 1979). Because Plaintiff does not assert a recognized cause of action upon which relief may be granted, Plaintiff's claim for "unconscionability" must be dismissed. Plaintiff's unconscionability claim fails for this reason alone, and the inquiry should end there.

2. *The Challenged Practices Are Not Unconscionable.*

Even if an affirmative cause of action for unconscionability existed, Plaintiff's claim would be subject to dismissal because the undisputed material facts demonstrate that Plaintiff cannot prove unconscionability. Under Arkansas law, both procedural and substantive unconscionability must be present for a finding of unconscionability. *See Trail DR., LLC v. Silver Hill Financial, LLC*, 2012 U.S. Dist. LEXIS 78953, *21 (E.D. Ark. June 7, 2012) ("A party must prove both procedural and substantive unconscionability before a contract or contract provision will be declared unenforceable"); *Gobeyn v. Travelers Indemnity Co.*, 2009 U.S. Dist. LEXIS 88824, *9 (E.D. Ark. Sep. 24, 2009) ("A plaintiff must prove both procedural and substantive unconscionability for an agreement to be unenforceable"). Neither element is present here.

(a) Plaintiff has not proved procedural unconscionability.

Procedural unconscionability focuses on the manner into which the contract was entered. *Id.* "Courts may look at various factors when determining whether an agreement is procedurally unconscionable, including whether the contract is 'oppressive,' which has been defined as arising from unequal bargaining power that results in an absence of meaningful choice, and the extent to which the person signing the agreement may be surprised by terms hidden in a form drafted by the party seeking to enforce its terms." *Hughes*, 2010 U.S. Dist. LEXIS 121710 at *6-7 (W.D. Ark. Nov. 16, 2010) (citations omitted). The record in this case is bereft of evidence of procedural unconscionability. Plaintiff does not claim that he was ever surprised by the terms of the Deposit Agreement or that he was not given a choice but to open his account with BancorpSouth.¹⁰ Nor does Plaintiff allege that the Deposit Agreement or Account Information Statement is disorganized, or that the posting terms were hidden. In

¹⁰ *See, e.g., Best v. U.S. Nat. Bank of Oregon*, 739 P.2d 554, 556 (Ore. 1987) (overdraft fees were not unconscionable where depositors could close their accounts at any time, and there was no evidence that the depositors were not of ordinary sophistication or that the bank obtained the deposit agreements through deception or improper means); *Saunders v. Michigan Ave. Nat'l Bank*, 662 N.E.2d 602, 611 (Ill. App. 1996) (overdraft fees were not unconscionable where the bank disclosed the fees, plaintiff was not intimidated or coerced into accepting the terms, and plaintiff could have chosen another bank).

fact, Plaintiff testified that he was aware of BancorpSouth's overdraft and posting policies, both from the governing documents and from reviewing his periodic account statements. (Stmt. Facts ¶¶ 21, 25-27, 29-30, 32.) At all times during the class period, Plaintiff had full access to information on his account through multiple channels. (*Id.* ¶¶ 20, 31). In short, Plaintiff has presented no evidence supporting a claim of procedural unconscionability.

(b) Plaintiff has not proved substantive unconscionability.

“[S]ubstantive unconscionability . . . looks to the terms of the contract and whether they are harsh, one-sided, or oppressive.” *See Gobeyn*, 2009 U.S. Dist. LEXIS 88824, *9. A contract is not unconscionable in the eyes of the law merely because the bargain works out, in retrospect, to be more costly than a party expected – especially when that cost is due to the party’s own conduct (in this case overdrawing the account). *See Bennett*, 466 F. Supp. at 699. Rather, the legal question is whether the terms were so shockingly improper, at the time they were entered into, that no court can enforce the contract even though the parties agreed to it. The classic standard is whether the contractual term “shocks the conscience” because it is “one which no sane man not acting under a delusion would make.” *See, e.g., Enderlin v. XM Satellite Radio Holdings*, 2008 U.S. Dist. LEXIS 27668, *38 (E.D. Ark. Mar. 25, 2008); *see also Cal. Grocers Ass’n*, 22 Cal. App. 4th at 214-15; *BMW Fin. Servs., N.A. v. Smoke Rise Corp.*, 486 S.E.2d 629, 630 (Ga. Ct. App. 1997); *Saunders*, 662 N.E.2d at 610.

The Deposit Agreement is not unconscionable. It provides significant benefits to account holders and imposes obligations on BancorpSouth. By paying a transaction into overdraft, BancorpSouth takes on certain financial risks. (Stmt. Facts ¶ 7). The high-to-low posting terms challenged here are hardly “shocking” or exceptional; rather, they authorize routine banking practices. Plaintiff himself asserts in his Complaint that high-to-low posting of debit transactions is commonplace in the industry and is widely accepted, after disclosure, by millions of ordinary banking customers across the country. (Compl. ¶¶ 2-4).

Indeed, the UCC and statements of federal bank regulatory agencies accept the authority of banks to post in high-to-low order, recognizing the significant arguments in favor of the practice and concluding that there is no single approach that is *a priori* preferable. In light of this approval, the practice cannot be deemed unconscionable. *See, e.g., White v. Wachovia, N.A.*, 563 F. Supp. 2d 1358, 1370 (N.D. Ga. 2008) (dismissing unconscionability claim directed at posting practice, observing that “there can be no substantive unconscionability because the text of the

provision [allowing such posting] is consistent with [the UCC]”); *Daniels v. PNC Bank, N.A.*, 738 N.E.2d 447, 451 (Ohio App. 2000) (“because the practice of high-low posting is allowed by [the UCC], it cannot be said to be itself unconscionable”). Similarly, Article 4 of Arkansas' UCC provides that “items may be accepted, paid, certified, or charged to the indicated account of [the bank’s] customer in any order.” UCC § 4-303(b); Ark. Code Ann. § 4-4-3.¹¹

Even if high-to-low posting order theoretically could form the basis for a finding of substantive unconscionability, Swift has presented no evidence that BancorpSouth's posting order was wrongful. Swift himself refused to identify a "correct" posting order, only stating that the transactions should be posted "fairly." (Stmt. Facts ¶ 55). Yet he admits that the relative importance of banking transactions is different for each customer and that BancorpSouth would not know what its customers believe to be their most important transactions. (*Id.* ¶ 57). In other words, Plaintiff demands a "fair" posting order *based on each individual customer's preferences*, but admits that BancorpSouth would not know what each customer considers "fair." (*Id.*) Swift also admitted that he has no reason to believe that all BancorpSouth customers consider BancorpSouth's transaction ordering policies to be unfair. (Stmt. Facts ¶ 58). Because Plaintiff admits that certain BancorpSouth account holders might prefer high-to-low posting, he cannot claim that posting order is inherently unreasonable.

Furthermore, Plaintiff and his wife testified that BancorpSouth’s Overdraft Protection Service actually benefitted them. According to Plaintiff, BancorpSouth's Overdraft Payment Service is a benefit to both him and other class members; his wife and co-account holder agreed. (*Id.* ¶¶ 52-54). Both Plaintiff and his wife *preferred* that BancorpSouth pay all applicable transactions into overdraft and charge a fee, rather than deny the transactions. (*Id.* ¶ 59). Additionally, neither Plaintiff nor his wife ever told BancorpSouth they did not want overdraft protection on their account, and Plaintiff’s wife testified that she had no reason to believe that BancorpSouth would have refused to remove it if she had. (*Id.* ¶ 50). In fact, in May of 2010, Plaintiff elected to continue BancorpSouth's overdraft payment service on his account. (*Id.* ¶¶ 47-48). At the time he made this election he knew BancorpSouth posted items high-to-low because he opted in less than a week *after* he filed his lawsuit. (*Id.* ¶ 51).

¹¹ It would be illogical for Arkansas law to explicitly approve a high-to-low posting order for paper checks if the very same posting order, applied to debit card transactions, was considered unconscionable.

Finally, an account holder like Swift, who can avoid any possible disadvantage by simply not overdrawing his or her account, is not in a position to complain regarding posting order. *See* UCC § 4-303, cmt. 7. Overdrafts occur because the customer initiates payment orders that exceed the account balance. It is undisputed that BancorpSouth's posting order did not actually **cause** Swift's account to overdraw; Swift himself posits merely that posting order affects the total number of fees incurred. (Compl. ¶ 30). In light of Plaintiff's control, there is no possible claim of unconscionability: "[A] person who chronically writes bad checks does not have clean hands to seek equitable relief from the resulting fees, since such a person is engaged in bad banking practices and is merely experiencing the intended deterrent effect of those fees." *Daniels*, 738 N.E.2d at 451; *see also Saunders*, 662 N.E.2d at 611 (plaintiff's challenge to an allegedly excessive overdraft charge "ignores [plaintiff's] own role in establishing the [overdraft] charge").

The facts are undisputed that Plaintiff exercised precisely this control over his BancorpSouth checking account. Either Plaintiff or his wife initiated all of the transactions on their account that caused overdraft fees. (Stmt. Facts ¶ 35). Plaintiff had regular access to his account information with BancorpSouth since he opened his account, (*Id.* ¶ 31), and he received monthly account statements detailing his transaction history for his account. (*Id.* ¶¶ 31-32, 44). Plaintiff also knew that BancorpSouth paid debit card transactions on his account into overdraft and that this triggered fees, because each time Swift incurred an overdraft fee, BancorpSouth notified him of the fee by sending a Notice for Charge for Overdrawn Account. (*Id.* ¶¶ 40, 45, 49).¹² He could also look online to see any overdraft fees before the notice even arrived. (*Id.* ¶ 41). Further, Plaintiff was able to go to his local branch and get copies of his statements at any time. (*Id.* ¶ 24). Plaintiff had the freedom to bank elsewhere, and could have inquired about the

¹² To the extent Plaintiff alleges that "[t]he imposition of overdraft charges which exceed the amount overdrawn ... is itself unconscionable," his claim plainly lacks merit as a matter of law. Plaintiff does not challenge the flat per-item overdraft fee across the board; rather, he simply asserts that, when that amount is charged for overdrafts caused by low value transactions, it is disproportionate to the Bank's risks and costs for those particular transactions. (Compl. ¶ 90). In fact he testified that the amount of BancorpSouth's overdraft fee is not problematic. (Stmt. Facts ¶ 56). But it has never been the law that flat per-transaction pricing is unconscionable or that companies must calibrate their pricing to match the specific costs associated with each transaction. *See Hernandez v. Wells Fargo Bank, N.A.*, 139 N.M. 68 (N.M. 2005) (rejecting claim that overdraft fee rates were unconscionable when imposed for small overdrafts). Therefore, this theory of unconscionability also fails.

posting order or overdrafts fees; he chose to do neither -- Plaintiff still maintains his checking account at BancorpSouth. (*Id.* ¶¶ 37-39, 42, 64-66).¹³ Indeed, Prior to filing his Complaint, Plaintiff never contacted anyone at BancorpSouth to inquire or complain about overdraft fees. (*Id.* ¶¶ 37-38, 42).

For all of these reasons, it is clear that Plaintiff has presented no evidence of procedural or substantive unconscionability.¹⁴ Both because Plaintiff has not presented any evidence of unconscionability, and because unconscionability cannot be an independent cause of action under Arkansas law, this Court should grant BancorpSouth summary judgment on Plaintiff's unconscionability claim.

D. Plaintiff Has Not Proved Any Facts Amounting to Conversion.¹⁵

Plaintiff alleges that charging his account for overdraft fees resulting from high-to-low posting constitutes "conversion." This cause of action also is fatally flawed. Plaintiff fails to plead either essential element of conversion: "(1) ownership of property by the plaintiff and (2) the exercise of dominion over the property by the defendant in violation of the plaintiff's rights." *Delta Pride Catfish, Inc. v. Marine Midland Business Loans, Inc.*, 767 F. Supp. 951, 963 (E.D. Ark. 1991). Because Plaintiff has not presented any evidence of either element, the Court should grant summary judgment on Plaintiff's conversion claim.

I. BancorpSouth Did Not Convert Any Property Owned by Plaintiff When Assessing Fees on Plaintiff's Account.

To state a claim for conversion, the property allegedly converted must belong to the plaintiff. Plaintiff does not, and cannot, show that proceeds in BancorpSouth checking account is property as to which he had personal ownership. On the contrary, it is well settled that when funds are deposited with a bank, the depositor cedes ownership over those funds and becomes instead a general creditor of the bank pursuant to the deposit contract. *See J.W. Reynolds Lumber Co. v. Smackover State Bank*, 836 S.W.2d 853, 855 (Ark. 1992) (holding that there was no conversion claim arising from deposit of money in an account); *see also Scholes Elec. & Commc'ns, Inc. v. Fraser*, 2006 WL 1644920, at *5

¹³ There is no question that Plaintiff had access to other banking options: Plaintiff's wife opened not one but two accounts at other local bank branches during the class period. (Stmt. Facts ¶¶ 64-65).

¹⁴ On the only occasion when Plaintiff's wife complained to BancorpSouth about overdraft charges, they were due to a computer problem and the bank promptly reversed the charges, and she was happy with the service she received. (*Id.* ¶ 39).

¹⁵ Plaintiff neither sought nor was granted certification for a class asserting conversion claims -- at this point he has waived such a class claim. In light of Plaintiff abandoning conversion as a class claim, it is unclear whether Plaintiff is pursuing an individual conversion claim.

(D.N.J. June 14, 2006); *In re Liquidation of Canal Bank & Trust Co.*, 160 So. 609, 611 (La. 1935) (“[T]here is no principle of the law of banking more firmly established than that relating to the title of money deposited generally in a bank. Such a deposit passes title to the banker immediately....”).¹⁶

During briefing on BancorpSouth's motion to dismiss, Plaintiff attempted to confuse this issue by arguing that Plaintiff had a right to possession of the account funds, and thus ownership is irrelevant. (DE# 1192 at 16-17). The error in Plaintiff's logic is shown, however, by the very language on which he purports to rely. Plaintiff quotes *Buck v. Gillham* for the proposition that “[t]he property interest may be shown by a possession or a present right to possession when the defendant cannot show a better right.” 98 S.W.3d 750, 753 (Ark. Ct. App. 2003). Because BancorpSouth can “show a better right,” to the account proceeds, Plaintiff's “possession or . . . present right to possession” of the property is not an ownership sufficient to assert a conversion claim. The black-letter law remains that funds deposited with a bank cannot serve as the basis for a conversion claim by the depositor against the bank. Plaintiff has presented no evidence of any actions by BancorpSouth related to any funds other than those in his deposit account; his conversion claim therefore fails as a matter of law.

2. *Plaintiff Has Offered No Proof of a “Wrongful” Taking of Property.*

It is well settled that “[t]he crux of conversion is *wrongful* exercise of dominion or control over property of another without authorization and to the exclusion of the owner's rights in that property.” *Chicago Title Ins. Co. v. Ellis*, 978 A.2d 281, 288 (N.J. Super. Ct. 2009) (emphasis added); see *McQuillan v. Mercedes-Benz Credit Corp.*, 961 S.W.2d 729 (1998). Even if Plaintiff demonstrated actual ownership of his account funds, he could not as a matter of law demonstrate a wrongful taking of that property, because, as discussed throughout herein, the Bank's actions in assessing the challenged overdraft fees were authorized under the Deposit Agreement.¹⁷

¹⁶ This principle was recognized even in *Gutierrez v. Wells Fargo & Co.*, 622 F. Supp. 2d 946 (N.D. Cal. 2009). There, the court correctly rejected a conversion claim identical to Plaintiff's, stating that the plaintiffs had “not demonstrated their ownership or right to possession of the property. The relationship between a bank and its depositor arising out of a general deposit is that of a debtor and creditor. **A bank may not be sued for conversion of funds deposited with the bank.**” *Id.* at 956 (emphasis added).

¹⁷ Although Plaintiff is really asserting that he was charged too much for his overdrafts, it is well-settled that a claim for an alleged overcharge does not state a claim for conversion. *Gutierrez*, 622 F. Supp. 2d at 956 (citing *McKell v. Washington Mut., Inc.*, 142 Cal. App. 4th 1457, 1492 (2006) (“Plaintiffs cite no authority for the proposition that a cause of action for conversion may be based on an overcharge.”)); *Belford*, 243 So. 2d at 648-49 (Fla. Ct. App.

E. Plaintiff Cannot Assert Unjust Enrichment as a Separate Cause of Action.¹⁸

Plaintiff's unjust enrichment claim fails because Arkansas law does not recognize an unjust enrichment cause of action by or against the parties to a written contract. Arkansas law is clear that "unjust enrichment has no application when an express written contract exists." *Servewell Plumbing, LLC v. Summit Contractors, Inc.*, 362 Ark. 598 612, 210 S.W.3d 101, 112 (2005); *Adkinson v. Kilgore*, 970 S.W.2d 327, 331 (Ark. Ct. App. 1998). The Eighth Circuit agrees. *See Varner v. Peterson Farms*, 371 F.3d 1011, 1018 (8th Cir. 2004); *see also Kirby v. United Am. Ins. Co.*, No. 4:08CV00338 JLH, 2010 WL 961658, at *3-4 (E.D. Ark. Jan. 22, 2010). At least three federal courts have dismissed similar "overdraft fee" unjust enrichment claims for precisely this reason. *See Hassler v. Sovereign Bank*, 374 F. App'x 341, 345-46 (3d Cir. 2010); *Hassler v. Sovereign Bank*, 644 F. Supp. 2d 509, 519 (D.N.J. 2009); *White v. Wachovia Bank, N.A.*, 563 F. Supp. 2d 1358, 1371-72 (N.D. Ga, 2008).

Plaintiff has consistently maintained that an express written contract existed between himself and BancorpSouth. There is no contrary evidence. (Compl. ¶¶ 31-33; *see also* ¶ 104 (incorporating Plaintiff's allegations regarding the existence of the written contract between the parties into his unjust enrichment count)). Plaintiff was aware of the policies in the contract and expressly agreed to them. (Stmt. Facts ¶¶ 13-14, 29). He understood the disclosures about BancorpSouth's posting order simply by reading the Account Information Statement and Deposit Agreement. (*Id.* ¶ 25). The undisputed facts demonstrate that an express written agreement governs the relationship between Plaintiff and BancorpSouth. Because Arkansas law does not allow a party to a written contract to bring an unjust enrichment claim in the face of a written contract, Plaintiff's unjust enrichment claim fails as a matter of law. *Adkinson, supra*.

1970); *Am. Gen. Life & Accident Ins. Co. v. Ward*, 509 F. Supp. 2d 1324, 1330 (N.D. Ga. 2007); *Song v. PIL, LLC*, 640 F. Supp. 2d 1011, 1017 (N.D. Ill. 2009) (citing *In re Thebus*, 483 N.E.2d 1258, 1260 (Ill. 1985)); *Silver v. Nelson*, 610 F. Supp. 505, 514 n.10 (E.D. La. 1985); *In re Salett*, 53 B.R. 925, 930 (Bankr. D. Mass. 1985); *Morrone Co. v. Barbour*, 241 F. Supp. 2d 683, 689 (S.D. Miss. 2002); *Winslow v. Corp. Express, Inc.*, 834 A.2d 1037, 1046 (N.J. Super. Ct. 2003); *Elliott Indus. LP v. BP Am. Prod. Co.*, 407 F.3d 1091, 1115-16 (10th Cir. 2005); *Daniels v. Equitable Life Assurance Soc'y of the United States*, 35 F.3d 210, 215 (5th Cir. 1994).

¹⁸ Plaintiff's unjust enrichment class includes BancorpSouth account holders only in Arkansas and Mississippi.

F. Plaintiff's Claim pursuant to the ADTPA Fails for Multiple Reasons.¹⁹

Plaintiff's claim under the ADTPA, Ark. Code Ann. § 4-88-101. *et seq.*, (Compl. at ¶¶ 113-120), fails because BancorpSouth's conduct falls within the ADTPA's "safe harbor" provision, and because there is no evidence either that BancorpSouth engaged in any deceptive practices or that Plaintiff has been damaged by any allegedly deceptive practices.

The ADTPA requires a showing of an "unconscionable, false, or deceptive act or practice in business, commerce, or trade." Ark Code. Ann. § 4-88-107(a)(10). The ADTPA includes a "safe harbor" provision, however, such that the ADTPA *does not apply* to practices that are subject to and that comply with any rule, order, or statute administered by the Federal Trade Commission or to actions or transactions permitted under laws administered by a regulatory body or officer acting under statutory authority of Arkansas or the United States. *See* Ark. Code Ann. § 4-88-101(1) and (3). Article 4 of Arkansas' UCC provides that "items may be accepted, paid, certified, or charged to the indicated account of [the bank's] customer in any order" suiting the bank. UCC § 4-303(b); Ark. Code Ann. § 4-4-3. Further, official judgments of the Office of Comptroller of Currency ("OCC"), persuasive but not binding on state-chartered banks, confirm that high-to-low posting is appropriate. *OCC Posting Opinion*, 2002 WL 32639293, at *3 ("banks are authorized, pursuant to section 24 (Seventh) of the National Bank Act and section 7.4002, to charge NSF fees that result from the high-to-low order of check posting"). Because state and federal law authorize BancorpSouth's posting order, such conduct falls within the ADTPA's safe harbor and thus cannot provide the basis for a violation of the ADTPA.²⁰ This reason alone requires dismissal of Plaintiff's claim. *See, e.g., DePriest v. AstraZeneca Pharms, L.P.*, 2009 Ark. LEXIS 722 (Ark. Sup. Ct. Nov. 5, 2009) (holding that plaintiffs' claims under the ADTPA must fail because the actions of which plaintiffs complained were permitted under laws administered by the FDA, and therefore within the ADTPA's safe harbor provision).

Plaintiff's ADTPA claim also fails because nothing about BancorpSouth's posting practices was a "deceptive" act as contemplated by the ADTPA. When the specific contractual provisions about which a plaintiff complains were disclosed in the written agreement between the parties, Plaintiff cannot later claim to have been defrauded by those terms. *Carmichael v.*

¹⁹ Though perhaps self-evident, Plaintiff's ADTPA class consists of Arkansas residents only.

²⁰ It simply would make no sense for Arkansas law to explicitly approve a high-to-low posting order for paper checks if the very same posting order, applied to debit card transactions, violated the state consumer protection law.

Nationwide Life Ins. Co., 305 Ark. 549, 552, 810 S.W.2d 39, 41 (Ark. 1991) ("[i]t is well-established in Arkansas that one is bound under the law to know of the contents of a paper signed by him and he cannot excuse himself by saying he did not know what it contained"); *Belew v. Griffis*, 249 Ark. 589, 591, 460 S.W.2d 80 (1970) (a "person is ordinarily bound to know the contents of a contract which he signs"); *Baskin v. Collins*, 305 Ark. 137, 143, 806 S.W.2d 3, 5 (1991) (no duty of disclosure exists where "both parties have equal access to the knowledge"); *Yoes v. Marine Midland Bank*, 1991 Ark. App. LEXIS 359, No. CA90-235, *9-10 (Ark. Ct. App. June 12, 1991) (denying fraudulent inducement defense).

Plaintiff has not demonstrated that BancorpSouth engaged in any materially misleading conduct in connection with high-to-low posting. BancorpSouth regularly disclosed its authority to post debit transactions from highest amount to lowest amount since 2003. (Stmt. Facts ¶ 11). In fact, Plaintiff testified that the Bank notified him of the high-to-low posting order on his account in writing on numerous occasions, and yet he continued to incur overdraft fees. (Stmt. Facts ¶¶ 23, 27, 29-34, 40, 48-49). Swift testified that he ascertained BancorpSouth's transaction ordering policy simply by reading his account statements, (*Id.* ¶ 32), and that he could have learned this at any time. (*Id.* ¶ 36). Plaintiff also testified that upon reading the Deposit Agreement and Account Information Statement, he understood that BancorpSouth could post in any order, even if that order resulted in more fees – the precise wrong he is now complaining about. (*Id.* ¶¶ 19, 25, 29, 33). Plaintiff has presented no evidence demonstrating any deceptive or misleading conduct under the ADTPA; the undisputed fact is that Plaintiff was not deceived by BancorpSouth's posting policies. Plaintiff's claim fails for lack of proof of this essential element.

Moreover, Plaintiff has provided no proof that he would have acted any differently had the Bank disclosed its practices differently; therefore he has failed to prove any injury arising from BancorpSouth's posting policies. *See Bildstein*, 329 F. Supp. 2d at 414 (dismissing claim for failure to disclose credit card fee in card agreement because the plaintiffs failed to allege that information about the fee would have affected their choice of credit cards); *Whatley*, 2010 U.S. Dist. LEXIS 125122, at *15-16 (recognizing that the ADTPA only grants a right of recovery to any "person who suffers actual damage or injury *as a result* of an offense or violation") (citations omitted) (emphasis in original). As described just above, Plaintiff testified that he fully understood that BancorpSouth posted transactions high-to-low, and that he would have discovered this earlier had he read the relevant disclosures or examined his monthly statements

earlier. (*Id.* ¶¶ 25-26, 32, 36). Further, Plaintiff received notice of and paid every overdraft charge on his account, yet continued to incur overdraft charges. (*Id.* ¶¶ 40, 43, 47-49). Plaintiff never complained, requested the charges be waived, or even asked BancorpSouth about the overdraft charges. (*Id.* ¶ 38). The undisputed facts demonstrate that Plaintiff had access to information, throughout his relationship with BancorpSouth, making clear that BancorpSouth posted debit transactions in an order of its choosing and that the order chosen might lead to more overdraft charges than some other method. In the face of this information, Swift never stopped overdrawing his account and never closed his account; he cannot now credibly claim to be damaged.

G. BancorpSouth's Affirmative Defense of Ratification Bars Plaintiff's Claims.

The Court should grant summary judgment on BancorpSouth's affirmative defense of ratification because Plaintiff continued to incur overdraft fees after learning of BancorpSouth's posting order. In Arkansas, "silence or acquiescence in the contract for any considerable length of time" amounts to ratification. *Sims v. First Nat'l Bank, Harrison*, 590 S.W.2d 270, 274 (Ark. 1980). Ratification may occur in an implied or express manner by continuing to accept the benefits of a contract after learning of a mistake or misrepresentation. *See, e.g., Vibo Corp., Inc. v. State of Arkansas ex rel. Dustin McDaniel*, 2011 Ark. 124 (2011) (upholding lower court's ruling that party ratified contract where it continued to accept benefits of contract after learning of alleged misrepresentations); *Coleman v. Coleman*, 955 S.W.2d 713 (Ark. Ct. App. 1997) (holding that father ratified his previous action by failing to remove son's name from account and placing money in account when he knew son's name was on it).

Plaintiff regularly and repeatedly overdrew his BancorpSouth checking account and incurred overdraft fees, all in the face of repeated notices that he was being assessed a fee for such behavior. (Stmt. Facts ¶¶ 34, 40). Even after learning of the fees and the Bank's use of the high-to-low posting order, Plaintiff continued to conduct transactions on his account that caused overdraft fees. (*Id.* ¶ 48-49, 51). Plaintiff paid all of the overdraft charges on his account and he never complained to BancorpSouth or requested they be refunded. (*Id.* ¶¶ 38, 43). Plaintiff's BancorpSouth account is still open today. (*Id.* ¶ 66). Plaintiff made a choice to continue taking advantage of BancorpSouth's Overdraft Protection Service, despite his knowledge of the high-to-low posting order, and was silent as to any alleged injury it allegedly caused him.²¹ In doing so,

²¹ Plaintiff's ratification of BancorpSouth's overdraft and posting policies is not a surprise in

he continually ratified BancorpSouth's posting policies that are the subject of his lawsuit.

H. BancorpSouth's Affirmative Defense of Waiver Bars Plaintiff's Claims.

The Court should grant summary judgment on BancorpSouth's affirmative defense of waiver because Plaintiff continued to accept the benefits of BancorpSouth's Overdraft Protection Service. In Arkansas, waiver is the "voluntary abandonment or surrender by a capable person of a right known to him to exist, with the intent that he shall forever be deprived of its benefits," and occurs when a person "with full knowledge of the material facts, does something which is inconsistent with the right or his intention to rely upon it." *Goforth v. Smith*, 991 S.W.2d 579, 586 (Ark. 1999); *see also Baptist Health v. Murphy*, 2010 Ark. 358 (2010) (hospital waived its right to raise defense of *res judicata* where it was aware cases were proceeding simultaneously but did not move to combine or raise the defense until after a judgment was entered); *Bio-Tech Pharmacal, Inc. v. International Business Connections, LLC*, 184 S.W.3d 447 (Ark. Ct. App. 2004) (appellant waived claim where it accepted and paid for several orders despite the fact that they did not comply with a contract requirement).

As discussed above, Plaintiff knowingly continued to overdraw his account and incur overdraft fees on his BancorpSouth account after he received multiple notices of overdraft fees and disclosures regarding BancorpSouth's overdraft policies. Plaintiff's wife testified that she never notified BancorpSouth to remove the Overdraft Protection Service from their account, even though she could have if she wanted to. (Stmt. Facts ¶ 50). Additionally, both Plaintiff and his wife testified they periodically entered into transactions on their BancorpSouth account when they were unsure of their account balance. (*Id.* ¶¶ 60-62). Plaintiff knowingly took a risk that there would be insufficient funds in his account to cover transactions, because he knew BancorpSouth would pay the transaction and charge him a fee. (*Id.* ¶ 63). He knew this information through his repeated use of Overdraft Payment Service, yet chose to continue using it when he had insufficient funds in his account in order to have his transactions paid, instead of returned. (*Id.*). Again, Plaintiff never contacted BancorpSouth about the overdraft fees on his account or requested they be refunded. (*Id.* ¶¶ 37-38). Plaintiff had alternatives to using his

light of the fact that Plaintiff believes that BancorpSouth's Overdraft Protection Service provides a benefit by preventing his transactions from being returned when he had insufficient funds in his account. (Stmt. Facts ¶¶ 53-54). Plaintiff further affirmatively opted-in to the Overdraft Payment Service in May of 2010 after he knew about the high-to-low posting order, and despite the fact that he had incurred numerous overdraft fees on his account. (*Id.* ¶¶ 48-49, 53). In fact, Plaintiff

BancorpSouth account, as evidenced by the fact that his wife had separate accounts at different banks. (*Id.* ¶¶ 64-65). Instead, he continued to incur overdraft charges knowingly, remains a BancorpSouth accountholder today, and indeed incurred more overdraft fees in a seven-month period in 2010 after opting-in to BancorpSouth's Overdraft Payment Service than in the preceding four years combined. (DE #2446-3 ¶¶ 16, 17). After years of using BancorpSouth's Overdraft Protection Service to his benefit, and admitting the benefits he derived from the service, Plaintiff has waived his right to complain of BancorpSouth's disclosed overdraft practices.

I. Because Plaintiff Swift's Claims Fail, the Class Claims Fail so the Court Should Grant Summary Judgment as to the Entire Certified Class.

Plaintiff Swift has failed to produce sufficient evidence on at least one element of every single one of his claims against BancorpSouth. Accordingly, his claims fail, along with those of the entire Certified Class. *See, e.g., Antenor*, 39 F. Supp. 2d at 1377 ("Defendants' request for summary judgment against the class as a whole will rise or fall depending on the class representative's proof."); *Brennan*, 450 F.2d at 1005 ("[T]he absent class member's interests are identical with those of the named plaintiff and his rights and liabilities are adjudicated in the principal suit"); *Cooper*, 390 F.3d 695, 713 (11th Cir. 2004) ("the common bond between the class representatives' claims and those of the class is strong enough so that it is fair for the fortunes of the class members to rise or fall with the fortunes of the class representatives."). Summary judgment should be granted for BancorpSouth not only on Plaintiff Swift's individual claims, but all of the claims of the Certified Class as well, because Swift's claims as class representative bind the entire certified class.

IV. CONCLUSION

For the reasons stated herein, BancorpSouth is entitled to a judgment as a matter of law on all of the claims in this case, and the Court should grant its Motion for Summary Judgment.

continued to incur overdraft fees after he chose to opt-in to overdraft protection. (*Id.* ¶ 48).

Respectfully submitted this 9th day of October, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record entitled to receive service.

This 9th day of October 2012.

/s/ Eric Jon Taylor
Eric Jon Taylor

EXHIBIT A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

MARATHON RESORT & MARINA, LTD.
a Florida Limited Partnership

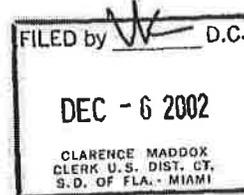
CASE NO. 02-10085-CIV-KING

Plaintiff,

v.

PROMUS HOTELS, INC.,
a Delaware corporation,

Defendant.



ORDER DISMISSING COUNTS II AND III OF PLAINTIFF'S COMPLAINT

THIS CAUSE comes before this Court upon Defendant's October 30, 2002, Motion to Dismiss Counts II and III of Plaintiff's Complaint. Plaintiff filed its Response on November 19, 2002. Defendant filed a Reply on November 26, 2002.

I. BACKGROUND

On or about May 22, 1998, the parties entered into a license agreement pursuant to which Plaintiff obtained a license to use the public names "Hampton Inn" and "Hampton Inn & Suites" in the operation of a Hampton Inn & Suites located in Marathon, Florida (the "License Agreement"). On August 29, 2002, Defendant terminated the License Agreement based on Plaintiff's alleged failure to pay franchise fees to Defendant. Plaintiff brought the instant action against Defendant, and asserts claims for breach of contract, breach of the implied covenant of good faith and fair dealing, rescission, and promissory estoppel.

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II. LEGAL STANDARD

A motion to dismiss will be granted only where it is clear that no set of facts consistent with the allegations could provide a basis for relief. Bradberry v. Pinellas County, 789 F.2d 1513, 1515 (11th Cir. 1986) (“It is well established that a complaint should not be dismissed for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) ‘unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief.’”) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The court must construe the complaint in the light most favorable to the plaintiff and accept as true all facts alleged by the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). The issue is not whether the plaintiff will ultimately prevail, but “whether the claimant is entitled to offer evidence to support the claims.” Little v. City of North Miami, 805 F.2d 962, 965 (11th Cir. 1986) (citation omitted). Regardless of the alleged facts, however, a court may dismiss a complaint on a dispositive issue of law. Marshall County Bd. of Educ. v. Marshall County Gas Dist., 992 F.2d 1171, 1174 (11th Cir. 1993).

III. ANALYSIS

A. Count II: Implied Covenant of Good Faith and Fair Dealing

Count II of the Complaint asserts a claim for breach of the implied covenant of good faith and fair dealing. In Burger King Corp. v. Weaver, 169 F.3d 1310 (11th Cir. 1999), the Eleventh Circuit held that Florida does not recognize an independent cause of action for breach of the implied covenant of good faith and fair dealing. Specifically, Weaver held that a cause of action for breach of the implied covenant of good faith cannot be maintained in derogation of the express terms of the underlying contract or in the absence of breach of an express term of the underlying agreement. Id. at 1318. This Court finds that Plaintiff has not asserted a claim for the implied covenant of good

faith and fear dealing. Therefore, Count II is dismissed with prejudice.

B. Count III: Rescission

Count III of Plaintiff's Complaint asserts a claim for Rescission. To state a claim for rescission of contract, the plaintiff must allege the following factors: (1) the character or relationship of the parties; (2) the making of the contract; (3) the existence of fraud, mutual mistake, false representations, impossibility of performance, or other ground for rescission or cancellation; (4) that the party seeking rescission has rescinded the contract and notified the other party to the contract of such rescission; (5) if the moving party has received benefits from the contract, he should further allege an offer to restore these benefits to the party furnishing them, if restoration is possible; and (6) that the moving party has no adequate remedy at law. Billian v. Mobil Corp., 710 So. 2d 614, 617 (Fla. 2d DCA 1965).

Defendant argues that Plaintiff failed to allege that it had rescinded the franchise agreement and/or notified Defendant of such rescission. (Def.'s Reply at 5). Plaintiff, in its Response, also admits that "Count III of the Complaint does not contain precise language indicating that the Defendant was notified that the franchise agreement [was] in fact rescinded." (Pl.'s Reply at 8). The Court finds that the requisite elements for a claim for rescission have not been alleged. Count III of Plaintiff's Complaint is therefore dismissed without prejudice.

IV. CONCLUSION

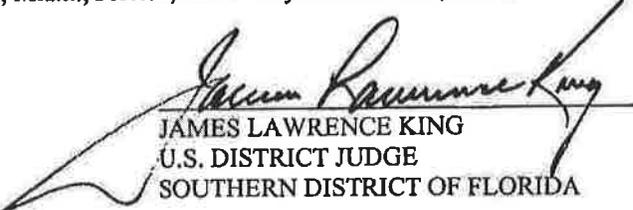
Accordingly, after a careful review of the record, and the Court being otherwise fully advised, it is

ORDERED and ADJUDGED that Defendant's Motion to Dismiss Counts II and III of Plaintiff's Complaint be, and the same is hereby, GRANTED. Counts II of Plaintiff's Complaint

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is hereby DISMISSED with prejudice. Count III of Plaintiff's Complaint is hereby DISMISSED without prejudice.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 6th day of December, 2002.


JAMES LAWRENCE KING
U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

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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)
Fourth Tranche)

_____)
)
THIS DOCUMENT RELATES TO:)

Shane Swift v. BancorpSouth, Inc.,)
S.D. Fla. Case No. 1:10-cv-23872-JLK)
_____)

**DEFENDANT BANCORPSOUTH BANK'S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED**

Pursuant to this Court's Local Rule 56.1(a), Defendant BancorpSouth Bank¹ ("BancorpSouth") submits this Statement of Material Facts As To Which There Is No Genuine Issue To Be Tried in support of its contemporaneously-filed Motion for Summary Judgment and supporting memorandum of law:

1. BancorpSouth is a regional bank incorporated in the State of Mississippi with its principal place of business in Tupelo, Mississippi. (2d Am. Compl. at ¶ 13).
2. Beginning in 2003, BancorpSouth posted all debits to checking accounts for a given day from highest dollar amount to lowest dollar amount. No debits for a given day are posted until after all credits/deposits for that day are posted to the customer's account. (Defendant BancorpSouth Bank's Responses to Plaintiff's First Set of Interrogatories, attached here as Exhibit A, at 11).
3. Prior to the beginning of the Class Period (as defined by this Court's class certification order), BancorpSouth posted transactions in an order dictated by the type of transaction, and posted high-to-low within each transaction type grouping. (*Id.*); (Transcript of deposition of Jeff Jagers taken on May 10-11, 2012 ("Jagers Dep.")² at 24:5-15).
4. In 2003 BancorpSouth adopted a high-to-low posting order for debit transactions to, among other reasons, increase non-interest revenue, streamline the posting process by eliminating the distinctions between types of transactions, and make the process easier for customers to understand. (Exhibit A at 12); (Transcript of deposition of Jeff Jagers taken on August 15, 2012 ("Second Jagers Dep.")³ at 68:24-69:20).
5. BancorpSouth posts an account holder's deposits and other credits for a given banking day first, before posting any debits. (Exhibit A at 10).
6. Since 2003, BancorpSouth has also provided account holders an overdraft payment service with a varying overdraft limit ("Overdraft Payment Service"). Under this service, BancorpSouth provides an amount over and above the customer's available

¹ BancorpSouth, Inc. previously asserted that it is not a proper defendant in this matter and, as a result, Plaintiff Swift named BancorpSouth Bank as the sole defendant in the Second Amended Complaint (DE #994).

² A copy of relevant portions of the Jagers Dep. is attached here as Exhibit B.

³ A copy of the relevant portions of the Second Jagers Dep. is attached here as Exhibit C.

balance for which BancorpSouth will authorize payment of debit transactions. (Exhibit A at 21).

7. BancorpSouth takes on certain risks when it pays a transaction into overdraft. (Second Jagers Dep. at 25:17-19).
8. In anticipation of the effective date of the Federal Reserve's revised Regulation E ("Reg. E"), and in order to comply with Reg. E, BancorpSouth changed its policies in 2010 with regard to enrollment of customers in its Overdraft Payment Service. (Exhibit A at 13).
9. As of the implementation date of Reg. E, BancorpSouth required all customers to affirmatively opt-in to the Overdraft Payment Service for transactions governed by Reg. E. (*Id.*).
10. At all times since BancorpSouth started its Overdraft Payment Service, a BancorpSouth customer has had the option to remove the Overdraft Payment Service from his account on request. Since 2010 BancorpSouth requires all customers to affirmatively opt-in to the Overdraft Payment Service for debit card and ATM card transactions in order to use the service for those transactions. (Exhibit A at 22).
11. At all times during the Class Period, BancorpSouth fully and regularly disclosed its discretionary posting order policy, stating that it would post debit card transactions in any order it chose, including high-to-low, even if that order resulted in greater insufficient funds or overdraft fees for customers. (Exhibit A at 14); (Jagers Dep. at 59:14-19); (DE #2274-13); (DE #2274-14).
12. Plaintiff Shane Swift is a citizen of Arkansas and a current checking account customer of BancorpSouth. (2d Am. Compl. at ¶¶ 12, 31, 66).
13. When Plaintiff opened his joint account with his wife Trina Swift at BancorpSouth's predecessor American State Bank, he acknowledged receipt of the governing account agreement documents and agreed to be bound by those documents. After American State Bank merged with BancorpSouth, BancorpSouth sent all account holders full disclosures regarding its products and services. When Plaintiff subsequently opened a second BancorpSouth account, he acknowledged receipt of the governing account agreement documents and agreed to be bound by those documents. (2d Am. Compl. at ¶¶ 31-33); (Transcript of deposition of Shane Swift taken on January 18, 2012 ("Swift

Dep.")⁴ at 88); (Exhibits 2-3 to Swift Dep.); (Jagers Dep. at 42:1-18).

14. Plaintiff agrees that the Deposit Account Terms and Conditions ("Deposit Agreement") and other related disclosures, including the Account Information Statement attached as Exhibit B to the Second Amended Complaint, govern his relationship with BancorpSouth. (*Id.*).
15. The Deposit Agreement expressly authorizes BancorpSouth to impose and deduct charges (including overdraft charges) directly from Plaintiff's account as they accrue. (*See* Deposit Agreement at 2, attached as Exhibit A to 2d Am. Compl.).
16. The 2010 Account Information Statement further provides:

An "overdraft" occurs any time a check, ACH, ATM, debit card, bank fee (including any overdraft related fee) or any other transaction (collectively, a "Transaction") is presented for payment against an account and the available balance of the account is insufficient to pay the Transaction. When an overdraft occurs, we may, at our discretion, refuse the Transaction, or alternatively, we may choose to pay the Transaction, in which case a negative account balance will result. . . .

(Account Information Statement at 3, attached as Exhibit B to 2d Am. Compl.). Similar language appears in Account Information Statements since 2003 (*see* Exhibit A at 14); (Jagers Dep. at 58:15-59:19); (Swift Dep. at 86-96); (Exhibits 4-12 to Swift Dep.); (DE #2274-13); (DE #2274-14).

17. In addition, the 2009 Deposit Agreement explicitly authorizes BancorpSouth to post debits to an account in any order, including but not limited to, the order of largest to smallest dollar amount:

ORDER OF PAYMENT: [I]f more than one item or order is presented for payment against this account on the same day and the available balance is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

(Deposit Agreement at 4, attached as Exhibit A to 2d Am. Compl.).

18. Similarly, the 2010 Account Information Statement states:

⁴ A copy of the relevant portions of the Swift Dep. is attached here as Exhibit D.

If more than one Transaction (whether check, ACH, ATM, debit card, bank fee, overdraft-related fee or any other transaction) is presented for payment against your account on the same banking day and the available balance is insufficient to pay them all, we may decide to pay any or all of them in any order we choose. When we pay Transactions, we generally choose to pay the largest Transaction first and the smallest Transaction last. Our choosing this order of payment for Transactions may result in greater Overdraft-related Fees than if we had chosen to pay them in some other order or had chosen not to pay them.

(Account Information Statement at 3-4, attached as Exhibit B to 2d Am. Compl.).

19. At least since 2004, BancorpSouth disclosed to its customers via its Account Information Statement that it would pay transactions in an order of its choosing even if this resulted in greater overdraft or insufficient funds fees. (Jaggers Dep. at 58:15-59:19); (Transcript of deposition of Shane Swift taken on August 16, 2012 ("Second Swift Dep.") at 45-48)⁵; (Exhibit 4 to Second Swift Dep.); (Swift Dep. 86-96); (Exhibits 4-12 to Swift Dep.); (DE #2274-14).
20. BancorpSouth provides multiple channels for customers to obtain information regarding their accounts, including monthly statements, a voice response system, calls to bank representatives, online banking and e-banking applications, and of course bank branches. (Transcript of 30(b)(6) deposition of Jeff Jaggers taken on August 15, 2012 ("Jaggers 30(b)(6) Dep.")⁶ at 62:23-63:13).
21. Plaintiff was aware that BancorpSouth could post debits in any order, including from high-to-low, from looking at his transaction history. (Swift Dep. at 32:15-22).
22. The 2010 Account Information Statement informed Plaintiff that he could participate in overdraft protection options offered by BancorpSouth instead of the Overdraft Payment Service:

[Y]ou may avoid Overdraft-related fees through on of the Overdraft Protection products offered by BancorpSouth. Credit Card Overdraft Protection works by charging your BancorpSouth MasterCard or VISA credit card for cash advances in the total amount of Transactions drawn against insufficient funds, with resulting deposits of the cash advance amounts into your account to cover Transactions, up to the cash advance limit of your credit card. Credit Card Overdraft Protection transactions are subject to all the rules and finance charge provisions applicable to cash advances under the Cardholder Agreement. You may also avoid Overdraft-related Fees by establishing a BancorpSouth Equity

⁵ A copy of the relevant portions of the Second Swift Dep. is attached here as Exhibit E.

⁶ A copy of the relevant portions of the Jaggers 30(b)(6) Dep. is attached here as Exhibit F.

- Credit Line, which is a line of credit. . . .
(Account Information Statement at 4, attached as Exhibit B to 2d Am. Compl.).
23. Plaintiff does not dispute that throughout the time he has had a BancorpSouth checking account, BancorpSouth sent him updated account governing documents and disclosures at or near the time they were published. (2d Am. Compl. at ¶¶ 31-33); (Swift Dep. at 81:8-21; 86-96); (Exhibits 4-12 to Swift Dep.).
 24. Plaintiff understood that transaction information was also available at a BancorpSouth branch: Plaintiff visited his local BancorpSouth branch on several occasions and requested and received copies of his account statements to help track his account activity. (Swift Dep. at 99-104).
 25. Plaintiff and his wife admit that they understand BancorpSouth's disclosures regarding its discretionary posting order in the Account Information Statement and Deposit Agreement, and would have understood the same if they had read the disclosures when they received them. (Transcript of deposition of Trina Swift taken on August 16, 2012 ("Trina Swift Dep.")⁷ at 45-49); (Second Swift Dep. at 41-49).
 26. Plaintiff's wife admits that if she had paid more attention to her monthly statements from BancorpSouth earlier, she would have understood the posting order at an earlier time. (Trina Swift Dep. at 48:6-13).
 27. BancorpSouth periodically sent its customers documents on how to avoid overdraft fees, and provided a link on its website for additional information regarding overdraft fees and the Overdraft Payment Service. (Jaggers Dep. at 53:3-22).
 28. The Deposit Agreement also informs customers that they are jointly and severally liable for any account deficit resulting from charges and overdrafts. (Exhibit A at 15-16).
 29. Plaintiff was aware that BancorpSouth had discretion in how it ordered debit transactions on his account, and he explicitly agreed to this policy as it was described in the Deposit Agreement. (Swift Dep. at 32:9-22, 81:8-25; 88).
 30. Plaintiff learned by reading his account statements and overdraft notices that BancorpSouth did not post transactions in chronological order. (Swift Dep. at 45:1-12; 77:19-23).

⁷ A copy of the relevant portions of the Trina Swift Dep. is attached here as Exhibit G.

31. Plaintiff had regular access to his account information with BancorpSouth since he opened his account. (Swift Dep. at 47:9-14).
32. Plaintiff acknowledged that he understood BancorpSouth's ordering policies by reading his account statements. (Swift Dep. at 77:5-78:2).
33. Plaintiff understood that BancorpSouth's discretionary posting policy disclosed in the Account Information Statement could lead to more overdraft and insufficient funds fees on his account. (Swift Second Dep. at 44:20-45:1).
34. During the Class Period, Plaintiff incurred multiple overdraft fees on his account in a single day on numerous occasions. (2d Am. Compl. at ¶ 68); (Trina Swift Dep. at 30:20-24).
35. Either Plaintiff or Plaintiff's wife initiated all of the transactions on their BancorpSouth account that incurred overdraft fees. (Jaggers 30(b)(6) Dep. at 37:8-19); (Trina Swift Dep. at 39:21-40:1).
36. Plaintiff admitted that if he had reviewed his account statements during the entire period he incurred overdraft fees, he would have seen that his transactions were ordered from high-to-low. (Swift Dep. 77:5-23); (Trina Swift Dep. at 43:8-44:7).
37. Before filing the Complaint, Plaintiff never spoke with anyone at BancorpSouth about overdraft fees or the re-sequencing of his transactions; Plaintiff also testified that he is satisfied with BancorpSouth's service. (Swift Dep. at 51:19-52:4).
38. Plaintiff never complained to BancorpSouth regarding the overdraft charges on his account, requested the charges be waived, or even asked BancorpSouth about the overdraft charges. (Swift Dep. at 51:17-52:24; 54:21-55:3).
39. The only time Plaintiff's wife complained to BancorpSouth regarding overdraft charges, the charges were due to a computer problem and BancorpSouth promptly reversed the charges to her satisfaction. (Trina Swift Dep. at 30:25-32:8).
40. Every time Plaintiff incurred an overdraft fee on his account, BancorpSouth notified him of the fee by sending a Notice for Charge for Overdrawn Account. Plaintiff admits receiving these notices. (Swift Dep. at 53:9-15); (Second Swift Dep. at 28:10-17).
41. Before a written overdraft notice arrived, Plaintiff and his wife also could review their account online to see any overdraft fees. Overdraft charges also appeared on their

- monthly statements. (Trina Swift Dep. at 36:19-37:15).
42. Plaintiff never contacted BancorpSouth about any overdraft notices. (Second Swift Dep. at 29:6-9); (Jaggers 30(b)(6) Dep. at 105:3-7).
 43. Plaintiff voluntarily paid every overdraft charge applied to his account. (Swift Dep. at 53:9-11; 54:11-20).
 44. Plaintiff received monthly account statements detailing transactions for his BancorpSouth account since he opened his account, either by mail or electronically. (Swift Dep. at 46:14-47:14).
 45. Plaintiff was aware that BancorpSouth paid debit transactions on his account into overdraft, and that BancorpSouth assessed overdraft fees on these transactions, because BancorpSouth indicated that funds in his account were insufficient to pay certain transactions. (Plaintiff Shane Swift's Objections and Responses to Defendant BancorpSouth Bank's First Continuing Interrogatories to Plaintiff, attached here at Exhibit H, at 11-12).
 46. In 2010 BancorpSouth sent notice to Plaintiff asking whether he wanted to continue participating in BancorpSouth's Overdraft Payment Service. (Swift Dep. 85:7-10).
 47. Plaintiff and his wife voluntarily opted-in to BancorpSouth's Overdraft Payment Service in May 2010. (Swift Dep. 85:7-13); (Trina Swift Dep. at 36:1-6).
 48. Plaintiff continued to incur overdraft fees on his account after opting-in to BancorpSouth's Overdraft Payment Service. (Trina Swift Dep. at 36:7-18).
 49. Plaintiff continued to conduct transactions on his account that caused overdraft fees after he received notices of overdrafts and the fees assessed for them. (Jaggers 30(b)(6) Dep. at 77:13-25); (Trina Swift Dep. at 36:1-18).
 50. Plaintiff's wife never told BancorpSouth that she did not want the Overdraft Payment Service on their joint account during the Class Period, and she had no reason to believe that BancorpSouth would have refused to remove the Overdraft Payment Service had she asked. (Trina Swift Dep. at 33:8-17).
 51. At the time Plaintiff opted-in to the Overdraft Payment Service, he knew BancorpSouth posted debits high-to-low because he filed his lawsuit less than a week prior. (Swift Dep. 85:7-20).
 52. Plaintiff admits that BancorpSouth's Overdraft Payment Service provides a benefit to

him and the Class. (Swift Dep. 68:17-19; 85:14-20).

53. Plaintiff admits that without BancorpSouth's Overdraft Payment Service, if there were not enough money in his account, a transaction would have been rejected or returned. He described such an outcome as "not a good thing." (Second Swift Dep. at 27:16-24).
54. Plaintiff's wife also admits that having the Overdraft Payment Service provides a benefit to her as an account holder. (Trina Swift Dep. at 33:18-34:6).
55. Plaintiff cannot identify what posting order BancorpSouth should use. (Swift Dep. 57:7-18).
56. Plaintiff admits that he is not challenging the amount that BancorpSouth charges for an individual overdraft fee. (Swift Dep. at 50:7-10).
57. Plaintiff admits that the relative importance of different banking transactions varies for each customer, and that BancorpSouth cannot know what its customers believe to be their most important transactions on their accounts. (Swift Dep. 61:14-62:15).
58. Plaintiff admits that he has no reason to believe that all BancorpSouth customers consider BancorpSouth's transaction ordering policies to be unfair. (Swift Dep. 38:22-25).
59. Plaintiff and his wife prefer that BancorpSouth pay all of their transactions, even if this results in overdrafts and BancorpSouth charges overdraft fees, rather than deny the transactions. (Trina Swift Dep. at 38:18-39:1); (Second Swift Dep. at 35:19-36:2).
60. Plaintiff's wife conducted transactions on their BancorpSouth account when she was unsure of the account balance and whether sufficient funds were in the account to cover the transaction(s). (Trina Swift Dep. at 41:16-42:2).
61. Plaintiff admits that he was not aware of all of the transactions his wife entered into on the BancorpSouth account during the class period. (Second Swift Dep. at 26:22-27:1).
62. Plaintiff admits that when he entered into the transactions listed in on page 21 of the Second Amended Complaint, he did not know if there were sufficient funds in his account to cover the transactions. (Second Swift Dep. at 20:23-21:5).
63. Plaintiff admits that he knew that if he had insufficient funds to cover transactions, the transactions would be covered by BancorpSouth's Overdraft Payment Service. Plaintiff admitted that he knew this because he had used the program before. (Second Swift Dep. at 21:6-11; 22:2-13).

64. Plaintiff's wife has maintained an individual checking account at Iberia Bank in Pochontas, Arkansas, since 2011. (Trina Swift Dep. at 12:3-10).
65. Plaintiff's wife also maintained an account with a local credit union during the Class Period. (Trina Swift Dep. at 12:13-16).
66. As of August, 2012 (and perhaps still to date), Plaintiff and his wife maintain a joint checking account at BancorpSouth. (Trina Swift Dep. at 50:12-14); (2d Am. Compl. at ¶ 66).
67. Plaintiff's wife admits that BancorpSouth cannot know when a customer has written a check until BancorpSouth receives it. (Trina Swift Dep. at 63:6-64:18).

Respectfully submitted this 9th day of October, 2012.

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 I have this day caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record entitled to receive service.

This 9th day of October, 2012.

/s/ Eric Jon Taylor
Eric Jon Taylor

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE 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 RESPONSES TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, defendant BancorpSouth Bank ("BancorpSouth")¹ hereby submits its answers and objections to Plaintiff's First Set of Interrogatories ("Interrogatories").

GENERAL ANSWERS AND OBJECTIONS

BancorpSouth hereby incorporates each of these general answers and objections into its specific answers and objections to each of Plaintiff's Interrogatories, whether or not BancorpSouth

¹ In the definitions section of his interrogatories, Plaintiff defines "You" to refer to, "the above-named Defendant." The only defendant named in the interrogatories, however, is "BancorpSouth, Inc.," which is listed in the case style at the top of Plaintiff's Interrogatories. BancorpSouth, Inc., is not a proper defendant in this matter. Counsel for Plaintiff and Defendant discussed the proper BancorpSouth entity to name in this matter in 2010, and Plaintiff properly identified the defendant herein as BancorpSouth Bank in his Second Amended Complaint (DE # 994). BancorpSouth Bank, as the only defendant in this matter, is the entity responding to Plaintiff's interrogatories, and BancorpSouth Bank interprets any references to "Defendant" in Plaintiff's interrogatories to refer to BancorpSouth Bank.

refers to such general answers or objection in its specific answer to a specific Interrogatory.

1. BancorpSouth objects to the Interrogatories to the extent that they purport to seek information protected from disclosure by the attorney-client privilege, the work product doctrine, the joint defense or common interest privilege, or any other privilege, immunity, or exemption from disclosure.

2. BancorpSouth objects to the Interrogatories to the extent they call for the disclosure of information prohibited or otherwise protected from disclosure by any laws or regulations of any State or the United States.

3. BancorpSouth objects to the Interrogatories to the extent that they seek information outside of BancorpSouth's possession, custody, or control, and/or information that is also within Plaintiff's possession, custody or control. Nevertheless, as described in BancorpSouth's Responses to Plaintiff's First Request For Production, BancorpSouth will produce Swift's monthly statements and other documents related to Swift's BancorpSouth account that BancorpSouth regularly distributes to Plaintiff, to the extent that BancorpSouth has such documents within its possession, custody, or control.

4. BancorpSouth objects to the Interrogatories to the extent that they purport to impose upon BancorpSouth any duty or obligation that is in excess of those obligations that are imposed by the Federal Rules of Civil Procedure, the Local Rules, the Court's orders, or any other applicable law or rule. In particular, BancorpSouth objects to the Interrogatories to the extent that they purport to call for information neither relevant to the claims or defenses of the parties nor reasonably calculated to lead to the discovery of admissible evidence, and/or purport to impose a duty on BancorpSouth beyond undertaking a reasonably diligent search for requested information.

5. BancorpSouth objects to the timeframe of the Interrogatories as set forth in paragraph nine

(9) of the Interrogatories on the grounds that it is overly broad, unduly burdensome, and seeks information that is neither relevant to the claims or defenses in this action nor reasonably calculated to lead to the discovery of admissible evidence. BancorpSouth further objects to the timeframe of the Interrogatories to the extent that the timeframe includes claims or damages that are barred by statutes of limitations, statutes of repose, or laches. The longest limitations period applicable to Plaintiff Swift's claims in his lawsuit is the five-year limitations period on his contract and ADTPA claims under Arkansas law. Plaintiff filed his original complaint in this matter on May 18, 2010. Therefore, any claims seeking compensation for overdraft fees assessed before May 18, 2005 are time-barred. Thus, for purposes of these answers, unless otherwise stated, BancorpSouth shall respond only for the period of January, 2005, to present (i.e., the date of these Interrogatories) in response to any requests regarding transactions which Plaintiff contends triggered compensable overdraft fees.

This limitation on BancorpSouth's responses shall not apply to responses related to information concerning the decisions regarding the order for posting electronic debit card transactions or other policies which were in effect during the alleged class period related to the posting of electronic debit card transactions. For responses related to policies or procedures related to posting order or paying debit card transactions into overdraft, or the decisions to adopt such policies, BancorpSouth shall produce documents only for the period of January, 2002 until the present (i.e., the date of these Interrogatories). The basis for this limitation is that BancorpSouth first adopted a policy of posting all transactions from highest dollar amount to lowest dollar amount in 2003, as first applied its "overdraft payment service" (as described in BancorpSouth's Responses to Plaintiff's First Set of Interrogatories) to debit card transactions in 2003.

6. BancorpSouth objects to the definition of " 'you,' 'your' and/or 'defendant' " to the extent it

purports to encompass "any affiliated entities" of BancorpSouth. BancorpSouth responds with respect to the entity named as defendant herein, BancorpSouth Bank.

7. BancorpSouth objects to the Interrogatories' definition of the term "Complaint" to the extent it purports to define that term to include any complaint pending in MDL 2036 other than the operative complaint *Swift v. BancorpSouth, Inc.*, S.D. Fla. Case No. 1:10-cv-23872-JLK.

8. BancorpSouth objects to the Interrogatories' definition of the term "Deposit Agreement" on the grounds that its reference to "all related documents which incorporate the Deposit Agreement" is vague and ambiguous. For purposes of these answers, BancorpSouth interprets the term "Deposit Agreement" to mean the "Deposit Account Terms and Conditions" attached as Exhibit A to Plaintiff's Second Amended Complaint and the "Account Information Statement" attached as part of Exhibit B to Plaintiff's Second Amended Complaint, and any earlier versions of these documents that applied to Swift's BancorpSouth account.

9. BancorpSouth objects to the Interrogatories' definition of the term "Item" on the grounds that its reference to "any debit or transaction processed through an account" is vague and ambiguous. BancorpSouth defines the term "Transaction" in the Account Information Statement. When BancorpSouth uses the term "Transaction" in these answers, BancorpSouth interprets and uses the term as it is defined in the Account Information Statement.

10. BancorpSouth objects to the Interrogatories' definition of the term "Account" to the extent that it purports to include accounts that cannot be accessed by an electronic debit card and/or on which overdraft fees cannot be incurred.

11. BancorpSouth further objects to the definition of the term "Account" on the grounds that the phrase "your institution" is vague and ambiguous. BancorpSouth responds with respect to the entity named as a defendant herein, BancorpSouth Bank.

12. BancorpSouth further objects to use of the phrase "other members of the proposed Class(es)" in the definition of the term "Account" on the grounds that no motion to certify any proposed class has been filed, that no Class has been or properly can be certified, and that members of the proposed Class(es) cannot readily be ascertained.

13. BancorpSouth objects to the Interrogatories' definition of the term "authorized" on the grounds that it is vague and ambiguous, and to the extent that it relies on the definition of "item" in the interrogatories (*see* objection number 9, above). With respect to use of the term "authorized" in connection with items initiated by use of an electronic debit card, BancorpSouth objects to any definition different from the process of authorization as specified by the rules and regulations of Visa, MasterCard, and similar networks with respect to debit cards accepted on their networks. For purposes of these answers, BancorpSouth will interpret the term "authorized" in this manner.

14. BancorpSouth objects to the Interrogatories' definition of the term "received" on the grounds that it is vague and ambiguous, and it is based on the definition of the term "authorized" (*see* objections number 13, above). BancorpSouth further objects to the definition of the term "received" to the extent that it depends on the formulation of "the date and time ... a dollar amount for the item is made available to you" because that formulation is vague and ambiguous. BancorpSouth further objects to the definition because it is inconsistent with banking practice and the operation of electronic debit card networks, and improperly conflates authorization of an electronic debit card transaction with receipt of an electronic debit card debit item for settlement of a definitive dollar amount.

15. BancorpSouth objects to the Interrogatories' definition of "overdraft fees" which includes a reference to the undefined phrase "sustained overdraft fees." BancorpSouth further objects to this definition because it does not make any distinction between charges assessed but not paid and

charges assessed and paid. For purposes of these Responses, BancorpSouth interprets the term "overdraft fees" to mean only overdraft fees incurred on consumer deposit accounts, which charges are both assessed and paid.

16. BancorpSouth objects to the Interrogatories to the extent they call for information related to any individual other than Swift, the only Plaintiff specifically named in the operative case *Shane Swift v. BancorpSouth, Inc.*, S.D. Fla. Case No. 1:10-cv-23872-JLK. BancorpSouth also objects to the definition of "Plaintiffs' account" to refer to "any bank account opened and maintained at your institution by any of the named Plaintiffs" to the extent it seeks to reach any account information related to any customer other than Swift.

17. Certain of the information sought in these Interrogatories can only be obtained and produced, as a practical matter by searching electronically stored information ("ESI") in the possession, custody, or control of BancorpSouth. A manual search for and production of such information would be unduly burdensome and oppressive, and requiring BancorpSouth manually to search for and produce the information sought in these Interrogatories would exceed the scope of its obligations under the Federal Rules of Civil Procedure. BancorpSouth is prepared to meet and confer with Plaintiff to discuss and agree upon appropriate protocols for searching and production of ESI, as specifically contemplated and required under the Federal Rules of Civil Procedure. BancorpSouth anticipates that the agreed-upon protocols will include, at a minimum, identification of custodians whose electronic records will be searched and agreed upon search terms that are reasonably designed to obtain ESI that is relevant to the parties' claims and defenses in this action. BancorpSouth provides its written responses to these Interrogatories with the understanding that it may need to supplement its responses to these Interrogatories after ESI protocols are agreed upon and the information is obtained from the ESI within BancorpSouth.

18. BancorpSouth has answered certain Interrogatories pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, referring Plaintiff to documents that BancorpSouth will produce that contain information responsive to one or more of the Interrogatories. BancorpSouth states that certain of these documents may only be obtained through the ESI protocol described above, in paragraph 17 of these General Responses and Objections.

19. Certain information called for in these Interrogatories is confidential and proprietary. BancorpSouth will produce such information only pursuant to an appropriate protective order entered by the Court. BancorpSouth is prepared to meet and confer with Plaintiff to discuss and agree upon an appropriate protective order. Further, to the extent any Interrogatory seeks customer-identifying information related to customers other than the named Plaintiff, or other customer confidential information that BancorpSouth is under an obligation to keep confidential, BancorpSouth will not produce that information.

20. BancorpSouth is continuing to compile information and documents responsive to the non-objectionable portion of the Interrogatories. All objections and answers are based on information presently known to BancorpSouth after reasonable inquiry performed to date. BancorpSouth's objections and answers as set forth herein are made without prejudice to BancorpSouth's right to assert additional or supplemental objections or responses. Accordingly, BancorpSouth reserves the right to supplement these answers and objections, and will do so as responsive, non-privileged information is located and compiled, pursuant to Fed. R. Civ. P. 26.

21. BancorpSouth objects to the general instruction in paragraph number five (5) of the Interrogatories which refers to documents that are "generated ... after the date of your answers" to the extent it is intended to reach documents that are prepared in anticipation of litigation in accordance with Fed. R. Civ. P. 26(b)(3).

22. BancorpSouth objects to the general instruction in paragraph number six (6) of the Interrogatories as there has been no agreement as to the production or format of a privilege log. Subject to this objection, with regard to the identification and protection of privileged documents and information, BancorpSouth will comply with the Fed. R. Civ. P. 26(b)(5).

23. BancorpSouth has made reasonable efforts to answer the Interrogatories, subject to its general and specific objections, as BancorpSouth understands and interprets each Interrogatory. If Plaintiff subsequently asserts any interpretation of any Interrogatory that differs from BancorpSouth's interpretation of the Interrogatory, BancorpSouth reserves the right to supplement and amend its objections and answers.

24. Nothing contained herein is an admission of the relevance or admissibility of any answer.

25. BancorpSouth is prepared to meet and confer with Plaintiff in an effort to resolve any questions or concerns regarding its general and specific objections.

RESPONSES TO FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1: Identify all persons who have knowledge of the facts or circumstances regarding the subject matter of this lawsuit and, for each such person, describe the facts known to that person and identify all documents relating to those facts. Such persons should include but not be limited to all persons who have knowledge of facts you will use in opposing a motion for class certification; who have knowledge of the policies, practices and procedures you employed regarding the manner or sequence in which your customers' transactions are posted to their accounts; and who were employed and/or retained by you in connection with the development, operation, revision and/or maintenance of software used to determine overdrafts and overdraft fees.

ANSWER TO INTERROGATORY NO. 1: BancorpSouth objects to Interrogatory No. 1 on the grounds that it is premature, overly broad, and unduly burdensome. As phrased, Interrogatory No. 1, particularly the request for disclosure of all persons "who have knowledge of the policies, practices and procedures you employed regarding the manner or sequence in which your customers' transactions are posted to their accounts," would require disclosure of every current or former

BancorpSouth employee (since 2003) in Bank operations or at a BancorpSouth branch. BancorpSouth further objects to Interrogatory No. 1 on the grounds that it is vague and ambiguous, especially as it relates to the undefined terms and phrases "subject matter of this lawsuit" and "employed regarding the manner or sequence in which your customers' transactions are posted to their accounts." Subject to its general and specific objections, and using its best efforts to comprehend Plaintiff's vague terms, BancorpSouth states that the following individuals have substantial knowledge of facts or circumstances relevant to BancorpSouth's policies and procedures related to the assessment, collection, and refunding of overdraft fees: Michael Lindsey and Jeff Jagers. Subject to and without waiving the foregoing general and specific objections, BancorpSouth states that it continues to investigate in good faith the subjects identified in this Interrogatory.

INTERROGATORY NO. 2: Identify each overdraft fee you assessed against an account held by each Plaintiff named in the Complaint(s) and, for each such fee, identify each item that was the basis for the overdraft fee and state all facts that show the basis on which the account was deemed to have been subject to an overdraft fee.

ANSWER TO INTERROGATORY NO. 2: BancorpSouth objects to Interrogatory No. 2 on the grounds that it is vague and ambiguous, especially as it relates to the undefined terms and phrases "basis for the overdraft fee" and "basis on which the account was deemed to have been subject to an overdraft fee." BancorpSouth also objects to the use of the term "assessed" with regard to overdraft fees, because Plaintiff does not clarify whether this Interrogatory requests information regarding fees triggered by a transaction, fees actually charged, or fees collected, and does not clarify whether fees that were later refunded should be included. Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d), related to Swift's accounts with BancorpSouth, which reflect reasonably available information concerning the transactional history of such accounts, for the time period of January, 2005, through the date of the

Interrogatories. *See also* BancorpSouth's Responses to RFP Nos. 7 and 8. BancorpSouth generally states that, with regard to debit card transactions before the effective date of Reg E in 2010, it charged an overdraft fee against a customer's account when a customer authorized a transaction that his account did not have sufficient funds to cover, as determined when the debit card transaction posted to the account. BancorpSouth also states that, even if a BancorpSouth customer authorizes a transaction at a time when, to the best BancorpSouth can determine, insufficient funds are in the account to cover the transaction, the transaction may not cause an overdraft (and an attendant overdraft fee) if the customer makes a deposit that posts the same banking day and which would cover the debit card transaction, because BancorpSouth posts all deposits for a given banking day before posting any debits. BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 3: For each item identified in response to Interrogatory No. 2 as the basis for an overdraft fee, state: (a) the date and time you authorized the item; (b) the date and time you received the item; and (c) the date and time the item was debited from the account.

ANSWER TO INTERROGATORY NO. 3: BancorpSouth objects to this Interrogatory on the grounds that it is vague and ambiguous including the phrase "the basis for an overdraft fee." Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents or ESI that it agrees to produce related to Swift's accounts with BancorpSouth (subject to agreed-upon appropriate protocols for searching and production of ESI, as discussed in General Objection No. 17 herein), which reflect reasonably available information concerning the transactional history of such accounts, for the time period of

January, 2005, through the date of the Interrogatories. *See also* BancorpSouth's Response to RFP No.

7. BancorpSouth further agrees to meet and confer with Plaintiff concerning whether a further narrative response is required after review of such documents.

INTERROGATORY NO. 4: For the period 1998 to the present, describe with particularity all policies, practices and procedures you used to determine the sequence in which items are posted to customers' accounts, including the dates any policies, practices or procedures were changed and the reason for such changes, and identify all persons with knowledge of the creation, implementation, modification, of such policies, practices and procedures.

ANSWER TO INTERROGATORY NO. 4: BancorpSouth objects to the timeframe of Interrogatory No. 4 on the grounds that it is overly broad, unduly burdensome, and requests information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence. BancorpSouth further objects to Interrogatory No. 4 because it seeks information which falls outside of the applicable statutes of limitations. Subject to and without waiving the foregoing objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, subject to the entry of an appropriate protective order, concerning the posting of electronic debit card transactions to customer accounts. *See also* BancorpSouth's Responses to RFP Nos. 9-11, 13, 22, 24, 38-41, 49-51, 53-54. BancorpSouth further states that, beginning in 2003, it posted the debits on checking accounts for a given day from highest dollar amount to lowest dollar amount. No debits for a given day are posted, however, until after all deposits for that day are posted to the customer's account. Prior to 2003, BancorpSouth's posted transactions in an order dictated by the type of transaction, and to post high-to-low within each type of transaction if there was more than one transaction of a particular type. Earnings Performance Group ("EPG") and other consulting firms approached BancorpSouth in the early 2000s offering consulting services that they represented would increase BancorpSouth's revenue. BancorpSouth engaged EPG in 2002. EPG proposed numerous policies for increasing bank profitability, including

adopting a high-to-low posting order for debits. BancorpSouth did not adopt all of EPG's recommendations, but BancorpSouth did adopt a high-to-low posting order. BancorpSouth adopted the high-to-low posting order for debits to, among other reasons, increase non-interest revenue and streamline the posting process by eliminating the distinctions between types of transactions.

INTERROGATORY NO. 5: Describe with particularity how the policies, practices and procedures identified in Interrogatory No. 4 varied or vary from state to state, if at all.

ANSWER TO INTERROGATORY NO. 5: BancorpSouth incorporates by reference its objections to Interrogatory No. 4. Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, subject to the entry of an appropriate protective order, concerning the order of posting of electronic debit card transactions to customer accounts. *See also* BancorpSouth's Responses to RFP Nos. 9-11, 13, 22, 24, 38-41, 49-51, 53-54. BancorpSouth further states that practices described in BancorpSouth's response to Interrogatory 4 do not vary from state to state. BancorpSouth further states that when it acquired a bank that used a different posting order, the acquired bank's posting order was used for its account holders until the acquired bank and its account holders could be converted to BancorpSouth's systems. For the time period relevant to this lawsuit, BancorpSouth states that it acquired American State Bank in 2005. Between November 30, 2005 and April 21, 2006, the account posting order for former account holders at American State Bank differed from the posting order on preexisting BancorpSouth accounts.

INTERROGATORY NO. 6: If the policies, practices and procedures regarding overdraft fees you have followed during the 180 days immediately preceding the date on which you answer these interrogatories are materially different than the policies, practices and procedures relating to overdraft fees you followed from 1998 to present, describe in detail all ways in which your current policies, practices and procedures differ, explain when, how and why they changed, and identify all documents that describe, refer or relate to the differences or changes.

ANSWER TO INTERROGATORY NO. 6: BancorpSouth objects to Interrogatory No. 6

on the ground that it potentially reaches BancorpSouth's policies, practices, and procedures for setting the amount of an individual overdraft fee, and the Interrogatory is, therefore, overly broad, unduly burdensome, and seeks information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence. BancorpSouth also objects to the vague term "policies and procedures regarding overdraft fees." BancorpSouth further objects to the timeframe of this Interrogatory in that the request for information dating to 1998 is overly broad, unduly burdensome, and seeks information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence, and because it falls outside of applicable statutes of limitations. Subject to and without waiving the foregoing general and specific objections, BancorpSouth states that in anticipation of the effective date of "Reg E," and in order to comply with Reg E, BancorpSouth changed its policies in 2010 with regard to enrollment of customers in its overdraft payments service (as described in response to Interrogatory No. 12 herein). BancorpSouth now requires all customers to affirmatively opt in to the overdraft payment service in connection with transactions governed by Reg E. For more information regarding BancorpSouth's overdraft payment service, see response to Interrogatory No. 12 herein. BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 7: Describe with particularity all actions you have taken to inform your customers of your policies, practices and procedures of posting items in the order of highest to lowest dollar amount, including when, how and by whom each such action was taken.

ANSWER TO INTERROGATORY NO. 7: BancorpSouth objects to Interrogatory No. 7 on the grounds that it is overly broad, unduly burdensome, and to the extent that it purports to

require BancorpSouth to identify each and every separate document, oral conversation, communication, or other responsive item concerning the posting of certain items to customer accounts in highest to lowest order. Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiffs to reasonably available documents that it agrees to produce, subject to the entry of an appropriate protective order, concerning information provided to customers concerning the posting of debit card transactions in order of highest to lowest dollar amount, for the time period of 2003 through the date of these Interrogatories. *See also* BancorpSouth's Response to RFP Nos. 1-6, 11, 17, 26, 48 and 55.

BancorpSouth further states that it has fully and regularly disclosed its policy of posting debit card transactions in order of highest to lowest dollar amount since it began following this policy in 2003. These disclosures were made, among other methods of disclosing BancorpSouth's posting policies, in the Deposit Account Terms and Conditions and Account Information Statements, revised from time to time, which have governed BancorpSouth accounts during all periods since 2003. BancorpSouth also refers Plaintiff to the Deposit Account Terms and Conditions, attached as Exhibit A to Swift's Second Amended Complaint, which states, in part:

ORDER OF PAYMENT - Unless otherwise provided in the Account Information Statement (see OTHER TERMS section below), if more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us . . .

and refers Plaintiff to the Account Information Statement, attached as Exhibit B to Swift's Second Amended Complaint. BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information,

and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 8: State the manner in which you have defined or otherwise described the term "overdraft" to your customers.

ANSWER TO INTERROGATORY NO. 8: Subject to and without waiving the foregoing general objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d) and subject to the entry of an appropriate protective order, concerning the actions it has taken to inform customers of BancorpSouth's policies, practices and procedures regarding the posting of electronic debit card transactions, for the time period of 2003 through the date of the Interrogatories, including exemplars of its Deposit Account Terms and Conditions and Account Information. *See also* BancorpSouth's Responses to RFP Nos. 1-6, 11, 17, 26 and 55. BancorpSouth further agrees to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

In addition, BancorpSouth refers Plaintiff to the Deposit Account Terms and Conditions attached as Exhibit A to Swift's Second Amended Complaint, which states, among other things, as follows:

LIABILITY: ... Each of you also agrees to be jointly and severally (solitarily) liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from the account, and the costs we incur to collect the deficit including our reasonable attorneys.

* * *

ORDER OF PAYMENT - Unless otherwise provided in the Account Information Statement (*see* OTHER TERMS section below), if more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we may pay any of them in any order

we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

BancorpSouth also refers Plaintiff to the "About Overdrafts" section of the Account Information Statement, attached as Exhibit B to Swift's Second Amended Complaint, which states in part:

An "overdraft" occurs any time a check, ACH, ATM, debit card, bank fee (including overdraft-related fee) or any other transaction (collectively, a "Transaction") is presented for payment against an account and the available balance of the account is insufficient to pay the Transaction. When an overdraft occurs, we may, at our discretion, refuse the Transaction, or alternatively, we may choose to pay the Transaction, in which case a negative account balance will result.

INTERROGATORY NO. 9: Describe with particularity each step, including each form of communication, involved in an electronic debit transaction, beginning with the initiation of the transaction, continuing through your receipt of notice of the dollar amount of the transaction and authorization of the transaction, and ending with your posting of the transaction to the customer's account and your assessment of overdraft fee, if any, based on the transaction.

ANSWER TO INTERROGATORY NO. 9: BancorpSouth objects to Interrogatory No. 9 on the grounds that it is vague and ambiguous, especially as to its use of the undefined terms and phrases "electronic debit transaction," "initiation," "receipt," and "notice." BancorpSouth further objects on the grounds that this Interrogatory is overly broad and unduly burdensome (e.g., the steps entailed may differ depending on the type of transaction), and to the extent that it calls for information that is not within the knowledge, custody, or control of BancorpSouth. BancorpSouth further objects on the ground that Interrogatory No. 9 is inaccurate to the extent it states that BancorpSouth is presented with information reflecting the final amount of a transaction prior to or at the time of initiation or authorization of the transaction.

Subject to and without waiving the foregoing general and specific objections, BancorpSouth

refers Plaintiff to reasonably available documents that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d) and subject to the entry of an appropriate protective order, concerning the steps involved in posting of transactions to customer accounts, for the period of 2003 through the date of the Interrogatories. BancorpSouth also refers Plaintiff to the Omnibus Motion to Dismiss and/or for Judgment on the Pleadings and Incorporated Memorandum of Law [DE # 217] at 8-12 (discussing the authorization and settlement process for electronic debit card transactions), and to BancorpSouth's Motion to Dismiss Plaintiff's Second Amended Complaint [DE# 1068] in this matter. *See also* BancorpSouth's Responses to RFPs 34-36, 41, 69-70. BancorpSouth further states as follows:

BancorpSouth's processing of debit card transaction (whether a "PIN" or a "signature" transaction) begins when BancorpSouth's systems receive an inquiry from a credit card processor. For a signature transaction, the transaction is routed to BancorpSouth via a third-party card processing vendor ("FDR"). The FDR system determines whether the transaction is or is not authorized. Authorization is based on whether the requested transaction exceeds the total of what the FDR system calculates the customer's account balance to be. FDR initiates a balance inquiry to BancorpSouth's Stratus system, and subtracts any signature transactions authorized from up to three prior days that have not "settled." If the requested transaction exceeds the total of the account balance (as calculated by FDR), the transaction will not be authorized. A signature transaction does not post to a customer's account, and does not reduce the customer's balance, until the merchant clears the transaction, which can be several days later. A signature transaction posts to the customer's account only after that the merchant clears the transaction. Signature transactions post at the end of the day when all other transactions for that day post, in order from highest dollar amount to lowest dollar amount. The posting of the transaction occurs on BancorpSouth's account demand deposit

account system ("DDA" or "mainframe"). If the transaction at issue causes the customer's account to be overdrawn or causes an overdrawn account to be further overdrawn, an overdraft fee will be assessed against the customer's account. The overdraft fee will be charged against the customer's account on the day following the transaction that triggered the fee.

For debit card "PIN" transactions, the process is similar, but not identical. PIN transactions are authorized or denied by BancorpSouth's "Stratus" system. Authorization is based on whether the requested transaction exceeds the total of what the Stratus system calculates the customer's account balance to be. The Stratus system will include the overdraft limit for that customer if the customer is enrolled in the overdraft payment service. The Stratus system's balance information is regularly updated by communication with BancorpSouth's DDA system. If the requested transaction exceeds the total of the account balance (as calculated by Stratus) the transaction will not be authorized. A PIN transaction posts to the customer's account, on the DDA, at the end of the day when all other transactions for that day post, in order from highest dollar amount to lowest dollar amount. If the transaction at issue causes the customer's account to be overdrawn or causes an overdrawn account to be further overdrawn, an overdraft fee will be assessed against the customer's account. The overdraft fee will be charged against the customer's account on the day following the transaction that triggered the fee.

BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 10: For each step in the process described in your answer to Interrogatory No. 9, identify each computer system or database used to transmit and/or store information and for each such database or system, identify its task and function and describe in detail where and how you retain the information associated with each step and the process

by which such records or information can be accessed:

ANSWER TO INTERROGATORY NO. 10: In Response to Interrogatory No. 10, BancorpSouth incorporates by reference its specific objections to Interrogatory No. 9. BancorpSouth further objects to Interrogatory No. 10 on the grounds that it is overly broad, unduly burdensome, and seeks information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d) and subject to the entry of an appropriate protective order, concerning computer systems and databases concerning electronic debit card transactions, for the time period of 2003 through the date of the Interrogatories. *See also* BancorpSouth's Responses to RFP Nos. 32-33, 41 and 69-70. BancorpSouth further states that this Interrogatory overlaps with Interrogatory No. 9 to a substantial extent; therefore, BancorpSouth refers Plaintiff to the portions of BancorpSouth's response to Interrogatory No. 9 that are responsive to this Interrogatory.

BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 11: On an annual basis for each year since 2002 and for each State in which you maintain customer accounts, state (a) the aggregate total dollar amount of overdraft fees based on debit card and/or ATM transactions you assessed against your customers' accounts; (b) the aggregate total dollar amount of overdraft fees based on debit card and/or ATM transactions assessed against customers accounts that you have forgiven, waived, reversed or otherwise not collected; and (c) the number of your customers' accounts that have been assessed more than one overdraft fee based on debit card and/or ATM transactions on a single day.

ANSWER TO INTERROGATORY NO. 11: BancorpSouth objects to Interrogatory No.

11 on the grounds that it is overly broad, unduly burdensome, seeks information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence, and falls outside of applicable statutes of limitations. BancorpSouth also objects to the use of the vague and undefined phrase "overdraft fees based on debit card and/or ATM transactions." Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents and/or data that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d) and subject to the entry of an appropriate protective order, concerning the aggregate amounts and number of customer accounts requested, for the time period of 2003 through the date of the Interrogatories. *See also* BancorpSouth's Responses to RFP Nos. 27 and 28. BancorpSouth further agrees to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 12: Describe in detail how you determine whether to authorize a debit transaction made on a customer's account. In the event an automated algorithm is used, describe in detail each factor considered by the algorithm and the weight ascribed to each such factor.

ANSWER TO INTERROGATORY NO. 12: BancorpSouth objects to Interrogatory No. 12 on the grounds that it is vague and ambiguous, especially as it relates to the phrase "authorize a debit transaction made on a customer's account." BancorpSouth further objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, subject to the entry of an appropriate protective order, concerning the method by which BancorpSouth determines whether or

not to authorize an electronic debit card transaction, for the time period of 2003 through the date of the Interrogatories. *See also* BancorpSouth's Response to RFP Nos. 34-36. BancorpSouth further states that, since 2003, BancorpSouth has provided an "overdraft payment service" with a varying overdraft limit. A customer can both have an overdraft protection product (such as a linked savings account, credit card, or line of credit to cover transactions that would overdraw the customer's checking account) and be enrolled in the overdraft payment service. Under the overdraft payment service, BancorpSouth provides an amount over and above the customer's available balance for which BancorpSouth will authorize payment of debit card transactions initiated by the customer. Under the overdraft payment service, each enrolled account holder has an overdraft limit. The bank may also, at its discretion, pay an item into overdraft above the overdraft limit. The amount of the overdraft limit may vary for each customer, and may vary for an individual customer, from statement period to statement period. The amount of the overdraft limit is affected by such factors as the length of time the customer's account has been open, the average balance in the account over the previous 90 days, and the number of times the customer has overdrawn his account in the previous 12 months. For an account enrolled in the overdraft payment service, whether a particular debit card transaction is authorized or not is determined by comparing the amount of the requested debit card transaction with the amount in the customer's account (as best BancorpSouth can determine in light of the uncertainties of what other transactions will be requested or will arrive before all of the transactions post at the end of the banking day) plus the amount of the customer's currently effective overdraft limit for the account. If the apparently available balance plus the overdraft limit exceeds the amount of the requested debit card transaction, the debit card transaction will be authorized; if the amount of the requested debit card transaction exceeds the apparently available balance plus the overdraft limit, the transaction will not be authorized.

Since its inception, the existence of the overdraft payment service has been disclosed to customers in BancorpSouth's Account Information Statement, among other methods of disclosure. At all times, a BancorpSouth customer has had the option to remove the overdraft payment service from his account on request. Although the default rule from 2003 until the effective date of Reg E in 2010 was for an account holder to be enrolled in the overdraft payment service unless he opted out, BancorpSouth changed its policies in 2010 to comply with Reg E. BancorpSouth now requires all customers to affirmatively opt in to the overdraft payment service for debit card and ATM card transactions in order to use the service for those transactions.

BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 13: Describe in detail the manner in which your Hogan or RDS (or equivalent) system operates with regard to the processing of items.

ANSWER TO INTERROGATORY NO. 13: BancorpSouth objects to Interrogatory No. 13 on the grounds that it is vague and ambiguous, especially as it relates to the undefined terms "equivalent" and "processing." BancorpSouth also objects to the use of the undefined and vague term "Hogan or RDS (or equivalent) system." Subject to and without waiving the foregoing general and specific objections, BancorpSouth refers Plaintiff to reasonably available documents that it agrees to produce, pursuant to Fed. R. Civ. P. 33(d) and subject to the entry of an appropriate protective order, concerning the system(s) it employs, for the time period of 2003 through the date of the Interrogatories. *See also* BancorpSouth's Responses to RFP Nos. 41, 69 and 70. BancorpSouth further states that this Interrogatory overlaps with Interrogatory No. 9 to a substantial extent; therefore, BancorpSouth refers Plaintiff to the portions of BancorpSouth's

response to Interrogatory No. 9 that are responsive to this Interrogatory.

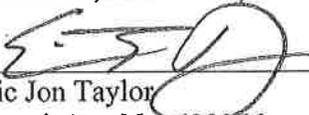
BancorpSouth further agrees to produce, pursuant to Fed. R. Civ. P. 33(d), responsive, reasonably available, and non-privileged documents further detailing this information, and to meet and confer with Plaintiff after Plaintiff reviews such documents regarding whether a further narrative response is required and/or whether deposition testimony is appropriate on these topics.

INTERROGATORY NO. 14: Identify all third parties, other than legal counsel or federal agencies, who have provided any documents, advice, assistance, proposals, reports, studies or services of any kind to you in connection with your policies, practices and procedures relating to the determination or assessment of overdraft fees, or the revenue projected to be derived from such fees.

ANSWER TO INTERROGATORY NO. 14: BancorpSouth objects to Interrogatory No. 14 on the grounds that it is overly broad, unduly burdensome and seeks information that is not relevant to any claim or defense in this action and/or not reasonably calculated to lead to the discovery of admissible evidence. BancorpSouth further objects to Interrogatory No. 14 because it potentially reaches BancorpSouth's policies, practices, and procedures for, among other things, setting the amount of an overdraft fee. Subject to and without waiving the foregoing general and specific objections, BancorpSouth agrees to conduct a reasonable inquiry and identify the requested third parties.

Respectfully submitted this 27th day of June, 2011.

PARKER, HUDSON, RAINER & DOBBS LLP



Eric Jon Taylor
Georgia Bar No. 699966
William J. Holley, II
Georgia Bar No. 362310
David B. Darden
Georgia Bar No. 250341
Darren E. Gaynor
Georgia Bar No. 288210

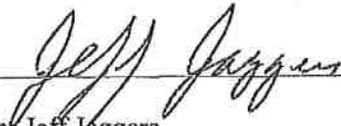
1500 Marquis Two Tower
285 Peachtree Center Avenue N.E.
Atlanta, Georgia 30303
Telephone: (404) 523-5000
Facsimile: (404) 522-8409

Counsel for Defendant BancorpSouth Bank

VERIFICATION

I, Jeff Jaggers, being duly sworn, depose and say that I am Senior Vice President for BancorpSouth Bank ("BancorpSouth"). I have reviewed the foregoing Defendant BancorpSouth's Responses to Plaintiff's First Set of Interrogatories, which I understand have been compiled from a number of sources within BancorpSouth with the assistance of BancorpSouth's counsel. To the best of my knowledge, information, and belief, the factual information contained in Defendant BancorpSouth's Objections and Responses to Plaintiff's First Set of Interrogatories is true and accurate.

This 27th day of June, 2011.


Name: Jeff Jaggers

Position: Senior Vice President

Sworn to and subscribed

before me this 27 day

of June, 2011.


Notary Public

My Commission Expires:



CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **DEFENDANT BANCORPSOUTH BANK'S RESPONSES TO PLAINTIFF'S FIRST INTERROGATORIES** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed as follows:

Robert C. Gilbert, Esq.
Alters Law Firm, P.A.
4141 N.E. 2nd Avenue, Suite 201
Miami, Florida 33137

Jeffrey M. Ostrow, Esq.
Jonathan Streisfeld, Esq.
Kopelowitz Ostrow Ferguson Weiselberg Keechl
200 S.W. First Avenue, 12th Floor
Fort Lauderdale, Florida 33301

Darren T. Kaplan, Esq.
Chitwood Harley Harnes, LLP
2300 Promenade II
1230 Peachtree Street, NE
Atlanta, Georgia 30309

This 27th day of June, 2011.


Eric Jon Taylor

EXHIBIT B

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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

THIS DOCUMENT RELATES TO:

Swift v. BancorpSouth, Inc.
N.D. FL Case No. 1:10-cv-00090-SPM
S.D. FL Case No. 1:10-cv-23872-JLK

DEPOSITION OF JEFF JAGGERS

TAKEN AT THE INSTANCE OF THE PLAINTIFF
IN THE BANCORPSOUTH CONFERENCE CENTER
387 WEST MAIN STREET, TUPELO, MISSISSIPPI
ON MAY 10 & 11, 2012, BEGINNING AT 3:35 P.M.

(APPEARANCES NOTED HEREIN)
Reported by: LUANNE FUNDERBURK, CSR 1046

ADVANCED COURT REPORTING
P.O. BOX 761
TUPELO, MS 38802-0761
(662) 690-1500

1 language? Is that what you were doing?

2 A. no.

3 MR. TAYLOR: Object to the form.

4 Q. Go ahead.

5 A. Prior to that we categorized our
6 transactions in, you know, different buckets and
7 posted high to low. And that was very difficult for
8 our customers to understand what makes up, you know,
9 my posting order. I've got X number of transactions
10 that fall into different types. And so, we put
11 together a listing of the types of transactions and
12 how they fell into different buckets. Once we went
13 to a more simplified approach, there was not a need
14 to go to that detail because all the transactions
15 fell into one category.

16 Q. Did the bank do any studies at any point in
17 time as to whether, in fact, customers were better
18 able to understand the posting order after you
19 changed it till the time it was in multiple buckets?

20 A. From the -- there was not a formal study
21 done, but the general consensus was that that was
22 much easier to understand, and our customers could
23 understand that and it was easier to explain to our
24 customers if they contacted the bank.

25 Q. How is the general consensus arrived at

1 Q. Well, was there anything specifically done
2 -- would it be correct to say that the bank merely
3 provided at some point a new deposit agreement
4 without any explanation as to what was in the terms
5 of the deposit agreement?

6 A. I do not recall if the bank sent new
7 deposit agreements with each acquisition on the
8 deposit side. I do recall that we send full
9 disclosures regarding all of our products and all of
10 our services. I know factually that we did not
11 require customers to sign another account agreement.
12 That was not done and we have not done that in any
13 acquisition. And I do know that -- my date may be
14 wrong here, but I believe it was sometime around
15 2007, we did a complete terms and conditions
16 discretionary, new discretionary to all customers
17 that were with our bank at that time. My
18 recollection is that was in 2007.

19 Q. So it's your recollection that prior to
20 that 2007 change, that the customers that banked with
21 one of these other banks that you acquired would not
22 have gotten a new deposit agreement?

23 A. I do not recall that they did. I don't
24 recall. It could have certainly been part of the
25 disclosures, but I don't recall that specific

1 MR. TAYLOR: Object to the form. I
2 think he answered that question.

3 A. We communicated -- you know, going
4 backwards, in March of 2000 -- well, it may have been
5 April. Either March 31st, April 2nd, somewhere
6 around that 2010, we did letters to our customers
7 about overdraft payment service. Most of that was in
8 preparation for Regulation E, but it would have been
9 prior to Reg E taking effect.

10 Q. And did those communications as far as you
11 know discuss the posting order of transactions?

12 A. My recollection is they're part of the
13 discretionary included how we paid items that a
14 customer could incur multiple fees.

15 Q. Anything else that you would add to that?

16 A. Yes.

17 Q. Okay.

18 A. We would have periodically mailed to
19 customers a document how to avoid overdraft fees, how
20 to avoid fees, including overdraft fees, on our web
21 site. We have a link on how to avoid fees and
22 included in that is how to avoid overdraft fees.

23 Q. Wait.

24 (Brief pause in the proceedings).

25 A. I thought you wanted me to wait.

1 -- the document you provided earlier there was a
2 paragraph with an asterisk, we began to create a
3 paragraph that we called about overdrafts. We did
4 that over time and then expanded on that over time.
5 So it changed over time.

6 Q. And what was the genesis of -- I guess
7 there's two different changes that we discussed. We
8 discussed the change relating to -- well, a call, if
9 it's okay, and you understand what I'm talking about,
10 the may language that said you may do it in any order
11 you choose. Okay? So what was the genesis of
12 choosing to go to that language as opposed to a
13 language that you previously had that talked about a
14 descending order?

15 A. That was 2003, 2004. I don't recall the
16 exact genesis. I do recall part of a conversation
17 related to -- there was discussions about having the
18 ability or disclosing the ability to pay certain
19 items that were made payable to BancorpSouth that we
20 would have the right to pay those items before any
21 others and that we might want to have that right to
22 pay any item that was made payable to BancorpSouth
23 before any other items. So, that was part of the
24 discussion. I remember that. I can't remember all
25 the discussion, but I remember that being part of the

1 discussion.

2 Q. But the bank wasn't -- at that point in
3 time because of that change, the bank wasn't
4 specifically telling the customer what the policy was
5 as of the time that they delivered that document to
6 the customers, in terms of the posting order,
7 correct?

8 MR. TAYLOR: Object to the form.

9 A. I think --

10 Q. As of the time you made this change to the
11 may in any order, you weren't identifying for the
12 customer what the bank's practice was specifically as
13 of that time, correct?

14 A. Our disclosures were that we may pay in any
15 order, and including the right to pay any item -- I
16 believe the discretionary -- and then immediately
17 shortly after that, it included the paragraph that we
18 have the right to pay any item made payable to
19 BancorpSouth first.

20 Q. All right.

21 MR. STREISFELD: Let's take a break.

22 (Short recess)

23 Q. I'm going to show you a document, which is
24 Exhibit 36 to the class certification motion. We'll
25 call it Exhibit 22 for purposes of today and ask if

EXHIBIT C

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IN THE 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)

THIS DOCUMENT RELATES TO:)
Swift vs. BancorpSouth, Inc.)
N.D. FL Case No. 1:10-cv-00090-SPM)
S.D. FL Case No. 1:10-cv-23872-JLK)

THE DEPOSITION OF
JEFF JAGGERS
Taken on Behalf of the Plaintiffs
August 15, 2012
12:38 P.M. - 4:08 P.M.

Edward F. Kidd, RPR, LCR #501

My License Expires: 6/30/14

1 because it's a valuable service to the
2 customer.

3 Q. So it's a service, it's a valuable
4 service to the customer and the customer
5 should pay for that valuable service, in your
6 mind?

7 A. Yes, it's a valuable service and the
8 bank discloses the fee to the customer and if
9 they, you know, want that service or use that
10 service, there is a fee associated with it.
11 That's one of the reasons to assess an
12 overdraft fee.

13 Q. Are there other reasons to assess an
14 overdraft fee?

15 A. Yes.

16 Q. What else?

17 A. There were certain risks that the
18 bank takes associated with paying an item
19 into overdraft. And so from the bank's
20 perspective, that risk that the bank takes,
21 there should be some form of revenue
22 associated with taking that risk.

23 Q. Was one of the things that EPG was
24 promising in January of 2002 with their OD
25 matrix project, would one of those things

1 buckets. Buckets were certain types of
2 transactions posted high to low and then
3 another bucket of certain types of
4 transactions posted high to low. So you had
5 more than one bucket and they all posted high
6 to low.

7 Q. And did EPG at some point in time
8 propose a different posting order?

9 A. Yes.

10 Q. Okay. Do you recall approximately
11 when that was?

12 A. It was in 2002, 2003, I don't recall
13 the exact dates. It could have been in 2001.
14 We were -- we engaged them on, my
15 recollection is two engagements from, maybe
16 late 2001 through 2003 or something like
17 that.

18 Q. I think that's about right. What was
19 the posting order that EPG ended up
20 ultimately proposing?

21 A. EPG recommended a simplified posting
22 order of high to low. All customer initiated
23 transactions in a bucket of high to low.

24 Q. Uh-huh. And do you recall why EPG
25 was recommending that you dispense with

1 bucket posting?

2 A. Multiple reasons. But, yes, I
3 recall.

4 Q. What were those reasons?

5 A. One, was there would be an increase
6 in revenue.

7 Q. Uh-huh?

8 A. Two was it would be much easier to
9 explain to a customer, and to -- for a
10 customer to understand, because it -- over
11 time customers had begun all different types
12 of transaction channels were growing and so
13 those bucket -- it was very hard for a
14 customer to understand how the posting order
15 occurred prior to 2002 so to simplify the
16 approach.

17 Q. Simplify it for the purposes of
18 explaining to your customers what was going
19 on, dispense with the buckets?

20 A. That's right.

21 Q. And also increase revenue to
22 BancorpSouth?

23 A. Yes.

24 Q. Okay. 48.

25 (Thereupon, Exhibit 48 was

EXHIBIT D

Shane Swift v. BancorpSouth, Inc.
Shane Swift on 01/18/2012

1:09-MD-02036-JLK
Page 1

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
Fourth Tranche

THIS DOCUMENT RELATES TO:

Shane Swift v. BancorpSouth, Inc.,
S.D. Fla. Case No. 1:10-cv23872-JLK

DEPOSITION OF SHANE SWIFT

WEDNESDAY, JANUARY 18, 2012
200 SOUTHWEST FIRST AVENUE
FORT LAUDERDALE, FLORIDA 33301
10:00 a.m. - 2:00 p.m.

APPEARANCES:

On behalf of BancorpSouth:
Eric Jon Taylor, Esquire
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On behalf of Shane Swift:
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and Jason H. Alperstein, Esquire
Kopelowitz, Ostrow, Ferguson, Weiselberg
200 Southwest First Avenue, Suite 1200
Fort Lauderdale, Florida 33301
(954) 525-4100
alperstein@kolawyers.com

- - -

1 fair thing is the correct sequencing, but if and when
2 every time there has been transactions over a
3 non-business day or over a weekend and the next
4 business day, it doesn't matter what day they fell on
5 over and over again.

6 There is an exact high to low all the
7 way down in the history of your banking account, you
8 know.

9 Q. You'd agree with me that when there is
10 an overdraft at BancorpSouth, there's a charge
11 associated with the overdraft, right?

12 A. Yes.

13 Q. And you know that?

14 A. Yes.

15 Q. And you know that the bank reorders
16 high to low, right?

17 A. I know that and I knew. That's
18 something I know.

19 Q. Just looking at your check registers,
20 you know because you kept the record and you could see
21 that it was high to low, right?

22 A. Yes.

23 Q. Okay. I think what I was getting hung
24 up on was fair, unfair. Is it accurate to say that
25 you think high to low resequencing is the problem?

1 over a weekend, you won't have any overdrafts, right?

2 A. That's correct.

3 Q. And that's just --

4 A. I know where you're coming from.

5 Q. That's just a general rule that if you
6 have enough money to cover any transactions you make,
7 you're not going to have an overdraft?

8 A. Yes.

9 Q. So you only have an overdraft if you
10 don't have enough money to cover all the transactions,
11 right?

12 A. Yes. Please ask me the question over
13 again.

14 Q. Let me try this and I'm not trying to
15 be difficult.

16 A. I'm not trying to be difficult.

17 Q. I don't sense that in you at all, but
18 we're very careful with words.

19 A. Yes. I'm not a counsel, but yes.

20 Q. Understood.

21 A. I'm just an ordinary guy.

22 Q. Do you have any reason to believe that
23 all BancorpSouth customers believe that resequencing
24 is unfair?

25 A. No.

1 Q. Did you review these transactions when
2 you received your May statement from BancorpSouth?

3 A. I reviewed these transactions after
4 several overdraft fees came in. Let me get this
5 right.

6 I don't remember if I went to the bank
7 and got a printout or if the overdraft notices came in
8 the mail, but all I know is I remember I got five
9 overdraft charges and I gathered the receipts and as I
10 observed, I noticed that they were resequenced from --
11 through the week. I noticed they were resequenced.
12 That's what I noticed.

13 Q. You noticed that on what?

14 A. I noticed they were resequenced as
15 opposed to the dates and times on the receipts.

16 Q. What were you looking at when you
17 noticed that they were resequenced?

18 A. I was looking at the dates and times on
19 the receipt and to my best knowledge, it was either
20 the printout -- it had to have been the printout if I
21 didn't -- it was either the printout or the
22 statements, but around the same time -- I'm not sure.
23 I'm not sure what time it was. It was shortly after I
24 got the notices.

25 Q. When you say the printout, was the

1 printout an electronic version of the statement?

2 A. Yes. Every once in a while, I would go
3 to the bank. When I did a transaction, I would get a
4 printout just to see what kind of action is going on
5 in my account, what kind of transactions are being
6 made and so I could have went to the bank, got a
7 printout, took it home, looked at the sequence of my
8 receipts, compared them to that or I could have
9 already had a statement at that time.

10 Either way, it was from a statement or
11 a printout, which is both basically statements of the
12 transactions and you know, what was going on in my
13 account.

14 Q. Do you receive monthly statements from
15 BancorpSouth in the mail?

16 A. Electronically now.

17 Q. When did that change from mail to
18 electronic?

19 A. I don't remember that. There's -- you
20 know, they go to my wife. I don't know.

21 Q. Okay. Is it fair to say that the
22 information that you reviewed was a BancorpSouth bank
23 statement?

24 A. Yes.

25 Q. And whether it was electronic --

1 A. In any form, printout fashion, whether
2 a printout or a monthly statement that was sent that
3 was tangible.

4 Q. You received those statements whether
5 electronically or in the mail monthly from
6 BancorpSouth, right?

7 A. Yes, I believe they send them out
8 monthly.

9 Q. You're not contending that you didn't
10 have access to your account information?

11 A. Oh, I had access to my account
12 information.

13 Q. Since you opened the account?

14 A. Since I opened the account.

15 Q. Is it fair to say that the amount of
16 the overdraft that's reflected in Paragraph 68 of the
17 Complaint, the hundred sixty dollars, is that what got
18 your attention?

19 A. What got my attention? No, that's not
20 what got my attention. The amount of -- that's what
21 you're asking me? The amount of the overdraft fees is
22 what got my attention?

23 Q. I'm trying to understand what made you
24 start looking at this for the first time.

25 A. The amount of overdrafts.

1 communicating.

2 A. Okay.

3 Q. I was asking if the amount had been
4 three dollars each, would you have been prompted to
5 even look into it?

6 A. Yes. Yes, I would.

7 Q. Do you think that the amount of
8 overdrafts; that is, the thirty two dollars, that is
9 not the issue here?

10 A. That is not the issue here.

11 Q. Do you think that's true for every
12 BancorpSouth customer?

13 MR. OSTROW: Form.

14 A. I wouldn't know that.

15 BY MR. TAYLOR:

16 Q. Okay. This on Page 21, though, those
17 are the transactions and that's the time frame you're
18 talking about, right?

19 A. Yes, that's the time. What did you
20 say? The what?

21 Q. This is the time frame and these are
22 the transactions when you first started looking at
23 this?

24 A. Yes, the 505 and after would be the
25 time frame, 506.

1 Q. What did you do to research this issue?

2 A. I noted that this is not -- I did
3 research. I went on Google, forums, blogs and you
4 know, typed into Google overdraft fees and the
5 manipulation of unfair overdraft fees.

6 So I started reading blogs and forums,
7 which I couldn't regurgitate word for word what they
8 said, but you know, I learned that there were other
9 people that felt the same way.

10 I didn't get in contact with those
11 people, but yes, I did my research at that time.

12 Q. So you did an Internet search?

13 A. I did an Internet search, yes.

14 Q. Did you do any other kind of research?

15 A. I might have, but the only thing I
16 really remember was over the Internet.

17 Q. Did you talk to anybody at BancorpSouth
18 about it?

19 A. Did I talk to anybody at BancorpSouth
20 specifically about the reordering of -- resequencing
21 of --

22 Q. Yes.

23 A. No, not that I recall. I didn't.

24 Q. Is it fair to say that during this time
25 period, you learned about -- well, strike that. Let

1 me ask it a different way.

2 Is it fair to say that in the main time
3 frame you did your research, did you have a complaint
4 with BancorpSouth in your mind at that time?

5 MR. OSTROW: Form.

6 A. I think I know what you're trying to
7 ask. Are you trying to ask me -- this is asking you.

8 BY MR. TAYLOR:

9 Q. Sure.

10 A. Are you trying to ask me that did I
11 have the complaint with them that I wanted to go
12 straight to them and complain about this happening?

13 Q. Yes. Did you have a beef with them?
14 Did you have --

15 A. Not necessarily. I wanted to make
16 sure -- I wanted to find out if resequencing from high
17 to low was fair.

18 Q. Okay. Why didn't you go to
19 BancorpSouth to ask about this?

20 A. I just didn't.

21 Q. Have you ever made any complaint to
22 BancorpSouth about your checking account or any of
23 your accounts?

24 A. No, I haven't.

25 Q. Are you satisfied with BancorpSouth as

1 a bank?

2 A. As a bank, yes.

3 Q. You still bank with them, right?

4 A. Yes.

5 Q. It's fair to say over the time that
6 you've been a BancorpSouth customer, you've had
7 overdraft charges over the entire relationship, right?

8 A. It's fair to say that.

9 Q. And those overdraft charges, you always
10 paid them, right?

11 A. Yes.

12 Q. And you were notified about them when
13 there were overdraft charges on your accounts, right?

14 MR. OSTROW: Form.

15 A. Yes.

16 MR. TAYLOR: What was your concern
17 about that?

18 MR. OSTROW: Timing.

19 BY MR. TAYLOR:

20 Q. During the time you've been a
21 BancorpSouth customer?

22 MR. OSTROW: Specifically, are you
23 saying as it's being incurred, after it was
24 incurred, once it's assessed? I'm trying to
25 narrow down when specifically.

1 BY MR. TAYLOR:

2 Q. After an overcharge charge was
3 incurred, you were notified, right?

4 A. I was notified, yes.

5 Q. Every time, right?

6 A. Yes, to my knowledge.

7 Q. That's all we're talking about. Again,
8 I'm not trying to make you guess and I'm not trying
9 to --

10 A. Okay.

11 Q. Again, you paid all of them, right?
12 You paid all the overdraft charges?

13 A. They were automatically taken out of my
14 account, so they were paid.

15 Q. So you paid?

16 A. To the best of my knowledge, yes.

17 Q. Including this hundred and sixty
18 dollars, right?

19 A. Oh, yes. The hundred and sixty dollars
20 was paid.

21 Q. But you didn't complain to BancorpSouth
22 about these hundred and sixty dollars in charges,
23 right?

24 A. No.

25 Q. You didn't ask them to waive any of

1 them, right?

2 A. I didn't go over there and ask them or
3 call them.

4 Q. So you don't know one way or the other
5 whether BancorpSouth would have waived some or all of
6 those charges, right?

7 A. I wouldn't know.

8 Q. Would that have made a difference to
9 you?

10 MR. OSTROW: Form.

11 A. Would the question -- the difference
12 being made if they would have made those -- the
13 question is if they would have waived these or any of
14 these fees, would I have been okay, that's good? Not
15 necessarily, no.

16 BY MR. TAYLOR:

17 Q. Well, that's not exactly what I was
18 asking, but I appreciate your answer. You were
19 talking about earlier transactions on a weekend.

20 A. Okay.

21 Q. Do you recall if these transactions
22 occurred on a weekend?

23 A. I don't recall that.

24 Q. We could figure it out on a
25 calendar.

1 simple question.

2 Did you have the receipts for the
3 transactions that we're looking at in Paragraph 68?
4 Did you have the receipts for those transactions when
5 you were comparing them to the BancorpSouth statement?

6 A. Yes.

7 Q. Okay. Based on those receipts and the
8 BancorpSouth statement, how do you think the bank
9 should have posted the transactions?

10 MR. OSTROW: Form.

11 A. I really -- I don't know how to answer
12 that question.

13 BY MR. TAYLOR:

14 Q. When you say you don't know how to
15 answer that question, do you mean you don't know how
16 the bank should have posted them?

17 A. The only answer I can give is fairly.
18 I mean, that's it.

19 Q. Would you agree with me that not all
20 transactions -- and when we say transactions, let's
21 limit it to the debit card transactions. You
22 mentioned A.T.M. and debit card transactions earlier.
23 I'm now talking about just debit transactions.

24 A. Okay.

25 Q. You know that BancorpSouth does not

1 trying to get at, not that I see you --

2 Q. If you do, you're the only one.

3 A. They're all equally important to me
4 because -- is that the question?

5 Q. I asked you if they were all equally
6 important to you and I thought I heard you say that
7 they were not all equally important to you.

8 A. The importance is the transaction is
9 being made with one debit card or in one account, but
10 you're asking me is every account equally -- I mean is
11 every transaction equally important to me?

12 Q. Correct.

13 A. Yes, because it's my finances.

14 Q. Okay. Would you agree with me that
15 only you know what transactions are most important to
16 you?

17 A. I wouldn't know if I'm the only one who
18 knows. I have a family.

19 Q. Maybe Trina would, but you and your
20 immediate family would know which transactions are
21 most important; is that fair?

22 A. Yes.

23 Q. And since you want posting to be fair,
24 how can the bank know what fair posting is to you?

25 A. What was the question?

1 (Thereupon, the above referred to
2 question was read back as above recorded by
3 the court reporter.)

4 THE WITNESS: That's a pretty
5 open-ended question. The best of my
6 knowledge, the bank wouldn't know what was
7 most important to me.

8 BY MR. TAYLOR:

9 Q. Right, and that would be true of all of
10 its customers, right?

11 A. Yes, well hold up right there. I don't
12 know. I don't know.

13 Q. You don't know one way or the other; is
14 that fair?

15 A. Yes. I don't know.

16 MR. TAYLOR: Can we take a quick
17 comfort break?

18 (Thereupon, a luncheon recess was then
19 taken.)

20 BY MR. TAYLOR:

21 Q. Mr. Swift, we're back on the record.
22 That oath you took earlier about swearing to tell the
23 truth, the whole truth, is still in effect. I hope
24 you had a good lunch.

25 We were talking about Paragraph 68 of

1 bank wouldn't know, right?

2 A. Yes.

3 Q. But just to be clear, you don't know
4 one way or the other whether that's correct?

5 A. I wouldn't know.

6 Q. You had a checking account back before
7 we had A.T.M. cards, right? You've been banking that
8 long that you had a checking account before you had an
9 A.T.M. card?

10 A. Yes.

11 Q. And back then, if you wrote a check and
12 didn't have enough money in the account, what would
13 happen?

14 A. The check would bounce.

15 Q. And that caused some problems, right?

16 A. Yes.

17 Q. So having overdraft protection can be a
18 benefit, right?

19 A. Yes.

20 Q. Tell me about when you opened up your
21 first BancorpSouth account.

22 MR. OSTROW: Form.

23 A. I don't know the exact day. When we
24 got back from Seattle and -- okay. It started out as
25 American State Bank.

1 MR. OSTROW: Form.

2 A. I wouldn't know if I was responsible.
3 But I'm fine with it.

4 BY MR. TAYLOR:

5 Q. All right. Going back to the Complaint
6 and if you shift back to Page 21, am I right that what
7 you noted when you looked at this statement was that
8 the transactions were ordered high to low even though
9 all of them took place on May 5, right?

10 A. Yes.

11 Q. And you were able to learn that just by
12 looking at the BancorpSouth statement, right?

13 A. Yes.

14 Q. You had had overdraft charges in the
15 past, right?

16 A. Yes.

17 Q. Before May 2010?

18 A. Yes.

19 Q. And if you'd looked at the statements
20 for those time periods, you could have seen if any of
21 those were in high to low ordering, as well, right?

22 A. Yes, and that's what I did at this
23 point. I went back and looked at all my statements.

24 Q. Tell me about that.

25 A. I found out that we kept our receipts

1 and that not everything was in chronological order.
2 Everything was resequenced as far back as I could see.
3 That's what put me into doing research on corrupt
4 practices.

5 Q. You think this is a corrupt practice?

6 A. I believe it is a corrupt practice.

7 Q. It's a practice that you learned was
8 the case as far back as you researched your account,
9 right?

10 MR. OSTROW: Form.

11 A. Yes, as far as I researched the account
12 from these dates back.

13 BY MR. TAYLOR:

14 Q. From May 2010 looking back, do you
15 recall how far back?

16 A. From around these dates. I don't
17 recall how far back, but I went as far as I could.

18 Q. A few years?

19 A. I couldn't recall that. Pretty far
20 back.

21 Q. Did you go back based on what you
22 actually had at the house or did you ask BancorpSouth
23 for statements?

24 A. No. I took my receipts and my
25 statements that I had at home.

1 recollection in layman's terms, just your words, what
2 did it say?

3 A. As in overdraft fees? Is that what
4 you're getting at?

5 Q. No, the posting order.

6 A. I couldn't name that. I couldn't
7 really even give all the wording.

8 Q. Do you recall reviewing the deposit
9 agreement -- again, in your research, do you recall
10 reviewing it and that it said that BancorpSouth
11 reserved the right to post transactions in any order
12 it chooses? Does that ring a bell?

13 A. I read that.

14 Q. When you were doing the research?

15 A. No.

16 Q. You read that when it was first sent to
17 you?

18 A. I don't even recall when I read that,
19 but I know I've seen it before. I think I've seen it
20 before. Yes. Okay. Yes, I read it sometime. I
21 don't know when, though.

22 Q. Do you recall if it was before or after
23 your research?

24 A. Before my research here?

25 Q. Yes.

1 the present, there have been times when you entered
2 into debit transactions without having enough money to
3 pay all of those transactions, right?

4 A. Yes.

5 Q. And you've incurred overdraftings?

6 A. Yes.

7 Q. And in fact, sometime in 2010, you were
8 sent a notice by the bank asking you whether you
9 wanted to continue to have overdraft coverage, right?

10 A. I recall that, yes.

11 Q. And you chose to accept overdraft
12 coverage for both of your accounts, right?

13 A. Yes.

14 Q. You did that because you recognized
15 that having overdraft coverage is a benefit to you,
16 right?

17 A. Yes.

18 Q. And would be a benefit for the class
19 you seek to represent, right?

20 A. Yes.

21 MR. OSTROW: Form.

22 BY MR. TAYLOR:

23 Q. You know that if you didn't have
24 overdraft coverage that instead of allowing a
25 transaction to go ahead and close, it would just

1 bounce like the old days, right?

2 A. Yes.

3 Q. And that would be a bad thing, right?

4 A. Yes.

5 Q. And that would be a bad thing for the
6 rest of the class you're trying to represent, right?

7 A. Yes.

8 MR. TAYLOR: Jeff, can we take a break?

9 I want to see if I can organize some exhibits
10 that I think I can get through pretty quickly.

11 I think it can be quicker if we take five or
12 ten minutes. I assume you want to be done
13 quicker than later.

14 MR. OSTROW: Take as long as you
15 want.

16 MR. TAYLOR: I just want to organize my
17 exhibits.

18 (Thereupon, a short recess was then
19 taken.)

20 (Thereupon, Exhibits Nos. 2 through 13
21 were marked for identification by counsel.)

22 BY MR. TAYLOR:

23 Q. We'll go back on the record and Mr.
24 Swift, what I want to do is go through a series of
25 documents with you, which we have numbered, so we'll

1 go in sequential order.

2 That's Exhibit 1 so we can put that to
3 the side and I show you Exhibit 2. Mr. Swift, are you
4 familiar with Exhibit 2?

5 A. Yes.

6 Q. This is the signature card that goes
7 along with the very first account we were talking
8 about that you opened at American State Bank, right?

9 A. Yes.

10 Q. If I look at signature line Number 2 in
11 the right-hand column, is that your signature?

12 A. It is my signature.

13 Q. Do you recall receiving and signing
14 this document?

15 A. I don't recall.

16 Q. Do you have any reason to question that
17 you received it?

18 A. No.

19 Q. And that does look like your signature?

20 A. Yes.

21 Q. Thank you. Let me show you now what
22 we've labeled as Exhibit --

23 MR. OSTROW: Can I ask you something?

24 (Thereupon, a discussion was held off
25 the record.)

1 BY MR. TAYLOR:

2 Q. Okay. Let me show you Exhibit 3. Do
3 you recognize that as a signature card for the
4 BancorpSouth bank account we were talking about
5 earlier?

6 A. I recognize my signature, but I don't
7 recognize --

8 Q. Do you have any reason to believe it's
9 not a true and accurate copy of your signature?

10 A. Not particularly, no reason, but this
11 is my signature on it.

12 Q. Okay, and you're not saying you didn't
13 receive this; you're saying you don't recall?

14 A. Yes. I don't recall.

15 Q. Okay. Fair enough.

16 MR. OSTROW: I'm going to -- you need
17 this back?

18 MR. GAYNOR: No.

19 BY MR. TAYLOR:

20 Q. You can keep the copies as long as we
21 keep -- these are pre-marked.

22 Let me show you a document labeled
23 Exhibit 4. Would you agree with me that this is an
24 account information statement that you received from
25 BancorpSouth bank?

1 A. It looks like an account information
2 statement. I might have received it.

3 Q. Fair to say that you don't recall one
4 way or another?

5 A. Fair to say I don't recall.

6 Q. Do you recall if you read this document
7 before?

8 A. I definitely don't recall that.

9 Q. Okay. You see at the bottom where it
10 says, Plaintiff, Swift, 003?

11 A. Yes.

12 Q. That means that your lawyers produced
13 that to us, so that, I believe, came from your files.

14 A. Okay.

15 Q. But you don't have any memory one way
16 or the other on receiving this document, right?

17 A. Well, I gathered everything that said
18 BancorpSouth on it. I gathered the material that said
19 BancorpSouth on it and sent it to my attorney, yes.

20 Q. And you don't have any specific memory
21 of this document?

22 A. No.

23 Q. Or any of the contents?

24 A. Amongst every document that I've
25 gotten, no.

1 Q. Do you recall reviewing this as part of
2 your research?

3 A. No, I do not.

4 Q. Nobody prevented you from reading it,
5 though, right?

6 A. Nobody prevented me from reading it.

7 Q. Let me show you what we've marked
8 Exhibit -- there you go. Exhibit 5, do you recognize
9 this document?

10 A. I don't recognize this document. I
11 don't.

12 Q. Okay. Again, you see on the bottom,
13 left corner, this time, it says, customer copy?

14 A. Okay.

15 Q. Do you recall receiving this document
16 from BancorpSouth?

17 A. I don't recall.

18 Q. And you see how it says, Plaintiff,
19 Swift, down in the right-hand corner?

20 A. Yes.

21 Q. Do you know that this document came
22 from your file?

23 A. Yes. Well, I mean if it came from my
24 attorney, yes. It came from me to him.

25 Q. Do you recall?

1 A. Well, I gathered information, yes.

2 Q. Understood. Do you recall reading this
3 document?

4 A. No.

5 Q. Nobody prevented you from reading it?

6 A. Nobody prevented me from reading it.

7 Q. Let me show you Exhibit 6. Are you
8 familiar with this document?

9 A. No.

10 Q. I'm sorry?

11 A. I may have read over this document.

12 Q. Do you remember receiving this document
13 from BancorpSouth?

14 A. I don't remember when, where.

15 Q. You see in the third column from the
16 left, at the bottom, it says, as of March 1, 2006,
17 does that help you recall?

18 A. It doesn't ring a bell, but there's the
19 date.

20 Q. You don't have any reason to believe
21 you did not receive this?

22 A. No, I do not.

23 Q. And no one prevented you from reading
24 it, right?

25 A. Nobody prevented me from reading it.

1 Q. Let me show you Exhibit 7. Do you
2 recall receiving this document from BancorpSouth?

3 A. I don't recall when. I don't recall
4 when.

5 Q. You don't recall one way or the other;
6 is that fair?

7 A. Yes.

8 Q. You see at the bottom of the third
9 column, it says, as of September 1, 2006, does that
10 help you remember?

11 A. No.

12 Q. Have you ever read this document?

13 A. Not to my knowledge.

14 Q. No one prevented you -- I'm sorry?

15 A. Not to my knowledge, no.

16 Q. No one prevented you from reading this
17 document, right?

18 A. No.

19 MR. OSTROW: We'll stipulate if he
20 didn't read it or doesn't remember, nobody
21 held a gun to his head and said, don't read
22 it.

23 THE WITNESS: As far as I'm concerned,
24 everything looks exactly the same.

25 BY MR. TAYLOR:

1 Q. Fair enough. The reason I'm showing
2 you these is to the best of my knowledge, all of these
3 were sent to you by BancorpSouth and I just want to
4 know if they are ones that you remember or not.

5 That's all I'm trying to do, so it's
6 not anything more than that.

7 Let me show you Exhibit 8. Do you
8 recall receiving that from BancorpSouth?

9 A. I don't recall receiving this from
10 BancorpSouth.

11 Q. You see the date? This one is again in
12 the third column, February 1, 2007?

13 A. Okay.

14 Q. Does that help you recall?

15 A. No, I don't recall receiving this from
16 BancorpSouth, but I do recall gathering all the
17 information that I could and sending it to him for
18 information.

19 Q. Do you recall reading this document?

20 A. No, I don't recall reading this
21 document.

22 Q. And notwithstanding the stipulation,
23 did anyone prevent you from reading it?

24 A. No.

25 Q. Let me show you Exhibit 9. Do you

1 recall, Mr. Swift, receiving Exhibit 9 from
2 BancorpSouth?

3 A. I don't recall.

4 Q. You see on the very far right, it says,
5 effective date, July 1, 2008? Does that help you
6 recall?

7 A. It's getting closer.

8 Q. Did you read this document when you
9 received it?

10 A. Not to my knowledge.

11 Q. Did anyone prevent you from reading it?

12 A. No.

13 Q. Let me show you Exhibit 10. Do you
14 recall receiving that from BancorpSouth Bank?

15 A. No, I don't recall.

16 Q. You see it's dated effective January
17 31, 2009? Does that help you recall?

18 A. No.

19 Q. Did you read this document?

20 A. Not to my knowledge.

21 Q. Did anyone prevent you from reading it?

22 A. No.

23 Q. Let me show you Exhibit 11. Do you
24 recall receiving this from BancorpSouth?

25 A. No.

1 Q. If you turn to the third page, bottom
2 of the last column, last updated on October 19, 2009,
3 does that help you recall?

4 A. No.

5 Q. Did you read this document?

6 A. No.

7 Q. Did anyone prevent you from reading
8 this document?

9 A. No.

10 Q. Let me show you Exhibit 12. Do you
11 recall receiving that from BancorpSouth?

12 A. Not particularly. I remember getting
13 this one.

14 Q. You do remember getting this one?

15 A. Yes.

16 Q. Do you remember reading it?

17 A. No, I don't remember reading it.

18 Q. Did anyone prevent you from reading it?

19 A. No.

20 Q. Now, we've looked at Exhibits 2 through
21 12. You aren't taking the position in this lawsuit
22 that you did not receive those documents on or near
23 the dates we discussed, are you?

24 You just don't remember one way or the
25 other?

1 A. Yes, I just don't remember.

2 MR. TAYLOR: Jeff, I have a couple
3 questions on the documents that we received
4 last night. I don't think I'm going to make
5 them exhibits. Is it all right if I just kind
6 of go over them with Mr. Swift and just ask
7 him a couple questions?

8 MR. OSTROW: No problem. I don't know
9 what the questions are.

10 THE WITNESS: Can I take a men's room
11 break?

12 MR. TAYLOR: Oh, sure.

13 (Thereupon, a short recess was then
14 taken.)

15 BY MR. TAYLOR:

16 Q. Okay. I want to wrap up. Mr. Swift, I
17 got these documents last night so I didn't have a
18 chance to follow up before now.

19 In labeling this set of exhibits as --
20 or documents as Exhibit 13, can you just tell me what
21 these are?

22 And since we only have the one copy,
23 I'm just going to look over your shoulder if that's
24 all right.

25 A. These look like dates that we received

1 BancorpSouth; do you recall?

2 A. I don't recall that.

3 Q. But at some point, your wife started
4 receiving statements electronically, correct?

5 A. Yes.

6 Q. At least as of November 29, 2008?

7 A. Yes, it appears to be.

8 Q. All right. I'm going to show you
9 Exhibit 14. The Bates labels are Plaintiff, Swift,
10 291, 292, 293, 294.

11 Is this an electronic statement like
12 you would get if you clicked on the links in Exhibit
13 13?

14 A. This is from the bank directly.

15 Q. This is from the bank directly, okay.
16 This one, you'll see it's kind of ordered backwards,
17 4, 3, 2, 1. Is this a bank statement, Exhibit Number
18 14?

19 A. This looks like a printout from the
20 local bank where we bank.

21 Q. A printout of what?

22 A. Of our account, certain dates that we
23 asked for.

24 Q. So this is not a complete statement?
25 As far as you know, this is a request you made that

1 the bank gave you certain transactions?

2 A. These look like the requests.

3 Q. Okay. How do you know that this came
4 from the bank as compared to an electronic statement
5 received by clicking on the link?

6 A. I wouldn't know. I mean, well, the
7 thing is is that I know -- I recognize that these do
8 come -- that's the way the printouts look, so go
9 ahead.

10 Q. This is the way the printouts look from
11 the branch when you go to visit the branch?

12 A. Yes. When I go to the branch and ask
13 for a printout, this is what they look like.

14 Q. Okay, and there are a number of these
15 that were produced last night. Did you go to the bank
16 and ask them to print out a series of all statements
17 about your account?

18 A. No.

19 Q. These documents ended up in your files,
20 right?

21 A. Yes.

22 Q. How did they end up in your files?

23 A. They ended up in my files because I --
24 you know, I kept them.

25 Q. But you had to go and request them in

1 order to receive them, right?

2 A. Yes.

3 Q. So what prompted you to go and ask the
4 bank for these electronic statements?

5 A. Well, looking at the dates, it's to
6 help take care of our account, to monitor our account
7 on a day-to-day basis, if you will.

8 Q. When did you ask for these documents
9 from the bank?

10 A. Well, as far as I can recall, multiple
11 times during any given time as I recall.

12 Q. Would you go ask for these or would
13 your wife?

14 A. Either one of us.

15 Q. Can I see those?

16 A. Yes.

17 Q. Do you recall if you made it a practice
18 monthly to go and ask for these to be printed out?

19 A. I can print them any time I want.

20 Q. Did you have any ordinary practice that
21 you'd do it monthly?

22 A. No ordinary practice.

23 Q. What would have caused you to go ask
24 for the bank to print out a statement?

25 MR. OSTROW: Form.

1 A. To help us better keep track of our
2 activity on the account. That's why I went.

3 BY MR. TAYLOR:

4 Q. Was it to help you make sure you
5 knew -- strike that. During the time frame that you
6 made these requests, did you also receive monthly
7 statements from the bank?

8 A. To my recollection, you know, as far as
9 I can recollect.

10 Q. Okay. Is it fair to say as far as you
11 remember that you either received a monthly statement
12 in the mail from BancorpSouth or an E-Mail to your
13 wife with a link to a statement for your whole
14 relationship with BancorpSouth?

15 A. My best knowledge, either/or.

16 Q. Okay. Separate from receiving those
17 statements, you also made requests for statements,
18 right?

19 A. Yes.

20 Q. Do you know anybody else who made these
21 kind of requests for statements from BancorpSouth?

22 A. I wouldn't know.

23 Q. You don't know one way or the other?

24 A. Yes, I wouldn't know.

25 Q. There's handwriting on some of these.

1 Do you know whose handwriting it is?

2 A. This looks like -- it's not mine.

3 Q. If it's not yours, does that mean
4 there's only one person that it could be?

5 A. I don't know.

6 Q. Does it look like your wife's?

7 A. That is something I wouldn't know.

8 Q. Did you ask for -- and we're looking at
9 Exhibit 14. Did you ask for this printout on or near
10 January 18, 2007?

11 A. I wouldn't know that.

12 Q. You don't recall?

13 A. The paperwork says what the paperwork
14 says.

15 Q. You don't recall?

16 A. No, I don't recall on 1-18-07.

17 Q. Let me ask just a follow-up to clear it
18 up. Did you ask for this Exhibit 14 after the lawsuit
19 was filed?

20 A. To my best recollection or to my best
21 knowledge, everything that has a date on it prior to
22 where it is, exhibit -- the first exhibit we had --

23 Q. The Complaint? Oh, you're looking for
24 Page 21?

25 A. Prior to, on or around May of 2010,

1 these were -- we collected these.

2 Q. Okay, so you requested these as part of
3 the research that we were talking about?

4 A. No. We had these. I had these. This
5 is before any of this.

6 Q. Okay. Okay. Okay. I think I got it.
7 You, at different times as reflected on the documents,
8 requested printouts, right?

9 A. Yes.

10 Q. And as far as you know, is the date on
11 the printout the date that you received the printout?

12 A. It appears so.

13 Q. Okay. But they are separate from the
14 monthly statements that you received when you received
15 them in the mail?

16 A. Okay.

17 Q. And separate from the electronic
18 statements that were sent to your wife's E-Mail
19 account, right?

20 A. Yes.

21 MR. TAYLOR: Okay. All right. Let me
22 just have a minute and we may be done.

23 (Thereupon, a short recess was then
24 taken.)

25 MR. TAYLOR: I don't have any further

New 8/20/03 dg

AMERICAN STATE BANK
1411 HIGHWAY 67 S, P O BOX 382
POCAHONTAS, AR 72455

ACCOUNT NUMBER Redacted

ACCOUNT OWNER(S) NAME & ADDRESS
TRINA N SWIFT
TERRY S SWIFT

OWNERSHIP OF ACCOUNT - CONSUMER PURPOSE
 INDIVIDUAL _____
 JOINT - WITH SURVIVORSHIP (and not as tenants in common)
 JOINT - NO SURVIVORSHIP (as tenants in common)
 TRUST - SEPARATE AGREEMENT:

Redacted

PAY ON DEATH DESIGNATION AS DEFINED IN THIS AGREEMENT
Name and Address of Beneficiary:

NEW EXISTING
TYPE OF ACCOUNT CHECKING SAVINGS
 MONEY MARKET CERTIFICATE OF DEPOSIT
 NOW _____
ACCOUNT NAME: AMERICAN FREE
 This is a Temporary account agreement.

OWNERSHIP OF ACCOUNT - BUSINESS PURPOSE
 SOLE PROPRIETORSHIP
 CORPORATION: FOR PROFIT NOT FOR PROFIT
 PARTNERSHIP LIMITED LIABILITY COMPANY

BUSINESS: _____
COUNTY & STATE OF ORGANIZATION: _____
AUTHORIZATION DATED: _____

Number of signatures required for withdrawal 1
FACSIMILE SIGNATURE(S) ALLOWED? YES NO

DATE OPENED 08/19/03 BY DG
INITIAL DEPOSIT \$ 100.00
 CASH CHECK Money order
HOME TELEPHONE # Redacted
BUSINESS PHONE # _____
DRIVER'S LICENSE # Redacted
E-MAIL _____
EMPLOYER STUDENT/ARTC
MOTHER'S MAIDEN NAME Redacted
Name and address of someone who will always know your location: Redacted

Electronic Funds Transfer Funds Availability Privacy
 Truth in Savings _____
SIGNATURE(S) - The undersigned agree to the terms stated on every page of this form and acknowledge receipt of a completed copy. The undersigned further authorize the financial institution to verify credit and employment history and/or have a credit reporting agency prepare a credit report on the undersigned, as individuals. The undersigned also acknowledge the receipt of a copy and agree to the terms of the following disclosure(s):
 Truth in Savings _____

BACKUP WITHHOLDING CERTIFICATIONS
TIN: Redacted
 TAXPAYER I.D. NUMBER - The Taxpayer Identification Number shown above (TIN) is my correct taxpayer identification number.
 BACKUP WITHHOLDING - I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.
 EXEMPT RECIPIENTS - I am an exempt recipient under the Internal Revenue Service Regulations.
SIGNATURE: I certify under penalties of perjury the statements checked in this section and that I am a U.S. person (including a U.S. resident alien).
Trina N Swift 8-20-03
(Date)

(1): Trina N Swift
TRINA N SWIFT
I.D. # Redacted Other Redacted 1975
ed
(2): Terry S Swift
TERRY S SWIFT
I.D. # Redacted Other Redacted 1972
ed
(3): X
I.D. # _____ Other _____
(4): X
I.D. # _____ Other _____

AGENCY (POWER OF ATTORNEY) DESIGNATION (Optional): To Add Agency Designation To Account, Name One or More Agents:

Agency Designation Survives Disability or Incapacity of Parties
 Agency Designation Terminates on Disability or Incapacity of Parties
(Select One and Initial):
SEE ADDENDUM. (page 1 of 2)

EXPER

EXHIBIT

Chud, MN Form MPSC-LA2-A1 1/18/2000

2



YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS

AGREEMENT - These terms govern the operation of this account unless varied or supplemented in writing. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so that the singular includes the plural and the plural includes the singular. As used in this form, the words "we," "our," or "us" mean the financial institution and the words "you" or "your" mean the account holder(s). This account may not be transferred or assigned without our written consent.

Page 1 will show whether this account is a consumer or business account. A consumer is a natural person who holds an account primarily for personal, family or household purposes.

Much of our relationship with our deposit customers is regulated by state and federal law, especially the law relating to negotiable instruments, the law regulating the methods of transferring property upon death and the rights of surviving spouses and dependents, the law pertaining to estate and other succession taxes, the law regarding electronic funds transfer, and the law regarding the availability of deposited funds. This body of law is too large and complex to be reproduced here.

- The purpose of this form is to: (1) summarize the rules applicable to the more common transactions; (2) establish rules to govern transactions or circumstances which the law does not regulate; and (3) establish rules for certain events or transactions which the law already regulates but permits variation by agreement.

We may permit some variations from this standard agreement, but any such variations must be agreed to in writing either on our signature card for the account or in some other written form.

LIABILITY - Each of you agrees, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges that may be imposed. You authorize us to deduct these charges as accrued directly from the account balance. You also agree to pay additional reasonable charges we may impose for services you request which are not contemplated by this agreement. Each of you also agrees to be jointly and severally liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from this account, and the costs we incur to collect the deficit including, to the extent permitted by law, our reasonable attorney's fees.

DEPOSITS - Any items, other than cash, accepted for deposit (including items drawn "on us") will be given provisional credit only until collection is final (and actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars). Unless otherwise disclosed, interest on non-consumer accounts will be paid only on collected funds, subject to minimum balance or other limitations, if any. We are not responsible for transactions initiated by mail or outside depository until we actually record them. All transactions received after our "daily cut off time" on a business day we are open, or received on a day in which we are not open for business, will be treated and recorded as if initiated on the next following business day that we are open.

WITHDRAWALS - Unless otherwise clearly indicated on the account records, any one of you who signs this form including authorized signers, may withdraw or transfer all or any part of the account balance at any time on terms approved by us. Each of you (until we receive written notice to the contrary) authorizes each other person signing this form to endorse any item payable to you or your order for deposit to this account or any other transaction with us. We may charge against your account a check, even though payment was made before the date of the check, unless you have given us written notice of the postdating. The fact that we may honor withdrawal requests which overdraw the finally collected account balance does not obligate us to do so, unless required by law. Withdrawals will first be made from collected funds, and we may, unless prohibited by law or our written policy, refuse any withdrawal request against uncollected funds, even if our general practice is to the contrary. We reserve the right to refuse any withdrawal or transfer request which is attempted by any method not specifically permitted, which is for an amount less than any minimum withdrawal requirement, or which exceeds any frequency limitation. Even if we honor a nonconforming request, repeated abuse of the stated limitations (if any) may eventually force us to close this account. We will use the date a transaction is completed by us (as opposed to the day you initiate it) to apply the frequency limitations. On interest-bearing accounts other than time deposits, we reserve the right to require at least seven days' written notice before any withdrawal or transfer. Withdrawals from a time deposit prior to maturity or prior to the expiration of any notice period may be restricted and may be subject to penalty. See your notice of penalties for early withdrawal.

ACH AND WIRE TRANSFERS - This agreement is subject to Article 4A of the Uniform Commercial Code in the state in which you have your account with us. If you originate a fund transfer for which Fedwire is used, and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a financial institution, person or account other than the one named. You agree to be bound by automated clearing house association rules, these rules provide, among other things, that payments made to you, or originated by you, are provisional until final settlement is made through a Federal Reserve Bank or payment is otherwise made as provided in Article 4A-403(a) of the Uniform Commercial Code. If we do not receive such payment, we are entitled to a refund from you in the amount credited to your account and the party originating such payment will not be considered to have paid the amount so credited. If we receive a credit to an account you have with us by wire or ACH, we are not required to give you any notice of the payment order or credit.

OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION - You intend these rules to apply to this account depending on the form of ownership and beneficiary designation, if any specified on page 1. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. Individual Account - It is owned by one person. Joint Account - With Survivorship (And Not As Tenants In

Common) - is owned by two or more persons. Each of you intends that upon your death the balance in the account (subject to any previous pledge to which we have consented) will belong to the survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. Joint Account - No Survivorship (As Tenants In Common) - is owned by two or more persons, but none of you intend (merely by opening this account) to create any right of survivorship in any other person. We encourage you to agree and tell us in writing of the percentage of the deposit contributed by each of you. This information will not, however, affect the "number of signatures" necessary for withdrawal. Pay-On-Death Account - If two or more of you create such an account, you own the account jointly with survivorship. Beneficiaries acquire the right to withdraw only if: (1) all persons creating the account die, and (2) the beneficiary is then living. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own this account in equal shares, with right of survivorship. Any such beneficiary may withdraw all or any part of the account balance. The person(s) creating this account type reserves the right to: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the deposit at any time. Corporate, Partnership, and other Organizational Accounts - We will usually require a separate authorization form designating the person permitted and conditions required for withdrawal from any account in the name of a legal entity such as a partnership, corporation, or other organization. We will honor such authorization according to its terms until it is amended or terminated in writing by the governing body of such organization.

STOP-PAYMENTS - A stop-payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it before our stop-payment cut-off time. Our stop-payment cut-off time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop-payment are provided by law. A stop-payment order must precisely identify the number, date and amount of the item, and the payee. We will honor a stop-payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item, if such other person has an equal or greater right to withdraw from this account than the person who signed the item in question. A release of the stop-payment request may be made only by the person who initiated the stop-payment.

AMENDMENTS AND TERMINATION - We may change any term of this agreement. Rules governing changes in interest rates have been provided separately. For other changes we will give you reasonable notice in writing or by any other method permitted by law. We may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you.

STATEMENTS - You must examine your statement of account with "reasonable promptness." If you discover (or reasonably should have discovered) any unauthorized payments or alterations, you must promptly notify us of the relevant facts. If you fail to do either of these duties, you will have to either share the loss with us, or bear the loss entirely yourself (depending on whether we exercised ordinary care and, if not, whether we substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items forged or altered by the same wrongdoer. You agree that the time you have to examine your statement and report to us will depend on the circumstances, but that such time will not, in any circumstance, exceed a total of 30 days from when the statement is first made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries or any other errors in your account within 60 days of when we make the statement available, you cannot assert a claim against us on any items in that statement, and the loss will be entirely yours. This 60 day limitation is without regard to whether we exercised ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this section.

DIRECT DEPOSITS - If, in connection with a direct deposit plan, we deposit any amount in this account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from this account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

TEMPORARY ACCOUNT AGREEMENT - If this option is selected, we may restrict or prohibit further use of this account if you fail to comply with the requirements we have imposed within a reasonable time.

SET-OFF - You each agree that we may (without prior notice and when permitted by law) set off the funds in this account against any due and payable debt owed to us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance due the date for which we properly accelerate under the note. This right of set-off does not apply to this account if: (a) it is an Individual Retirement Account or other tax-deferred retirement account, or (b) the debt is created by a consumer credit transaction under a credit card plan, or (c) the debtor's right of withdrawal arises only in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of set-off.

FACSIMILE SIGNATURES - You authorize us, at any time, to charge you for all checks, drafts, or other orders, for the payment of money, that are drawn on or negotiated at by whom or by what means the facsimile signature(s) may have been affixed so long as they resemble the facsimile signature specimen on page 1 of this agreement, or that we filed separately with us, and contain the required number of signatures for this purpose.

AGENCY (POWER OF ATTORNEY) DESIGNATION - Agents may make account transactions on the behalf of the parties, but have no ownership or right of death unless named as Pay-on-Death beneficiaries.

 **BANCORPSOUTH BANK**
 1411 HWY 67 S
 POCAHONTAS, AR 72455
 BRANCH 555

OWNERSHIP OF ACCOUNT - CONSUMER PURPOSE

SINGLE-PARTY
 MULTIPLE-PARTY
 FIDUCIARY

PAY-ON-DEATH DESIGNATION AS DEFINED IN THIS AGREEMENT
 Name and Address of Beneficiary:

OWNERSHIP OF ACCOUNT - COMMERCIAL PURPOSE

SINGLE-PARTY ACCOUNT (Sole Proprietorship)
 CORPORATION
 PARTNERSHIP
 LIMITED PARTNERSHIP
 LIMITED LIABILITY COMPANY
 UNINCORPORATED ASSOCIATION
 FIDUCIARY
 GOVERNMENT
 OTHER ORGANIZATION

DATE OPENED 2/21/2008 BY DORA GRAHAM
 INITIAL DEPOSIT \$ 52,000.00
 CASH CHECK
 HOME TELEPHONE # Redacted
 BUSINESS PHONE # _____
 DRIVER'S LICENSE # _____
 E-MAIL _____
 EMPLOYER _____
 MOTHER'S MAIDEN NAME _____
 Name and address of someone who will always know your location: _____

BACKUP WITHHOLDING CERTIFICATIONS

TIN: Redacted

TAXPAYER I.D. NUMBER - The Taxpayer Identification Number shown above (TIN) is my correct taxpayer identification number.

BACKUP WITHHOLDING - I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.

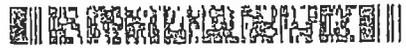
EXEMPT RECIPIENTS - I am an exempt recipient under the Internal Revenue Service Regulations.

SIGNATURE: I certify under penalties of perjury the statements checked in this section and that I am a U.S. person (including a U.S. resident alien).

x Trina Swift
 (Date) 2/21/2008

BANK COPY

Branch 555 Region E22
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ACCOUNT NUMBER Redacted

ACCOUNT OWNER(S) NAME & ADDRESS

TRINA N SWIFT OR
 TERRY S SWIFT
 MORTGAGE ACCOUNT
Redacted

Primary RM #: Redacted
 Secondary RM #: _____

TYPE OF ACCOUNT

NEW EXISTING
 CHECKING SAVINGS
 MONEY MARKET
 NOW

ChexSystems Yes No
 SSN issued _____ State _____
 Existing Deposit Customer _____

SIGNATURE(S) - The undersigned agrees that this account is subject to and shall be governed by the deposit agreement entitled "Your Deposit Account Terms and Conditions" in effect at the opening of this account and as thereafter amended, replaced or superseded from time to time. The undersigned further authorizes Bancorpsouth Bank to verify credit and employment history and/or have a credit reporting agency prepare a credit report on the undersigned, the individuals. The undersigned acknowledge receipt of a copy of Your Deposit Account Terms and Conditions and the following disclosure(s), to all of which the undersigned agree to be bound:

Account Information Statement Funds Availability
 Electronic Funds Transfer Truth in Savings Privacy

TRINA N SWIFT
Trina Swift

TERRY S SWIFT
Terry S Swift

_____ x
 _____ x
 _____ x

COUNTY OF POCAHONTAS, AR

YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS AGREEMENT

AGREEMENT - These terms govern the operation of this account unless varied or supplemented in writing by amendment as provided herein. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so that the singular includes the plural and the plural includes the singular. As used in this agreement, the words "we," "our," or "us" mean BancorpSouth Bank and the words "you" or "your" mean the account owner(s). This account may not be transferred, pledged or assigned without our written consent, and we reserve the right to withhold such consent for any reason.

Much of our relationship with our deposit customers is regulated by state and federal law, especially the law relating to negotiable instruments, the law regulating the methods of transferring property upon death and the rights of surviving spouses and dependents, the law pertaining to estate and other succession taxes, the law regarding electronic funds transfer, and the law regarding the availability of deposited funds. This body of law is too large and complex to be reproduced here.

The purpose of this form is to:

- (1) summarize the rules applicable to the more common transactions;
- (2) establish rules to govern transactions or circumstances which the law does not regulate; and
- (3) establish rules for certain events or transactions which the law already regulates but permits variation by agreement.

LIABILITY - Each of you agrees, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges that may be imposed. You authorize us to deduct these charges as accrued directly from the account balance. You also agree to pay additional reasonable charges we may impose for services you request which are not contemplated by this agreement. Each of you also agrees to be jointly and severally (solidarily) liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from this account, and the costs we incur to collect the deficit including our reasonable attorneys' fees.

DEPOSITS - Any items, other than cash, accepted for deposit (including items drawn "on us") will be given provisional credit only until collection is final (and actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars). Applicable law may require us to make your deposits available for withdrawal before payment becomes final or before the expiration of other banks' deadlines to return your deposited items to us for refund. You agree that our making all or any part of a deposit available to you for withdrawal is not a waiver of our right to charge back to this account any deposited item which is returned to us unpaid or for refund; instead, we may charge back to this account, and you will be responsible for, all such items. Subject to any other limitations, interest will be paid only on collected funds, unless otherwise provided by law. We are not responsible for transactions initiated by mail or outside depository until we actually record them. All transactions received after our daily cut-off time on a business day we are open (a "banking day"), or received on a day in which we are not open for business, will be treated and recorded as if initiated on the next following banking day. Our daily cut-off time varies from location to location and is posted at each of our locations.

WITHDRAWALS - Any one of you who signs this form, including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us. However, we reserve the right to limit the amount of any withdrawal in cash where, for example, currency in the amount of the withdrawal is not available at our branch or your withdrawal exceeds the amount we allow via automatic teller machine or if the cash supply of the automatic teller machine is depleted. Each of you authorizes each other person signing this form to endorse any item payable to you or your order for deposit to this account or any other transaction with us. You agree that our right to charge a check against this account does not depend on the date of the check. Therefore, we may charge a check against this account before the date of the check or at any time thereafter, provided, however, that we may, but are not required to, refuse to pay a check which appears on its face to be more than six months old. In any event, we will not be liable to you for charging against this account a check before its date or after it is more than six months old. The fact that we may honor withdrawal requests which overdraw the finally collected account balance does not obligate us to do so. Withdrawals will first be made from

collected funds, and we may, unless prohibited by law, refuse any withdrawal request against uncollected funds, even if our general practice is to the contrary. We reserve the right to refuse any withdrawal or transfer request which is attempted by any method not specifically permitted, which is for an amount less than any minimum withdrawal requirement, or which exceeds any frequency limitation. Even if we honor a nonconforming request, we may close the account in the event of repeated abuse of the stated limitations. We will use the date a transaction is completed by us (as opposed to the day you initiate it) to apply the frequency limitations. On interest bearing accounts other than time deposits, we reserve the right to require at least seven days' written notice before any withdrawal or transfer.

ACH, WIRE AND FUNDS TRANSFERS - We may decline to process any wire or funds transfer which is not subject to Regulation E or the Electronic Funds Transfer Act until you enter into a separate Funds Transfer Agreement with us. If we process any wire or funds transfer for you before you enter into a separate Funds Transfer Agreement, with respect to each such transfer you will be bound by the terms of this section. You agree to be bound by all rules and regulations governing any system through which any transfer occurs, including, but not limited to, any ACH rules, NACHA rules and the rules and regulations pertaining to Fedwire, the electronic transfer system of the Federal Reserve Banks. We may make wire or funds transfers by any means available to us, including, but not limited to, through our correspondent banks or by internal book entry. We have no obligation to notify you of incoming wire or funds transfers. Any credit for incoming wire or funds transfers is provisional until we have received final payment. If we do not receive final payment, we may reverse the credit. We may permit any of you or any authorized signer to order wire or other funds transfers from this account by telephone, in person, by written instruction, or by any other means acceptable to us, subject to any time deadlines or other conditions or procedures which we may establish. Wire and funds transfers are made only through the use of identifying numbers for the recipient bank and account, without regard to any names which may be furnished for any recipient bank or account. You must furnish the correct identifying numbers to us in connection with each wire or funds transfer. Funds will be wired or transferred in accordance with the identifying numbers you furnish us for the identifying numbers which you use, if you are originating an ACH transaction, even if an identifying number is incorrect or is inconsistent with any name you may use or furnish us. In such event, we will not be responsible for your error, the transfer will not be considered an unauthorized transaction, and any loss will be entirely yours. Any instructions you may give us in connection with a wire or funds transfer will not be binding on us unless we have agreed to such instructions in writing. You must strictly observe all deadlines we impose for the processing of wire and funds transfers. We will not be responsible for any delay or other consequences which result from your failure to comply with any of these deadlines. You have no right to cancel or change any wire or funds transfer after you submit it to us. Any attempt by us to cancel or change or any wire or funds transfer at your request will not constitute the assumption of any duty by us. You assume all risk associated with international wire or funds transfers. We will not be liable to you in any way in connection with an international wire or funds transfer, whether for failure of delivery, delayed delivery, fluctuations in exchange rates or for any other reason. If any incoming wire or funds transfer is denominated in a foreign currency, you authorize us to convert such to U. S. Dollars according to such exchange rate which we may select at our discretion. You acknowledge and agree that such exchange rate may not be the most favorable rate of exchange published and that you will be bound by our choice of exchange rate. If you provide your account number or any other account identifying information to any third party and such third party originates any funds transfer transaction on this account, you agree that we may treat such transaction as a transaction authorized by you.

OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION - You intend these rules to apply to this account depending on the form of ownership and beneficiary designation, if any, specified on page 1. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. Single Party Account - is owned by one person. Multiple Party Account - is owned by two or more persons jointly with right of survivorship and not as tenants in common, regardless of the conjunction ("or," "and") used

(page 2 of 5)

between the depositors' names. Each of you expressly agrees that the account is not owned as a tenancy by the entireties. Each of you intends that upon your death the balance in the account (subject to any previous pledge to which we have consented) will vest in and belong to the survivor(s) as the separate property and estate of such survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. Transactions on Multiple Party Accounts do not require the signatures of all account owners to transact on the account. Instead, any account owner may transact on the account to the exclusion of the other(s), and each of you authorize each other of you to do so without further consent. If this Agreement is governed by the laws of the state of Louisiana, the owners of a Multiple Party Account are co-owners of the account, and all or any part of any deposit may be paid to any one of you, whether any other of you is living or not, and any such payment to any of you shall constitute receipt and acquittance and shall fully release and discharge us from the claims of any person to funds of the deceased depositor for the payment made. Pay On Death Account - Pay-On-Death beneficiaries acquire the right to withdraw only if: (1) all persons creating the account die, (2) the beneficiary is then living, and (3) we are not otherwise required by law to make payment to some other person. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own this account and may transact on it according to the Multiple Party Account rules stated above unless otherwise provided by law. The person(s) creating a Pay-On-Death Account reserves the right to: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the deposit at any time. If two or more of you create such a Pay-On-Death Account, you own the account according to the Multiple Party Account rules stated above until the last of you dies. Fiduciary Account - A Fiduciary Account, whether for a consumer or a commercial purpose, is one in which the person controlling the account does so for the benefit of another. Examples of fiduciaries are trustees, executors, conservators, custodians for minors, representative payees and court-appointed guardians. For purposes of this agreement, guardians such as parents or other relatives who have not been court-appointed or persons who have not complied with necessary provisions of any applicable transfer to minors laws are not fiduciaries. We are not a fiduciary in connection with this account. For fiduciary accounts, we will usually require, in the case of trustees, a trust resolution according to our form, and in all other cases documents evidencing the fiduciary's authority. We have no duty to inspect any will or trust document, and you agree that we will not be bound by any limitations imposed in a will or trust document. You agree that a Fiduciary Account is a general deposit and not a special deposit. Corporation, Partnership, Limited Partnership, Limited Liability Company (LLC), Unincorporated Association, Government and other Organizational Accounts - We will usually require a separate resolution in a form acceptable to us designating the person permitted and conditions required for withdrawal from any account in the name of a legal entity such as a Corporation, Partnership, Limited Partnership, LLC, Unincorporated Association, governmental entity or other organization.

STOP PAYMENTS - A stop payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it before our stop payment cut off time. Our stop payment cut off time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law. A stop payment order must precisely identify the number, date and amount of the item, and the payee. We will honor a stop payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item, if such other person has an equal or greater right to withdraw from this account than the person who signed the item in question. A release of the stop payment request may be made only by the person who initiated the stop payment.

AMENDMENTS AND TERMINATION - We may change any term of this agreement or any of the disclosures indicated on the first page of this agreement. Rules governing changes in interest rates have been provided separately. For other changes we will give you reasonable notice in writing or by any other method permitted by law. We may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you unless otherwise provided by law.

STATEMENTS - You must examine your statement of account with reasonable promptness. If you discover (or reasonably should have discovered) any forgeries, unauthorized payments, alterations or disputed transactions, you must promptly notify us of the relevant facts. Even if you do promptly notify us, you still may have to either share the loss with us or bear the loss entirely yourself (depending on whether you exercised ordinary care or substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items forged or altered by the same wrongdoer. You agree that the time you have to examine your statement and report to us will not, in any circumstance, exceed a total of 60 days from when the statement is first made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, unauthorized activity or any other errors or disputed transactions in this account within 60 days of when we make the statement available, you cannot assert a claim against us on any items in that statement, and the loss will be entirely yours.

You also agree to examine your statement with the same reasonable promptness to discover whether any deposit is missing or has been incorrectly credited. If your statement of account contains any error pertaining to any deposit, and if you fail to report such error to us within 60 days of when we make the statement available, you cannot assert a claim against us for such error, and any loss will be entirely yours.

The 60 day limitations set forth in this section are without regard to whether we exercised ordinary care.

If this account is a commercial purpose account, you additionally agree to take advantage of products and services we offer for the detection and prevention of fraud and unauthorized transactions, such as "Positive Pay" cash management products. If you fail to utilize any such product or service, you agree that you will be precluded from asserting any claim against us for any unauthorized transaction which could have been prevented by the proper use of such product or service.

We may require any report of errors on your statement to be put in writing by you and we may additionally require you to furnish us with an affidavit concerning the error on forms acceptable to us. If this account is a commercial purpose account, you agree to exhaust all rights against any insurance coverage you may have before making any claim against us. Our liability to you, if any, will be reduced by the amount of any insurance you are entitled to receive. You agree, upon request by us, to assign to us all insurance rights you may have in connection with any loss on your commercial purpose account.

DIRECT DEPOSITS - If, in connection with a direct deposit plan, we deposit any amount in this account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from this account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

TEMPORARY ACCOUNTS - If you intend for this account to be a Multiple Party Account, but all of you are not present at the time the account is opened, we may permit as many of you as are present to open the account either as a Single Party Account or a Multiple Party Account only in the name(s) of those who are present (the "Temporary Account"). At the same time we may permit as many of you as are present to also sign account documentation listing the names of all those intended to be owners of the Multiple Party Account, including those who are not present (the "Permanent Account"). However, we are not required to give effect to the Permanent Account documentation until all owners listed on such documentation have signed it and we have processed it, at which point the Permanent Account documentation shall supersede and replace the Temporary Account documentation. Notwithstanding the foregoing sentence, we may give the Permanent Account documentation retroactive effect to the date on which the Temporary Account was opened. We are not required to give any of you notice that the Permanent Account documentation has taken effect, nor are we required to give any intended owner notice that such intended owner's signature is needed on the Permanent Account documentation. If the Permanent Account documentation is not signed by all intended owners within 30 days following the opening of the Temporary Account, we may discard the Permanent Account documentation and will have no liability for doing so. A Temporary Account is subject to all of the terms and provisions of this agreement.

SET OFF - You each agree that we may without prior notice to you set off the funds in this account against any due and payable debt owed to us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note. This right of set-off applies regardless of the source of the deposit, and you consent that we may exercise this right of set-off against deposits which consist in whole or in part of government payments, including, but not limited to, Social Security and Veterans Administration payments. This right of set-off does not apply to this account if: (a) it is an Individual Retirement Account or other tax deferred retirement account, or (b) the debtor's right of withdrawal arises only in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of set-off.

FACSIMILE SIGNATURES - You authorize us, at any time, to charge you for all checks, drafts, or other orders or transactions, for the payment of money, that are drawn on us by facsimile signature, regardless of by whom or by what means the facsimile signature(s) may have been affixed.

AUTHORIZED SIGNERS - An authorized signer is someone you designate to conduct transactions on your behalf, but does not have any ownership or rights in the account unless the authorized signer is also named as a Pay on Death beneficiary, in which case the Pay-On-Death Account rules apply. Otherwise, the rights of an authorized signer cease upon your death but not upon your disability or incapacity; however, you agree that we will not be liable for honoring any transaction by an authorized signer after your death. We reserve the right to limit the number of authorized signers and to decline to permit authorized signers on certain types of accounts.

ACCOUNTS OWNED BY MINORS - If this is a Multiple Party Account and one or more of the account owners is a minor, all adult owners of the account jointly and severally agree that all transactions made on the account by any such minor shall be deemed to have been made by such adult owners, regardless of whether any such transaction may be void or voidable. EACH SUCH ADULT OWNER AGREES TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH ANY TRANSACTION MADE BY ANY SUCH MINOR.

REFUSAL OF DEPOSITS - We may refuse to accept any item, wire or electronic funds transfer for deposit or to send any item for collection, and we will have no liability to you or to any other person for such refusal.

ORDER OF PAYMENT - If more than one item or order is presented for payment against this account on the same day and the available balance of this account is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

ERRORS - If there occurs any error on this account in your favor, such as crediting this account for any amount to which you are not entitled, charging this account for an amount less than the amount of an item or other order, or receipt of any direct deposit to which you are not entitled, you agree that we may adjust this account to correct the error and that, if there are insufficient funds in this account for such adjustment, you will immediately pay us the amount necessary to correct the error. You agree to pay our reasonable attorneys' fees and expenses in the event we sue you to recover the amount necessary to correct the error.

DEPOSITS NOT MADE IN PERSON - We are not responsible for transactions initiated by mail, outside depository or left with us for subsequent processing until we actually record them, and you accept and assume all risks inherent in initiating such transactions. For deposits so initiated, our determination of the amount of the deposit will be conclusive, and you waive any right to contest our determination.

RESTRICTIVE LEGENDS - For your own purposes you may print or write on checks or other items restrictive legends specifying the number of signatures required, the maximum amount for which the check or item is payable, the number of days the check or item is valid and similar restrictions. However, you agree that such restrictions shall not be binding on us, that we may disregard such restrictions and that we will have no liability to you or to any other person for paying any check or other item inconsistently with any restrictive legend that is printed or written thereon.

CHECK CHARACTERISTICS - If you use checks from sources other than vendors approved by us, or if you use check stock, security features or ink color which cause data to disappear or to become obscured when the check is converted into an image, you agree to bear any loss which results. We will not be liable for failing to honor a stop-payment order for an item issued on a check form from sources other than vendors approved by us.

SECURITY INTEREST - In addition to the rights of set-off which we have under this Agreement, you hereby grant to us a security interest in this account to secure payment of any obligation which you now owe us or which you may owe us at any time in the future, including your obligation to pay our attorneys' fees and expenses and your obligation to indemnify us as provided elsewhere in this Agreement. When any such obligation is due and payable to us, we may pay such obligation, or any part thereof, from this account without prior notice to you, and we will not be liable for the dishonor of any item or order which results from such exercise of our security interest. If this account has any pay-on-death beneficiary, the interests of such beneficiary shall be junior to our security interest and shall be subject to our right of set-off, even if we do not exercise our security interest or right of set-off until after your death.

PAYMENT TO BENEFICIARIES - Payment to pay-on-death beneficiaries shall be as provided by law. Notwithstanding anything in the Pay-on-Death Account rules stated above, we may require any pay-on-death beneficiary wishing to continue transactions with us to close this account and open a new account under such beneficiary's signature.

INDEMNIFICATION BY FIDUCIARY - IF THIS ACCOUNT IS A FIDUCIARY ACCOUNT (INCLUDING, BUT NOT LIMITED TO, AN ACCOUNT USED AS A CUSTODIAL ACCOUNT OR AS A REPRESENTATIVE PAYEE ACCOUNT TO RECEIVE PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION OR ANY OTHER GOVERNMENTAL PAYOR), YOU, THE FIDUCIARY, AGREE IN YOUR INDIVIDUAL CAPACITY TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH THIS ACCOUNT, WHETHER RESULTING FROM OVERDRAFT, ERROR IN YOUR FAVOR, RECLAMATION BY ANY GOVERNMENTAL PAYOR, ANY DISPUTE WITHIN THE SCOPE OF THE "ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY" SECTION BELOW OR ANY OTHER REASON. IN THE EVENT OF ANY SUCH LOSS, WE MAY ENFORCE THE FOREGOING INDEMNITY BY SETTING OFF THE AMOUNT OF SUCH LOSS AGAINST (OR BY EXERCISING ANY SECURITY INTEREST WE MAY HAVE IN) ANY OTHER ACCOUNT WITH US IN WHICH YOU, THE FIDUCIARY, HAVE AN INTEREST (UNLESS YOUR INTEREST IN SUCH ACCOUNT IS ONLY AS A FIDUCIARY), AND WE WILL NOT BE LIABLE TO YOU OR TO ANYONE ELSE FOR THE DISHONOR OF ANY ITEM OR ORDER ON SUCH OTHER ACCOUNT WHICH RESULTS FROM SUCH SET-OFF OR EXERCISE OF OUR SECURITY INTEREST.

SIGNATURE BY MARK - If any signature which appears on page 1 of this Agreement is by mark (such as an "X"), then you agree that we will have no liability whatsoever on claims by you or any other person based on forgery, unauthorized signature, alteration or the like.

ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY - IN THE EVENT OF ANY DISPUTE REGARDING THIS ACCOUNT, INCLUDING ANY DISPUTE OVER OWNERSHIP OF OR ENTITLEMENT TO THIS ACCOUNT OR THE CAPACITY OR AUTHORITY OF ANY PERSON TO TRANSACT ON THIS ACCOUNT, YOU AGREE TO PAY OUR REASONABLE ATTORNEYS' FEES AND EXPENSES IN THE EVENT THAT WE BECOME INVOLVED IN ANY PROCEEDING TO RESOLVE SUCH DISPUTE. IN THE EVENT OF SUCH DISPUTE WE MAY PAY THE AVAILABLE BALANCE OF THIS ACCOUNT INTO COURT, AND IN THAT EVENT YOU AGREE NOT TO MAKE ANY CLAIM AGAINST US. ADDITIONALLY, TO THE EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO ANY SUCH DISPUTE. YOU ALSO AGREE THAT WE SHALL BE ENTITLED TO RECOVER OUR REASONABLE ATTORNEY'S FEES AND EXPENSES IN CONNECTION WITH SUCH PAYMENT INTO COURT AND THAT WE MAY RECOVER SUCH FEES AND EXPENSES FROM THE BALANCE PAID INTO COURT.

IN THE EVENT OF ANY KIND OF CLAIM BY YOU AGAINST US IN CONNECTION WITH THIS ACCOUNT, YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES.

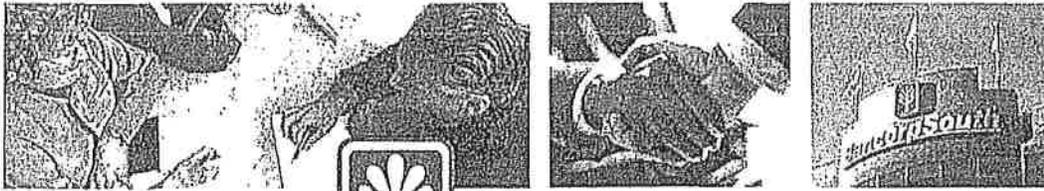
GOVERNING LAW; PROCESS; REPRESENTATIVES - With regard to any account established online, this Agreement is governed by the laws of Mississippi and by federal law and regulation. Otherwise, this Agreement is governed by the laws of the state of the location of our branch identified on the first page of this form and by federal law and regulation. Notwithstanding this, we may honor any levy, attachment, garnishment, execution, subpoena, court order, administrative order (including child support order) or other legal process which names you or which encompasses you, this account or any tax identification number associated with this account, regardless of whether we are subject to the jurisdiction of the issuer of such, regardless of in which state such is served on us and regardless of how such is served on us. We are not required to raise any defense in your behalf. We may also comply with the directions of any executor, administrator, conservator, guardian, receiver, bankruptcy trustee, attorney-in-fact or any other such representative purporting to have authority over this account who furnishes us with apparently authentic copies of documents which confer such authority. We may refuse to deal with any such representative in our sole discretion, and we will not be liable to you for such refusal. You agree that we may place temporary or permanent holds on the balance of this account related to or otherwise in response to any such process or authority and that we shall be fully protected in doing so, even if we later determine that such process or authority is inapplicable to this account. YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ACTING OR NOT ACTING ON ANY SUCH PROCESS OR FOR ACTING OR NOT ACTING ON THE DIRECTIONS OF ANY SUCH REPRESENTATIVE OR FOR PLACING OR NOT PLACING TEMPORARY OR PERMANENT HOLDS, AND YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO SUCH ACTION OR INACTION.

EFFECT OF TERMINATION OR AMENDMENT - Termination of this account, whether by us or by you, does not relieve you of any obligation you may then owe us. We may accept deposits to this account after it has been closed in order to collect any deficit balance, and such acceptance will not constitute reinstatement of the account. Your use of this account after we give you notice of any amendment to this agreement constitutes your acceptance of such amendment. No amendment of this Agreement is enforceable against us unless it is in writing and we have authored the writing or have signed it through an employee having authority to do so, such as a regional president. No practice or course of dealing in connection with this account which is at variance with this agreement shall constitute a modification or amendment of this agreement.

OTHER TERMS - This account is additionally governed by our Account Information Statement. You acknowledge receipt of a copy of the Account Information Statement and you agree to be bound by its terms, as amended by us from time to time, and to be responsible for all fees and charges set forth therein which apply to this account. You understand that the Account Information Statement does not necessarily set forth all possible fees and charges which apply to this account.

SEVERABILITY - In the event that any part of this Agreement is determined to be unenforceable, such will not affect the other parts of this Agreement, all of which shall remain fully enforceable.

ARBITRATION - IF THIS ACCOUNT IS A COMMERCIAL PURPOSE ACCOUNT, THEN YOU AGREE THAT ANY CLAIM, DISPUTE OR CONTROVERSY ("CLAIM") BY EITHER YOU OR US AGAINST THE OTHER, OR AGAINST THE EMPLOYEES, AGENTS OR ASSIGNS OF THE OTHER, ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT, THIS ACCOUNT OR ANY TRANSACTION, INCLUDING CLAIMS REGARDING THE APPLICABILITY OF THIS ARBITRATION CLAUSE OR THE VALIDITY OF ALL OR ANY PART OF THIS AGREEMENT, SHALL BE RESOLVED BY BINDING ARBITRATION BY THE NATIONAL ARBITRATION FORUM, UNDER THE CODE OF PROCEDURE IN EFFECT AT THE TIME THE CLAIM IS MADE OR FILED; RULES AND FORMS OF THE NATIONAL ARBITRATION FORUM MAY BE OBTAINED AND CLAIMS MAY BE FILED AT ANY NATIONAL ARBITRATION FORUM OFFICE, WWW.ARBITRATION-FORUM.COM OR POST OFFICE BOX 50191, MINNEAPOLIS, MINNESOTA 55405, TELEPHONE 1-800-474-2371. ANY ARBITRATION HEARING AT WHICH YOU APPEAR WILL TAKE PLACE IN THE CITY WHICH IS THE LOCATION OF OUR BRANCH AT WHICH THIS ACCOUNT WAS OPENED. THIS ARBITRATION AGREEMENT IS MADE PURSUANT TO A TRANSACTION INVOLVING INTERSTATE COMMERCE AND SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. SECTIONS 1-16. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. IN THE ABSENCE OF THIS ARBITRATION AGREEMENT YOU AND WE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS, BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.



BancorpSouth, Right Where You Are.

Account Information Statement

This disclosure of fees and charges applies to accounts at BancorpSouth. We think it is important for you to have a full understanding of these fees and charges.

We welcome your questions in person or by phone. The answers are as close as your nearest BancorpSouth office or by using InfoLine, 1-888-797-7711, our 24-hour account information line. Bold text in the following indicates changes from the last edition of the Account Information Statement.

NON-INTEREST BEARING CHECKING ACCOUNTS

The minimum deposit required to open any BancorpSouth non-interest bearing checking account is \$50.00.

Regular Checking

An \$800.00 minimum daily ledger balance avoids any monthly service charge. When the minimum daily ledger balance falls below \$800.00 during a statement cycle, the monthly service charge will be \$8.50.

BancSmart Free Checking

The BancSmart Free Checking account has no monthly maintenance fee, no per check charge and no minimum monthly balance. Combined with a savings account, free Internet Banking, online statements, combined statements and other services, BancSmart Free Checking is a complete bundle of products positioned to help you start your relationship with BancorpSouth. To receive Bill Pay free of charge, you must have a combination of either online statement and debit card or direct deposit and debit card. A \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in Internet Banking and then sign up for Bill Pay. It is not required that you have Internet Banking or Bill Pay to receive BancSmart Free Checking.

Free Checking for Students*

Students love this account because there is no minimum balance requirement, no monthly service charge, and no per check charge... it's "Free" through age 24.

Second Chance Checking*

Second Chance Checking is a special checking account for those individuals who may not have a perfect check-writing history with ChexSystems. (If you've ever had a checking account that was overdrawn when it was closed or have written bad checks in the past, your name may appear on the national ChexSystems list used by banks to approve individuals for checking accounts.) BancorpSouth doesn't approve everyone for a Second Chance Checking account, only those individuals that don't have a significant ChexSystems history.

Second Chance Checking helps you to build your good check writing history and work toward a standard BancorpSouth checking account - many without a monthly fee. If your account is in good standing after one year (no overdrafts or bad checks), you may request a standard BancorpSouth checking account.

Second Chance Checking gives you unlimited check-writing privileges with a standard monthly service charge and is subject to BancorpSouth's standard deposit policies and fees and may be closed anytime for any reason of delinquency (bad check writing, overdrafts, etc.) or fraud.

Monthly service charge regardless of balance\$0.99

*Accounts receive a monthly statement. Check images remain on file at the bank. Copies may be requested with no charge for the first five (5) items. In excess of five, per item copy charge is \$1.00.

INTEREST BEARING CHECKING ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum deposit required to open BancorpSouth interest bearing checking accounts varies by account type. See individual account descriptions for details.

Performance Checking

Performance Checking is our special rate bonus checking account which earns a Bonus Rate on your balance from \$0-\$30,000 and special ATM benefits when you meet each of the following 4 requirements during your statement period on your Performance Checking account: 1. Have at least 1 ACH debit or credit; 2. Have at least 12 debit card purchase transactions; 3. Be enrolled in online statement; 4. Be enrolled in Internet Banking.

If you meet all 4 of the requirements during a statement period, then your Performance Checking account balance from \$0 to \$30,000 will earn a Bonus Rate Annual Percentage Yield (APY) and that portion of your Performance Checking account balance in excess of \$30,000 will earn a Standard Rate APY. Additionally, if you meet all 4 of the requirements at all times during a statement period, then at the end of each statement period, for the first 5 ATM transactions you make at a non-BancorpSouth ATM during that period, we will refund the \$1.50 non-BancorpSouth ATM fee and will credit your account an additional \$2.00 against charges imposed by the owner of the non-BancorpSouth ATM (a total of \$3.50 in refunds and credits for the first 5 such transactions during the statement period). ATM fee refunds and credits will never exceed \$17.50 in any statement period. If you do not meet all 4 of these requirements at all times during the statement period, then you will earn the Standard Rate on all balances. Personal accounts only. Rates are subject to change at the bank's discretion without notice. Fees may reduce earnings.

Minimum opening deposit\$50.00
 Unlimited Deposits and Withdrawals
 No minimum balance or monthly service charge

Heritage Checking

Heritage Checking is BancorpSouth's preferred services account for our friends who are 50 and over. Heritage Checking accounts earn interest at a competitive rate, which is determined solely by the Bank and is subject to change weekly. Interest is earned daily on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Heritage Checking account before the interest is credited, you will receive the accrued interest for that period. In addition to earning interest, Heritage Checking accounts include common carrier accidental death insurance as well as discounts and special savings.

Minimum opening deposit\$50.00
 Monthly Service Charge with a minimum daily ledger balance of:
 \$500.00 or moreNONE
 Below \$500.00\$8.00

Interest Plus Checking

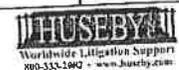
The Interest Plus Checking account is a tiered-rate checking account.

The interest rate tiers are as follows:

Balances between \$0-\$4,999
 Balances between \$5,000-\$9,999
 Balances between \$10,000-\$24,999
 Balances between \$25,000-\$49,999
 Balances between \$50,000-\$99,999
 Balances \$100,000 and above

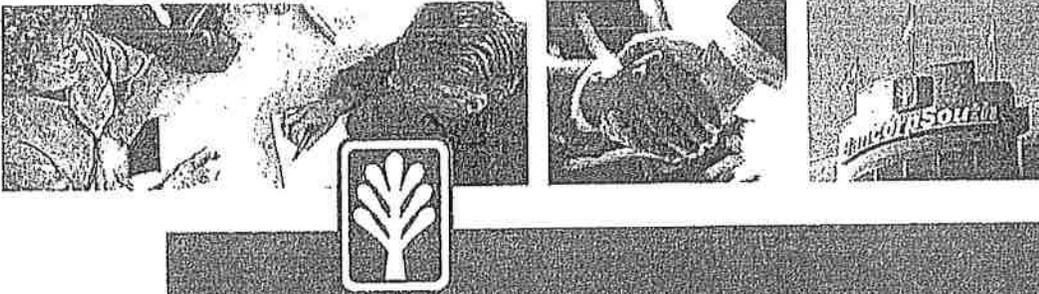
EXHIBIT

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Bank deposits are FDIC Insured. BancorpSouth Investment Services, Inc., and BancorpSouth Insurance Services, Inc., are wholly owned subsidiaries of BancorpSouth Bank. Insurance products are offered by BancorpSouth Insurance Services, Inc. Investment products are offered by BancorpSouth Investment Services, Inc. Member SIPC. Insurance and investment products are * Not a deposit | Not FDIC Insured * Not Insured by any federal government agency * Not guaranteed by the bank * May go down in value

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Account Information Statement - continued

Your account has unlimited transactions at no extra cost and earns interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time and is available for early withdrawal.

Minimum opening deposit	\$1,000.00
Monthly service charge with a balance of:	
\$1,000.00 or more	NONE
Below \$1,000.00	\$10.00

Monthly statements are itemized and include imaged checks.

SAVINGS ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. The minimum deposit required to open a BancorpSouth savings account varies by account type. See individual account descriptions for details.

Money Market Select

The Money Market Select account is a tiered-rate money market account. The interest rate tiers are as follows:

Balances between \$0-\$9,999
Balances between \$10,000-\$24,999
Balances between \$25,000-\$49,999
Balances between \$50,000-\$99,999
Balances between \$100,000-\$149,999
Balances between \$150,000-\$499,999
Balances \$500,000 and above

The Money Market Select account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals.

Minimum opening deposit	\$1,000.00
Minimum balance	\$10,000.00
Monthly service charge with a balance of:	
\$10,000.00 or more	NONE
Below \$10,000.00	\$10.00

There will be a \$10.00 charge for each withdrawal in excess of six per month. Monthly statements are itemized and include imaged checks. A BancorpSouth checking account is required to open this account.

Personal Money Market

The Personal Money Market account is a tiered-rate money market account. The interest rate tiers are as follows:

Balances between \$0-\$2,499
Balances between \$2,500-\$4,999
Balances \$5,000 and above

The Personal Money Market account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals.

Minimum opening deposit	\$1,000.00
Monthly service charge with a balance of:	
\$1,000.00 or more	NONE

Below \$1,000.00\$10.00
There will be a \$10.00 charge for each withdrawal in excess of six per month. Monthly statements are itemized and include imaged checks.

Classic Savings

Interest is paid on the collected balance using the daily balance method. The rate of interest is determined solely by the Bank and is subject to change on a weekly basis. Interest is compounded daily and credited semiannually. Deposits and withdrawals can be made at any time. If you close your account prior to the interest being credited, you will receive interest through the closing date. Minimum deposit required to open a Classic Savings account is \$50.00. Only a \$25.00 opening deposit is required for children 15 and under to open a "Savings Bug" (Classic Savings) account. All other account details apply. There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle.

Select Savings Account

The Select Savings account earns interest at a rate determined solely by the Bank and is subject to change. Interest is calculated based on semiannual compound and credited semiannually. Accrued interest is available for early closing withdrawals. A BancorpSouth checking account is required to open this account. This account is available for businesses.

Minimum opening deposit	\$1,000.00
Semiannual service charge with a balance of:	
\$1,000.00 or more	NONE
Below \$1,000.00	\$15.00

Additional information and fees for Classic and Select Savings Accounts:

Additional "Memo" statements will be produced if the account has an EFT transaction during the month. This is a snapshot statement and will reflect all activity since the last scheduled semiannual statement. There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle.

Performance Savings

Performance Savings is our special rate bonus savings account which earns a Bonus Rate on your entire balance when you meet each of the following requirements during your interest cycle on your Performance Savings account:

1. Transfer at least \$50 into your Performance Savings account each interest cycle electronically via ACH or Internet Banking Transfer.
2. Combine your Performance Savings statement with your BancorpSouth Checking account statement (you will no longer receive a separate statement for your Performance Savings account). If you meet both the requirements above during your statement period, your entire balance for that interest cycle will earn the Bonus Rate Annual Percentage Yield (APY). Performance Savings not only pays you a Bonus Rate, but also helps you save with the \$50 per interest cycle transfer requirement. A Performance Checking account is required to open as part of our "Performance Banking" package of services. Interest is paid monthly on the collected balance in the account using the daily balance method of interest calculation. Rates are subject to change at the bank's discretion without notice. Fees may reduce earnings.

Minimum opening deposit	\$50.00
Minimum monthly balance	\$50.00
Monthly service charge if balance falls below minimum	\$2.50

There will be a \$5.00 charge for each withdrawal in excess of six during the monthly interest cycle.

Christmas Club

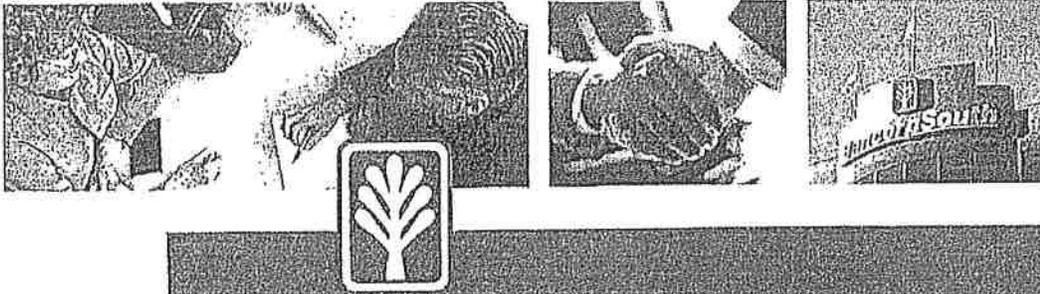
Christmas Club accounts earn interest at a rate determined solely by the Bank and is subject to change weekly. Interest is calculated on the daily ledger balance using the daily balance method. Interest is accrued daily and credited yearly in November when a check for the balance is issued

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Bank deposits are FDIC insured. BancorpSouth Investment Services, Inc., and BancorpSouth Insurance Services, Inc., are wholly owned subsidiaries of BancorpSouth Bank. Insurance products are offered by BancorpSouth Insurance Services, Inc. Investment products are offered by BancorpSouth Investment Services, Inc. Member SIPC. Insurance and investment products are Not a deposit! Not FDIC insured • Not insured by any federal government agency • Not guaranteed by the bank • May go down in value

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BancorpSouth, Right Where You Are.

Account Information Statement - continued

you. If you close your Christmas Club account before the interest is credited, you forfeit all accrued interest. If the principal balance of your Christmas Club account is \$250.00 or less on the day designated by the Bank for crediting interest to Christmas Club accounts, you forfeit all accrued interest. If you make a withdrawal from your Christmas Club account prior to the date in November when a check for the balance of the account is issued to you, you will be charged a fee of \$5.00 for each such withdrawal.

SERVICE FEES

Check Printing Charges	Charges will vary based on check design
Official Checks	\$6.00
Each Overdraft (OD) Item	\$35.00
Each Insufficient (NSF) Funds Item	\$35.00
Continuous Overdraft Fee	\$25.00
for each period of ten (10) days or longer that your account is continuously in overdraft, charged on the tenth (10th) day	
Overdraft Equity Credit Line Fee	\$.75 per transfer
Overdraft Transfer Fee from Credit Card	See your Cardholder Agreement
Overdraft Transfer Fee from Eligible Deposit Account	\$.75 per transfer
Each Stop Payment	\$35.00
Each ACH Stop Payment of Future Items	\$35.00
and then a \$5.00 monthly charge for each month after the sixth month in which stop payment remains in effect	
Each Returned Deposit Item	\$7.00
Each Returned Check Re-deposited	\$3.00
Each Returned Check Special Handling	\$7.50
Each Deposit Correction	\$3.00
Special Statement	\$7.50
Debit Card Replacement Fee	\$5.00
Research Fees:	
Research Per Hour	\$20.00
Photocopies (each)	\$1.00
Collection Item Fee	the cost of processing the collection letter with a \$20 minimum.
Dormant Checking Account Charges	\$8.50
An \$8.50 per month fee will be charged on dormant accounts. "Dormant Accounts" are defined by applicable law.	
Dormant Savings Account Charges	\$8.50
An \$8.50 per month fee will be charged on dormant accounts. "Dormant Accounts" are defined by applicable law.	
90 Day Account Closure Fee	\$25.00
(Fee charged on checking accounts closed within 90 days of opening.)	
Wire Transfer Fees:	
Outgoing	\$15.00
Incoming	\$12.00
Foreign	\$50.00
Telephone Funds Transfers:	
Automated via InfoLine	NO CHARGE
Assisted by branch or InfoLine personnel	\$3.00

Safe Deposit Box Drilling Fee - Missouri	\$85.00
All other states	\$75.00
Legal Processing	Up to \$125.00
(see Other Important Information section)	

ABOUT OVERDRAFTS

An "overdraft" occurs any time a check, ACH, ATM, debit card, bank fee (including any overdraft-related fee) or any other transaction (collectively, a "Transaction") is presented for payment against an account and the available balance of the account is insufficient to pay the Transaction. When an overdraft occurs, we may, at our discretion, refuse the Transaction, or alternatively, we may choose to pay the Transaction, in which case a negative account balance will result.

Overdraft Payment Service

BancorpSouth's Overdraft Payment Service is a service whereby we determine whether to pay a Transaction in overdraft. This determination is strictly discretionary with us. Our Overdraft Payment Service is not a contract or agreement with you. We are not required to pay any Transaction in overdraft, even if we have paid overdrafts many times previously and even if we have permitted an account to remain in an overdrawn status for an extended period. We use a variety of factors in determining whether to pay a Transaction in overdraft, including, but not necessarily limited to, how long your account has been open, how many times and in what amounts your account has been previously overdrawn, how much money you have in your account on average, whether your account is or has been subject to garnishment or other legal action, and whether you have defaulted on any agreements with us (including loan agreements). You may remove your account from our Overdraft Payment Service, in which case we will refuse to pay most Transactions drawn against insufficient funds. Removing your account from our Overdraft Payment Service does not guarantee that your account cannot be overdrawn. For example, certain Transactions such as pre-authorized electronic debits and bank fees may continue to be paid from your account and may cause your account to be overdrawn. Call a BancorpSouth customer service representative at 1-888-797-7711 to ask about removing your account from our Overdraft Payment Service.

Overdraft-related Fees

Certain fees apply to our Overdraft Payment Service and to accounts which otherwise become overdrawn. If we decide to pay a Transaction in overdraft, you will be charged an Overdraft (OD) Item fee for each such Transaction. If we decide not to pay a Transaction into overdraft, you will be charged an Insufficient Funds (NSF) Item fee for each refused Transaction. If your account remains in overdraft for ten (10) consecutive days, then on the tenth (10th) day you will be charged a Continuous Overdraft fee. Only one Continuous Overdraft fee will be charged for each continuous period of overdraft of ten (10) days or more, regardless of how long such period continues. There is no limit to the amount of Overdraft Item, Insufficient Funds Item or Continuous Overdraft fees (collectively, "Overdraft-related Fees") which you may incur.

Order of Payment

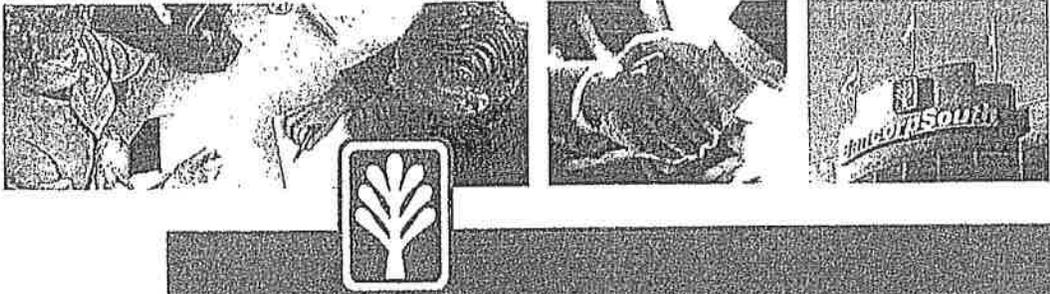
If more than one Transaction (whether check, ACH, ATM, debit card, bank fee, overdraft-related fee or any other transaction) is presented for payment against your account on the same banking day and the available balance is insufficient to pay them all, we may decide to pay any or all of them in any order we choose. When we pay Transactions, we generally choose to pay the largest Transaction first and the smallest Transaction last. Our choosing this order of payment for Transactions may result in greater Overdraft-related Fees than if

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Bank deposits are FDIC insured. BancorpSouth Investment Services, Inc., and BancorpSouth Insurance Services, Inc., are wholly owned subsidiaries of BancorpSouth Bank. Insurance products are offered by BancorpSouth Insurance Services, Inc. Investment products are offered by BancorpSouth Investment Services, Inc. Member SIPC. Insurance and investment products are Not a deposit. Not FDIC insured. Not insured by any federal government agency. Not guaranteed by the bank. * May go down in value.

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Account Information Statement - continued

we had chosen to pay them in some other order or had chosen not to pay them. We may also choose to first pay Transactions which are payable to BancorpSouth and our affiliates.

Avoiding Overdraft-related Fees

The best way to avoid Overdraft-related Fees is to manage your account so that you do not overdraw it. Otherwise, you may avoid Overdraft-related Fees through one of the Overdraft Protection products offered by BancorpSouth. Credit Card Overdraft Protection works by charging your BancorpSouth MasterCard® or VISA® credit card for cash advances in the total amount of Transactions drawn against insufficient funds, with resulting deposits of the cash advance amounts into your account to cover such Transactions, up to the available cash advance limit of your credit card. Credit Card Overdraft Protection transactions are subject to all of the rules and finance charge provisions applicable to cash advances under the Cardholder Agreement. You may also avoid Overdraft-related Fees by establishing a BancorpSouth Equity Credit Line, which is a line of credit. This form of Overdraft Protection works by charging your Equity Credit Line in the amounts of Transactions drawn against insufficient funds, with resulting deposits of these amounts into your account to cover such Transactions, up to the available credit limit of your Equity Credit Line. An Overdraft Equity Credit Line fee and interest charges will be charged to your Equity Credit Line in accordance with the terms of your Equity Credit Line agreement. You may also avoid Overdraft-related Fees by linking your account to another checking or savings account you have with BancorpSouth. This form of Overdraft Protection works by debiting from your other account the amounts of Transactions drawn against insufficient funds, with resulting deposits of these amounts into your account to cover such Transactions, up to the available balance of your other account. A transfer fee will be charged. It is still possible for your account to become overdrawn and to incur Overdraft-related Fees even if you use an Overdraft Protection product, such as when your credit card or Equity Credit Line reaches its applicable limit or the available balance of your linked account is depleted and you continue to make Transactions on your account. Call a BancorpSouth customer service representative at 1-888-797-7711 to ask about our Overdraft Protection products. Also, ask a customer service representative for a copy of our flier, "How to Avoid Paying Bank Fees."

MasterCard® Debit Card

BancorpSouth MasterCard® Debit Card is the convenient plastic card that looks like a credit card but works like a check, deducting your purchases from your checking account. MasterCard® Debit Card is good for cash purchases anywhere debit MasterCard® is accepted. Plus, you get a receipt with every transaction so there is no problem keeping track of what you have spent. Monthly, all transactions are reported on your checking account statement along with any checks you have written. A MasterCard® Debit Card serves as your ATM card, so you only have one "checking account card" to carry with you.

MasterCard® Debit Card Fee NO CHARGE
 There is a fee of \$1.50 per transaction when you use your MasterCard® Debit Card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a MasterCard® Debit Card transaction made at its ATM. There is a fee of one percent (1%) of the transaction amount if you use your MasterCard® Debit Card for a transaction in a foreign country. If your transaction in a foreign country is in a currency other than U.S. dollars, the rate used for converting the transaction to U.S. dollars will be the wholesale market rate or any government-mandated rate in effect on the date that MasterCard processes the transaction or any other rate or method prescribed by the then-current MasterCard regulations. Currency conversion may occur on a date other than the date of the transaction, and the conversion rate may be affected accordingly.

Internet Banking and Bill Pay

Internet Banking is free with any personal BancorpSouth checking or Money Market account. Internet Banking allows you to access balance inquiries, view your statement information and your canceled checks (even if your statement doesn't have check images), transfer between accounts, and make payments on your BancorpSouth line of credit or loan.

Free Bill Pay is also available with any personal BancorpSouth checking account when you sign up for Internet Banking if you have a combination of either online statement and debit card or direct deposit and debit card. A \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in Internet Banking, and then sign up for Bill Pay through Internet Banking. (The Free Bill Pay option listed above is standard for all customers who register for Bill Pay after August 21, 2006. If you currently have Bill Pay and would like to change your billing method, please ask your local customer service representative or call our InfoLine at 1-888-797-7711.)

24-Hour Banking

You may access your BancorpSouth checking account day and night at literally thousands of ATMs across the United States with our automated teller card. At BancorpSouth ATM locations you may make deposits as well as withdrawals, loan payments and transfers between accounts.

24-Hour Banking Card Fee \$1.00 per month
 There is a fee of \$1.50 per transaction when you use your 24-Hour Banking card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a 24-Hour Banking card transaction made at its ATM.

Certificate of Deposit

BancorpSouth Certificates of Deposit offer competitive returns on investments that can be tailored to fit your exact needs. Early withdrawal penalties apply to all Certificates of Deposit.

Minimum opening deposit \$1,000.00

Plus Package

The Plus Package is a package of benefits and savings which may be added to any BancorpSouth personal checking account. A fee of \$4.50 for individuals less than 60 years of age or \$3.50 for individuals 60 and better applies and will be deducted from your BancorpSouth personal checking account on a monthly basis. If you have previously enrolled in the program and are being charged a fee of \$4.50 per month, please notify a BancorpSouth representative upon attaining the age of 60, and we will gladly adjust your monthly fee to the appropriate rate.

OTHER IMPORTANT INFORMATION

- The Daily Balance Method of paying interest uses the daily balance in calculating the interest on your account. This method applies a daily periodic rate to the principal in the account each day. When you deposit checks into any account at BancorpSouth, interest begins to accrue no later than the business day we receive credit for the item.
- The Daily Ledger Balance reflects all deposits and withdrawals regardless of actual collection of funds.
- On checking accounts, federal regulations allow the bank to create transaction and savings sub-accounts which exist only on the books of the bank and which allow the bank to make transfers at the close of each working day. This puts the bank in a more favorable position concerning reserve requirements and ultimately allows us to maintain the most competitive pricing on your checking account. The activity of the sub-accounts will not be reflected on your bank statement and will not affect your account balance or the interest, fees and features of your checking account.

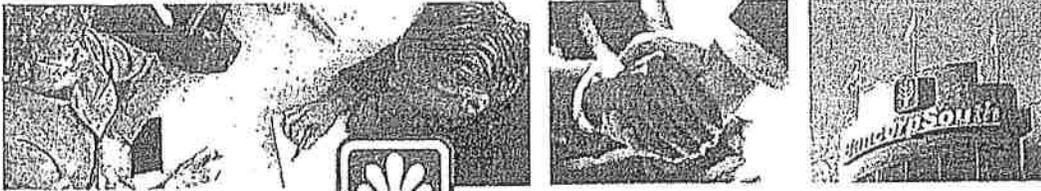


BancorpSouth

Right Where You Are

Bank deposits are FDIC insured. BancorpSouth Investment Services, Inc., and BancorpSouth Insurance Services, Inc., are wholly owned subsidiaries of BancorpSouth Bank. Insurance products are offered by BancorpSouth Insurance Services, Inc. Investment products are offered by BancorpSouth Investment Services, Inc. Member SIPC. Insurance and investment products are • Not a deposit | Not FDIC insured • Not insured by any federal government agency • Not guaranteed by the bank
 • May go down in value

bancorpsouth.com



BancorpSouth, Right Where You Are.

Account Information Statement - continued

- Electronic debits such as Automated Teller Machine and MasterCard® Debit Card along with InfoLine transfers are not included in your debit item count for calculating service charges.
- All fees and charges are subject to applicable law.
- If your account is made subject to garnishment, execution, levy or any similar legal process, or if your account is made subject to any legal proceeding in which the Bank is required to respond, appear or provide records, we may charge you for each such garnishment, execution, levy or proceeding a fee of up to \$125.00. This fee is in addition to any cost and expenses, including reasonable attorney's fees, which we incur in connection with any of the foregoing.
- You may not use your account in connection with any business of placing, receiving or otherwise knowingly transmitting bets or wagers by any means which involves the use, at least in part, of the Internet, or for any other transaction which is prohibited by Federal Reserve Regulation GG.

Effective Date: May 10, 2010



Bank deposits are FDIC insured. BancorpSouth Investment Services, Inc., and BancorpSouth Insurance Services, Inc., are wholly owned subsidiaries of BancorpSouth Bank. Insurance products are offered by BancorpSouth Insurance Services, Inc. Investment products are offered by BancorpSouth Investment Services, Inc. Member SIPC. Insurance and investment products are • Not a deposit | Not FDIC insured • Not insured by any federal government agency • Not guaranteed by the bank • May go down in value

bancorpsouth.com



BANCORPSOUTH BANK
 1411 HWY 67 S
 POCAHONTAS, AR 72455
 BRANCH 555

OWNERSHIP OF ACCOUNT - CONSUMER PURPOSE

SINGLE-PARTY
 MULTIPLE-PARTY
 FIDUCIARY

PAY-ON-DEATH DESIGNATION AS DEFINED IN THIS AGREEMENT
 Name and Address of Beneficiaries:

OWNERSHIP OF ACCOUNT - COMMERCIAL PURPOSE

SINGLE-PARTY ACCOUNT (Sole Proprietorship)
 CORPORATION
 PARTNERSHIP
 LIMITED PARTNERSHIP
 LIMITED LIABILITY COMPANY
 UNINCORPORATED ASSOCIATION
 FIDUCIARY
 GOVERNMENT
 OTHER ORGANIZATION

DATE OPENED 2/21/2008 BY DORA GRAHAM
 INITIAL DEPOSIT \$ \$2,000.00
 CASH CHECK _____
 HOME TELEPHONE # Redacted
 BUSINESS PHONE # _____
 DRIVER'S LICENSE # _____
 E-MAIL _____
 EMPLOYER _____
 MOTHER'S MAIDEN NAME _____
 Name and address of someone who will always know your location: _____

BACKUP WITHHOLDING CERTIFICATIONS

TIN: Redacted

TAXPAYER I.D. NUMBER - The Taxpayer Identification Number shown above (TIN) is my correct taxpayer identification number.

BACKUP WITHHOLDING - I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.

EXEMPT RECIPIENTS - I am an exempt recipient under the Internal Revenue Service Regulations.

SIGNATURE: I certify under penalties of perjury the statements checked in this section and that I am a U.S. person (including a U.S. resident alien).

X _____ (Date) 2/21/2008

CUSTOMER COPY

Branch 555 Region 622

©2004 Wolters Kluwer Financial Services - Bankers Systems™ Form BXS-MPSC-LAZ 9/20/2007



ACCOUNT NUMBER Redacted

ACCOUNT OWNER(S) NAME & ADDRESS

TRINA N SWIFT OR
 TERRY S SWIFT
 MORTGAGE ACCOUNT
Redacted

Primary RM #: Redacted
 Secondary RM #: _____

TYPE OF ACCOUNT

NEW EXISTING
 CHECKING SAVINGS
 MONEY MARKET _____
 NOW

ChexSystems Yes No
 SSN Issued _____ State _____
 Existing Deposit Customer _____

SIGNATURE(S) - The undersigned agree that this account is subject to and shall be governed by the deposit agreement entitled "Your Deposit Account Terms and Conditions" in effect at the opening of this account and as thereafter amended, replaced or superceded from time to time. The undersigned further authorize BancorpSouth Bank to verify credit and employment history and/or have a credit reporting agency prepare a credit report on the undersigned, as individuals. The undersigned acknowledge receipt of a copy of Your Deposit Account Terms and Conditions and the following disclosure(s), to all of which the undersigned agree to be bound:

- Account Information Statement Funds Availability
- Electronic Funds Transfer Truth in Savings Privacy
- _____
- _____

[TRINA N SWIFT]
 [X]

[TERRY S SWIFT]
 [X]

[X]

[X]

[X]

EXHIBIT



sgcd 1

0000119532537IM2N801SIGCARD (page 1 of 5)
 PLAINTIFF SWIFT 00104

ACH DEPOSIT ACCOUNT TERMS AND CONDITIONS AGREEMENT

AGREEMENT These terms govern the operation of this account unless varied or supplemented in writing by amendment as provided herein. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so that the singular includes the plural and the plural includes the singular. As used in this agreement, the words "we," "our," or "us" mean BancorpSouth Bank and the words "you" or "your" mean the account owner(s). This account may not be transferred, pledged or assigned without our written consent, and we reserve the right to withhold such consent for any reason.

Much of our relationship with our deposit customers is regulated by state and federal law, especially the law relating to negotiable instruments, the law regulating the methods of transferring property upon death and the rights of surviving spouses and dependents, the law pertaining to estate and other succession taxes, the law regarding electronic funds transfer, and the law regarding the availability of deposited funds. This body of law is too large and complex to be reproduced here.

The purpose of this form is to:

- (1) summarize the rules applicable to the more common transactions;
- (2) establish rules to govern transactions or circumstances which the law does not regulate; and
- (3) establish rules for certain events or transactions which the law already regulates but permits variation by agreement.

LIABILITY - Each of you agrees, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges that may be imposed. You authorize us to deduct these charges as accrued directly from the account balance. You also agree to pay additional reasonable charges we may impose for services you request which are not contemplated by this agreement. Each of you also agrees to be jointly and severally (solidarily) liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from this account, and the costs we incur to collect the deficit including our reasonable attorneys' fees.

DEPOSITS - Any items, other than cash, accepted for deposit (including items drawn "on us") will be given provisional credit only until collection is final (and actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars). Applicable law may require us to make your deposits available for withdrawal before payment becomes final or before the expiration of other banks' deadlines to return your deposited items to us for refund. You agree that our making all or any part of a deposit available to you for withdrawal is not a waiver of our right to charge back to this account any deposited item which is returned to us unpaid or for refund; instead, we may charge back to this account, and you will be responsible for, all such items. Subject to any other limitations, interest will be paid only on collected funds, unless otherwise provided by law. We are not responsible for transactions initiated by mail or outside depository until we actually record them. All transactions received after our daily cut-off time on a business day we are open (a "banking day"), or received on a day in which we are not open for business, will be treated and recorded as if initiated on the next following banking day. Our daily cut-off time varies from location to location and is posted at each of our locations.

WITHDRAWALS - Any one of you who signs this form, including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us. However, we reserve the right to limit the amount of any withdrawal in cash where, for example, currency in the amount of the withdrawal is not available at our branch or your withdrawal exceeds the amount we allow via automatic teller machine or if the cash supply of the automatic teller machine is depleted. Each of you authorizes each other person signing this form to endorse any item payable to you or your order for deposit to this account or any other transaction with us. You agree that our right to charge a check against this account does not depend on the date of the check. Therefore, we may charge a check against this account before the date of the check or at any time thereafter, provided, however, that we may, but are not required to, refuse to pay a check which appears on its face to be more than six months old. In any event, we will not be liable to you for charging against this account a check before its date or after it is more than six months old. The fact that we may honor withdrawal requests which overdraw the finally collected account balance does not obligate us to do so. Withdrawals will first be made from

collected funds, and we may, unless prohibited by law, refuse any withdrawal request against uncollected funds, even if our general practice is to the contrary. We reserve the right to refuse any withdrawal or transfer request which is attempted by any method not specifically permitted, which is for an amount less than any minimum withdrawal requirement, or which exceeds any frequency limitation. Even if we honor a nonconforming request, we may close the account in the event of repeated abuse of the stated limitations. We will use the date a transaction is completed by us (as opposed to the day you initiate it) to apply the frequency limitations. On interest bearing accounts other than time deposits, we reserve the right to require at least seven days' written notice before any withdrawal or transfer.

ACH, WIRE AND FUNDS TRANSFERS - We may decline to process any wire or funds transfer which is not subject to Regulation E or the Electronic Funds Transfer Act until you enter into a separate Funds Transfer Agreement with us. If we process any wire or funds transfer for you before you enter into a separate Funds Transfer Agreement, with respect to each such transfer you will be bound by the terms of this section. You agree to be bound by all rules and regulations governing any system through which any transfer occurs, including, but not limited to, any ACH rules, NACHA rules and the rules and regulations pertaining to Fedwire, the electronic transfer system of the Federal Reserve Banks. We may make wire or funds transfers by any means available to us, including, but not limited to, through our correspondent banks or by internal book entry. We have no obligation to notify you of incoming wire or funds transfers. Any credit for incoming wire or funds transfers is provisional until we have received final payment. If we do not receive final payment, we may reverse the credit. We may permit any of you or any authorized signer to order wire or other funds transfers from this account by telephone, in person, by written instruction, or by any other means acceptable to us, subject to any time deadlines or other conditions or procedures which we may establish. Wire and funds transfers are made only through the use of identifying numbers for the recipient bank and account, without regard to any names which may be furnished for any recipient bank or account. You must furnish the correct identifying numbers to us in connection with each wire or funds transfer. Funds will be wired or transferred in accordance with the identifying numbers you furnish us (or the identifying numbers which you use. If you are originating an ACH transaction, even if an identifying number is incorrect or is inconsistent with any name you may use or furnish us. In such event, we will not be responsible for your error, the transfer will not be considered an unauthorized transaction, and any loss will be entirely yours. Any instructions you may give us in connection with a wire or funds transfer will not be binding on us unless we have agreed to such instructions in writing. You must strictly observe all deadlines we impose for the processing of wire and funds transfers. We will not be responsible for any delay or other consequences which result from your failure to comply with any of these deadlines. You have no right to cancel or change any wire or funds transfer after you submit it to us. Any attempt by us to cancel or change any wire or funds transfer at your request will not constitute the assumption of any duty by us. You assume all risk associated with international wire or funds transfers. We will not be liable to you in any way in connection with an international wire or funds transfer, whether for failure of delivery, delayed delivery, fluctuations in exchange rates or for any other reason. If any incoming wire or funds transfer is denominated in a foreign currency, you authorize us to convert such to U. S. Dollars according to such exchange rate which we may select at our discretion. You acknowledge and agree that such exchange rate may not be the most favorable rate of exchange published and that you will be bound by our choice of exchange rate. If you provide your account number or any other account identifying information to any third party and such third party originates any funds transfer transaction on this account, you agree that we may treat such transaction as a transaction authorized by you.

OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION - You intend these rules to apply to this account depending on the form of ownership and beneficiary designation, if any, specified on page 1. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. Single Party Account - is owned by one person. Multiple Party Account - is owned by two or more persons jointly with right of survivorship and not as tenants in common, regardless of the conjunction ("or", "and") used

between the depositors' names. Each of you expressly agrees that the account is not owned as a tenancy by the entireties. Each of you intends that upon your death the balance in the account (subject to any previous pledge to which we have consented) will vest in and belong to the survivor(s) as the separate property and estate of such survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. Transactions on Multiple Party Accounts do not require the signatures of all account owners to transact on the account. Instead, any account owner may transact on the account to the exclusion of the other(s), and each of you authorize each other of you to do so without further consent. If this Agreement is governed by the laws of the state of Louisiana, the owners of a Multiple Party Account are co-owners of the account, and all or any part of any deposit may be paid to any one of you, whether any other of you is living or not, and any such payment to any of you shall constitute receipt and acquittance and shall fully release and discharge us from the claims of any person to funds of the deceased depositor for the payment made. **Pay On Death Account - Pay-On-Death beneficiaries** acquire the right to withdraw only if: (1) all persons creating the account die, (2) the beneficiary is then living, and (3) we are not otherwise required by law to make payment to some other person. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own this account and may transact on it according to the Multiple Party Account rules stated above unless otherwise provided by law. The person(s) creating a Pay-On-Death Account reserves the right to: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the deposit at any time. If two or more of you create such a Pay-On-Death Account, you own the account according to the Multiple Party Account rules stated above until the last of you dies. **Fiduciary Account - A Fiduciary Account**, whether for a consumer or a commercial purpose, is one in which the person controlling the account does so for the benefit of another. Examples of fiduciaries are trustees, executors, conservators, custodians for minors, representative payees and court-appointed guardians. For purposes of this agreement, guardians such as parents or other relatives who have not been court-appointed or persons who have not complied with necessary provisions of any applicable transfer to minors laws are not fiduciaries. We are not a fiduciary in connection with this account. For fiduciary accounts, we will usually require, in the case of trustees, a trust resolution according to our form, and in all other cases documents evidencing the fiduciary's authority. We have no duty to inspect any will or trust document, and you agree that we will not be bound by any limitations imposed in a will or trust document. You agree that a Fiduciary Account is a general deposit and not a special deposit. **Corporation, Partnership, Limited Partnership, Limited Liability Company (LLC), Unincorporated Association, Government and other Organizational Accounts -** We will usually require a separate resolution in a form acceptable to us designating the person permitted and conditions required for withdrawal from any account in the name of a legal entity such as a Corporation, Partnership, Limited Partnership, LLC, Unincorporated Association, governmental entity or other organization.

STOP PAYMENTS - A stop payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it before our stop payment cut off time. Our stop payment cut off time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law. A stop payment order must precisely identify the number, date and amount of the item, and the payee. We will honor a stop payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item, if such other person has an equal or greater right to withdraw from this account than the person who signed the item in question. A release of the stop payment request may be made only by the person who initiated the stop payment.

AMENDMENTS AND TERMINATION - We may change any term of this agreement or any of the disclosures indicated on the first page of this agreement. Rules governing changes in interest rates have been provided separately. For other changes we will give you reasonable notice in writing or by any other method permitted by law. We may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you unless otherwise provided by law.

STATEMENTS - You must examine your statement of account with reasonable promptness. If you discover (or reasonably should have discovered) any forgeries, unauthorized payments, alterations or disputed transactions, you must promptly notify us of the relevant facts. Even if you do promptly notify us, you still may have to either share the loss with us or bear the loss entirely yourself (depending on whether you exercised ordinary care or substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items forged or altered by the same wrongdoer. You agree that the time you have to examine your statement and report to us will not, in any circumstance, exceed a total of 60 days from when the statement is first made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, unauthorized activity or any other errors or disputed transactions in this account within 60 days of when we make the statement available, you cannot assert a claim against us on any items in that statement, and the loss will be entirely yours.

You also agree to examine your statement with the same reasonable promptness to discover whether any deposit is missing or has been incorrectly credited. If your statement of account contains any error pertaining to any deposit, and if you fail to report such error to us within 60 days of when we make the statement available, you cannot assert a claim against us for such error, and any loss will be entirely yours.

The 60 day limitations set forth in this section are without regard to whether we exercised ordinary care.

If this account is a commercial purpose account, you additionally agree to take advantage of products and services we offer for the detection and prevention of fraud and unauthorized transactions, such as "Positive Pay" cash management products. If you fail to utilize any such product or service, you agree that you will be precluded from asserting any claim against us for any unauthorized transaction which could have been prevented by the proper use of such product or service.

We may require any report of errors on your statement to be put in writing by you and we may additionally require you to furnish us with an affidavit concerning the error on forms acceptable to us. If this account is a commercial purpose account, you agree to exhaust all rights against any insurance coverage you may have before making any claim against us. Our liability to you, if any, will be reduced by the amount of any insurance you are entitled to receive. You agree, upon request by us, to assign to us all insurance rights you may have in connection with any loss on your commercial purpose account.

DIRECT DEPOSITS - If, in connection with a direct deposit plan, we deposit any amount in this account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from this account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

TEMPORARY ACCOUNTS - If you intend for this account to be a Multiple Party Account, but all of you are not present at the time the account is opened, we may permit as many of you as are present to open the account either as a Single Party Account or a Multiple Party Account only in the name(s) of those who are present (the "Temporary Account"). At the same time we may permit as many of you as are present to also sign account documentation listing the names of all those intended to be owners of the Multiple Party Account, including those who are not present (the "Permanent Account"). However, we are not required to give effect to the Permanent Account documentation until all owners listed on such documentation have signed it and we have processed it, at which point the Permanent Account documentation shall supersede and replace the Temporary Account documentation. Notwithstanding the foregoing sentence, we may give the Permanent Account documentation retroactive effect to the date on which the Temporary Account was opened. We are not required to give any of you notice that the Permanent Account documentation has taken effect, nor are we required to give any intended owner notice that such intended owner's signature is needed on the Permanent Account documentation. If the Permanent Account documentation is not signed by all intended owners within 30 days following the opening of the Temporary Account, we may discard the Permanent Account documentation and will have no liability for doing so. A Temporary Account is subject to all of the terms and provisions of this agreement.

SET-OFF - You each agree that we may without prior notice to you set off the funds in this account against any due and payable debt owed to us, now or in the future, by any of you having the right of withdrawal, or the estate or such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note. This right of set off applies regardless of the source of the deposit, and you consent that we may exercise this right of set-off against deposits which consist in whole or in part of government payments, including, but not limited to, Social Security and Veterans Administration payments. This right of set-off does not apply to this account if: (a) it is an Individual Retirement Account or other tax deferred retirement account, or (b) the debtor's right of withdrawal arises only in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of set-off.

FACSIMILE SIGNATURES - You authorize us, at any time, to charge you for all checks, drafts, or other orders or transactions, for the payment of money, that are drawn on us by facsimile signature, regardless of by whom or by what means the facsimile signature(s) may have been affixed.

AUTHORIZED SIGNERS - An authorized signer is someone you designate to conduct transactions on your behalf, but does not have any ownership or rights in the account unless the authorized signer is also named as a Pay on Death beneficiary, in which case the Pay-On-Death Account rules apply. Otherwise, the rights of an authorized signer cease upon your death but not upon your disability or incapacity; however, you agree that we will not be liable for honoring any transaction by an authorized signer after your death. We reserve the right to limit the number of authorized signers and to decline to permit authorized signers on certain types of accounts.

ACCOUNTS OWNED BY MINORS - If this is a Multiple Party Account and one or more of the account owners is a minor, all adult owners of the account jointly and severally agree that all transactions made on the account by any such minor shall be deemed to have been made by such adult owners, regardless of whether any such transaction may be void or voidable. EACH SUCH ADULT OWNER AGREES TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH ANY TRANSACTION MADE BY ANY SUCH MINOR.

REFUSAL OF DEPOSITS - We may refuse to accept any item, wire or electronic funds transfer for deposit or to send any item for collection, and we will have no liability to you or to any other person for such refusal.

ORDER OF PAYMENT - If more than one item or order is presented for payment against this account on the same day and the available balance of this account is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

ERRORS - If there occurs any error on this account in your favor, such as crediting this account for any amount to which you are not entitled, charging this account for an amount less than the amount of an item or other order, or receipt of any direct deposit to which you are not entitled, you agree that we may adjust this account to correct the error and that, if there are insufficient funds in this account for such adjustment, you will immediately pay us the amount necessary to correct the error. You agree to pay our reasonable attorneys' fees and expenses in the event we sue you to recover the amount necessary to correct the error.

DEPOSITS NOT MADE IN PERSON - We are not responsible for transactions initiated by mail, outside depository or left with us for subsequent processing until we actually record them, and you accept and assume all risks inherent in initiating such transactions. For deposits so initiated, our determination of the amount of the deposit will be conclusive, and you waive any right to contest our determination.

RESTRICTIVE LEGENDS - For your own purposes you may print or write on checks or other items restrictive legends specifying the number of signatures required, the maximum amount for which the check or item is payable, the number of days the check or item is valid and similar restrictions. However, you agree that such restrictions shall not be binding on us, that we may disregard such restrictions and that we will have no liability to you or to any other person for paying any check or other item inconsistently with any restrictive legend that is printed or written thereon.

CHECK CHARACTERISTICS - If you use checks from sources other than vendors approved by us, or if you use check stock, security features or ink color which cause data to disappear or to become obscured when the check is converted into an image, you agree to bear any loss which results. We will not be liable for failing to honor a stop-payment order for an item issued on a check form from sources other than vendors approved by us.

SECURITY INTEREST - In addition to the rights of set-off which we have under this Agreement, you hereby grant to us a security interest in this account to secure payment of any obligation which you now owe us or which you may owe us at any time in the future, including your obligation to pay our attorneys' fees and expenses and your obligation to indemnify us as provided elsewhere in this Agreement. When any such obligation is due and payable to us, we may pay such obligation, or any part thereof, from this account without prior notice to you, and we will not be liable for the dishonor of any item or order which results from such exercise of our security interest. If this account has any pay-on-death beneficiary, the interests of such beneficiary shall be junior to our security interest and shall be subject to our right of set-off, even if we do not exercise our security interest or right of set-off until after your death.

PAYMENT TO BENEFICIARIES - Payment to pay-on-death beneficiaries shall be as provided by law. Notwithstanding anything in the Pay-on-Death Account rules stated above, we may require any pay-on-death beneficiary wishing to continue transactions with us to close this account and open a new account under such beneficiary's signature.

INDEMNIFICATION BY FIDUCIARY - IF THIS ACCOUNT IS A FIDUCIARY ACCOUNT (INCLUDING, BUT NOT LIMITED TO, AN ACCOUNT USED AS A CUSTODIAL ACCOUNT OR AS A REPRESENTATIVE PAYEE ACCOUNT TO RECEIVE PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION OR ANY OTHER GOVERNMENTAL PAYOR), YOU, THE FIDUCIARY, AGREE IN YOUR INDIVIDUAL CAPACITY TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH THIS ACCOUNT, WHETHER RESULTING FROM OVERDRAFT, ERROR IN YOUR FAVOR, RECLAMATION BY ANY GOVERNMENTAL PAYOR, ANY DISPUTE WITHIN THE SCOPE OF THE "ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY" SECTION BELOW OR ANY OTHER REASON. IN THE EVENT OF ANY SUCH LOSS, WE MAY ENFORCE THE FOREGOING INDEMNITY BY SETTING OFF THE AMOUNT OF SUCH LOSS AGAINST (OR BY EXERCISING ANY SECURITY INTEREST WE MAY HAVE IN) ANY OTHER ACCOUNT WITH US IN WHICH YOU, THE FIDUCIARY, HAVE AN INTEREST (UNLESS YOUR INTEREST IN SUCH ACCOUNT IS ONLY AS A FIDUCIARY), AND WE WILL NOT BE LIABLE TO YOU OR TO ANYONE ELSE FOR THE DISHONOR OF ANY ITEM OR ORDER ON SUCH OTHER ACCOUNT WHICH RESULTS FROM SUCH SET-OFF OR EXERCISE OF OUR SECURITY INTEREST.

SIGNATURE BY MARK - If any signature which appears on page 1 of this Agreement is by mark (such as an "X"), then you agree that we will have no liability whatsoever on claims by you or any other person based on forgery, unauthorized signature, alteration or the like.

ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY - IN THE EVENT OF ANY DISPUTE REGARDING THIS ACCOUNT, INCLUDING ANY DISPUTE OVER OWNERSHIP OF OR ENTITLEMENT TO THIS ACCOUNT OR THE CAPACITY OR AUTHORITY OF ANY PERSON TO TRANSACT ON THIS ACCOUNT, YOU AGREE TO PAY OUR REASONABLE ATTORNEYS' FEES AND EXPENSES IN THE EVENT THAT WE BECOME INVOLVED IN ANY PROCEEDING TO RESOLVE SUCH DISPUTE. IN THE EVENT OF SUCH DISPUTE WE MAY PAY THE AVAILABLE BALANCE OF THIS ACCOUNT INTO COURT, AND IN THAT EVENT YOU AGREE NOT TO MAKE ANY CLAIM AGAINST US. ADDITIONALLY, TO THE EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO ANY SUCH DISPUTE. YOU ALSO AGREE THAT WE SHALL BE ENTITLED TO RECOVER OUR REASONABLE ATTORNEY'S FEES AND EXPENSES IN CONNECTION WITH SUCH PAYMENT INTO COURT AND THAT WE MAY RECOVER SUCH FEES AND EXPENSES FROM THE BALANCE PAID INTO COURT.

IN THE EVENT OF ANY KIND OF CLAIM BY YOU AGAINST US IN CONNECTION WITH THIS ACCOUNT, YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES.

GOVERNING LAW; PROCESS; REPRESENTATIVES - With regard to any account established online, this Agreement is governed by the laws of Mississippi and by federal law and regulation. Otherwise, this Agreement is governed by the laws of the state of the location of our branch identified on the first page of this form and by federal law and regulation. Notwithstanding this, we may honor any levy, attachment, garnishment, execution, subpoena, court order, administrative order (including child support order) or other legal process which names you or which encompasses you, this account or any tax identification number associated with this account, regardless of whether we are subject to the jurisdiction of the issuer of such, regardless of in which state such is served on us and regardless of how such is served on us. We are not required to raise any defense in your behalf. We may also comply with the directions of any executor, administrator, conservator, guardian, receiver, bankruptcy trustee, attorney-in-fact or any other such representative purporting to have authority over this account who furnishes us with apparently authentic copies of documents which confer such authority. We may refuse to deal with any such representative in our sole discretion, and we will not be liable to you for such refusal. You agree that we may place temporary or permanent holds on the balance of this account related to or otherwise in response to any such process or authority and that we shall be fully protected in doing so, even if we later determine that such process or authority is inapplicable to this account. YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ACTING OR NOT ACTING ON ANY SUCH PROCESS OR FOR ACTING OR NOT ACTING ON THE DIRECTIONS OF ANY SUCH REPRESENTATIVE OR FOR PLACING OR NOT PLACING TEMPORARY OR PERMANENT HOLDS, AND YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO SUCH ACTION OR INACTION.

EFFECT OF TERMINATION OR AMENDMENT - Termination of this account, whether by us or by you, does not relieve you of any obligation you may then owe us. We may accept deposits to this account after it has been closed in order to collect any deficit balance, and such acceptance will not constitute reinstatement of the account. Your use of this account after we give you notice of any amendment to this agreement constitutes your acceptance of such amendment. No amendment of this Agreement is enforceable against us unless it is in writing and we have authored the writing or have signed it through an employee having authority to do so, such as a regional president. No practice or course of dealing in connection with this account which is at variance with this agreement shall constitute a modification or amendment of this agreement.

OTHER TERMS - This account is additionally governed by our Account Information Statement. You acknowledge receipt of a copy of the Account Information Statement and you agree to be bound by its terms, as amended by us from time to time, and to be responsible for all fees and charges set forth therein which apply to this account. You understand that the Account Information Statement does not necessarily set forth all possible fees and charges which apply to this account.

SEVERABILITY - In the event that any part of this Agreement is determined to be unenforceable, such will not affect the other parts of this Agreement, all of which shall remain fully enforceable.

ARBITRATION - IF THIS ACCOUNT IS A COMMERCIAL PURPOSE ACCOUNT, THEN YOU AGREE THAT ANY CLAIM, DISPUTE OR CONTROVERSY ("CLAIM") BY EITHER YOU OR US AGAINST THE OTHER, OR AGAINST THE EMPLOYEES, AGENTS OR ASSIGNS OF THE OTHER, ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT, THIS ACCOUNT OR ANY TRANSACTION, INCLUDING CLAIMS REGARDING THE APPLICABILITY OF THIS ARBITRATION CLAUSE OR THE VALIDITY OF ALL OR ANY PART OF THIS AGREEMENT, SHALL BE RESOLVED BY BINDING ARBITRATION BY THE NATIONAL ARBITRATION FORUM, UNDER THE CODE OF PROCEDURE IN EFFECT AT THE TIME THE CLAIM IS MADE OR FILED. RULES AND FORMS OF THE NATIONAL ARBITRATION FORUM MAY BE OBTAINED AND CLAIMS MAY BE FILED AT ANY NATIONAL ARBITRATION FORUM OFFICE, WWW.ARBITRATION-FORUM.COM OR POST OFFICE BOX 50191, MINNEAPOLIS, MINNESOTA 55405, TELEPHONE 1-800-474-2371. ANY ARBITRATION HEARING AT WHICH YOU APPEAR WILL TAKE PLACE IN THE CITY WHICH IS THE LOCATION OF OUR BRANCH AT WHICH THIS ACCOUNT WAS OPENED. THIS ARBITRATION AGREEMENT IS MADE PURSUANT TO A TRANSACTION INVOLVING INTERSTATE COMMERCE AND SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. SECTIONS 1-16. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. IN THE ABSENCE OF THIS ARBITRATION AGREEMENT YOU AND WE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS, BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.

Account Information Statement

Effective Date: March 1, 2006

fully detailed in the Certificate of Deposit Disclosure, available at all BancorpSouth offices.

Minimum opening deposit \$1,000.00

Plus Package

The Plus Package is a package of benefits and savings which may be added to any BancorpSouth personal checking account. A fee of \$1.50 for individuals less than 60 years of age or \$3.00 for individuals 60 and over applies and will be deducted from your BancorpSouth personal checking account on a monthly basis. If you have previously enrolled the program and are being charged a fee of \$4.50 per month, please notify a BancorpSouth representative upon assuming the age of 60, and we will gladly adjust your monthly fee to the appropriate rate.

OTHER IMPORTANT INFORMATION

The Daily Balance Method of paying interest uses the daily balance in calculating the interest on your account. This method applies a daily periodic rate to the principal in the account each day. When you deposit checks into any account at BancorpSouth, interest begins to accrue no later than the business day we receive credit for the item.

The Daily Ledger Balance reflects all deposits and withdrawals regardless of actual collection of funds.

On interest bearing checking accounts, federal regulations allow the bank to create checking and savings sub-accounts which exist only in the books of the bank and which allow the bank to make transfers at the close of each working day. This puts the bank in a more favorable position concerning reserve requirements and ultimately allows us to maintain the most competitive rate we can pay on your interest bearing checking account. The activity of the sub-accounts will not be reflected on your bank statement and will not affect your account balance or the interest, fees and features of your interest bearing checking account.

Electronic debits such as Automated Teller Machine and MoneyMONEY™ debits along with failed transfers are not included in your debit item count for calculating service charges.

All fees and charges are subject to applicable law. If your account is made subject to garnishment, execution, levy or any similar legal process, or if your account is made subject to any legal proceeding in which the bank is required to respond, appear or provide records, we may charge you for each such proceeding, execution levy or proceeding a fee of \$25.00. This fee is in addition to any costs and expenses, including attorney's fees, in which we are entitled under your Account Terms and Conditions or applicable law.

overdraft into your account and charges the amount as an advance on your Equity Credit Line, up to the limit of your credit line.

An Overdraft Equity Credit Line fee will be charged to your checking account in accordance with the terms of your Equity Credit Line overdraft protection agreement. Ask your BancorpSouth customer service representative about Overdraft Protection. Also, ask a customer service representative for a copy of our brochure, "How to Avoid Paying Bank Fees."

MasterMoney™

BancorpSouth MasterMoney is the convenient plastic card that looks like a credit card but works like a check, deducting your purchases from your checking account. MasterMoney is good for cash purchases anywhere MasterCard™ is accepted. Plus, you get a receipt with every transaction so there is no problem keeping track of what you have spent. Monthly, all transactions are reported on your checking account statement along with any checks you have written. A MasterMoney card serves as your ATM card, so you only have one "checking account card" to carry with you.

NO CHARGE

There is a fee of \$1.50 per transaction when you use your MasterMoney card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a MasterMoney transaction made at its ATM.

There is a fee of one percent (1%) of the transaction amount if you use your MasterMoney card for a transaction in a foreign country. If your transaction in a foreign country is in a currency other than U.S. Dollars, the rate used for converting the transaction to U.S. Dollars will be the wholesale market rate or any government-manipulated rate in effect on the date that MasterCard processes the transaction or any other rate or method prescribed by the International MasterCard regulations. Currency conversion may occur on a date other than the date of the transaction, and the conversion rate may be affected accordingly.

24-Hour Banking

You may access your BancorpSouth checking account day and night at literally thousands of ATMs across the United States with our automated teller card. All BancorpSouth ATM locations you may make deposits as well as withdrawals, loan payments and transfers between accounts.

24-Hour Banking card fee

There is a fee of \$1.50 per transaction when you use your 24-Hour Banking card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a 24-Hour Banking card transaction made at its ATM.

Certificate of Deposit

BancorpSouth Certificates of Deposit offer competitive returns on investments that can be tailored to fit your exact needs. Early withdrawal penalties apply to all Certificates of Deposit and are

Wire Transfer Fees:

Outgoing \$15.00

Incoming \$12.00

Foreign \$20.00

Telephone Funds Transfer:

Announced via Infoline NO CHARGE

Assisted by branch personnel \$3.00

Overdraft Transfer Fee (per transfer) \$5.00

Overdraft Equity Credit Line Fee refer to your account statement agreement

Legal Deposit Box Drilling Fee \$40.00

Legal Processing (including levies and garnishments) \$25.00

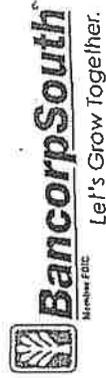
ACCOUNT OVERDRAFTS

An "overdraft" occurs any time a check or other transaction is presented for payment against an account and the available balance of the account is insufficient to pay the check or transaction. When an overdraft occurs, we may, at our discretion, return the check and refuse the transaction, or, alternatively, we may choose to pay the check or transaction, in which case a negative account balance will result. If we return the check and refuse the transaction, you will be charged an Insufficient Funds (NSF) item fee for each returned check and related transaction. If we pay the check or transaction, you will be charged an Overdraft (OD) item fee for each check or transaction paid in overdraft.

Determining whether to pay a check or other transaction in overdraft is solely discretionary with us. We are not required to pay any check or other transaction in overdraft, even if we have paid overdrafts many times previously and even if we have permitted an account to remain in an overdraft status for an extended period. Also, if more than one check or other transaction is presented for payment against your account on the same banking day and the available balance is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater Overdraft item or Insufficient Funds item fees than if we had chosen to pay them in some other order. We may also choose to first pay checks or other transactions which are payable to BancorpSouth and our affiliates.

You may avoid Overdraft item and Insufficient Funds item fees on checking accounts through Overdraft Protection, Credit Card Overdraft Protection or your BancorpSouth MasterCard or VISA credit card for each advance in the amounts of checks or other transactions drawn against insufficient funds, with resulting deposits of the cash advance amounts into your account to cover such checks or other transactions up to the credit limit of your credit card. Credit card fees, interest charges and cash advance charges will be assessed to your credit card account in accordance with the terms of your account cardholder agreement. You may also avoid Overdraft item and Insufficient Funds item fees on checking accounts by establishing a BancorpSouth Equity Credit Line, which is a line of credit. In the event of an overdraft, the bank transfers the amount of the

This is the account information statement brochure that will be used for all personal accounts except for - Heritage Checking Plus (All American Plus OD), and Premier Checking and Y.O.U. Checking (All American 40 and 50).



EXHIBIT



As of March 1, 2006
BRC004 - 03/06

Dear Customer:
 Thank you for choosing BancorpSouth. We are dedicated to providing world-class financial personal service to our customers and the communities we serve.
 This brochure is a disclosure of the fees and charges that apply to accounts at BancorpSouth. We think it is important for you to have a full understanding of these fees and charges.
 We welcome your questions in person or by phone. The answers are as close as your nearest BancorpSouth office or by using Internet. 1-888-797-7711, our 24-hour account information line. Bold text in the following indicates changes from the last edition of the brochure.

NON-INTEREST CHECKING ACCOUNTS
 The minimum deposit required to open any BancorpSouth non-interest bearing checking account is \$50.00.

Regular Checking
 An \$800.00 minimum daily ledger balance is in effect monthly service charge. When the minimum daily ledger balance falls below \$800.00 during a statement cycle, the monthly service charge will be \$5.00.

HomeSmart Free Checking
 The HomeSmart Free Checking account has no monthly maintenance fee, no per check charge and no minimum monthly balance. Combined with a savings account, free HomeSonic Internet Banking, e-mail statements, combined statements and other services, BancorpSouth Free Checking is a complete bundle of products positioned to help you start your relationship with BancorpSouth. HomeSmart Free Checking is also the personal checking only account with the free Bill Pay option.
 To receive Bill Pay, you must have a combination of either e-mail statement and debit card or direct deposit and debit card. A \$1.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in HomeSonic Internet Banking and then sign up for Bill Pay. It is not required that you have HomeSite or Bill Pay to receive BancorpSouth Free Checking.

Free Checking for Students
 Students have this account because there is no minimum balance requirement, no monthly service charge, and no per check charge... it's "Free" through age 24. No annual charge for your 24-hour banking card.
 *Accounts receive a monthly statement. Checks and deposit slips remain on file at the bank. Copies may be requested with no charge for the first five (5) items. In excess of five, per item copy charge is \$1.00.

INTEREST BEARING CHECKING ACCOUNTS
 Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum deposit required to open BancorpSouth interest

checking accounts varies by account type. See individual account descriptions for details.

Heritage Checking
 Heritage Checking is BancorpSouth's preferred services account for our friends who are 30 and over. Heritage Checking accounts earn interest at a competitive rate, which is determined solely by the Bank and is subject to change weekly. Interest is earned daily on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Heritage Checking account before the interest is credited, you will not receive the accrued interest for that period. In addition to earning interest, Heritage Checking accounts include common carrier accidental death insurance as well as discounts and special savings.

Minimum opening deposit \$100.00
 Monthly Service Charge with a minimum daily ledger balance of \$500.00 or more NONE
 Below \$500.00 \$8.00

Checking-Plus: Personal & Household Checking
 Personal and household checking accounts earn interest at a competitive interest rate, which is determined solely by the Bank and is subject to change weekly. Interest is earned on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Checking-Plus account before the interest is credited, you will not receive the accrued interest for that period.

Minimum opening deposit \$1,000.00
 Monthly Service Charge with a balance of \$1,000.00 or more NONE
 Below \$1,000.00 \$10.00
 Per item charges:
 First 40 checks or debits NONE
 In excess of 40 checks or debits \$.20 each
 First 20 items deposited NONE
 In excess of 20 items deposited \$.08 each

Premium Access Checking
 With Premium Access Checking, you earn a premium rate on your checking account deposit of \$5,000.00 or more; plus you can write all the checks you like without incurring a service charge. You may open an account with a minimum deposit of \$5,000.00 and earn interest each day your collected balance is \$5,000.00 or more. A competitive rate is determined solely by the Bank and is subject to change weekly. Interest is earned on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Premium Access Checking account before the interest is credited, you will receive the accrued interest for that period.

Premium Access Checking fee NONE
 If ledger balance does not fall below \$5,000.00
 Should your ledger balance fall below \$5,000.00, a minimum balance fee of \$10.00 is charged for that statement cycle.

SAVINGS ACCOUNTS
 Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum deposit required to open a BancorpSouth savings account varies by account type. See individual account descriptions for details.

Premium Access Money Market Account
 Premium Access Money Market Account is a fixed rate money market account. The interest rate there are as follows:
 Balances between \$2,500.00 and \$9,999.99
 Balances between \$10,000.00 and \$49,999.99
 Balances between \$50,000.00 and \$99,999.99
 Balances \$100,000.00 and above

Your account earns a competitive rate of interest (determined solely by the Bank and is subject to change weekly. Interest is accrued on the collected balance using the daily balance method. Should the daily collected balance fall below \$2,500.00, interest will not be paid. Interest is accrued on a daily basis and is credited and compounded monthly. If you close your Premium Access Money Market Account before the interest is credited, you will receive the interest through the date of closing. Minimum deposit required to open a Premium Access Money Market Account is \$1,000.00. A total of six withdrawals may be made each month, of which three may be by check or debit to third parties.

Monthly Service Charge with a minimum daily ledger balance of:
 \$1,000.00 or more NONE
 Below \$1,000.00 \$10.00
 Excessive Withdrawal Fee (per withdrawal) \$10.00
 Personal Money Market Investment Account
 Personal Money Market Investment Accounts earn interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is accrued on the collected balance using the daily balance method. Should the daily collected balance fall below \$1,000.00, the rate of interest will be the Checking-Plus rate. Interest is accrued on a daily basis and is credited and compounded monthly. If you close your Money Market Investment Account before the interest is credited, you will receive the interest through the date of closing. Minimum deposit required to open a Money Market Investment Account is \$1,000.00. A total of six withdrawals may be made each month, of which three may be by check or debit to third parties.

Monthly Service Charge with a minimum daily ledger balance of:
 \$1,000.00 or more NONE
 Below \$1,000.00 \$10.00
 Excessive Withdrawal Fee (per withdrawal) \$10.00
 * Classic Savings

A competitive interest rate is paid on the collected balance using the daily balance method. The rate of interest is determined solely by the Bank and is subject to change on a weekly basis. Interest is compounded daily and credited semi-annually. Deposits and withdrawals can be made at any time. If you close your account

prior to the interest being credited, you will receive interest through the closing date. Minimum deposit required to open a Classic Savings account is \$100.00. Only a \$25.00 opening deposit is required for children 13 and under to open a Savings Bug™ (Classic Savings) account. All other account details apply. Classic Savings Fees in which you may be subject:

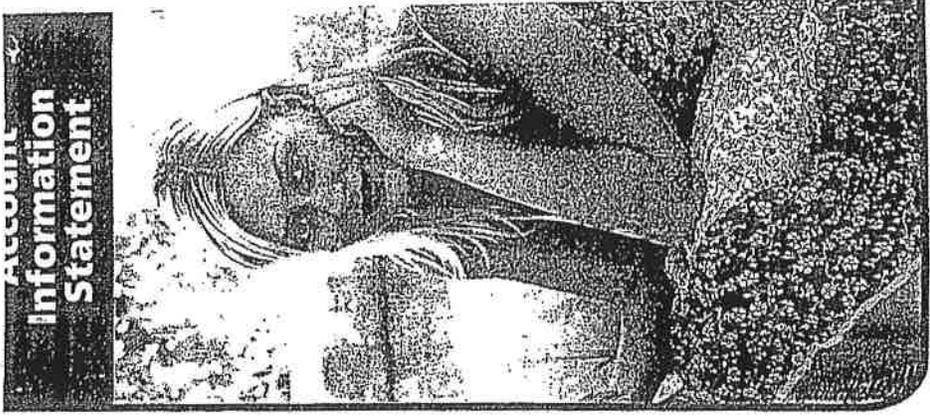
There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle, excluding ATEA withdrawals

Christmas Club
 Christmas Club accounts earn interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated on the daily ledger balance using the daily balance method. Interest is accrued daily and credited only in November when a check for the balance is issued to you. If you close your Christmas Club account before the interest is credited, you forfeit all accrued interest. If the principal balance of your Christmas Club account is \$2,500.00 or less on the day designated by the Bank for crediting interest to Christmas Club accounts, you forfeit all accrued interest. If you make a withdrawal from your Christmas Club account prior to the date in November when a check for the balance of the account is issued to you, you will be charged a fee of \$5.00 for each such withdrawal.

SERVICE FEES
 Check Printing Charges Charges will vary based on check design
 Official Checks \$6.00
 Each Overdraft (OD) Item \$30.00
 Each Insufficient (NSF) Funds Item \$30.00
 Each Stop Payment \$30.00
 Each Returned Deposit Item \$1.00
 Each Returned Check Reopened \$1.00
 Each Returned Check Special Handling \$6.00
 Each Deposit Correction \$3.00
 Special Statement \$3.00
 Debit Card Replacement Fee \$5.00
 Research Fees \$5.00

Research Per Hour \$20.00
 Photocopies (each) \$1.00
 Collection Item Fee \$2.00 per item plus \$.20 per \$100.00 with a \$20.00 maximum
 Dormant Checking Account Charges
 An \$8.50 per month fee will be charged on dormant checking accounts in addition to regular applicable fees. *Dormant Accounts* are defined by applicable law.
 Dormant Savings Account Charges
 A savings account with a balance below \$100 will be charged an \$8.50 monthly fee. If dormant in excess of 730 days, \$25.00 Account Closure Fee
 for checking accounts closed within 90 days of opening.

Continued on Back



ACCOUNT INFORMATION STATEMENT

BancorpSouth
MEMBER FDIC
www.bancorpsouth.com

EXHIBIT
7

HUSEBYAN
Workforce Litigation Support
800.555.2052 • www.husebyan.com

Certificate of Deposit
BancorpSouth Certificates of Deposit offer competitive returns on investments that can be tailored to fit your exact needs. Early withdrawal penalties apply to all Certificates of Deposit and are fully detailed in the Certificate of Deposit Disclosure available at all BancorpSouth offices.

Minimum opening deposit \$1,000.00
This Package
The Plus Package is a package of benefits and savings which may be added to any BancorpSouth personal checking account. A fee of \$4.50 for individuals less than 60 years of age or \$3.50 for individuals 60 and over applies and will be deducted from your BancorpSouth personal checking account on a monthly basis. If you have previously enrolled in the program and are being charged a fee of \$4.50 per month, please notify a BancorpSouth representative upon attaining the age of 60, and we will gladly adjust your monthly fee to the appropriate rate.

OTHER IMPORTANT INFORMATION

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Electronic debits such as Automated Teller Machine and MasterCard[®] debits along with fund line transfers are not included in your debit item count for calculating service charges. All fees and charges are subject to applicable law.

If your account is made subject to garnishment, execution, levy or any similar legal process or if your account is made subject to any legal proceeding in which the bank is required to respond, appear or provide records, we may charge you for each such garnishment, execution, levy or proceeding a fee of up to \$125.00. This fee is in addition to any cost and expenses, including reasonable attorney's fees, which we incur in connection with any of the foregoing.

As of September 1, 2006
BRC-004

transaction so there is no problem keeping track of what you have spent. Monthly all transactions are reported on your checking account statement along with any checks you have written. A MasterCard card serves as your ATM card, so you only have one "checking account card" to carry with you.

MasterMoney[™] fee NO CHARGE
There is a fee of \$1.50 per transaction when you use your MasterMoney card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a MasterMoney transaction made at its ATM.

There is a fee of one percent (1%) of the transaction amount if you use your MasterMoney card for a transaction in a foreign country. If your transaction in a foreign country is in a currency other than U.S. Dollars, the rate used for converting the transaction to U.S. Dollars will be the wholesale market rate or any government-authorized rate in effect on the date that MasterCard processes the transaction or any other rate or method prescribed by the then-current MasterCard regulations. Currency conversion may occur on a date other than the date of the transaction, and the conversion rate may be affected accordingly.

Internet Banking and Bill Pay

HomeSite Internet Banking is free with any personal BancorpSouth Checking or Money Market account. HomeSite Internet Banking allows you to access balance inquiries, view your statement information and your current checks (even if your statement doesn't have check images), transfer between accounts, and make payments on your BancorpSouth line of credit or loan. Free Bill Pay is also available with any personal BancorpSouth checking account when you sign up for HomeSite Internet Banking. If you have a combination of either E-mail Statement and Debit Card, or Direct Deposit and Debit Card, a \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in HomeSite Internet Banking, and then sign up for Bill Pay through HomeSite Internet Banking. (The free Bill Pay option listed above is standard for all customers who register for Bill Pay after August 21, 2006. If you currently have Bill Pay and would like to change your billing method, please ask your local customer service representative or call our toll-free line at 1-888-397-7711).

24-Hour Banking

You may access your BancorpSouth checking account day and night at literally thousands of ATMs across the United States with our automated teller card. At BancorpSouth ATM locations you may make deposits as well as withdrawals, loan payments and transfers between accounts. 24-Hour Banking card fee \$1.00 per month
There is a fee of \$1.50 per transaction when you use your 24-Hour Banking card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a 24-Hour Banking card transaction made at its ATM.

ABOUT OVERDRAFTS
An "overdraft" occurs any time a check or other transaction is presented for payment against an account and the available balance of the account is insufficient to pay the check or transaction. When an overdraft occurs, we may, at our discretion, return the check and refuse the transaction, or, alternatively, we may choose to pay the check or transaction, in which case a negative account balance will result. If we return the check and refuse the transaction, you will be charged an Insufficient Funds (NSF) item fee for each returned check and refused transaction. If we pay the check or transaction, you will be charged an Overdraft (OD) item fee for each check or transaction paid in overdraft.

Determining whether to pay a check or other transaction in overdraft is strictly discretionary with us. We are not required to pay any check or other transaction in overdraft, even if we have paid overdrafts many times previously and even if we have permitted an account to remain in an overdraft status for an extended period. Also, if more than one check or other transaction is presented for payment against your account on the same banking day and the available balance is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater Overdraft Item or Insufficient Funds Item fees than if we had chosen to pay them in some other order. We may also choose to first pay checks or other transactions which are payable to BancorpSouth and our affiliates.

You may avoid Overdraft Item and Insufficient Funds Item fees on checking accounts through Overdraft Protection. Credit Card Overdraft Protection works by charging your BancorpSouth MasterCard or VISA credit card for cash advances in the amounts of checks or other transactions drawn against insufficient funds, with resulting deposits of other transactions, up to the credit limit of your credit card. An Overdraft Protection credit card transfer fee of 3% of the transfer amount, minimum \$5.00 and maximum \$30.00, will be charged for each transfer. Credit card fees, interest charges and cash advance charges will be assessed to your credit card account in accordance with your credit card terms and conditions. You may also avoid Overdraft Item and Insufficient Funds Item fees on checking accounts by establishing a BancorpSouth Equity Credit Line, which is a line of credit. In the event of an overdraft, the bank transfers the amount of the overdraft into your account and charges the amount as an advance on your Equity Credit Line, up to the limit of your credit line. An Overdraft Protection Equity Credit Line transfer fee of \$5.00 will be charged for each transfer amount unless secured by Real Estate, Equity Credit Line Overdraft Protection may not be available in Texas. Standard interest charges apply to all transfers from the date posted to your account. Ask your BancorpSouth customer service representative about Overdraft Protection. Also, ask a customer service representative for a copy of our brochure, "How to Avoid Paying Bank Fees."

MasterMoney[™]
BancorpSouth MasterMoney is the convenient plastic card that looks like a credit card but works like a check, deducting your purchases from your checking account. MasterMoney is good for cash purchases anywhere MasterCard[®] is accepted. Plus, you get a receipt with every

the daily balance method and is credited and compounded monthly. If you close your Heritage Checking account before the interest is credited, you will not receive the accrued interest for that period. In addition to earning interest, Heritage Checking accounts include common carrier accidental death insurance as well as discounts and special savings. Minimum opening deposit: \$100.00 Monthly Service Charge with a minimum daily ledger balance of \$500.00 or more: NONE \$8.00 Below \$500.00: NONE \$8.00

Interest Plus Checking
The Interest Plus Checking account is a tiered rate checking account. The interest rate tiers are as follows:

- Balances between \$0-\$4,999
- Balances between \$5,000-\$9,999
- Balances between \$10,000-\$24,999
- Balances between \$25,000-\$49,999
- Balances between \$50,000-\$99,999
- Balances between \$100,000 and above

Your account has unlimited transactions at no extra cost and earns interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time, and is not available for early withdrawal. Minimum opening deposit: \$1,000.00 Monthly service charge with a balance of: NONE \$10.00 Below \$1,000.00: NONE \$10.00 Monthly statements are itemized and include imaged checks.

SAVINGS ACCOUNTS
Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum deposit required to open a BancorpSouth savings account varies by account type. See individual account descriptions for details.

Money Market Select
The Money Market Select account is a tiered rate money market account. The interest rate tiers are as follows:

- Balances between \$0-\$9,999
- Balances between \$10,000-\$24,999
- Balances between \$25,000-\$49,999
- Balances between \$50,000-\$99,999
- Balances between \$100,000-\$149,999
- Balances between \$150,000-\$499,999
- Balances between \$500,000 and above

The Money Market Select account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals. Minimum opening deposit: \$1,000.00 Minimum balance: \$10,000.00

Monthly service charge with a balance of: \$10,000.00 or more: NONE Below \$10,000.00: \$10.00 There will be a \$10.00 charge for each withdrawal in excess of six per month, excluding ATM withdrawals and over-the-counter transactions. Monthly statements are itemized and include imaged checks. A BancorpSouth Checking account is required to open this account.

Personal Money Market
The Personal Money Market account is a tiered rate money market account. The interest rate tiers are as follows:

- Balances between \$0-\$4,999
- Balances between \$5,000 and above

The Personal Money Market account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals. Minimum opening deposit: \$1,000.00 Monthly service charge with a balance of: NONE \$1,000.00 or more: NONE Below \$1,000.00: NONE There will be a \$10.00 charge for each withdrawal in excess of six per month, excluding ATM withdrawals and over-the-counter transactions. Monthly statements are itemized and include imaged checks.

Select Savings Account
The Select Savings account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on semiannual compounding, and credited semiannually at statement time (June 25 and December 25). Additional "Amenity" statements will be produced if the account has an EFT transaction during the month. This is a snapshot statement and will reflect all activity since the last scheduled semiannual statement. Interest will be paid at the scheduled (semiannual) date. Accrued interest is available for early closing withdrawals. Minimum opening deposit: \$1,000.00 Monthly service charge with a balance of: \$1,000.00 or more: NONE Below \$1,000.00: \$15.00 There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle, excluding ATM withdrawals or over-the-counter transactions. Additional deposits can be made at any time. A BancorpSouth Checking account is required to open this account. This account is not available for business.

Christmas Club
Christmas Club accounts earn interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated on the daily ledger balance using the daily balance method. Interest is accrued daily and credited yearly in November when a check for the

Dear Customer:
Thank you for choosing BancorpSouth. We are dedicated to providing world-class financial personal service to our customers and the communities we serve. This brochure is a disclosure of the fees and charges that apply to accounts at BancorpSouth. We think it is important for you to have a full understanding of these fees and charges. We welcome your questions in person or by phone. The answers are as close as your nearest BancorpSouth office or by using InfoLine, 1-888-797-7711, our 24-hour account information line. Hold text in the following indicates changes from the last edition of the brochure.

NON-INTEREST CHECKING ACCOUNTS
The minimum deposit required to open any BancorpSouth non-interest bearing checking account is \$30.00.

Regular Checking
An \$800.00 minimum daily ledger balance avoids any monthly service charge. When the minimum daily ledger balance falls below \$800.00 during a statement cycle, the monthly service charge will be \$8.50.

BancSmart Free Checking
The BancSmart Free Checking account has no monthly maintenance fee, no per check charge, and no minimum monthly balance. Combined with a savings account, free HomeSite Internet Banking, e-mail statements, combined statements and other services, BancSmart Free Checking is a complete bundle of products positioned to help you start your relationship with BancorpSouth. To receive Bill Pay free of charge, you must have a combination of either e-mail statement and debit card or direct deposit and debit card. A \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in HomeSite Internet Banking and then sign up for Bill Pay. It is not required that you have HomeSite or Bill Pay to receive BancSmart Free Checking.

Free Checking for Students*
Students love this account because there is no minimum balance requirement, no monthly service charge, and no per check charge...it's "Free" through age 24. No annual charge for your 24-hour banking card. *Accounts receive a monthly statement. Checks and deposit slips remain on file at the bank. Copies may be requested with no charge for the first five (5) items. In excess of five, per item copy charge is \$1.00.

INTEREST BEARING CHECKING ACCOUNTS
Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum deposit required to open BancorpSouth interest checking accounts varies by account type. See individual account descriptions for details.

Heritage Checking
Heritage Checking is BancorpSouth's preferred services account for our friends who are 50 and over. Heritage Checking accounts earn interest at a competitive rate, which is determined solely by the Bank and is subject to change weekly. Interest is earned daily on the collected balance using

balance is issued to you. If you close your Christmas Club account before the interest is credited, you forfeit all accrued interest. If the principal balance of your Christmas Club account is \$250.00 or less on the day designated by the Bank for crediting interest to Christmas Club accounts, you forfeit all accrued interest. If you make a withdrawal from your Christmas Club account prior to the date in November when a check for the balance of the account is issued to you, you will be charged a fee of \$5.00 for each such withdrawal.

SERVICE FEES
Check Printing Charges: Charges will vary based on check design \$6.00 Official Checks: \$30.00 Each Overdraft (OD) Item: \$30.00 Each Insufficient (NSF) Funds Item: \$30.00 Each Stop Payment: \$30.00 Each Returned Deposit Item: \$4.00 Each Returned Check Rejected: \$6.00 Each Returned Check Special Handling: \$3.00 Each Deposit Correction: \$5.00 Special Statement: \$5.00 Debit Card Replacement Fee: \$5.00 Research Fees: \$70.00 Photocopies (each): \$1.00 Collection Item Fee: \$21.00 per item plus \$.20 per \$100.00 with a \$20.00 maximum

Dormant Checking Account Charges
An \$8.50 per month fee will be charged on dormant checking accounts in addition to regular applicable fees. *Dormant Accounts* are defined by applicable law.

Dormant Savings Account Changes
A savings account with a balance below \$100 will be charged an \$8.50 monthly fee if dormant in excess of 730 days. Account Closure Fee: \$25.00 (for checking accounts closed within 90 days of opening.) Wire Transfer Fees: Incoming: \$15.00 Foreign: \$12.00 Outgoing: \$30.00 Telephone Funds Transfers: NO CHARGE Authorized via InfoLine: \$3.00 Assisted by branch personnel: \$3.00 Overdraft Protection Equity Credit Line Transfer Fee (Unless secured by Real Estate): \$5.00 Overdraft Protection Credit Card Transfer Fee: \$5.00 Sale Deposit Box Drilling Fee: \$40.00 Legal Processing (including leaves and garnishments): Up to \$125.00 (see other Important Information Section)

Continued on Back

Account Information Statement

Effective Date: February 1, 2007

penalties apply to all Certificates of Deposit and are fully detailed in the Certificate of Deposit Disclosure available at all BancorpSouth offices.

Minimum opening deposit \$1,000.00

Plus Package
The Plus Package is a package of benefits and savings which may be added to any BancorpSouth personal checking account. A fee of \$4.50 for individuals less than 60 years of age or \$3.50 for individuals 60 and better applies and will be deducted from your BancorpSouth personal checking account on a monthly basis. If you have previously enrolled in the program and are being charged a fee of \$4.50 per month, please notify a BancorpSouth representative upon attaining the age of 60 and we will gladly adjust your monthly fee to the appropriate rate.

OTHER IMPORTANT INFORMATION

The Daily Balance Method of paying interest uses the daily balance in calculating the interest on your account. This method applies a daily periodic rate to the principal in the account each day. When you deposit checks into any account at BancorpSouth, interest begins to accrue no later than the business day we receive credit for the item.

The Daily Ledger Balance reflects all deposits and withdrawals regardless of actual collection of funds.

On checking accounts, federal regulations allow the bank to create transaction and savings sub-accounts which exist only on the books of the bank and which allow the bank to make transfers at the close of each working day. This puts the bank in a more favorable position concerning reserve requirements and ultimately allows us to maintain the most competitive pricing on your checking account. The activity of the sub-accounts will not be reflected on your bank statement and will not affect your account balance or the interest fees and features of your checking account.

Electronic debits such as Automated Teller Machine and MasterCard® debits along with InfoLine transfers are not included in your debit item count for calculating service charges.

All fees and charges are subject to applicable law. If your account is made subject to garnishment, execution, levy or any similar legal process, or if your account is made subject to any legal proceeding in which the Bank is required to respond, appear or provide records, we may charge you for each such garnishment, execution, levy or proceeding a fee of up to \$125.00. This fee is in addition to any cost and expenses, including reasonable attorney's fees, which we incur in connection with any of the foregoing.

Transactions are reported on your checking account statement along with any checks you have written. A MasterCard® card services as your ATM card, so you only have one "checking account card" to carry with you. AbsorbMoney fee: NO CHARGE

There is a fee of \$1.50 per transaction when you use your AbsorbMoney card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge you account a fee for a MasterCard® transaction made at its ATM.

There is a fee of one percent (1%) of the transaction amount if you use your MasterCard® card for a transaction in a foreign country. If your transaction in a foreign country is in a currency other than U.S. Dollars, the rate used for converting the transaction to U.S. Dollars will be the wholesale market rate or any government-mandated rate in effect on the date that MasterCard processes the transaction or any other rate or method prescribed by the MasterCard network. Currency conversion may occur on a date other than the date of the transaction, and the conversion rate may be affected accordingly.

Internet Banking and Bill Pay

HomeSite Internet Banking is free with any personal BancorpSouth Checking or Money Market account. HomeSite Internet Banking allows you to access balance inquiries, view your statement information and your canceled checks (even if your statement doesn't have check images), transfer between accounts, and make payments from your BancorpSouth line of credit or loan.

Free Bill Pay is also available with any personal BancorpSouth checking account when you sign up for HomeSite Internet Banking. If you have a combination of either E-mail statement and debit card or direct deposit and debit card, a \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in HomeSite Internet Banking, and then sign up for Bill Pay through HomeSite Internet Banking. (The Free Bill Pay option listed above is standard for all customers who register for Bill Pay after August 21, 2006. If you currently have Bill Pay and would like to change your billing method, please ask your local customer service representative or call our InfoLine at 1-888-797-7711.)

24-Hour Banking

You may access your BancorpSouth checking account day and night at literally thousands of ATMs across the United States with our automated teller card. At BancorpSouth ATM locations you may make deposits as well as withdrawals, loan payments and transfers between accounts. 24-Hour Banking card fee: \$1.00 per month
There is a fee of \$1.50 per transaction when you use your 24-Hour Banking card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a 24-Hour Banking card transaction made at its ATM.

Certificate of Deposit

BancorpSouth Certificates of Deposit offer competitive returns on investments that can be tailored to fit your exact needs. Early withdrawal

ABOUT OVERDRAFTS

An "overdraft" occurs any time a check or other transaction is presented for payment against an account and the available balance of the account is insufficient to pay the check or transaction. When an overdraft occurs, we may, at our discretion, return the check and refuse the transaction, or, alternatively, we may choose to pay the check or transaction, in which case a negative account balance will result. If we return the check and refuse the transaction, you will be charged an Insufficient Funds (NSF) item fee for each returned check and refused transaction. If we pay the check or transaction, you will be charged an Overdraft (OD) item fee for each check or transaction paid in overdraft.

Determining whether to pay a check or other transaction in overdraft is strictly discretionary with us. We are not required to pay any check or other transaction in overdraft, even if we have paid overdrafts many times previously and even if we have permitted an account to remain in an overdraft status for an extended period. Also, if more than one check or other transaction is presented for payment against your account on the same banking day and the available balance is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater overdraft item or insufficient funds item fees than if we had chosen to pay them in some other order. We may also choose to first pay checks or other transactions which are payable to BancorpSouth and our affiliates.

You may avoid overdraft item and insufficient funds item fees on checking accounts through Overdraft Protection. Credit Card Overdraft Protection works by charging your BancorpSouth MasterCard or VISA credit card for each advance in the amount of checks or other transactions drawn against insufficient funds, with resulting deposits of the cash advance amounts into your account to cover such checks or other transactions, up to the credit limit of your credit card. An Overdraft Protection credit card transfer fee of 3% of the transfer amount, minimum \$5.00 and maximum \$30.00, will be charged for each transfer. Credit card fees, interest charges and cash advance charges will be assessed to your credit card account in accordance with your credit card terms and conditions. You may also avoid overdraft item and insufficient funds item fees on checking accounts by establishing a BancorpSouth Equity Credit Line, which is a line of credit. In the event of an overdraft, the bank transfers the amount of the overdraft into your account and charges the amount as an advance on your Equity Credit Line, up to the limit of your credit line. An Overdraft Protection Equity Credit Line transfer fee of \$5.00 will be charged for each transfer amount unless secured by Real Estate. Equity Credit Line Overdraft Protection may not be available in Texas. Standard interest charges apply to all transfers from the date posted to your account. Ask your BancorpSouth customer service representative about Overdraft Protection. Also, ask a customer service representative for a copy of our brochure "How to Avoid Paying Bank Fees."

MasterMoney™ is the convenient plastic card that looks like a credit card but works like a check, deducting your purchases from your checking account. MasterMoney is good for cash purchases anywhere MasterCard® is accepted. Plus, you get a receipt with every transaction so there is no problem keeping track of what you have spent. Monthly, all

EXHIBIT

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As of February 1, 2007

BR0004T - 11/06

Dear Customer:
Thank you for choosing BancorpSouth. We are dedicated to providing world-class financial personal service to our customers and the communities we serve.

This brochure is a disclosure of the fees and charges that apply to accounts at BancorpSouth. We think it is important for you to have a full understanding of these fees and charges.

We welcome your questions in person or by phone. The answers are as close as your nearest BancorpSouth office or by using InfoLine, 1-888-797-7711, our 24-hour account information line.

Bold text in the following indicates changes from the last edition of the brochure.

NON-INTEREST CHECKING ACCOUNTS

The minimum deposit required to open any BancorpSouth non-interest bearing checking account is \$50.00.

Regular Checking

An \$800.00 minimum daily budget balance avoids any monthly service charge. When the minimum daily budget balance falls below \$800.00 during a statement cycle, the monthly service charge will be \$3.50.

BancSmart Free Checking

The BancSmart Free Checking account has no monthly maintenance fee, no per check charge, and no minimum monthly balance. Combined with a savings account, free HomeSite Internet Banking, e-mail statements, combined statements, and other services, BancSmart Free Checking is a complete bundle of products positioned to help you start your relationship with BancorpSouth. To receive Bill Pay free of charge, you must have a combination of either e-mail statements and debit card or direct deposit and debit card. A \$1.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in HomeSite Internet Banking and then sign up for Bill Pay. It is not required that you have HomeSite or Bill Pay to receive BancSmart Free Checking.

Free Checking for Students*

Students love this account because there is no minimum balance requirement, no monthly service charge, and no per check charge... it's "Free" through age 21. No annual charge for your 24-hour banking card. *Accounts receive a monthly statement. Check images remain on file at the bank. Copies may be requested with no charge for the first five (5) items. In excess of five, per item copy charge is \$1.00.

INTEREST BEARING CHECKING ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum deposit required to open BancorpSouth interest checking accounts varies by account type. See individual account descriptions for details.

Heritage Checking

Heritage Checking is BancorpSouth's preferred services account for our friends who are 50 and over. Heritage Checking accounts earn interest at a competitive rate, which is determined solely by the Bank and is subject to change weekly. Interest is earned daily on the collected balance using the daily balance method and is credited and compounded monthly. If

you close your Heritage Checking account before the interest is credited, you will not receive the accrued interest for that period. In addition to certain interest, Heritage Checking accounts include common carrier accidental death insurance as well as discounts and special savings.

Minimum opening deposit.....\$100.00
Monthly Service Charge with a minimum daily ledger balance of:
\$50.00 or more.....NONE
Below \$50.00.....\$3.00

Interest Plus Checking

The Interest Plus Checking account is a tiered-rate checking account. The interest rate tiers are as follows:

Balances between \$0-\$4,999
Balances between \$5,000-\$9,999
Balances between \$10,000-\$24,999
Balances between \$25,000-\$49,999
Balances between \$50,000-\$99,999
Balances \$100,000 and above

Your account has unlimited transactions at an extra cost and earns interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time, and is not available for early withdrawal.

Minimum opening deposit.....\$1,000.00
Monthly service charge with a balance of:
\$1,000.00 or more.....NONE
Below \$1,000.00.....\$10.00

SAVINGS ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. The minimum deposit required to open a BancorpSouth savings account varies by account type. See individual account descriptions for details.

Money Market Select

The Money Market Select account is a tiered-rate money market account. The interest rate tiers are as follows:

Balances between \$0-\$9,999
Balances between \$10,000-\$24,999
Balances between \$25,000-\$49,999
Balances between \$50,000-\$99,999
Balances \$100,000 and above

The Money Market Select account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for clearing withdrawals.

Minimum opening deposit.....\$1,000.00
Minimum balance.....\$10,000.00
Monthly service charge with a balance of:
\$10,000.00 or more.....NONE
Below \$10,000.00.....\$10.00

There will be a \$10.00 charge for each withdrawal in excess of six per month, excluding ATM withdrawals and over-the-counter transactions. Monthly statements are limited and include imaged checks. A BancorpSouth Checking account is required to open this account.

Personal Money Market
The Personal Money Market account is a tiered rate money market account. The interest rate tiers are as follows:

Balances between \$1-\$2,499
Balances between \$2,500-\$4,999
Balances \$5,000 and above

The Personal Money Market account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for clearing withdrawals.

Minimum opening deposit.....\$1,000.00
Monthly service charge with a balance of:
\$1,000.00 or more.....NONE
Below \$1,000.00.....\$10.00

There will be a \$10.00 charge for each withdrawal in excess of six per month, excluding ATM withdrawals and over-the-counter transactions. Monthly statements are limited and include imaged checks.

Classic Savings

A competitive interest rate is paid on the collected balance using the daily balance method. The rate of interest is determined solely by the Bank and is subject to change on a weekly basis. Interest is compounded daily and credited semiannually. Deposits and withdrawals can be made at any time. If you close your account prior to the interest being credited, you will receive interest through the closing date. Minimum deposit required to open a Classic Savings account is \$100.00. Only a \$25.00 opening deposit is required for children 15 and under to open a "Savings Bug" (Classic Savings) account. All other account details apply.

Select Savings Account
The Select Savings account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on semiannual compound and credited semiannually. Accrued interest is available for early closing withdrawals. A BancorpSouth checking account is required to open this account. This account is not available for businesses.

Minimum opening deposit.....\$1,000.00
Semiannual service charge with a balance of:
\$1,000.00 or more.....NONE
Below \$1,000.00.....\$15.00

Additional information and fees for Classic and Select Savings Accounts:

Additional "Memo" statements will be produced if the account has an EFT transaction during the month. This is a snapshot statement and will reflect all activity since the last scheduled semiannual statement. There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle, excluding ATM withdrawals or over-the-counter transactions. Additional deposits can be made at any time.

Christmas Club
Christmas Club accounts earn interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated on the daily ledger balance using the daily balance method. Interest is accrued daily and credited yearly in November when a check for the balance is issued to you. If you close your Christmas Club account before the interest is credited, you forfeit all accrued interest. If the principal balance of your Christmas Club account is \$250.00 or less on the day designated by the Bank for crediting interest to Christmas Club accounts, you forfeit all accrued interest. If you make a withdrawal from your Christmas Club account prior to the date in November when a check for the balance of the account is issued to you, you will be charged a fee of \$5.00 for each such withdrawal.

SERVICE FEES

Check Printing Charges.....Charges will vary based on check design
Official Checks.....\$6.00
Each Overdraft (OD) Item.....\$2.00
Each Insufficient (NSF) Funds Item.....\$2.00
Each Stop Payment.....\$2.00
Each Returned Deposit Item.....\$5.00
Each Returned Check, Re-deposited.....\$3.00
Each Returned Check Special Handling.....\$7.50
Each Deposit Correction.....\$3.00
Special Statement.....\$7.50
Debit Card Replacement Fee.....\$5.00
Research Per Hour.....\$20.00
Photocopies (each).....\$1.00
Collection Item Fee.....\$2.00 per item plus \$.20 per \$100.00 with a \$200.00 maximum

Domestic Checking Account Charges
An \$8.50 per month fee will be charged on domestic checking accounts in addition to regular applicable fees. *Domestic Accounts are defined by applicable law.
Domestic Savings Account Charges
A savings account with a balance below \$100 will be charged an \$8.50 monthly fee if dormant in excess of 730 days.

Account Closure Fee.....\$25.00
(for checking accounts closed within 90 days of opening.)
Wire Transfer Fees:
Outgoing.....\$15.00
Incoming.....\$12.00
Foreign.....\$30.00

Telephone Funds Transfers
Automated via InfoLine.....NO CHARGE
Assisted by branch personnel.....\$3.00
Overdraft Protection Empty Credit Line Transfer Fee (Unless secured by Real Estate).....\$3.00

Overdraft Protection Credit Card Transfer Fee.....\$3.00
Overdraft Protection during the month. This is a snapshot statement and will reflect all activity since the last scheduled semiannual statement.
Safe Deposit Box Drilling Fee.....\$90.00
Legal Processing (including levies and garnishments).....Up to \$125.00 (see other Important Information Section)

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**Deposit Account
Terms and Conditions**

Effective January 31, 2009

EXHIBIT

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HUSEBY
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800-333-2002 • www.huseby.com



Thank you for banking with BancorpSouth.

From time to time, we update the Terms and Conditions which govern your BancorpSouth deposit accounts. Below are new Terms and Conditions which will become effective on January 31, 2009. These new Terms and Conditions replace the Terms and Conditions documents you have received previously. These new Terms and Conditions cover the use of all types of depository accounts you have with us, both consumer and commercial, except for Time Deposit and Individual Retirement Accounts. These new Terms and Conditions do not change the structure of any of your accounts or change any fees applicable to your accounts.

If you have any questions about these new Terms and Conditions, please call your local BancorpSouth office or our InfoLine at 888-797-7711.

YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS EFFECTIVE JANUARY 31, 2009

EFFECTIVE JANUARY 31, 2009, THE FOLLOWING TERMS AND CONDITIONS WILL SUPERSEDE AND REPLACE THE TERMS AND CONDITIONS WHICH HAVE PREVIOUSLY GOVERNED YOUR DEPOSIT ACCOUNTS (OTHER THAN TIME DEPOSIT AND INDIVIDUAL RETIREMENT ACCOUNTS) AT BANCORPSOUTH. YOUR USE OF ANY ACCOUNT IN ANY WAY ON OR AFTER JANUARY 31, 2009, CONSTITUTES YOUR ACCEPTANCE OF AND AGREEMENT TO THE FOLLOWING NEW TERMS AND CONDITIONS.

AGREEMENT - These terms and conditions (this "Agreement") govern your deposit relationships with us unless varied or supplemented in writing by amendment as provided herein. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so that the singular includes the plural and the plural includes the singular. As used in this Agreement, the "account" means each deposit account you maintain with us other than Time Deposit (Certificate of Deposit) accounts and Individual Retirement Accounts; "we," "our," or "us" mean BancorpSouth Bank; "you" or "your" mean the owner(s) of the account; and "signature page" means the page(s) containing the signatures of the owner(s) of the account. This Agreement applies separately to each account. The account may not be transferred, pledged or assigned without our written consent, and we reserve the right to withhold such consent for any reason.

Our relationship with our deposit customers is regulated by state and federal law, especially the law relating to negotiable instruments, the law regulating the methods of transferring property upon death and the rights of surviving spouses and dependents, the law pertaining to estate and other succession taxes, the law regarding electronic funds transfer, and the law regarding the availability of deposited funds. This body of law is too large and complex to be reproduced here. The purpose of this Agreement is to:

- (1) summarize the rules applicable to the more common transactions;
- (2) establish rules to govern transactions or circumstances which the law does not regulate; and
- (3) establish rules for certain events or transactions which the law already regulates but permits variation by agreement.

LIABILITY - Each of you agrees, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms and conditions set forth in this Agreement and the schedule of charges that may be imposed. You authorize us to deduct these charges as accrued directly from the account balance. You also agree to pay additional reasonable charges we may impose for services you request which are not contemplated by this Agreement. Each of you also agrees to be jointly and severally (solidarily) liable for any account deficit resulting from charges or overdrafts, whether caused by you or another authorized to withdraw from the account, and the costs we incur to collect the deficit including our reasonable attorneys' fees.

DEPOSITS - Any items, other than cash, accepted for deposit (including items drawn "on us") will be given provisional credit only until collection is final (and actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars). Applicable law may require us to make your deposits available for withdrawal before payment becomes final or before the expiration of other banks' deadlines to return your deposited items to us for refund. You agree that our making all or any part of a deposit available to you for withdrawal is not a waiver of our right to charge back to the account any deposited item which is returned to us unpaid or for refund; instead, we may charge back to the account, and you will be responsible for, all such items. Subject to any other limitations, interest will be paid only on collected funds, unless otherwise provided by law. All transactions received after our daily cut-off time on a business day are open to "banking day", or received on a day in which we are not open for business, will be treated and recorded as if initiated on the next following banking day. Our daily cut-off time varies from location to location and is posted at each of our locations.

WITHDRAWALS - Any one of you who signs the signature page, including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us. However, we reserve the right to limit the amount of any withdrawal in cash where, for example, currency in the amount of the withdrawal is not available at our branch or your withdrawal exceeds the amount we allow via automatic teller machine or if the cash supply of the automatic teller machine is depleted. Each of you authorizes each other person signing the signature page to endorse any item payable to you or your order for deposit to the account or any other transaction with us. You agree that our right to charge a check against the account does not depend on the date of the check. Therefore, we may charge a check against the account

before the date of the check or at any time thereafter, provided, however, that we may, but are not required to, refuse to pay a check which appears on its face to be more than six months old. In any event, we will not be liable to you for charging against the account a check before its date or after it is more than six months old. The fact that we may honor withdrawal requests which overdraw the finally collected account balance does not obligate us to do so. Withdrawals will first be made from collected funds, and we may, unless prohibited by law, refuse any withdrawal request against uncollected funds, even if our general practice is to the contrary. We reserve the right to refuse any withdrawal or transfer request which is attempted by any method not specifically permitted, which is for an amount less than any minimum withdrawal requirement, or which exceeds any frequency limitation. Even if we honor a non-conforming request, we may close the account in the event of repeated abuse of the stated limitations. We will use the date a transaction is completed by us (as opposed to the day you initiate it) to apply the frequency limitations. On interest bearing accounts other than time deposits, we reserve the right to require at least seven days' written notice before any withdrawal or transfer.

ACH, WIRE AND FUNDS TRANSFERS - We may decline to process any wire or funds transfer which is not subject to Regulation E or the Electronic Funds Transfer Act until you enter into a separate Funds Transfer Agreement with us. If we process any wire or funds transfer for you before you enter into a separate Funds Transfer Agreement, with respect to each such transfer you will be bound by the terms of this section. You agree to be bound by all rules and regulations governing any system through which any transfer occurs, including, but not limited to, any ACH rules, NACHA rules and the rules and regulations pertaining to Fedwire, the electronic transfer system of the Federal Reserve Banks. We may make wire or funds transfers by any means available to us, including, but not limited to, through our correspondent banks or by internal book entry. We have no obligation to notify you of incoming wire or funds transfers. Any credit for incoming wire or funds transfers is provisional until we have received final payment. If we do not receive final payment, we may reverse the credit. We may permit any of you or any authorized signer to order wire or other funds transfers from the account by telephone, in person, by written instruction, or by any other means acceptable to us, subject to any time deadlines or other conditions or procedures which we may establish. Wire and funds transfers are made only through the use of identifying numbers for the recipient bank and account, without regard to any names which may be furnished for any recipient bank or account. You must furnish the correct identifying numbers to us in connection with each wire or funds transfer. Funds will be wired or transferred in accordance with the identifying numbers you furnish us (or the identifying numbers which you use, if you are originating an ACH transaction), even if an identifying number is incorrect or is inconsistent with any name you may use or furnish us. In such event, we will not be responsible for your error; the transfer will not be considered an unauthorized transac-

tion, and any loss will be entirely yours. Any instructions you may give us in connection with a wire or funds transfer will not be binding on us unless we have agreed to such instructions in writing. You must strictly observe all deadlines we impose for the processing of wire and funds transfers. We will not be responsible for any delay or other consequences which result from your failure to comply with any of these deadlines. You have no right to cancel or change any wire or funds transfer after you submit it to us. Any attempt by us to cancel or change any wire or funds transfer at your request will not constitute the assumption of any duty by us. You assume all risk associated with international wire or funds transfers. We will not be liable to you in any way in connection with an international wire or funds transfer, whether for failure of delivery, delayed delivery, fluctuations in exchange rates, or for any other reason. If any incoming wire or funds transfer is denominated in a foreign currency, you authorize us to convert such to U.S. Dollars according to such exchange rate which we may select at our discretion. You acknowledge and agree that such exchange rate may not be the most favorable rate of exchange published and that you will be bound by our choice of exchange rate. If you provide your account number or any other account identifying information to any third party and such third party originates any funds transfer transaction on the account, you agree that we may treat such transaction as a transaction authorized by you.

OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION - You intend these rules to apply to the account depending on the form of ownership and beneficiary designation, if any, specified on the signature page. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. Single Party Account is owned by one person. Multiple Party Account is owned by two or more persons jointly with right of survivorship and not as tenants in common, regardless of the conjunction ("or", "and") used between the depositors' names. Each of you expressly agrees that the account is not owned as a tenancy by the entireties. Each of you intends that upon your death the balance in the account (subject to any previous pledge to which we have consented) will vest in and belong to the survivor(s) as the separate property and estate of such survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. Transactions on Multiple Party Accounts do not require the signatures of all account owners to transact on the account. Instead, any one account owner or authorized signer may transact on the account to the exclusion of the other(s), and each of you authorizes each other of you to do so without further consent. If this Agreement is governed by the laws of the state of Louisiana, the owners of a Multiple Party Account are co-owners of the account, and all or any part of any deposit may be paid to any one of you, whether any other of you is living or not, and any such payment to any of you shall constitute receipt and acquittance and shall fully release and discharge us from the claims of any person to funds of the deceased depositor

for the payment made. Pay-On-Death Account Pay-On-Death beneficiaries acquire the right to withdraw only if: (1) all persons creating the account die, (2) the beneficiary is then living, and (3) we are not otherwise required by law to make payment to some other person. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own the account and may transact on it according to the Multiple Party Account rules stated above unless otherwise provided by law. Any one account owner or authorized signer may: (1) change beneficiary, (2) change account types, and (3) withdraw all or part of the deposit at any time. If two or more of you create such a Pay-On-Death Account, you own the account according to the Multiple Party Account rules stated above until the last of you dies.

Fiduciary Account - A Fiduciary Account, whether for a consumer or a commercial purpose, is one in which the person controlling the account does so for the benefit of another. Examples of fiduciaries are trustees, executors, conservators, custodians for minors, representative payees and court-appointed guardians. For purposes of this Agreement, guardians such as parents or other relatives who have not been court-appointed or persons who have not complied with necessary provisions of any applicable transfer to minors laws are not fiduciaries. We are not a fiduciary in connection with the account. For fiduciary accounts, we will usually require, in the case of trustees, a trust resolution according to our form, and in all other cases documents evidencing the fiduciary's authority. We have no duty to inspect any will or trust document, and you agree that we will not be bound by any limitations imposed in a will or trust document. You agree that a Fiduciary Account is a general deposit and not a special deposit. Corporate, Partnership, LLC, Government and other Organizational Accounts We will usually require a separate resolution in a form acceptable to us designating the person(s) permitted to make withdrawals from any account in the name of a legal entity such as a partnership, corporation, LLC, governmental entity or other organization.

STOP-PAYMENTS - A stop-payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it before our stop-payment cut-off time. Our stop-payment cut-off time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop-payment are provided by law. A stop-payment order must precisely identify the number, date and amount of the item, and the payee. We will honor a stop-payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item, if such other person has an equal or greater right to withdraw from the account than the person who signed the item in question. A release of the stop-payment request may be made only by the person who initiated the stop-payment.

AMENDMENTS AND TERMINATION - We may change, in whole or in part, any term of this Agreement or any of the disclosures indicated on the signature page or previously given to you. Rules governing changes in interest rates have been provided separately.

rately. For other changes, we will give you reasonable notice, in writing or by any other method permitted by law. We may also close the account at any time upon reasonable notice to you and to any one of you is notice to all of you unless otherwise provided by law.

STATEMENTS - You must examine your statement of account with reasonable promptness. If you discover for reasonably should have discovered) any forgeries, unauthorized payments, alterations or disputed transactions, you must promptly notify us of the relevant facts. Even if you do promptly notify us, you still may have to either share the loss with us or bear the loss entirely yourself (depending on whether you exercised ordinary care or substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items forged or altered by the same wrongdoer. You agree that the time you have to examine your statement and report to us will not, in any circumstance, exceed a total of 60 days from when the statement is first made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, unauthorized activity or any other errors or disputed transactions in the account within 60 days of when we make the statement available, you cannot assert a claim against us on any items in that statement, and the loss will be entirely yours.

You also agree to examine your statement with the same reasonable promptness to discover whether any deposit is missing or has been incorrectly credited. If your statement of account contains any error pertaining to any deposit, and if you fail to report such error to us within 60 days of when we make the statement available, you cannot assert a claim against us for such error, and any loss will be entirely yours.

The 60 day limitations set forth in this section are without regard to whether we exercised ordinary care.

If the account is a commercial purpose account, you additionally agree to take advantage of products and services we offer for the detection and prevention of fraud and unauthorized transactions, such as "Positive Pay" cash management products. If you fail to utilize any such product or service, you agree that you will be precluded from asserting any claim against us for any unauthorized transaction which could have been prevented by the proper use of such product or service.

We may require any report of errors on your statement to be put in writing by you and we may additionally require you to furnish us with an affidavit concerning the error on forms acceptable to us. If the account is a commercial purpose account, you agree to exhaust all rights against any insurance coverage you may have before making any claim against us. Our liability to you, if any, will be reduced by the amount of any insurance you are entitled to receive. You agree, upon request by us, to assign to us all insurance rights you may have in connection with any loss on your commercial purpose account.

DEBIT DEPOSITS - If, in connection with a direct deposit plan, we deposit any amount in the account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

TEMPORARY ACCOUNTS - If you intend for the account to be a Multiple Party Account, but all of you are not present at the time the account is opened, we may permit as many of you as are present to open the account either as a Single Party Account or a Multiple Party Account only in the name(s) of those who are present (the "Temporary Account"). At the same time we may permit as many of you as are present to also sign account documentation listing the names of all those intended to be owners of the Multiple Party Account, including those who are not present (the "Permanent Account"). However, we are not required to give effect to the Permanent Account documentation until all owners listed on such documentation have signed it and we have processed it, at which point the Permanent Account documentation shall supersede and replace the Temporary Account documentation. Notwithstanding the foregoing sentence, we may give the Permanent Account documentation retroactive effect to the date on which the Temporary Account was opened. We are not required to give any of you notice that the Permanent Account documentation has taken effect, nor are we required to give any intended owner notice that such intended owner's signature is needed on the Permanent Account documentation. If the Permanent Account documentation is not signed by all intended owners within 30 days following the opening of the Temporary Account, we may discard the Permanent Account documentation and will have no liability for doing so. A Temporary Account is subject to all of the terms and provisions of this Agreement.

SET-OFF - You each agree that we may, without prior notice to you, set off the funds in the account against any due and payable debt owed to us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note. This right of set-off applies regardless of the source of the deposit, and you consent that we may exercise this right of set-off against deposits which consist in whole or in part of government payments, including, but not limited to, Social Security and Veterans Administration payments. This right of set-off does not apply to the account if: (a) it is an Individual Retirement Account or other tax-deferred retirement account, or (b) the debtor's right of withdrawal arises only in a representative capacity. We will not be liable for the dishonor of any check when the

dishonor occurs because we set off a debt against the account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of set-off.

FACSIMILE SIGNATURES - You authorize us, at any time, to charge you for all checks, drafts, or other orders or transactions, for the payment of money, that are drawn on us by facsimile signature, regardless of by whom or by what means the facsimile signature(s) may have been affixed.

AUTHORIZED SIGNERS - An authorized signer is someone you designate to conduct transactions on your behalf, but does not have any ownership or rights in the account unless the authorized signer is also named as a Pay-On-Death beneficiary, in which case the Pay-On-Death Account rules apply. Otherwise, the rights of an authorized signer cease upon your death but not upon your disability or incapacity; however, you agree that we will not be liable for honoring any transaction by an authorized signer after your death. We reserve the right to limit the number of authorized signers and to decline to permit authorized signers on certain types of accounts.

ACCOUNTS OWNED BY MINORS - If this is a Multiple Party Account and one or more of the account owners is a minor, all adult owners of the account, jointly and severally agree that all transactions made on the account by any such minor shall be deemed to have been made by such adult owners, regardless of whether any such transaction may be void or voidable. EACH SUCH ADULT OWNER AGREES TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH ANY TRANSACTION MADE BY ANY SUCH MINOR.

REFUSAL OF DEPOSITS - We may refuse to accept any item, wire or electronic funds transfer for deposit or to send any item for collection, and we will have no liability to you or to any other person for such refusal.

ORDER OF PAYMENT - Unless otherwise provided in the Account Information Statement (see OTHER TERMS section below), if more than one item or order is presented for payment against the account on the same day and the available balance of the account is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater insufficient funds fees than if we had chosen to pay them in some other order. Our payment of any item or order in overdraft does not create any obligation for us to pay any other item or order in overdraft in the future, and you agree that no course of dealing regarding the payment of items or orders in overdraft will be created between us.

ERRORS - If there occurs any error on the account in your favor, such as crediting the account for an amount to which you are not entitled, charging the account for an amount less than the amount of an item or other order, or receipt of any direct deposit to which you are not entitled, you agree that we may adjust this

account to correct the error and that, if there are insufficient funds in the account for such adjustment, you will immediately pay us the amount necessary to correct the error. You agree to pay our reasonable attorneys' fees and expenses in the event we sue you to recover the amount necessary to correct the error.

DEPOSITS NOT MADE IN PERSON - We are not responsible for transactions initiated by mail, outside depository or left with us for subsequent processing until we actually record them, and you accept and assume all risks inherent in initiating such transactions. For deposits so initiated, our determination of the amount of the deposit will be conclusive, and you waive any right to contest our determination.

RESTRICTIVE LEGENDS - For your own purposes you may print or write on checks or other items restrictive legends specifying the number of signatures required, the maximum amount for which the check or item is payable, the number of days the check or item is valid, and similar restrictions. However, you agree that such restrictions shall not be binding on us, that we may disregard such restrictions and that we will have no liability to you or to any other person for paying any check or other item inconsistently with any restrictive legend that is printed or written thereon.

CHECK CHARACTERISTICS - If you use checks from sources other than vendors approved by us, or if you use check stock, security features or ink color which cause data to disappear or to become obscured when the check is converted into an image, you agree to bear any loss which results. We will not be liable for failing to honor a stop-payment order for an item issued on a check form from sources other than vendors approved by us.

SECURITY INTEREST - In addition to the rights of set-off which we have under this Agreement, you hereby grant to us a security interest in the account to secure payment of any obligation which you now owe us or which you may owe us at any time in the future, including your obligation to pay our attorneys' fees and expenses and your obligation to indemnify us as provided elsewhere in this Agreement. When any such obligation is due and payable to us, we may pay such obligation, or any part thereof, from the account without prior notice to you, and we will not be liable for the dishonor of any item or order which results from such exercise of our security interest. If the account has any Pay-On-Death beneficiary, the interests of such beneficiary shall be junior to our security interest and shall be subject to our right of set-off, even if we do not exercise our security interest or right of set-off until after your death.

PAYMENT TO BENEFICIARIES - Payment to pay-on-death beneficiaries shall be as provided by law. Notwithstanding anything in the Pay-on-Death Account rules stated above, we may require any pay-on-death beneficiary wishing to continue transactions with us to close the account and open a new account under such beneficiary's signature.

INDEMNIFICATION BY FIDUCIARY - IF THE ACCOUNT IS A FIDUCIARY ACCOUNT (INCLUDING, BUT NOT LIMITED TO, AN ACCOUNT USED AS A CUSTODIAL ACCOUNT OR AS A REPRESENTATIVE PAYEE ACCOUNT TO RECEIVE PAYMENTS FROM THE SOCIAL SECURITY ADMINISTRATION OR ANY OTHER GOVERNMENTAL PAYOR), YOU, THE FIDUCIARY, AGREE IN YOUR INDIVIDUAL CAPACITY TO INDEMNIFY US AND HOLD US HARMLESS FROM ANY LOSS WE INCUR IN CONNECTION WITH THE ACCOUNT, WHETHER RESULTING FROM OVERDRAFT, ERROR IN YOUR FAVOR, RECLAMATION BY ANY GOVERNMENTAL PAYOR, ANY DISPUTE WITHIN THE SCOPE OF THE "ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY" SECTION BELOW OR ANY OTHER REASON. IN THE EVENT OF ANY SUCH LOSS, WE MAY ENFORCE THE FOREGOING INDEMNITY BY SETTING OFF THE AMOUNT OF SUCH LOSS AGAINST (OR BY EXERCISING ANY SECURITY INTEREST WE MAY HAVE IN) ANY OTHER ACCOUNT WITH US IN WHICH YOU, THE FIDUCIARY, HAVE AN INTEREST (UNLESS YOUR INTEREST IN SUCH ACCOUNT IS ONLY AS A FIDUCIARY), AND WE WILL NOT BE LIABLE TO YOU OR TO ANYONE ELSE FOR THE DISHONOR OF ANY ITEM OR ORDER ON SUCH OTHER ACCOUNT WHICH RESULTS FROM SUCH SET-OFF OR EXERCISE OF OUR SECURITY INTEREST.

SIGNATURE BY MARK - If any signature which appears on the signature page is by mark (such as an "X"), then you agree that we will have no liability whatsoever on claims by you or any other person based on forgery, unauthorized signature, alteration or the like.

ACCOUNT DISPUTE; INDEMNITY; LIMITATION ON LIABILITY - IN THE EVENT OF ANY DISPUTE REGARDING THE ACCOUNT, INCLUDING ANY DISPUTE OVER OWNERSHIP OF OR ENTITLEMENT TO THE ACCOUNT OR THE CAPACITY OR AUTHORITY OF ANY PERSON TO TRANSACT ON THE ACCOUNT, YOU AGREE TO PAY OUR REASONABLE ATTORNEYS' FEES AND EXPENSES IN THE EVENT THAT WE BECOME INVOLVED IN ANY PROCEEDING TO RESOLVE SUCH DISPUTE. IN THE EVENT OF SUCH DISPUTE WE MAY PAY THE AVAILABLE BALANCE OF THE ACCOUNT INTO COURT, AND IN THAT EVENT YOU AGREE NOT TO MAKE ANY CLAIM AGAINST US. ADDITIONALLY, TO THE EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO ANY SUCH DISPUTE. YOU ALSO AGREE THAT WE SHALL BE ENTITLED TO RECOVER OUR REASONABLE ATTORNEYS' FEES AND EXPENSES IN CONNECTION WITH SUCH PAYMENT INTO COURT AND

THAT WE MAY RECOVER SUCH FEES AND EXPENSES FROM THE BALANCE PAID INTO COURT. IN THE EVENT OF ANY KIND OF CLAIM BY YOU AGAINST US IN CONNECTION WITH THE ACCOUNT, YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES.

GOVERNING LAW; PROCESS; REPRESENTATIVES - With regard to any account established online, this Agreement is governed by the laws of Mississippi and by federal law and regulation. Otherwise, this Agreement is governed by the laws of the state of the location of our branch identified on the signature page and by federal law and regulation. Notwithstanding this, we may honor any levy, attachment, garnishment, execution, subpoena, court order, administrative order (including child support order) or other legal process which names you or which encompasses you, the account or any tax identification number associated with the account, regardless of whether we are subject to the jurisdiction of the issuer of such, regardless of in which state such is served on us and regardless of how such is served on us. We are not required to raise any defense in your behalf. We may also comply with the directions of any executor, administrator, conservator, guardian, receiver, bankruptcy trustee, attorney-in-fact or any other such representative purporting to have authority over the account who furnishes us with apparently authentic copies of documents which confer such authority. We may refuse to deal with any such representative in our sole discretion, and we will not be liable to you for such refusal. You agree that we may place temporary or permanent holds on the balance of the account related to or otherwise in response to any such process or authority and that we shall be fully protected in doing so, even if we later determine that such process or authority is inapplicable to the account. YOU AGREE THAT WE WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ACTING OR NOT ACTING ON ANY SUCH PROCESS OR FOR ACTING OR NOT ACTING ON THE DIRECTIONS OF ANY SUCH REPRESENTATIVE OR FOR PLACING OR NOT PLACING TEMPORARY OR PERMANENT HOLDS, AND YOU AGREE TO INDEMNIFY US, OUR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM OR IN ANY WAY RELATING TO SUCH ACTION OR INACTION.

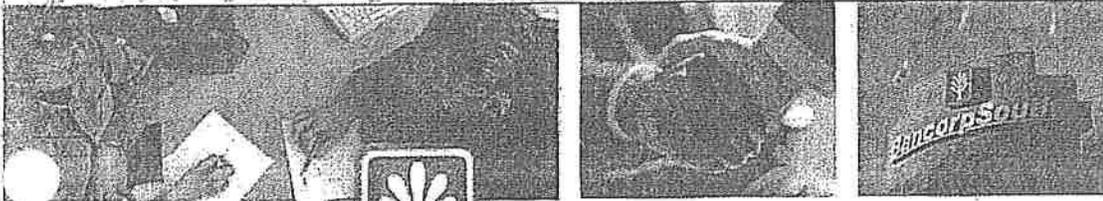
EFFECT OF TERMINATION OR AMENDMENT - Termination of the account, whether by us or by you, does not relieve you of any obligation you may then owe us. We may accept deposits to the account after it has been closed in order to collect any deficit balance, and such acceptance will not constitute reinstatement of the account. Your use of the account after we give you notice of any amendment to this Agreement constitutes your acceptance of such amendment. No amendment of this Agreement is enforceable against us unless it is in writing and we have

authorized the writing or have signed it through an employee having authority to do so, such as a regional president. No practice or course of dealing in connection with the account which is at variance with this Agreement shall constitute a modification or amendment of this Agreement.

OTHER TERMS - The account is additionally governed by our Account Information Statement. You acknowledge receipt of a copy of the Account Information Statement and you agree to be bound by its terms, as amended by us from time to time, and to be responsible for all fees and charges set forth therein which apply to the account. You understand that the Account Information Statement does not necessarily set forth all possible fees and charges which apply to the account.

SEVERABILITY - In the event that any part of this Agreement is determined to be unenforceable, such will not affect the other parts of this Agreement, all of which shall remain fully enforceable.

ARBITRATION - IF THE ACCOUNT IS A COMMERCIAL PURPOSE ACCOUNT, THEN YOU AGREE THAT ANY CLAIM, DISPUTE OR CONTROVERSY ("CLAIM") BY EITHER YOU OR US AGAINST THE OTHER, OR AGAINST THE EMPLOYEES, AGENTS OR ASSIGNS OF THE OTHER, ARISING FROM OR RELATING IN ANY WAY TO THIS AGREEMENT, THE ACCOUNT OR ANY TRANSACTION, INCLUDING CLAIMS REGARDING THE APPLICABILITY OF THIS ARBITRATION CLAUSE OR THE VALIDITY OF ALL OR ANY PART OF THIS AGREEMENT, SHALL BE RESOLVED BY BINDING ARBITRATION BY THE NATIONAL ARBITRATION FORUM, UNDER THE CODE OF PROCEDURE IN EFFECT AT THE TIME THE CLAIM IS MADE OR FILED. RULES AND FORMS OF THE NATIONAL ARBITRATION FORUM MAY BE OBTAINED AND CLAIMS MAY BE FILED AT ANY NATIONAL ARBITRATION FORUM OFFICE, WWW.ARBTRATION-FORUM.COM OR POST OFFICE BOX 300191, MINNEAPOLIS, MINNESOTA 55405. TELEPHONE 1-800-474-2371. ANY ARBITRATION HEARING AT WHICH YOU APPEAR WILL TAKE PLACE IN THE CITY WHICH IS THE LOCATION OF OUR BRANCH AT WHICH THE ACCOUNT WAS OPENED. THIS ARBITRATION AGREEMENT IS MADE PURSUANT TO A TRANSACTION INVOLVING INTERSTATE COMMERCE AND SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. SECTIONS 1-16. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. IN THE ABSENCE OF THIS ARBITRATION AGREEMENT YOU AND WE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT AND/OR TO PARTICIPATE OR BE REPRESENTED IN LITIGATION FILED IN COURT BY OTHERS, BUT EXCEPT AS OTHERWISE PROVIDED ABOVE, ALL CLAIMS MUST NOW BE RESOLVED THROUGH ARBITRATION.



BancorpSouth, Right Where You Are.

Account Information Statement

This disclosure of fees and charges apply to accounts at BancorpSouth. We think it is important for you to have a full understanding of these fees and charges.

We welcome your questions in person or by phone. The answers are as close as your nearest BancorpSouth office or by using Infoline, 1-888-797-7711, our 24-hour account information line.

Bold text in the following indicates changes from the last edition of the Account Information Statement.

NON-INTEREST CHECKING ACCOUNTS

The minimum deposit required to open any BancorpSouth non-interest bearing checking account is \$50.00.

Regular Checking

An \$800.00 minimum daily ledger balance avoids any monthly service charge. When the minimum daily ledger balance falls below \$800.00 during a statement cycle, the monthly service charge will be \$8.50.

BancSmart Free Checking

The BancSmart Free Checking account has no monthly maintenance fee, no per check charge and no minimum monthly balance. Combined with a savings account, free Internet Banking, online statements, combined statements and other services, BancSmart Free Checking is a complete bundle of products positioned to help you start your relationship with BancorpSouth. To receive Bill Pay free of charge, you must have a combination of either online statement and debit card or direct deposit and debit card. A \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in Internet Banking and then sign up for Bill Pay. It is not required that you have Internet Banking or Bill Pay to receive BancSmart Free Checking.

Free Checking for Students*

Students love this account because there is no minimum balance requirement, no monthly service charge, and no per check charge ... it's "Free" through age 24. No annual charge for your 24-hour banking card.

Second Chance Checking*

Second Chance Checking is a special checking account for those individuals who may not have a perfect check-writing history with CheckSystems. (If you've ever had a checking account that was overdrawn when it was closed or have written bad checks in the past, your name may appear on the national CheckSystems list used by banks to approve individuals for checking accounts.) BancorpSouth doesn't approve everyone for a Second Chance Checking account, only those individuals that don't have a significant CheckSystems history.

Second Chance Checking helps you to build your good check-writing history and work toward a standard BancorpSouth checking account — many without a monthly fee. If your account is in good standing after one year (no overdrafts or bad checks), you may request a standard BancorpSouth checking account.

Second Chance Checking gives you unlimited check-writing privileges with a standard monthly service charge and is subject to BancorpSouth's standard deposit policies and fees and may be closed anytime for any reason of delinquency (bad check writing, overdrafts, etc.) or fraud.

Monthly service charge regardless of balance\$6.99

*Accounts receive a monthly statement. Check images remain on file at the bank. Copies may be requested with no charge for the first five (5) items. In excess of five, per item copy charge is \$1.00.

INTEREST BEARING CHECKING ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum deposit required to open BancorpSouth interest checking accounts varies by account type. See individual account descriptions for details.

Performance Checking

Performance Checking is our special rate Bonus checking account which earns a Bonus Rate on your balance from \$0-\$30,000 and special ATM benefits when you meet each of the following 4 requirements during your statement period on your Performance Checking account: 1. Have at least 1 ACH debit or credit; 2. Have at least 12 debit card purchase transactions; 3. Be enrolled in online statement; 4. Be enrolled in Internet Banking.

If you meet all 4 of the requirements during a statement period, then your Performance Checking account balance from \$0 to \$30,000 will earn a Bonus Rate Annual Percentage Yield (APY) and that portion of your Performance Checking account balance in excess of \$30,000 will earn a Standard Rate APY. Additionally, if you meet all 4 of the requirements at all times during a statement period, then at the end of each statement period, for the first 5 ATM transactions you make at a non-BancorpSouth ATM during that period, we will refund the \$1.50 non-BancorpSouth ATM fee and will credit your account an additional \$2.00 against charges imposed by the owner of the non-BancorpSouth ATM (a total of \$3.50 in refunds and credits for the first 5 such transactions during the statement period). ATM fee refunds and credits will never exceed \$17.50 in any statement period. If you do not meet all 4 of these requirements at all times during the statement period, then you will earn the Standard Rate on all balances. Personal accounts only. Rates are subject to change at the bank's discretion without notice. Fees may reduce earnings.

Minimum opening deposit\$50.00
Unlimited Deposits and Withdrawals
No minimum balance or monthly service charge

Heritage Checking

Heritage Checking is BancorpSouth's preferred services account for our friends who are 50 and over. Heritage Checking accounts earn interest at a competitive rate, which is determined solely by the Bank and is subject to change weekly. Interest is earned daily on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Heritage Checking account before the interest is credited, you will not receive the accrued interest for that period. In addition to earning interest, Heritage Checking accounts include common carrier accidental death insurance as well as discounts and special savings.

Minimum opening deposit\$50.00
Monthly Service Charge with a minimum daily ledger balance of:
\$500.00 or moreNONE
Below \$500.00\$8.00

Interest Plus Checking

The Interest Plus Checking account is a tiered-rate checking account. The interest rate tiers are as follows:

Balances between \$0-\$4,999
Balances between \$5,000-\$9,999
Balances between \$10,000-\$24,999
Balances between \$25,000-\$49,999
Balances between \$50,000-\$99,999
Balances \$100,000 and above

Your account has unlimited transactions at no extra cost and earns interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time and is not available for early withdrawal.

Minimum opening deposit\$1,000.00
Monthly service charge with a balance of:
\$1,000.00 or moreNONE
Below \$1,000.00\$10.00
Monthly statements are itemized and include imaged checks.

SAVINGS ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. The minimum deposit required to open a BancorpSouth savings account varies by account type. See individual account descriptions for details.

Money Market Select

The Money Market Select account is a tiered-rate money market account. The interest rate tiers are as follows:

Balances between \$0-\$9,999
Balances between \$10,000-\$24,999
Balances between \$25,000-\$49,999
Balances between \$50,000-\$99,999
Balances between \$100,000-\$149,999
Balances between \$150,000-\$199,999
Balances \$500,000 and above

The Money Market Select account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals.

Minimum opening deposit\$1,000.00
Minimum balance\$10,000.00
Monthly service charge with a balance of:
\$10,000.00 or moreNONE
Below \$10,000.00\$10.00

There will be a \$10.00 charge for each withdrawal in excess of six per month, excluding ATM withdrawals and over-the-counter transactions. Monthly statements are itemized and include imaged checks. A BancorpSouth checking account is required to open this account.

Personal Money Market

The Personal Money Market account is a tiered-rate money market account. The interest rate tiers are as follows:

Balances between \$0-\$2,499
Balances between \$2,500-\$4,999
Balances \$5,000 and above

The Personal Money Market account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is

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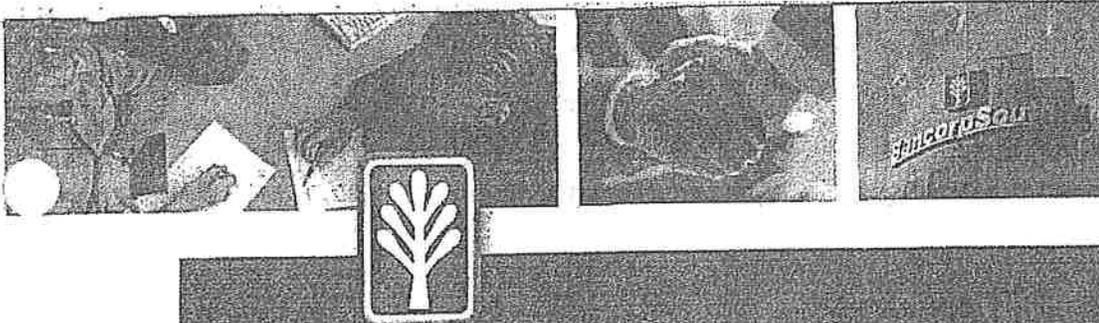
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calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals.

Minimum opening deposit	\$1,000.00
Monthly service charge with a balance of:	
\$1,000.00 or more	NONE
Below \$1,000.00	\$10.00

There will be a \$10.00 charge for each withdrawal in excess of six per month, excluding ATM withdrawals and over-the-counter transactions. Monthly statements are itemized and include imaged checks.

Classic Savings

Interest is paid on the collected balance using the daily balance method. The rate of interest is determined solely by the Bank and is subject to change on a weekly basis. Interest is compounded daily and credited semiannually. Deposits and withdrawals can be made at any time. If you close your account prior to the interest being credited, you will receive interest through the closing date. Minimum deposit required to open a Classic Savings account is \$50.00. Only a \$25.00 opening deposit is required for children 15 and under to open a "Savings Bug" (Classic Savings) account. All other account details apply.

Select Savings Account

The Select Savings account earns interest at a rate determined solely by the Bank and is subject to change. Interest is calculated based on semiannual compound and credited semiannually. Accrued interest is available for early closing withdrawals. A BancorpSouth checking account is required to open this account. This account is not available for businesses.

Minimum opening deposit	\$1,000.00
Semiannual service charge with a balance of:	
\$1,000.00 or more	NONE
Below \$1,000.00	\$15.00

Additional Information and Fees for Classic and Select Savings Accounts:

Additional "Memo" statements will be produced if the account has an EFT transaction during the month. This is a snapshot statement and will reflect all activity since the last scheduled semiannual statement. There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle.

Performance Savings

Performance Savings is our special rate bonus savings account which earns a Bonus Rate on your entire balance when you meet each of the following requirements during your interest cycle on your Performance Savings account:

1. Transfer at least \$50 into your Performance Savings account each interest cycle electronically via ACH or Internet Banking Transfer.
2. Combine your Performance Savings statement with your BancorpSouth Checking account statement (you will no longer receive a separate statement for your Performance Savings account).

If you meet both the requirements above during your statement period, your entire balance for that interest cycle will earn the bonus rate Annual Percentage Yield (APY). Performance Savings not only pays you a bonus rate, but also helps you save with the \$50 per interest cycle transfer requirement. A Performance Checking

account is required to open as part of our "Performance Banking" package of services. Interest is paid monthly on the collected balance in the account using the daily balance method of interest calculation. Rates are subject to change at the bank's discretion without notice. Fees may reduce earnings.

Minimum opening deposit	\$50.00
Minimum monthly balance	\$50.00
Monthly service charge if balance falls below minimum	\$2.50

There will be a \$5.00 charge for each withdrawal in excess of six during the monthly interest cycle (excluding Internet Banking Transfers, and ATM, Debit Card and ACH transactions).

Christmas Club

Christmas Club accounts earn interest at a rate determined solely by the Bank and is subject to change weekly. Interest is calculated on the daily ledger balance using the daily balance method. Interest is accrued daily and credited yearly in November when a check for the balance is issued to you. If you close your Christmas Club account before the interest is credited, you forfeit all accrued interest. If the principal balance of your Christmas Club account is \$250.00 or less on the day designated by the Bank for crediting interest to Christmas Club accounts, you forfeit all accrued interest. If you make a withdrawal from your Christmas Club account prior to the date in November when a check for the balance of the account is issued to you, you will be charged a fee of \$5.00 for each such withdrawal.

SERVICE FEES

Check Printing Charges	Charges will vary based on check design
Official Checks	\$6.00
Each Overdraft (OD) Item	\$32.00
Each Insufficient (NSF) Funds Item	\$32.00
Each Stop Payment	\$32.00
Each Returned Deposit Item	\$7.00
Each Returned Check Redeposited	\$3.00
Each Returned Check Special Handling	\$7.50
Each Deposit Correction	\$3.00
Special Statement	\$7.50
Debit Card Replacement Fee	\$5.00
Research Fees:	
Research Per Hour	\$20.00
Photocopies (each)	\$1.00
Collection Item Fee	the cost of processing the collection letter with a \$20 minimum.

Dormant Checking Account Charges

An \$8.50 per month fee will be charged on dormant checking accounts in addition to regular applicable fees. "Dormant Accounts" are defined by applicable law.

Dormant Saving Account Charges

A savings account with a balance below \$100 will be charged an \$8.50 monthly fee if dormant in excess of 730 days.

Account Closure Fee	\$25.00
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(for checking accounts closed within 90 days of opening.)

Wire Transfer Fees:

Outgoing	\$15.00
Incoming	\$12.00
Foreign	\$50.00

Telephone Funds Transfers:

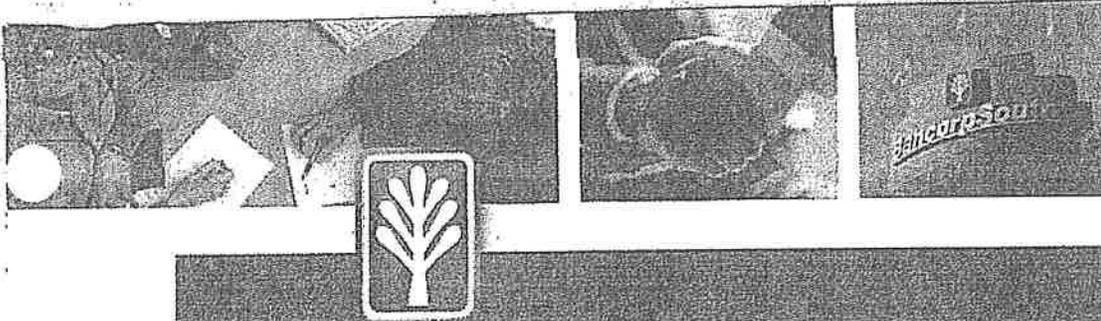
Automated via Infoline	NO CHARGE
Assisted by branch personnel	\$3.00
Overdraft Protection Equity Credit Line Transfer Fee (Unless secured by Real Estate)	\$5.00
Overdraft Protection Credit Card Transfer Fee	3%
of the transfer amount, minimum \$5.00 and maximum \$50.00	
Overdraft Protection via Checking or Savings account transfer fee	\$5.00
Safe Deposit Box Drilling Fee - Missouri	\$85.00
All other states	\$75.00
Legal Processing (including levies and garnishments) Up to	\$125.00

ABOUT OVERDRAFTS

An "overdraft" occurs any time a check or other transaction is presented for payment against an account and the available balance of the account is insufficient to pay the check or transaction. When an overdraft occurs, we may, at our discretion, return the check and refuse the transaction, or alternatively, we may choose to pay the check or transaction, in which case a negative account balance will result. If we return the check and refuse the transaction, you will be charged an Insufficient Funds (NSF) Item fee for each returned check and refused transaction. If we pay the check or transaction, you will be charged an Overdraft (OD) Item fee for each check or transaction paid in overdraft.

Determining whether to pay a check or other transaction in overdraft is strictly discretionary with us. We are not required to pay any check or other transaction in overdraft, even if we have paid overdrafts many times previously and even if we have permitted an account to remain in an overdraft status for an extended period. Also, if more than one check or other transaction is presented for payment against your account on the same banking day and the available balance is insufficient to pay them all, we may pay any of them in any order we choose, even if the order we choose results in greater Overdraft Item or Insufficient Funds Item fees than if we had chosen to pay them in some other order. We may also choose to first pay checks or other transactions which are payable to BancorpSouth and our affiliates.

You may avoid Overdraft Item and Insufficient Funds Item fees on checking accounts through Overdraft Protection. Credit Card Overdraft Protection works by charging your BancorpSouth MasterCard or VISA credit card for cash advances in the amounts of checks or other transactions drawn against insufficient funds, with resulting deposits of the cash advance amounts into your account to cover such checks or other transactions, up to the credit limit of your credit card. An Overdraft Protection credit card transfer fee of 3% of the transfer amount, minimum \$5.00 and maximum \$30.00, will be charged for each transfer. Credit card fees, interest charges and cash advance charges will be assessed to your credit card account in accordance with your credit card terms and conditions. You may also avoid Overdraft Item and Insufficient Funds Item fees on checking accounts by establishing a BancorpSouth Equity Credit Line, which is a line of credit. In the event of an overdraft, the bank transfers the amount of the overdraft into your account and charges the amount as an advance on your Equity Credit Line, up to the limit of your credit line. An Overdraft Protection Equity Credit Line transfer fee of \$5.00 will be charged for each transfer amount unless secured by Real Estate. Equity Credit Line Overdraft Protection may not be available in Texas. Standard interest charges



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apply to all transfers from the date posted to your account. Ask your BancorpSouth customer service representative about Overdraft Protection. Also, ask a customer service representative for a copy of our flier "How to Avoid Paying Bank Fees."

MasterCard® Debit Card

BancorpSouth MasterCard® Debit Card is the convenient plastic card that looks like a credit card but works like a check, deducting your purchases from your checking account. MasterCard® Debit Card is good for cash purchases anywhere debit MasterCard® is accepted. Plus, you get a receipt with every transaction so there is no problem keeping track of what you have spent. Monthly, all transactions are reported on your checking account statement along with any checks you have written. A MasterCard® Debit Card serves as your ATM card, so you only have one "checking account card" to carry with you.

MasterCard® Debit Card fee NO CHARGE
 There is a fee of \$1.50 per transaction when you use your MasterCard® Debit Card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a MasterCard® Debit Card transaction made at its ATM. There is a fee of one percent (1%) of the transaction amount if you use your MasterCard® Debit Card for a transaction in a foreign country. If your transaction in a foreign country is in a currency other than U.S. dollars, the rate used for converting the transaction to U.S. dollars will be the wholesale market rate or any government-mandated rate in effect on the date that MasterCard processes the transaction or any other rate or method prescribed by the then-current MasterCard regulations. Currency conversion may occur on a date other than the date of the transaction, and the conversion rate may be affected accordingly.

Internet Banking and Bill Pay

Internet Banking is free with any personal BancorpSouth checking or Money Market account. Internet Banking allows you to access balance inquiries, view your statement information and your canceled checks (even if your statement doesn't have check images), transfer between accounts, and make payments on your BancorpSouth line of credit or loan.

Free Bill Pay is also available with any personal BancorpSouth checking account when you sign up for Internet Banking if you have a combination of either online statement and debit card or direct deposit and debit card. A \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in Internet Banking, and then sign up for Bill Pay through Internet Banking. (The Free Bill Pay option listed above is standard for all customers who register for Bill Pay after August 21, 2006. If you currently have Bill Pay and would like to change your billing method, please ask your local customer service representative or call our InfoLine at 1-888-797-7711.)

24-Hour Banking

You may access your BancorpSouth checking account day and night at literally thousands of ATMs across the United States with our automated teller card. At BancorpSouth ATM locations you may make deposits as well as withdrawals, loan payments and transfers between accounts.

24-Hour Banking card fee \$1.00 per month
 There is a fee of \$1.50 per transaction when you use your 24-Hour Banking card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may

also charge your account a fee for a 24-Hour Banking card transaction made at its ATM.

Certificate of Deposit

BancorpSouth Certificates of Deposit offer competitive returns on investments that can be tailored to fit your exact needs. Early withdrawal penalties apply to all Certificates of Deposit.
 Minimum opening deposit \$1,000.00

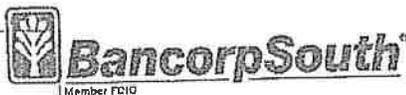
Plus Package

The Plus Package is a package of benefits and savings which may be added to any BancorpSouth personal checking account. A fee of \$4.50 for individuals less than 60 years of age or \$3.50 for individuals 60 and better applies and will be deducted from your BancorpSouth personal checking account on a monthly basis. If you have previously enrolled in the program and are being charged a fee of \$4.50 per month, please notify a BancorpSouth representative upon attaining the age of 60, and we will gladly adjust your monthly fee to the appropriate rate.

OTHER IMPORTANT INFORMATION

- The Daily Balance Method of paying interest uses the daily balance in calculating the interest on your account. This method applies a daily periodic rate to the principal in the account each day. When you deposit checks into any account at BancorpSouth, interest begins to accrue no later than the business day we receive credit for the item.
- The Daily Ledger Balance reflects all deposits and withdrawals regardless of actual collection of funds.
- On checking accounts, federal regulations allow the bank to create transaction and savings sub-accounts which exist only on the books of the bank and which allow the bank to make transfers at the close of each working day. This puts the bank in a more favorable position concerning reserve requirements and ultimately allows us to maintain the most competitive pricing on your checking account. The activity of the sub-accounts will not be reflected on your bank statement and will not affect your account balance or the interest, fees and features of your checking account.
- Electronic debits such as Automated Teller Machine and MasterCard® Debit Card along with Infoline transfers are not included in your debit item count for calculating service charges.
- All fees and charges are subject to applicable law.
- If your account is made subject to garnishment, execution, levy or any similar legal process, or if your account is made subject to any legal proceeding in which the Bank is required to respond, appear or provide records, we may charge you for each such garnishment, execution, levy or a proceeding fee of up to \$125.00. This fee is in addition to any cost and expenses, including reasonable attorney's fees, which we incur in connection with any of the foregoing.

Last updated on October 19, 2009



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Account Information Statement

This disclosure of fees and charges applies to accounts at BancorpSouth. We think it is important for you to have a full understanding of these fees and charges.

We welcome your questions in person or by phone. The answers are as close as your nearest BancorpSouth office or by using InfoLine, 1-888-797-7711, our 24-hour account information line. **Bold text** in the following indicates changes from the last edition of the Account Information Statement.

NON-INTEREST BEARING CHECKING ACCOUNTS

The minimum deposit required to open any BancorpSouth non-interest bearing checking account is \$50.00.

Regular Checking

An \$800.00 minimum daily ledger balance avoids any monthly service charge. When the minimum daily ledger balance falls below \$800.00 during a statement cycle, the monthly service charge will be \$8.50.

BancSmart Free Checking

The BancSmart Free Checking account has no monthly maintenance fee, no per check charge and no minimum monthly balance. Combined with a savings account, free Internet Banking, online statements, combined statements and other services, BancSmart Free Checking is a complete bundle of products positioned to help you start your relationship with BancorpSouth. To receive Bill Pay free of charge, you must have a combination of either online statement and debit card or direct deposit and debit card. A \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in Internet Banking and then sign up for Bill Pay. It is not required that you have Internet Banking or Bill Pay to receive BancSmart Free Checking.

Free Checking for Students*

Students love this account because there is no minimum balance requirement, no monthly service charge, and no per check charge... it's "Free" through age 24.

Second Chance Checking*

Second Chance Checking is a special checking account for those individuals who may not have a perfect check-writing history with ChexSystems. (If you've ever had a checking account that was overdrawn when it was closed or have written bad checks in the past, your name may appear on the national ChexSystems list used by banks to approve individuals for checking accounts.) BancorpSouth doesn't approve everyone for a Second Chance Checking account, only those individuals that don't have a significant ChexSystems history.

Second Chance Checking helps you to build your good check writing history and work toward a standard BancorpSouth checking account - many without a monthly fee. If your account is in good standing after one year (no overdrafts or bad checks), you may request a standard BancorpSouth checking account.

Second Chance Checking gives you unlimited check-writing privileges with a standard monthly service charge and is subject to BancorpSouth's standard deposit policies and fees and may be closed anytime for any reason of delinquency (bad check writing, overdrafts, etc.) or fraud.

*Monthly service charge regardless of balance \$6.99
 *Accounts receive a monthly statement. Check images remain on file at the bank. Copies may be requested with no charge for the first five (5) items. In excess of five, per item copy charge is \$1.00.

INTEREST BEARING CHECKING ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum deposit required to open BancorpSouth interest checking accounts varies by account type. See individual account descriptions for details.

Performance Checking

Performance Checking is our special rate bonus checking account which earns a Bonus Rate on your balance from \$0-\$30,000 and special ATM benefits when you meet each of the following 4 requirements during your statement period on your Performance Checking account: 1. Have at least 1 ACH debit or credit; 2. Have at least 12 debit card purchase transactions; 3. Be enrolled in online statement; 4. Be enrolled in Internet Banking.

If you meet all 4 of the requirements during a statement period, then your Performance Checking account balance from \$0 to \$30,000 will earn a Bonus Rate Annual Percentage Yield (APY) and that portion of your Performance Checking account balance in excess of \$30,000 will earn a Standard Rate APY. Additionally, if you meet all 4 of the requirements at all times during a statement period, then at the end of each statement period, for the first 5 ATM transactions you make at a non-BancorpSouth ATM during that period, we will refund the \$1.50 non-BancorpSouth ATM fee and will credit your account an additional \$2.00 against charges imposed by the owner of the non-BancorpSouth ATM (a total of \$3.50 in refunds and credits for the first 5 such transactions during the statement period). ATM fee refunds and credits will never exceed \$17.50 in any statement period. If you do not meet all 4 of these requirements at all times during the statement period, then you will earn the Standard Rate on all balances. Personal accounts only. Rates are subject to change at the bank's discretion without notice. Fees may reduce earnings.

Minimum opening deposit	\$50.00
Unlimited Deposits and Withdrawals	
No minimum balance or monthly service charge	

Heritage Checking

Heritage Checking is BancorpSouth's preferred services account for our friends who are 50 and over. Heritage Checking accounts earn interest at a competitive rate, which is determined solely by the Bank and is subject to change weekly. Interest is earned daily on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Heritage Checking account before the interest is credited, you will receive the accrued interest for that period. In addition to earning interest, Heritage Checking accounts include common carrier accidental death insurance as well as discounts and special savings.

Minimum opening deposit	\$50.00
Monthly Service Charge with a minimum daily ledger balance of:	
\$500.00 or more	NONE
Below \$500.00	\$8.00

Interest Plus Checking

The Interest Plus Checking account is a tiered-rate checking account.

The interest rate tiers are as follows:

Balances between \$0-\$4,999	0.00%
Balances between \$5,000-\$9,999	0.00%
Balances between \$10,000-\$24,999	0.00%
Balances between \$25,000-\$49,999	0.00%
Balances between \$50,000-\$99,999	0.00%
Balances \$100,000 and above	0.00%



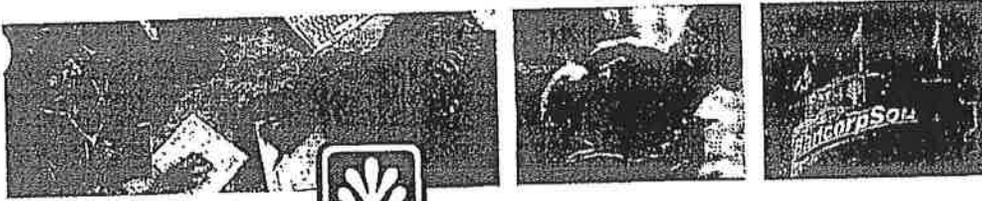
Bank deposits are FDIC insured. BancorpSouth Investment Services, Inc., and BancorpSouth Insurance Services, Inc., are wholly owned subsidiaries of BancorpSouth Bank. Insurance products are offered by BancorpSouth Insurance Services, Inc. Investment products are offered by BancorpSouth Investment Services, Inc. Member SIPC. Insurance and investment products are * Not a deposit | Not FDIC insured * Not insured by any federal government agency * Not guaranteed by the bank
 # May go down in value

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Account Information Statement - continued

Your account has unlimited transactions at no extra cost and earns interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time and is available for early withdrawal.

Minimum opening deposit	\$1,000.00
Monthly service charge with a balance of:	
\$1,000.00 or more	NONE
Below \$1,000.00	\$10.00
Monthly statements are itemized and include imaged checks.	

SAVINGS ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. The minimum deposit required to open a BancorpSouth savings account varies by account type. See individual account descriptions for details.

Money Market Select

The Money Market Select account is a tiered-rate money market account. The interest rate tiers are as follows:

- Balances between \$0-\$9,999
- Balances between \$10,000-\$74,999
- Balances between \$75,000-\$49,999
- Balances between \$50,000-\$99,999
- Balances between \$100,000-\$149,999
- Balances between \$150,000-\$499,999
- Balances \$500,000 and above

The Money Market Select account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals.

Minimum opening deposit	\$1,000.00
Minimum balance	\$10,000.00
Monthly service charge with a balance of:	
\$10,000.00 or more	NONE
Below \$10,000.00	\$10.00

There will be a \$10.00 charge for each withdrawal in excess of six per month. Monthly statements are itemized and include imaged checks. A BancorpSouth checking account is required to open this account.

Personal Money Market

The Personal Money Market account is a tiered-rate money market account. The interest rate tiers are as follows:

- Balances between \$0-\$2,499
- Balances between \$2,500-\$4,999
- Balances \$5,000 and above

The Personal Money Market account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals.

Minimum opening deposit	\$1,000.00
Monthly service charge with a balance of:	
\$1,000.00 or more	NONE

Below \$1,000.00

There will be a \$10.00 charge for each withdrawal in excess of six per month. Monthly statements are itemized and include imaged checks.

Classic Savings

Interest is paid on the collected balance using the daily balance method. The rate of interest is determined solely by the Bank and is subject to change on a weekly basis. Interest is compounded daily and credited semiannually. Deposits and withdrawals can be made at any time. If you close your account prior to the interest being credited, you will receive interest through the closing date. Minimum deposit required to open a Classic Savings account is \$50.00. Only a \$25.00 opening deposit is required for children 15 and under to open a "Savings Bug" (Classic Savings) account. All other account details apply. There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle.

Select Savings Account

The Select Savings account earns interest at a rate determined solely by the Bank and is subject to change. Interest is calculated based on semiannual compound and credited semiannually. Accrued interest is available for early closing withdrawals. A BancorpSouth checking account is required to open this account. This account is available for businesses.

Minimum opening deposit	\$1,000.00
Semiannual service charge with a balance of:	
\$1,000.00 or more	NONE
Below \$1,000.00	\$15.00

Additional Information and Fees for Classic and Select Savings Accounts:

Additional "Memo" statements will be produced if the account has an EFT transaction during the month. This is a snapshot statement and will reflect all activity since the last scheduled semiannual statement. There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle.

Performance Savings

Performance Savings is our special rate bonus savings account which earns a Bonus Rate on your entire balance when you meet each of the following requirements during your interest cycle on your Performance Savings account:

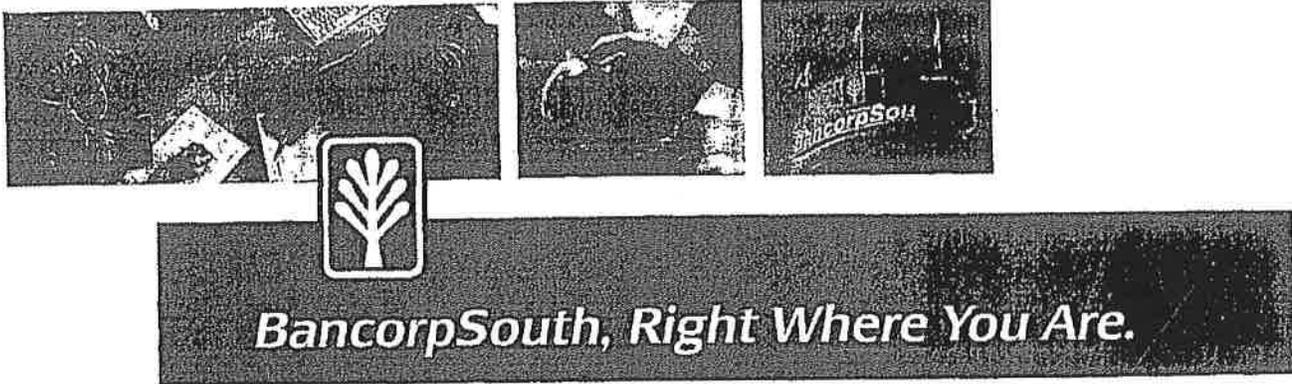
1. Transfer at least \$50 into your Performance Savings account each interest cycle electronically via ACH or Internet Banking Transfer.
2. Combine your Performance Savings statement with your BancorpSouth Checking account statement (you will no longer receive a separate statement for your Performance Savings account). If you meet both the requirements above during your statement period, your entire balance for that interest cycle will earn the Bonus Rate Annual Percentage Yield (APY). Performance Savings not only pays you a Bonus Rate, but also helps you save with the \$50 per interest cycle transfer requirement. A Performance Checking account is required to open as part of our "Performance Banking" package of services. Interest is paid monthly on the collected balance in the account using the daily balance method of interest calculation. Rates are subject to change at the bank's discretion without notice. Fees may reduce earnings.

Minimum opening deposit	\$50.00
Minimum monthly balance	\$50.00
Monthly service charge if balance falls below minimum	\$2.50
There will be a \$5.00 charge for each withdrawal in excess of six during the monthly interest cycle.	

Christmas Club

Christmas Club accounts earn interest at a rate determined solely by the Bank and is subject to change weekly. Interest is calculated on the daily ledger balance using the daily balance method. Interest is accrued daily and credited yearly in November when a check for the balance is issued to





Account Information Statement - continued

you. If you close your Christmas Club account before the interest is credited, you forfeit all accrued interest. If the principal balance of your Christmas Club account is \$250.00 or less on the day designated by the Bank for crediting interest to Christmas Club accounts, you forfeit all accrued interest. If you make a withdrawal from your Christmas Club account prior to the date in November when a check for the balance of the account is issued to you, you will be charged a fee of \$5.00 for each such withdrawal.

SERVICE FEES

Check Printing Charges	.....Charges will vary based on check design	
Official Checks	.....	\$6.00
Each Overdraft (OD) Item	.....	\$35.00
Each Insufficient (NSF) Funds Item	.....	\$35.00
Continuous Overdraft Fee	.....	\$25.00
	for each period of ten (10) days or longer that your account is continuously in overdraft, charged on the tenth (10th) day	
Overdraft Equity Credit Line Fee	.....	\$7.50 per transfer
Overdraft Transfer Fee from Credit Card	.....	See your Cardholder Agreement
Overdraft Transfer Fee from Eligible Deposit Account	.....	\$7.50 per transfer
Each Stop Payment	.....	\$35.00
Each ACH Stop Payment of Future Items	.....	\$35.00
	and then a \$5.00 monthly charge for each month after the sixth month in which stop payment remains in effect	
Each Returned Deposit Item	.....	\$7.00
Each Returned Check Redeposited	.....	\$3.00
Each Returned Check Special Handling	.....	\$7.50
Each Deposit Correction	.....	\$3.00
Special Statement	.....	\$7.50
Debit Card Replacement Fee	.....	\$5.00
Research Fees:		
Research Per Hour	.....	\$20.00
Photocopies (each)	.....	\$1.00
Collection Item Fee	.....the cost of processing the collection letter with a \$20 minimum.	
Dormant Checking Account Charges	.....	\$8.50
	An \$8.50 per month fee will be charged on dormant accounts. "Dormant Accounts" are defined by applicable law.	
Dormant Savings Account Charges	.....	\$8.50
	An \$8.50 per month fee will be charged on dormant accounts. "Dormant Accounts" are defined by applicable law.	
90 Day Account Closure Fee	.....	\$25.00
	(Fee charged on checking accounts closed within 90 days of opening.)	
Wire Transfer Fees:		
Outgoing	.....	\$15.00
Incoming	.....	\$12.00
Foreign	.....	\$50.00
Telephone Funds Transfers:		
Automated via InfoLine	.....	NO CHARGE
Assisted by branch or InfoLine personnel	.....	\$3.00

Safe Deposit Box Drilling Fee - Missouri	.....	\$85.00
All other states	.....	\$75.00
Legal Processing	.....	Up to \$125.00
	(see Other Important Information section)	

ABOUT OVERDRAFTS

An "overdraft" occurs any time a check, ACH, ATM, debit card, bank fee (including any overdraft-related fee) or any other transaction (collectively, a "Transaction") is presented for payment against an account and the available balance of the account is insufficient to pay the Transaction. When an overdraft occurs, we may, at our discretion, refuse the Transaction, or alternatively, we may choose to pay the Transaction, in which case a negative account balance will result.

Overdraft Payment Service

BancorpSouth's Overdraft Payment Service is a service whereby we determine whether to pay a Transaction in overdraft. This determination is strictly discretionary with us. Our Overdraft Payment Service is not a contract or agreement with you. We are not required to pay any Transaction in overdraft, even if we have paid overdrafts many times previously and even if we have permitted an account to remain in an overdraft status for an extended period. We use a variety of factors in determining whether to pay a Transaction in overdraft, including, but not necessarily limited to, how long your account has been open, how many times and in what amounts your account has been previously overdrawn, how much money you have in your account on average, whether your account is or has been subject to garnishment or other legal action, and whether you have defaulted on any agreements without (including loan agreements). You may remove your account from our Overdraft Payment Service, in which case we will refuse to pay most Transactions drawn against insufficient funds. Removing your account from our Overdraft Payment Service does not guarantee that your account cannot be overdrawn. For example, certain Transactions such as pre-authorized electronic debits and bank fees may continue to be paid from your account and may cause your account to be overdrawn. Call a BancorpSouth customer service representative at 1-888-797-7711 to ask about removing your account from our Overdraft Payment Service.

Overdraft-related Fees

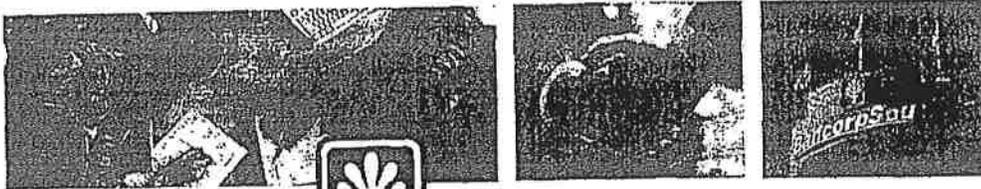
Certain fees apply to our Overdraft Payment Service and to accounts which otherwise become overdrawn. If we decide to pay a Transaction in overdraft, you will be charged an Overdraft (OD) Item fee for each such Transaction. If we decide not to pay a Transaction into overdraft, you will be charged an Insufficient Funds (NSF) Item fee for each refused Transaction. If your account remains in overdraft for ten (10) consecutive days, then on the tenth (10th) day you will be charged a Continuous Overdraft fee. Only one Continuous Overdraft fee will be charged for each continuous period of overdraft of ten (10) days or more, regardless of how long such period continues. There is no limit to the amount of Overdraft Item, Insufficient Funds Item or Continuous Overdraft fees (collectively, "Overdraft-related Fees") which you may incur.

Order of Payment

If more than one Transaction (whether check, ACH, ATM, debit card, bank fee, overdraft-related fee or any other transaction) is presented for payment against your account on the same banking day and the available balance is insufficient to pay them all, we may decide to pay any or all of them in any order we choose. When we pay Transactions, we generally choose to pay the largest Transaction first and the smallest Transaction last. Our choosing this order of payment for Transactions may result in greater Overdraft-related Fees than if



Bank deposits are FDIC insured. BancorpSouth Investment Services, Inc., and BancorpSouth Insurance Services, Inc., are wholly owned subsidiaries of BancorpSouth Bank. Insurance products are offered by BancorpSouth Insurance Services, Inc. Investment products are offered by BancorpSouth Investment Services, Inc. Member SIPC. Insurance and investment products are not a deposit. Not FDIC insured. Not insured by any federal government agency. Not guaranteed by the bank. * May go down in value



BancorpSouth, Right Where You Are.

Account Information Statement - continued

we had chosen to pay them in some other order or had chosen not to pay them. We may also choose to first pay Transactions which are payable to BancorpSouth and our affiliates.

Avoiding Overdraft-related Fees

The best way to avoid Overdraft-related Fees is to manage your account so that you do not overdraw it. Otherwise, you may avoid Overdraft-related Fees through one of the Overdraft Protection products offered by BancorpSouth. Credit Card Overdraft Protection works by charging your BancorpSouth MasterCard® or VISA® credit card for cash advances in the total amount of Transactions drawn against insufficient funds, with resulting deposits of the cash advance amounts into your account to cover such Transactions, up to the available cash advance limit of your credit card. Credit Card Overdraft Protection transactions are subject to all of the rules and finance charge provisions applicable to cash advances under the Cardholder Agreement. You may also avoid Overdraft-related Fees by establishing a BancorpSouth Equity Credit Line, which is a line of credit. This form of Overdraft Protection works by charging your Equity Credit Line in the amounts of Transactions drawn against insufficient funds, with resulting deposits of these amounts into your account to cover such Transactions, up to the available credit limit of your Equity Credit Line. An Overdraft Equity Credit Line fee and interest charges will be charged to your Equity Credit Line in accordance with the terms of your Equity Credit Line agreement. You may also avoid Overdraft-related Fees by linking your account to another checking or savings account you have with BancorpSouth. This form of Overdraft Protection works by debiting from your other account the amounts of Transactions drawn against insufficient funds, with resulting deposits of these amounts into your account to cover such Transactions, up to the available balance of your other account. A transfer fee will be charged. It is still possible for your account to become overdrawn and to incur Overdraft-related Fees even if you use an Overdraft Protection product, such as when your credit card or Equity Credit Line reaches its applicable limit or the available balance of your linked account is depleted and you continue to make Transactions on your account. Call a BancorpSouth customer service representative at 1-888-797-7711 to ask about our Overdraft Protection products. Also, ask a customer service representative for a copy of our flier, "How to Avoid Paying Bank Fees."

MasterCard® Debit Card

BancorpSouth MasterCard® Debit Card is the convenient plastic card that looks like a credit card but works like a check, deducting your purchases from your checking account. MasterCard® Debit Card is good for cash purchases anywhere debit MasterCard® is accepted. Plus, you get a receipt with every transaction so there is no problem keeping track of what you have spent. Monthly, all transactions are reported on your checking account statement along with any checks you have written. A MasterCard® Debit Card serves as your ATM card, so you only have one "checking account card" to carry with you.

MasterCard® Debit Card Fee NO CHARGE
 There is a fee of \$1.50 per transaction when you use your MasterCard® Debit Card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a MasterCard® Debit Card transaction made at its ATM. There is a fee of one percent (1%) of the transaction amount if you use your MasterCard® Debit Card for a transaction in a foreign country. If your transaction in a foreign country is in a currency other than U.S. dollars, the rate used for converting the transaction to U.S. dollars will be the wholesale market rate or any government-mandated rate in effect on the date that MasterCard processes the transaction or any other rate or method prescribed by the then-current MasterCard regulations. Currency conversion may occur on a date other than the date of the transaction, and the conversion rate may be affected accordingly.

Internet Banking and Bill Pay

Internet Banking is free with any personal BancorpSouth checking or Money Market account. Internet Banking allows you to access balance inquiries, view your statement information and your canceled checks (even if your statement doesn't have check images), transfer between accounts, and make payments on your BancorpSouth line of credit or loan.

Free Bill Pay is also available with any personal BancorpSouth checking account when you sign up for Internet Banking if you have a combination of either online statement and debit card or direct deposit and debit card. A \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in Internet Banking, and then sign up for Bill Pay through Internet Banking. (The Free Bill Pay option listed above is standard for all customers who register for Bill Pay after August 21, 2006. If you currently have Bill Pay and would like to change your billing method, please ask your local customer service representative or call our InfoLine at 1-888-797-7711.)

24-Hour Banking

You may access your BancorpSouth checking account day and night at literally thousands of ATMs across the United States with our automated teller card. At BancorpSouth ATM locations you may make deposits as well as withdrawals, loan payments and transfers between accounts.

24-Hour Banking Card Fee \$1.00 per month
 There is a fee of \$1.50 per transaction when you use your 24-Hour Banking card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a 24-Hour Banking card transaction made at its ATM.

Certificate of Deposit

BancorpSouth Certificates of Deposit offer competitive returns on investments that can be tailored to fit your exact needs. Early withdrawal penalties apply to all Certificates of Deposit.

Minimum opening deposit \$1,000.00

Plus Package

The Plus Package is a package of benefits and savings which may be added to any BancorpSouth personal checking account. A fee of \$4.50 for individuals less than 60 years of age or \$3.50 for individuals 60 and better applies and will be deducted from your BancorpSouth personal checking account on a monthly basis. If you have previously enrolled in the program and are being charged a fee of \$4.50 per month, please notify a BancorpSouth representative upon attaining the age of 60, and we will gladly adjust your monthly fee to the appropriate rate.

OTHER IMPORTANT INFORMATION

- The Daily Balance Method of paying interest uses the daily balance in calculating the interest on your account. This method applies a daily periodic rate to the principal in the account each day. When you deposit checks into any account at BancorpSouth, interest begins to accrue no later than the business day we receive credit for the item.
- The Daily Ledger Balance reflects all deposits and withdrawals regardless of actual collection of funds.
- On checking accounts, federal regulations allow the bank to create transaction and savings sub-accounts which exist only on the books of the bank and which allow the bank to make transfers at the close of each working day. This puts the bank in a more favorable position concerning reserve requirements and ultimately allows us to maintain the most competitive pricing on your checking account. The activity of the sub-accounts will not be reflected on your bank statement and will not affect your account balance or the interest, fees and features of your checking account.



Bank deposits are FDIC insured. BancorpSouth Investment Services, Inc., and BancorpSouth Insurance Services, Inc., are wholly owned subsidiaries of BancorpSouth Bank. Insurance products are offered by BancorpSouth Insurance Services, Inc. Investment products are offered by BancorpSouth Investment Services, Inc. Member SIPC. Insurance and investment products are Not a deposit. Not FDIC insured. Not insured by any federal government agency. Not guaranteed by the bank. * May go down in value.

EXHIBIT E

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IN THE 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,)
Fourth Tranche)

THIS DOCUMENT RELATES TO:,)
)
)
Shane Swift v. BancorpSouth, Inc.,)
S.D. Fla. Case No. 1:10-cv-23872JLK)

DEPOSITION
OF
SHANE SWIFT

AUGUST 16, 2012

1 the value of the money in your account?

2 MR. KAPLAN: No objection.

3 THE WITNESS: Yes. I see that.

4 BY MR. TAYLOR:

5 Q You agree with that?

6 A Yes.

7 Q Just using these transactions as an
8 example, some of those transactions occurred
9 without enough money in your account to cover
10 them. Right?

11 A Yes.

12 Q And my question is: You knew that
13 when you undertook those transactions, didn't
14 you?

15 A I don't recall knowing that during
16 these transactions.

17 Q Okay. Is it fair to say that you
18 didn't know whether you would have enough
19 money to cover all of these transactions at
20 the time that you entered into the
21 transactions?

22 A Ask me that again, please.

23 Q Sure. Is it fair to say that, when
24 you entered into the transactions that are
25 reflected in the chart here on Page 21 of

1 Exhibit 2, that you didn't know if there was
2 enough money in your account to cover those
3 transactions?

4 A It is fair to say that I did not
5 know.

6 Q Is it fair to say that you knew the
7 transactions would be honored by the bank?

8 A It would be fair to say that I knew
9 the transactions would be honored by the bank
10 if it just so happened to go into an
11 overdraft.

12 Q The overdraft is what allowed the
13 transaction to be honored, in other words.
14 Right?

15 MR. KAPLAN: Do you understand
16 the question?

17 THE WITNESS: I didn't
18 understand the question. Go ahead. Ask
19 me -- I mean, it is a simple question.
20 But go ahead.

21 BY MR. TAYLOR:

22 Q No, no. We are trying to make sure
23 we are on the same page.

24 A Uh-huh.

25 Q One of the things we did well last

Shane Swift v. BancorpSouth, Inc.
Shane Swift on 08/16/2012

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1 time is we got to get on the same page.

2 The reason that all of the
3 transactions were honored was because of
4 BancorpSouth's overdraft service. Right?

5 A Yes.

6 Q And you knew about that. Right?

7 A The overdraft protection?

8 Q Right.

9 A Yes.

10 Q Because you have used it before.

11 A Yes. It was used before.

12 Q You used it before. Right?

13 A Yes.

14 Q And when I say "you," I know both you
15 and your wife are on the account. I don't
16 mean to pick one or the other. It's whoever
17 was doing the transaction.

18 A It is fine. Yeah. You understand
19 that. Yes.

20 Q What is Life Touch School?

21 A That is what I was looking at. I
22 don't recall Life Touch School. I really
23 don't recall Life Touch School. It is
24 probably in the corner of my mind, but I don't
25 recall Life Touch School.

1 A My wife and I have two separate
2 accounts.

3 Q So you have a new account with
4 another bank. Is that fair?

5 A I don't. I don't.

6 Q Your wife has a new account with a
7 new bank?

8 A Yes.

9 Q What bank is she using?

10 A Iberia.

11 Q Is that in Pocahontas?

12 A Yes.

13 Q Do you have access to that account?

14 A No.

15 Q So we are still really talking only
16 during the class period and only the primary
17 checking account. Not the mortgage checking
18 account.

19 Your memory is that there was only
20 one check register for that account. Right?

21 A Yes.

22 Q During the class period, is it fair
23 to say that you weren't aware of all the
24 transactions that your wife was entering into
25 on the primary checking account?

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Shane Swift on 08/16/2012

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1 A It would be fair to say that. Yes.

2 Q We may have talked a little bit about
3 this before. I'm not going to go deeply into
4 it.

5 But you recall before we used debit
6 cards that, when there wasn't enough money in
7 an account for a check, that the check would
8 be returned NSF. Right?

9 A At any particular bank?

10 Q Just as a general matter.

11 A Yes. As a general matter.

12 Q An overdraft service operates to
13 honor the transaction rather than return it.
14 Right?

15 A Yes.

16 Q Do you understand that, if there is
17 no overdraft service, if there is no overdraft
18 protection and there is not enough money in an
19 account, that the transaction will be either
20 rejected or returned?

21 A Yes.

22 Q Having a transaction rejected is not
23 a good thing. Right?

24 A No. It is not.

25 Q You recall when I asked you about

1 receiving overdraft notices from the bank
2 during the class period. Right?

3 A Do I recall you mentioning it?

4 Q We talked about that at the last
5 deposition.

6 A I couldn't recall; but, I mean, I'm
7 sure --

8 Q And this is just --

9 A All right.

10 Q You received overdraft notices from
11 BancorpSouth for the overdrafts that occurred
12 on your account during the class period.
13 Right?

14 A Yes.

15 Q You received those overdraft notices
16 every time you had an overdraft. Right?

17 A Through the mail, yes.

18 Q You did not investigate the
19 circumstances for the overdraft when you
20 received those notices. Right?

21 MR. KAPLAN: Objection. Form.

22 THE WITNESS: You can either
23 rephrase your question; or I'm going to
24 ask your question back, what you meant
25 by "investigate."

1 The reason why -- are you asking
2 me the reason why?

3 BY MR. TAYLOR:

4 Q Well, let's try to start it this way.

5 A Okay.

6 Q When you received the overdraft
7 notices, you testified that you did not
8 contact the bank about it. Right?

9 A Yes.

10 Q And you didn't undertake any
11 investigation at the time to understand why
12 the overdraft occurred, did you?

13 MR. KAPLAN: Objection. I think
14 that misstates his prior testimony. At
15 some point, he looked at it; and he
16 looked at the ordering. So in my mind,
17 that would be an investigation of it.

18 Are you talking about prior to
19 that point?

20 MR. TAYLOR: I appreciate what
21 you are doing.

22 MR. KAPLAN: I can just do form
23 too if you want me --

24 MR. TAYLOR: No, no. I'm not
25 trying to trick him. I expected him to

Shane Swift v. BancorpSouth, Inc.
Shane Swift on 08/16/2012

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1 Q You don't recall writing out a check
2 to Life Touch School. Is that right?

3 A I don't recall writing out a check.

4 Q Just so I am clear -- and hopefully
5 the record is clear -- you don't recall for
6 sure if that might have been for your
7 daughter's school pictures?

8 A I don't recall that.

9 Q Now, under each of the three charts,
10 Pages 21 and 22 of Exhibit 1, there are some
11 amount of overdrafts. Correct?

12 A On each page, there are some amount
13 of overdrafts.

14 Q In each chart.

15 A Yes, there are. There are.

16 Q And each chart represents a different
17 posting order. Correct?

18 A Yes.

19 Q From your perspective, whichever
20 chart we are talking about here, would you
21 rather have had the transactions that are
22 reflected as transactions that triggered an
23 overdraft -- would you have rather had those
24 transactions honored or dishonored?

25 A Out of any?

Shane Swift v. BancorpSouth, Inc.
Shane Swift on 08/16/2012

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1 Q Correct.

2 A I would have rather had them honored.

3 Q Do you recall looking at -- and you
4 can use any chart for this.

5 Do you recall what the transactions
6 were for any of these specific line items?

7 A Yes.

8 Q Can you tell me what the Wal-Mart
9 transaction -- I'm looking at the first chart
10 on Page 21. The Wal-Mart in Pocahontas,
11 Arkansas, \$75.42.

12 Can you tell me what that transaction
13 was?

14 A I couldn't recall. I don't --

15 Q We talked about Life Touch School.
16 You just don't remember one way or the other.
17 Right?

18 A Not fully.

19 Q But it sounded like school pictures
20 kind of rings a bell.

21 A You are getting there. Yes. Maybe.

22 Q JP Flash. What is that transaction?

23 A It might be a gas station. Maybe
24 not.

25 Q Is it fair to say you don't recall?

1 BY MR. TAYLOR:

2 Q Mr. Swift, can you identify Exhibit
3 Number 6?

4 A Yes. I can identify it. Yes.

5 Q What is that?

6 A It appears to be an account
7 information statement.

8 Q It is from BancorpSouth. Correct?

9 A The logo is on it. Yes.

10 Q Do you see that it is dated as of
11 March 1, 2006?

12 A I see that.

13 Q Do you recall receiving the
14 document -- that is, Exhibit 6 -- in
15 connection with your primary BancorpSouth
16 checking account?

17 A Ask that question one more time.

18 Q Do you recall receiving the document,
19 Exhibit 6 -- it would have been an original
20 copy.

21 Do you recall receiving the document
22 Exhibit 6 in connection with your BancorpSouth
23 primary checking account during the class
24 period?

25 A No.

1 Q Is it fair to say you just don't
2 recall one way or the other whether you
3 received it?

4 A Yes. It is fair to say that.

5 Q Is it fair to say you received mail
6 from the bank that you did not always review?

7 A Yes. It is fair.

8 Q Looking at Exhibit 6, the far left
9 column, do you see the "About Overdrafts"
10 section?

11 A I am looking at it.

12 Q I'm going to ask you to look at the
13 second paragraph about six lines down.

14 Do you see where it says, "Also, if
15 more than one"? Do you see that?

16 A I am reading it. Yes.

17 Q Would you mind just reading into the
18 record that -- from there to the end of the
19 paragraph.

20 A You want me to read from there to the
21 end of the paragraph?

22 Q Please.

23 A Forgive me for my contacts, but I
24 will attempt.

25 Also if none -- it is real choppy

Shane Swift v. BancorpSouth, Inc.
Shane Swift on 08/16/2012

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1 right here. "If more than one check or other
2 transaction is presented for payment against
3 your account in the same banking day and the
4 available balance is sufficient to pay them
5 all, we may pay any of them in any order we
6 choose even if the order we choose results in
7 greater overdraft item or insufficient fund
8 item fees than if we had chosen to pay them in
9 some other order.

10 "We may also choose to first pay
11 checks or other transactions which are payable
12 to BancorpSouth and our affiliates."

13 Q Thank you. I want to make one
14 correction because this is a little -- the
15 copy is not great.

16 A Yes.

17 Q It says -- up towards the third line
18 that I asked you to read, it says, "The
19 available balance is insufficient to pay them
20 all." Right?

21 A Yes. The balance is insufficient to
22 pay them all.

23 Q The specific language I wanted you to
24 focus on is the part that says that, "If more
25 than one check or other transaction is

1 presented for payment against your account on
2 the same banking day and the available balance
3 is insufficient to pay them all, we may pay
4 any of them in any order we choose."

5 Do you see that?

6 A Yes.

7 Q You understand that. Right?

8 MR. KAPLAN: Objection as to
9 form.

10 THE WITNESS: Reading it today,
11 yes. I do.

12 BY MR. TAYLOR:

13 Q And it means that the bank is saying
14 that it can order transactions in any way it
15 chooses. Right?

16 MR. KAPLAN: Objection to form.

17 THE WITNESS: That is what it
18 appears to say.

19 BY MR. TAYLOR:

20 Q And then a little bit further, it
21 says, "Even if that means it creates more
22 overdrafts." Right?

23 A That is what it appears to say.

24 Q And you understand that, reading it.
25 Right?

1 A Yes.

2 (Whereupon, Exhibit No. 4 was marked
3 for identification and is attached
4 hereto.)

5 BY MR. TAYLOR:

6 Q Mr. Swift, that is Exhibit 4. The
7 jumping around with numbers is -- this was
8 Exhibit 4 from the last deposition.

9 A Okay.

10 Q It may be a little confusing today.
11 It will actually be more clear in the long run
12 if we do it this way.

13 A Like I say, forgive me. My
14 contacts -- they have been acting up the last
15 couple of days.

16 Q I understand.

17 Mr. Swift, can you identify Exhibit
18 4?

19 A I can identify it.

20 Q What is Exhibit 4, please?

21 A It appears to be an Account
22 Information Statement.

23 Q Again, this is a BancorpSouth Account
24 Information Statement. Right?

25 A It appears so with the letterhead.

1 Q Could you turn to the very last page.

2 A (Witness complies.)

3 Q At the bottom right-hand column, do
4 you see where it says effective May 10, 2010?

5 A Yes.

6 Q Do you recall receiving this
7 document?

8 A I don't recall.

9 Q Do you see at the bottom where it
10 says, Plaintiff Swift and then 00003?

11 A It doesn't say three. It says seven.

12 MR. KAPLAN: You are talking
13 about the front of the --

14 MR. TAYLOR: I'm sorry. I am on
15 the front page again.

16 BY MR. TAYLOR:

17 Q Do you see where it says Plaintiff
18 Swift 00003?

19 A Yes.

20 Q I will represent to you that that
21 Bates label -- what we refer to as Bates
22 label -- means that your lawyers produced that
23 document to us.

24 A Okay.

25 Q Do you recall giving this document to

1 your lawyers?

2 A I don't recall giving this document.

3 Gave multiple documents, though.

4 Q Do you have any reason to believe
5 that this document didn't come from your
6 records?

7 A I have no reason to believe that.

8 Q Is it fair to say that this document,
9 like the other one, is one you just may not
10 have read?

11 A Yes.

12 Q Please turn to Page 3.

13 A (Witness complies.)

14 Q In the bottom right-hand corner, it
15 says "Order of Payment." Do you see that?

16 A Yes.

17 Q Would you mind reading that
18 paragraph, please.

19 A "If more than one transaction,
20 whether check, ACH, ATM, debit card, bank fee,
21 overdraft related fee, or any other
22 transaction is presented for payment against
23 your account on the same banking day and the
24 available balance is insufficient to pay them
25 all, we may decide to pay any or all of them

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Shane Swift on 08/16/2012

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1 in any order we choose.

2 "When we pay transactions, we
3 generally choose to pay the largest
4 transaction first and the smallest transaction
5 last. Our choosing this order of payment for
6 transactions may result in greater overdraft
7 related fees than if we had chosen to pay them
8 in some other order or had chosen not to pay
9 them.

10 "We may also choose to first pay
11 transactions which are payable to BancorpSouth
12 and our affiliates."

13 Q Thank you. Focusing on the very
14 first part of what you just read, do you
15 understand what it means when it says that,
16 "If more than one transaction, whether check,
17 ACH, ATM, debit card, bank fee, overdraft
18 related fee, or any other transaction is
19 presented for payment against your account on
20 the same banking day and the available balance
21 is insufficient to pay them all, we may decide
22 to pay any or all of them in any order we
23 choose"?

24 A I have come to understand that.

25 Q You understand that, reading today?

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1 A Yes.

2 Q Had you read it back when you
3 received it, you would have understood it.
4 Right?

5 A Yes. Yes.

6 Q And then the next sentence is, "When
7 we pay transactions, we generally choose to
8 pay the largest transaction first and the
9 smallest transaction last."

10 You understand that. Right?

11 A Yes.

12 Q If you had read it back when you
13 received it, you would have understood it?

14 A I'm sure.

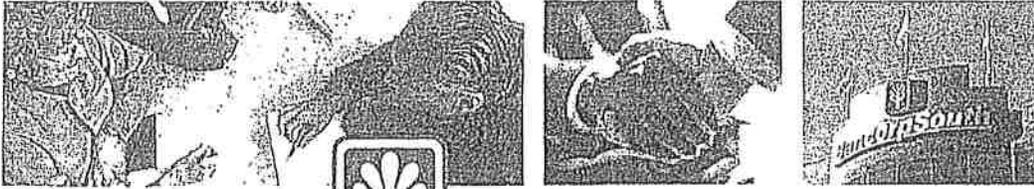
15 Q The sentence, "Our choosing this
16 order of payment for transactions may result
17 in greater overdraft related fees than if we
18 had chosen to pay them in some other order or
19 chose not to pay them --" likewise, you
20 understand what that means?

21 A Yes.

22 Q And you would have understood it had
23 you read it earlier. Right?

24 A Yes.

25 MR. TAYLOR: If you want to take



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Account Information Statement

This disclosure of fees and charges applies to accounts at BancorpSouth. We think it is important for you to have a full understanding of these fees and charges.

We welcome your questions in person or by phone. The answers are as close as your nearest BancorpSouth office or by using InfoLine, 1-888-797-7711, our 24-hour account information line. Bold text in the following indicates changes from the last edition of the Account Information Statement.

NON-INTEREST CHECKING ACCOUNTS

The minimum deposit required to open any BancorpSouth non-interest bearing checking account is \$50.00.

Regular Checking

An \$800.00 minimum daily ledger balance avoids any monthly service charge. When the minimum daily ledger balance falls below \$800.00 during a statement cycle, the monthly service charge will be \$8.50.

BancSmart Free Checking

The BancSmart Free Checking account has no monthly maintenance fee, no per check charge and no minimum monthly balance. Combined with a savings account, free Internet Banking, online statements, combined statements and other services, BancSmart Free Checking is a complete bundle of products positioned to help you start your relationship with BancorpSouth. To receive Bill Pay free of charge, you must have a combination of either online statement and debit card or direct deposit and debit card. A \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in Internet Banking and then sign up for Bill Pay. It is not required that you have Internet Banking or Bill Pay to receive BancSmart Free Checking.

Free Checking for Students*

Students love this account because there is no minimum balance requirement, no monthly service charge, and no per check charge... it's "Free" through age 24.

Second Chance Checking*

Second Chance Checking is a special checking account for those individuals who may not have a perfect check-writing history with ChexSystems. (If you've ever had a checking account that was overdrawn when it was closed or have written bad checks in the past, your name may appear on the national ChexSystems list used by banks to approve individuals for checking accounts.) BancorpSouth doesn't approve everyone for a Second Chance Checking account, only those individuals that don't have a significant ChexSystems history.

Second Chance Checking helps you to build your good check writing history and work toward a standard BancorpSouth checking account - many without a monthly fee. If your account is in good standing after one year (no overdrafts or bad checks), you may request a standard BancorpSouth checking account.

Second Chance Checking gives you unlimited check-writing privileges with a standard monthly service charge and is subject to BancorpSouth's standard deposit policies and fees and may be closed anytime for any reason of delinquency (bad check writing, overdrafts, etc.) or fraud.

Monthly service charge regardless of balance\$6.99
 *Accounts receive a monthly statement. Check images remain on file at the bank. Copies may be requested with no charge for the first five (5) items. In excess of five, per item copy charge is \$1.00.

INTEREST BEARING CHECKING ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. This means that all the collected funds in your account earn interest each day. The minimum deposit required to open BancorpSouth interest bearing checking accounts varies by account type. See individual account descriptions for details.

Performance Checking

Performance Checking is our special rate bonus checking account which earns a Bonus Rate on your balance from \$0-\$30,000 and special ATM benefits when you meet each of the following 4 requirements during your statement period on your Performance Checking account: 1. Have at least 1 ACH debit or credit; 2. Have at least 12 debit card purchase transactions; 3. Be enrolled in online statement; 4. Be enrolled in Internet Banking.

If you meet all 4 of the requirements during a statement period, then your Performance Checking account balance from \$0 to \$30,000 will earn a Bonus Rate Annual Percentage Yield (APY) and that portion of your Performance Checking account balance in excess of \$30,000 will earn a Standard Rate APY. Additionally, if you meet all 4 of the requirements at all times during a statement period, then at the end of each statement period, for the first 5 ATM transactions you make at a non-BancorpSouth ATM during that period, we will refund the \$1.50 non-BancorpSouth ATM fee and will credit your account an additional \$2.00 against charges imposed by the owner of the non-BancorpSouth ATM (a total of \$3.50 in refunds and credits for the first 5 such transactions during the statement period). ATM fee refunds and credits will never exceed \$17.50 in any statement period. If you do not meet all 4 of these requirements at all times during the statement period, then you will earn the Standard Rate on all balances. Personal accounts only. Rates are subject to change at the bank's discretion without notice. Fees may reduce earnings.

Minimum opening deposit\$50.00
 Unlimited Deposits and Withdrawals
 No minimum balance or monthly service charge

Heritage Checking

Heritage Checking is BancorpSouth's preferred services account for our friends who are 50 and over. Heritage Checking accounts earn interest at a competitive rate, which is determined solely by the Bank and is subject to change weekly. Interest is earned daily on the collected balance using the daily balance method and is credited and compounded monthly. If you close your Heritage Checking account before the interest is credited, you will receive the accrued interest for that period. In addition to earning interest, Heritage Checking accounts include common carrier accidental death insurance as well as discounts and special savings.

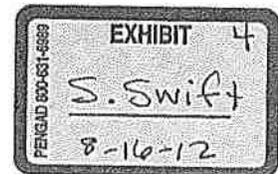
Minimum opening deposit\$50.00
 Monthly Service Charge with a minimum daily ledger balance of:
 \$300.00 or moreNONE
 Below \$300.00\$8.00

Interest Plus Checking

The Interest Plus Checking account is a tiered-rate checking account.

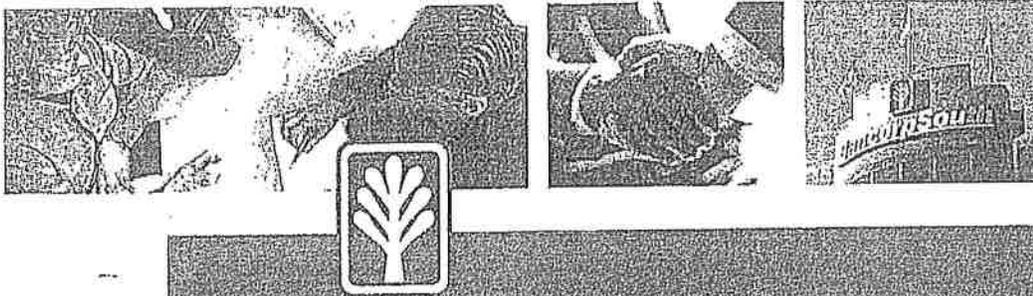
The interest rate tiers are as follows:

Balances between \$0-\$4,999
 Balances between \$5,000-\$9,999
 Balances between \$10,000-\$24,999
 Balances between \$25,000-\$49,999
 Balances between \$50,000-\$99,999
 Balances \$100,000 and above



Bank deposits are FDIC insured. BancorpSouth Investment Services, Inc., and BancorpSouth Insurance Services, Inc., are wholly owned subsidiaries of BancorpSouth Bank. Insurance products are offered by BancorpSouth Insurance Services, Inc. Investment products are offered by BancorpSouth Investment Services, Inc. Member SIPC. Insurance and investment products are: * Not a deposit | Not FDIC insured | Not insured by any federal government agency * Not guaranteed by the bank * May go down in value

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Account Information Statement - continued

Your account has unlimited transactions at no extra cost and earns interest at a competitive rate determined solely by the Bank and is subject to change weekly. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time and is available for early withdrawal.

Minimum opening deposit	\$1,000.00
Monthly service charge with a balance of:	
\$1,000.00 or more	NONE
Below \$1,000.00	\$10.00

Monthly statements are itemized and include imaged checks.

SAVINGS ACCOUNTS

Interest is paid on the collected balance in the account using the daily balance method of interest calculation. The minimum deposit required to open a BancorpSouth savings account varies by account type. See individual account descriptions for details.

Money Market Select

The Money Market Select account is a tiered-rate money market account. The interest rate tiers are as follows:

- Balances between \$0-\$9,999
- Balances between \$10,000-\$24,999
- Balances between \$25,000-\$49,999
- Balances between \$50,000-\$99,999
- Balances between \$100,000-\$149,999
- Balances between \$150,000-\$499,999
- Balances \$500,000 and above

The Money Market Select account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals.

Minimum opening deposit	\$1,000.00
Minimum balance	\$10,000.00
Monthly service charge with a balance of:	
\$10,000.00 or more	NONE
Below \$10,000.00	\$10.00

There will be a \$10.00 charge for each withdrawal in excess of six per month. Monthly statements are itemized and include imaged checks. A BancorpSouth checking account is required to open this account.

Personal Money Market

The Personal Money Market account is a tiered-rate money market account. The interest rate tiers are as follows:

- Balances between \$0-\$2,499
- Balances between \$2,500-\$4,999
- Balances \$5,000 and above

The Personal Money Market account earns interest at a competitive rate determined solely by the Bank and is subject to change. Interest is calculated based on simple interest and applied to the daily collected balance. Interest is credited at statement time; however, the accrued interest is available for closing withdrawals.

Minimum opening deposit	\$1,000.00
Monthly service charge with a balance of:	
\$1,000.00 or more	NONE

Below \$1,000.00\$10.00
There will be a \$10.00 charge for each withdrawal in excess of six per month. Monthly statements are itemized and include imaged checks.

Classic Savings

Interest is paid on the collected balance using the daily balance method. The rate of interest is determined solely by the Bank and is subject to change on a weekly basis. Interest is compounded daily and credited semiannually. Deposits and withdrawals can be made at any time. If you close your account prior to the interest being credited, you will receive interest through the closing date. Minimum deposit required to open a Classic Savings account is \$50.00. Only a \$25.00 opening deposit is required for children 15 and under to open a "Savings Bug" (Classic Savings) account. All other account details apply. There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle.

Select Savings Account

The Select Savings account earns interest at a rate determined solely by the Bank and is subject to change. Interest is calculated based on semiannual compound and credited semiannually. Accrued interest is available for early closing withdrawals. A BancorpSouth checking account is required to open this account. This account is available for businesses.

Minimum opening deposit	\$1,000.00
Semiannual service charge with a balance of:	
\$1,000.00 or more	NONE
Below \$1,000.00	\$5.00

Additional information and fees for Classic and Select Savings Accounts:
Additional "Memo" statements will be produced if the account has an EFT transaction during the month. This is a snapshot statement and will reflect all activity since the last scheduled semiannual statement. There will be a \$5.00 charge for each withdrawal in excess of six during any six-month cycle.

Performance Savings

Performance Savings is our special rate bonus savings account which earns a Bonus Rate on your entire balance when you meet each of the following requirements during your interest cycle on your Performance Savings account:

1. Transfer at least \$50 into your Performance Savings account each interest cycle electronically via ACH or Internet Banking Transfer.
2. Combine your Performance Savings statement with your BancorpSouth Checking account statement (you will no longer receive a separate statement for your Performance Savings account). If you meet both the requirements above during your statement period, your entire balance for that interest cycle will earn the Bonus Rate Annual Percentage Yield (APY). Performance Savings not only pays you a Bonus Rate, but also helps you save with the \$50 per interest cycle transfer requirement. A Performance Checking account is required to open as part of our "Performance Banking" package of services. Interest is paid monthly on the collected balance in the account using the daily balance method of interest calculation. Rates are subject to change at the bank's discretion without notice. Fees may reduce earnings.

Minimum opening deposit	\$50.00
Minimum monthly balance	\$50.00
Monthly service charge if balance falls below minimum	\$2.50

There will be a \$5.00 charge for each withdrawal in excess of six during the monthly interest cycle.

Christmas Club

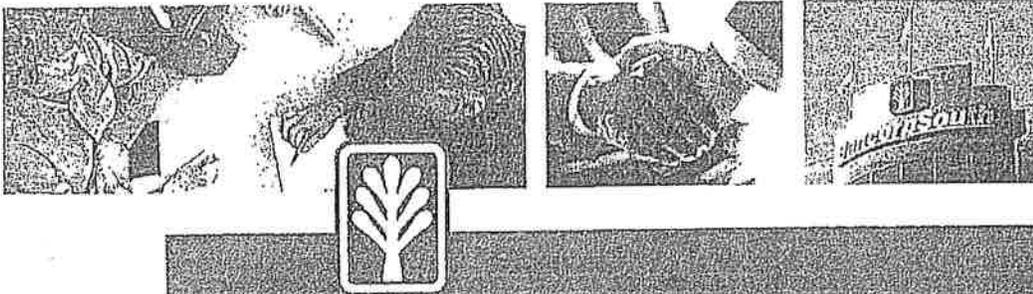
Christmas Club accounts earn interest at a rate determined solely by the Bank and is subject to change weekly. Interest is calculated on the daily ledger balance using the daily balance method. Interest is accrued daily and credited yearly in November when a check for the balance is issued to



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Account Information Statement - continued

you. If you close your Christmas Club account before the interest is credited, you forfeit all accrued interest. If the principal balance of your Christmas Club account is \$250.00 or less on the day designated by the Bank for crediting interest to Christmas Club accounts, you forfeit all accrued interest. If you make a withdrawal from your Christmas Club account prior to the date in November when a check for the balance of the account is issued to you, you will be charged a fee of \$5.00 for each such withdrawal.

Safe Deposit Box Drilling Fee - Missouri	\$85.00
All other states	\$75.00
Legal Processing	Up to \$125.00
(see Other Important Information section)	

SERVICE FEES

Check Printing Charges	Charges will vary based on check design
Official Checks	\$6.00
Each Overdraft (OD) Item	\$35.00
Each Insufficient (NSF) Funds Item	\$35.00
Continuous Overdraft Fee	\$25.00
for each period of ten (10) days or longer that your account is continuously in overdraft, charged on the tenth (10th) day	
Overdraft Equity Credit Line Fee	\$7.50 per transfer
Overdraft Transfer Fee from Credit Card	See your Cardholder Agreement
Overdraft Transfer Fee from Eligible Deposit Account	\$7.50 per transfer
Each Stop Payment	\$35.00
Each ACH Stop Payment of Future Items	\$35.00
and then a \$5.00 monthly charge for each month after the sixth month in which stop payment remains in effect	
Each Returned Deposit Item	\$7.00
Each Returned Check Re-deposited	\$3.00
Each Returned Check Special Handling	\$7.50
Each Deposit Connection	\$3.00
Special Statement	\$7.50
Debit Card Replacement Fee	\$5.00
Research Fees:	
Research Per Hour	\$20.00
Photocopies (each)	\$1.00
Collection Item Fee	the cost of processing the collection letter with a \$20 minimum.
Dormant Checking Account Charges	\$8.50
An \$8.50 per month fee will be charged on dormant accounts. "Dormant Accounts" are defined by applicable law.	
Dormant Savings Account Charges	\$8.50
An \$8.50 per month fee will be charged on dormant accounts. "Dormant Accounts" are defined by applicable law.	
90 Day Account Closure Fee	\$25.00
(Fee charged on checking accounts closed within 90 days of opening.)	
Wire Transfer Fees:	
Outgoing	\$15.00
Incoming	\$12.00
Foreign	\$50.00
Telephone Funds Transfers:	
Automated via InfoLine	NO CHARGE
Assisted by branch or InfoLine personnel	\$3.00

ABOUT OVERDRAFTS

An "overdraft" occurs any time a check, ACH, ATM, debit card, bank fee (including any overdraft-related fee) or any other transaction (collectively, a "Transaction") is presented for payment against an account and the available balance of the account is insufficient to pay the Transaction. When an overdraft occurs, we may, at our discretion, refuse the Transaction, or alternatively, we may choose to pay the Transaction, in which case a negative account balance will result.

Overdraft Payment Service

BancorpSouth's Overdraft Payment Service is a service whereby we determine whether to pay a Transaction in overdraft. This determination is strictly discretionary with us. Our Overdraft Payment Service is not a contract or agreement with you. We are not required to pay any Transaction in overdraft, even if we have paid overdrafts many times previously and even if we have permitted an account to remain in an overdrawn status for an extended period. We use a variety of factors in determining whether to pay a Transaction in overdraft, including, but not necessarily limited to, how long your account has been open, how many times and in what amounts your account has been previously overdrawn, how much money you have in your account on average, whether your account is or has been subject to garnishment or other legal action, and whether you have defaulted on any agreements with us (including loan agreements). You may remove your account from our Overdraft Payment Service, in which case we will refuse to pay most Transactions drawn against insufficient funds. Removing your account from our Overdraft Payment Service does not guarantee that your account cannot be overdrawn. For example, certain Transactions such as pre-authorized electronic debits and bank fees may continue to be paid from your account and may cause your account to be overdrawn. Call a BancorpSouth customer service representative at 1-888-797-7711 to ask about removing your account from our Overdraft Payment Service.

Overdraft-related Fees

Certain fees apply to our Overdraft Payment Service and to accounts which otherwise become overdrawn. If we decide to pay a Transaction in overdraft, you will be charged an Overdraft (OD) Item fee for each such Transaction. If we decide not to pay a Transaction into overdraft, you will be charged an Insufficient Funds (NSF) Item fee for each refused Transaction. If your account remains in overdraft for ten (10) consecutive days, then on the tenth (10th) day you will be charged a Continuous Overdraft fee. Only one Continuous Overdraft fee will be charged for each continuous period of overdraft of ten (10) days or more, regardless of how long such period continues. There is no limit to the amount of Overdraft Item, Insufficient Funds Item or Continuous Overdraft fees (collectively, "Overdraft-related Fees") which you may incur.

Order of Payment

If more than one Transaction (whether check, ACH, ATM, debit card, bank fee, overdraft-related fee or any other transaction) is presented for payment against your account on the same banking day and the available balance is insufficient to pay them all, we may decide to pay any or all of them in any order we choose. When we pay Transactions, we generally choose to pay the largest Transaction first and the smallest Transaction last. Our choosing this order of payment for Transactions may result in greater Overdraft-related Fees than if

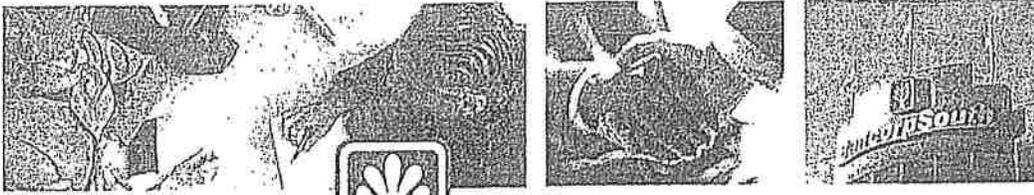
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Right Where You Are

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Account Information Statement - continued

we had chosen to pay them in some other order or had chosen not to pay them. We may also choose to first pay Transactions which are payable to BancorpSouth and our affiliates.

Avoiding Overdraft-related Fees

The best way to avoid Overdraft-related Fees is to manage your account so that you do not overdraw it. Otherwise, you may avoid Overdraft-related Fees through one of the Overdraft Protection products offered by BancorpSouth. Credit Card Overdraft Protection works by charging your BancorpSouth MasterCard® or VISA® credit card for cash advances in the total amount of Transactions drawn against insufficient funds, with resulting deposits of the cash advance amounts into your account to cover such Transactions, up to the available cash advance limit of your credit card. Credit Card Overdraft Protection transactions are subject to all of the rules and finance charge provisions applicable to cash advances under the Cardholder Agreement. You may also avoid Overdraft-related Fees by establishing a BancorpSouth Equity Credit Line, which is a line of credit. This form of Overdraft Protection works by charging your Equity Credit Line in the amounts of Transactions drawn against insufficient funds, with resulting deposits of these amounts into your account to cover such Transactions, up to the available credit limit of your Equity Credit Line. An Overdraft Equity Credit Line fee and interest charges will be charged to your Equity Credit Line in accordance with the terms of your Equity Credit Line agreement. You may also avoid Overdraft-related Fees by linking your account to another checking or savings account you have with BancorpSouth. This form of Overdraft Protection works by debiting from your other account the amounts of Transactions drawn against insufficient funds, with resulting deposits of these amounts into your account to cover such Transactions, up to the available balance of your other account. A transfer fee will be charged. It is still possible for your account to become overdrawn and to incur Overdraft-related Fees even if you use an Overdraft Protection product, such as when your credit card or Equity Credit Line reaches its applicable limit or the available balance of your linked account is depleted and you continue to make Transactions on your account. Call a BancorpSouth customer service representative at 1-888-797-7711 to ask about our Overdraft Protection products. Also, ask a customer service representative for a copy of our flier, "How to Avoid Paying Bank Fees."

MasterCard® Debit Card

BancorpSouth MasterCard® Debit Card is the convenient plastic card that looks like a credit card but works like a check, deducting your purchases from your checking account. MasterCard® Debit Card is good for cash purchases anywhere debit MasterCard® is accepted. Plus, you get a receipt with every transaction so there is no problem keeping track of what you have spent. Monthly, all transactions are reported on your checking account statement along with any checks you have written. A MasterCard® Debit Card serves as your ATM card, so you only have one "checking account card" to carry with you.

MasterCard® Debit Card Fee NO CHARGE

There is a fee of \$1.50 per transaction when you use your MasterCard® Debit Card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a MasterCard® Debit Card transaction made at its ATM. There is a fee of one percent (1%) of the transaction amount if you use your MasterCard® Debit Card for a transaction in a foreign country. If your transaction in a foreign country is in a currency other than U.S. dollars, the rate used for converting the transaction to U.S. dollars will be the wholesale market rate or any government-mandated rate in effect on the date that MasterCard processes the transaction or any other rate or method prescribed by the then-current MasterCard regulations. Currency conversion may occur on a date other than the date of the transaction, and the conversion rate may be affected accordingly.

Internet Banking and Bill Pay

Internet Banking is free with any personal BancorpSouth checking or Money Market account. Internet Banking allows you to access balance inquiries, view your statement information and your canceled checks (even if your statement doesn't have check images), transfer between accounts, and make payments on your BancorpSouth line of credit or loan.

Free Bill Pay is also available with any personal BancorpSouth checking account when you sign up for Internet Banking if you have a combination of either online statement and debit card or direct deposit and debit card. A \$4.99 monthly service charge will be assessed for Bill Pay if the combination is not in effect at statement time. To receive Bill Pay, you need to enroll in Internet Banking, and then sign up for Bill Pay through Internet Banking. (The Free Bill Pay option listed above is standard for all customers who register for Bill Pay after August 21, 2006. If you currently have Bill Pay and would like to change your billing method, please ask your local customer service representative or call our InfoLine at 1-888-797-7711.)

24-Hour Banking

You may access your BancorpSouth checking account day and night at literally thousands of ATMs across the United States with our automated teller card. At BancorpSouth ATM locations you may make deposits as well as withdrawals, loan payments and transfers between accounts.

24-Hour Banking Card Fee \$1.00 per month
There is a fee of \$1.50 per transaction when you use your 24-Hour Banking card at an ATM that belongs to another bank or financial services company. Such other bank or financial services company may also charge your account a fee for a 24-Hour Banking card transaction made at its ATM.

Certificate of Deposit

BancorpSouth Certificates of Deposit offer competitive returns on investments that can be tailored to fit your exact needs. Early withdrawal penalties apply to all Certificates of Deposit.
Minimum opening deposit \$1,000.00

Plus Package

The Plus Package is a package of benefits and savings which may be added to any BancorpSouth personal checking account. A fee of \$4.50 for individuals less than 60 years of age or \$3.50 for individuals 60 and better applies and will be deducted from your BancorpSouth personal checking account on a monthly basis. If you have previously enrolled in the program and are being charged a fee of \$4.50 per month, please notify a BancorpSouth representative upon attaining the age of 60, and we will gladly adjust your monthly fee to the appropriate rate.

OTHER IMPORTANT INFORMATION

- The Daily Balance Method of paying interest uses the daily balance in calculating the interest on your account. This method applies a daily periodic rate to the principal in the account each day. When you deposit checks into any account at BancorpSouth, interest begins to accrue no later than the business day we receive credit for the item.
- The Daily Ledger Balance reflects all deposits and withdrawals regardless of actual collection of funds.
- On checking accounts, federal regulations allow the bank to create transaction and savings sub-accounts which exist only on the books of the bank and which allow the bank to make transfers at the close of each working day. This puts the bank in a more favorable position concerning reserve requirements and ultimately allows us to maintain the most competitive pricing on your checking account. The activity of the sub-accounts will not be reflected on your bank statement and will not affect your account balance or the interest, fees and features of your checking account.

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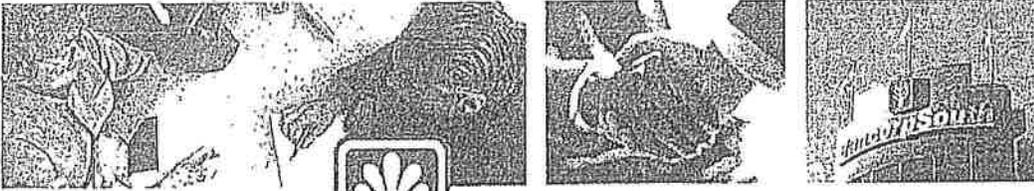


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Account Information Statement - continued

- Electronic debits such as Automated Teller Machine and MasterCard® Debit Card along with InfoLine transfers are not included in your debit item count for calculating service charges.
- All fees and charges are subject to applicable law.
- If your account is made subject to garnishment, execution, levy or any similar legal process, or if your account is made subject to any legal proceeding in which the Bank is required to respond, appear or provide records, we may charge you for each such garnishment, execution, levy or proceeding a fee of up to \$125.00. This fee is in addition to any cost and expenses, including reasonable attorney's fees, which we incur in connection with any of the foregoing.
- You may not use your account in connection with any business of placing, receiving or otherwise knowingly transmitting bets or wagers by any means which involves the use, at least in part, of the Internet, or for any other transaction which is prohibited by Federal Reserve Regulation GG.

Effective Date: May 10, 2010



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EXHIBIT F

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IN THE 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)
THIS DOCUMENT RELATES TO:)
Swift vs. BancorpSouth, Inc.)
N.D. FL Case No. 1:10-cv-00090-SPM)
S.D. FL Case No. 1:10-cv-23872-JLK)

THE 30(b)6 DEPOSITION OF
JEFF JAGGERS
Taken on Behalf of the Plaintiffs
August 15, 2012
8:57 A.M. - 11:33 A.M.

Edward F. Kidd, RPR, LCR #501

My License Expires: 6/30/14

1 Does BancorpSouth have any specific
2 knowledge that Shane Swift, plaintiff,
3 voluntarily initiated all transactions which
4 caused his accounts to be overdrawn?

5 A. From my --

6 Q. Not from your -- from the perspective
7 of the bank?

8 A. From the bank's perspective, the
9 customer is responsible for the initiation of
10 their transactions and the customer has the
11 responsibility to either write the check,
12 swipe the card, authorize a third party to
13 draft their account, withdraw cash from an
14 ATM, all of those things are the customer's
15 responsibility to initiate those
16 transactions. Sitting here today, I'm not
17 aware of any of the transactions as it
18 relates to this case that the Swifts,
19 plaintiffs, did not initiate.

20 Q. Is there some specific transaction of
21 which you have knowledge that plaintiff Shane
22 Swift initiated which caused the account to
23 become overdrawn?

24 MR. TAYLOR: Object to the form.

25 THE WITNESS: Are you -- are you

1 time that the account was overdrawn, there
2 could have been letters that were forwarded
3 to the plaintiffs reminding them that their
4 account was overdrawn. The plaintiffs
5 received monthly statements. On those
6 monthly statements the fees were disclosed
7 and listed on their monthly statements, and
8 the actual balances in their accounts, there
9 is a summary section in the balance of the
10 account in which the customer would have seen
11 their balances on a daily basis.

12 Q. Any other way that plaintiff Shane
13 Swift would have received notice of overdraft
14 charges?

15 A. He, the -- not -- I'm not a lawyer.

16 Q. Sure.

17 A. Without speaking to the legal
18 definition of notice, the bank provides
19 multiple channels for the customer to obtain
20 information on their account on a daily
21 basis.

22 Q. Uh-huh?

23 A. There is a voice response system that
24 a customer can call and they can listen to
25 their transactions, they can speak to a bank

1 representative and get that information or
2 they can have an online banking account,
3 through that online banking account they see
4 all the transactions that have posted on
5 their account and the fees would be disclosed
6 in either the voice response or through the
7 online banking application. We now have an
8 E-banking application, mobile banking
9 application that the customer can also see
10 the transactions history and see fees and
11 other things that are assessed on their
12 account through the mobile banking
13 application.

14 Q. Do you send notices of overdraft
15 charges through that mobile E-banking system?

16 A. The mobile banking application does
17 not -- there are no -- nothing is sent
18 through that. It is a log-in process in
19 which you access your account information
20 through credentials.

21 Q. Uh-huh. I'm sorry. Were you
22 finished?

23 A. No -- yes.

24 Q. We're talking here specifically about
25 overdraft charges. It's actually alleged

1 time, would your testimony with regard to
2 that phrase in the seventh affirmative
3 defense be any different than your testimony
4 with regard to that phrase in the fifth
5 affirmative defense?

6 A. No.

7 Q. Or, I'm sorry, that is actually the
8 sixth affirmative defense.

9 MR. TAYLOR: It's both.

10 MR. KAPLAN: I'm getting
11 confused. Fifth affirmative defense.

12 BY MR. KAPLAN:

13 Q. The next sentence reads plaintiff and
14 the purported class members failed to cease
15 the practice of voluntarily authorizing
16 transactions that caused overdraft fees after
17 being notified the fees were imposed.

18 In the interest of time, would your
19 testimony here with regard to the phrase
20 voluntarily authorizing transactions differ
21 materially from your prior testimony with
22 regard to that same phrase, voluntarily
23 initiating all transactions in the first
24 affirmative defense?

25 A. No.

1 Q. Mr. Swift?

2 A. (Witness nods head).

3 Q. Do you have any knowledge that
4 Mr. Swift ever contacted you and said don't
5 pay any of my items into overdraft?

6 A. I don't have any knowledge that
7 anyone, Mr. or Mrs. Swift, contacted us.

8 Q. Okay. As you sit here today, do you
9 have any reason to believe that Mr. Swift did
10 not have an overdraft limit that BancorpSouth
11 had in place but did not tell Mr. Swift he
12 had?

13 MR. TAYLOR: Object to the form,
14 but answer it if you can.

15 THE WITNESS: Make sure I
16 understood the question you're asking.
17 While Mr. Smith -- Mr. Swift. So sorry.
18 While Mr. Swift was a customer and his
19 account was with us, was there a period
20 of time in which his account would not
21 have had an overdraft limit?

22 BY MR. KAPLAN:

23 Q. Correct.

24 A. I have not done that research.

25 MR. KAPLAN: You want to take a

EXHIBIT G

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IN THE 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,)
Fourth Tranche)

THIS DOCUMENT RELATES TO:)
)
)
Shane Swift v. BancorpSouth, Inc.,)
S.D. Fla. Case No. 1:10-cv-23872JLK)

DEPOSITION
OF
TRINA SWIFT

AUGUST 16, 2012

Shane Swift v. BancorpSouth, Inc.
Trina Swift on 08/16/2012

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1 mean?
2 A It is the joint account. Yes.
3 Q Okay. You have an individual account
4 at another bank. Is that right?
5 A Yes.
6 Q What bank is that with?
7 A Iberia.
8 Q How long have you had that checking
9 account?
10 A A little over a year.
11 Q Before that, did you guys have just
12 the joint account?
13 A Yes. Well, I have a credit union
14 account.
15 Q Is that through your employer?
16 A Yes.
17 Q Is the Iberia account the first time
18 you had a separate checking account --
19 A Yes.
20 Q -- from Shane? Okay.
21 Why did you open that separate
22 account?
23 A It was for -- it was for business
24 purposes initially as well.
25 Q You have a business that you are

1 THE WITNESS: I believe they
2 did. Most places do if you have more
3 than one account there.

4 BY MR. GAYNOR:

5 Q As far as you recall, you have never
6 had a linked account or any other account that
7 was pulled from to cover overdrafts?

8 A I don't remember at this time.

9 Q How did you find out that your
10 account had an overdraft payment service?

11 A I believe, if I can remember, that --
12 it might have been a notice or something. I'm
13 not really sure. It just might have -- I
14 don't remember. I might have gotten a notice
15 from them.

16 Q You mean you think you may have read
17 something that the bank sent you that made you
18 aware of the fact that --

19 A Overdraft. Yes.

20 Q Over the time that you and your
21 husband have had your primary BancorpSouth
22 account, would you agree that you have had a
23 number of overdraft fees over time?

24 A Yes.

25 Q At any point, did you complain to

1 BancorpSouth about the overdraft fees you got
2 on your account?

3 A I don't remember going to them
4 complaining about a fee that I have had on my
5 account. No. I don't intentionally try to do
6 that, but it is a service that is provided. I
7 haven't had to go to the branch and complain
8 about it.

9 Q So you didn't complain about any of
10 your overdraft fees at a branch.

11 Did you ever call customer service or
12 anything like that to complain about overdraft
13 fees?

14 A I might remember there is a time
15 where there was maybe a computer glitch or
16 something, and I had asked them about it.
17 They said it was the computers, and they
18 reversed that.

19 Q So as we sit here today, the only
20 time you remember complaining about an
21 overdraft fee -- the bank reversed those
22 charges?

23 A Yes. Because it really wasn't
24 insufficient. It wasn't negative. It was
25 just something that they had a problem with,

1 and they said there were several people that
2 had that problem than that one particular time
3 that I remember.

4 Q In that situation, they resolved it?

5 A Yeah. They made it easy and resolved
6 it.

7 Q To your satisfaction?

8 A Yeah.

9 Q At any point, did you tell
10 BancorpSouth that you didn't want overdraft
11 payment service?

12 A No.

13 Q Is it your belief that you could have
14 stopped the service if you didn't want it?

15 MR. KAPLAN: Objection. Form.

16 At what point in time?

17 MR. GAYNOR: Thank you.

18 MR. KAPLAN: Okay.

19 BY MR. GAYNOR:

20 Q I think there is a term that I didn't
21 define when we were talking about definitions
22 of terms before.

23 We referred to the class period in
24 Mr. Swift's deposition this morning, and the
25 class period is roughly 2003 until 2010,

1 around the time that the lawsuit was filed.

2 So I may have some questions from here on out
3 where I refer to the class period. And it
4 will refer to that 2003 to the middle of 2010
5 time period.

6 Do you remember at any time -- strike
7 that.

8 Was there any time during the class
9 period where you asked BancorpSouth to take
10 overdraft payment service off of your account?

11 A No. Not that I recall.

12 Q Do you have any reason to believe
13 that, if you had asked them to do that during
14 the class period, that the bank would have
15 refused?

16 A No. I have no reason to believe
17 that.

18 Q Would you agree that having the
19 overdraft payment service on your account
20 provides a benefit to you as an account
21 holder?

22 MR. KAPLAN: Objection to form.

23 THE WITNESS: Your question is
24 do I believe that having that overdraft
25 protection is a benefit to me as an

1 account holder?

2 BY MR. GAYNOR:

3 Q Yes, ma'am.

4 A Is that your question?

5 Q Yes, ma'am.

6 A Yes.

7 Q At some point in 2010, BancorpSouth
8 specifically asked you and Mr. Swift if you
9 wanted to continue having that service. Is
10 that right?

11 A I don't remember. Maybe that was --
12 was that when it was an increase in the --
13 maybe when there was an increase in the
14 overdraft fee?

15 MR. GAYNOR: I think I have
16 something that might clear that up.

17 Let's go off the record for a
18 second.

19 (A recess was taken, and the
20 deposition continued as follows:)

21 (Whereupon, Exhibit No. 19 was marked
22 for identification and is attached
23 hereto.)

24 BY MR. GAYNOR:

25 Q Ms. Swift, I'm going to show you what

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1 Q So your understanding of this
2 document is that BancorpSouth at some point
3 did ask you and Shane if you wanted to
4 continue with the service, and you signed this
5 to say, yes, you did?

6 A Okay. Yes.

7 Q It is your understanding that, after
8 you signed this form, that you and Mr. Swift
9 continued to incur overdraft fees on your
10 BancorpSouth checking account?

11 A Okay.

12 MR. KAPLAN: You have to say yes
13 or no.

14 THE WITNESS: I'm sorry. Yes.

15 BY MR. GAYNOR:

16 Q So there were times after that that
17 you got overdraft fees?

18 A Yes.

19 Q Did BancorpSouth send you notices
20 when you overdrew your account and incurred an
21 overdraft fee?

22 A Yes.

23 Q To your knowledge, is there any time
24 when you would have incurred a fee for an
25 overdraft and did not get a notice?

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1 A No.

2 Q So when you incurred a fee for
3 overdrawing your account, the bank told you
4 about it?

5 A Yes. Yes. But can I say that you
6 can always look on-line before you get that
7 notice in the mail. It doesn't come like
8 right away.

9 Q So there are ways for you to know you
10 have overdrawn your account and incurred a fee
11 for that before you even get that notice?

12 A Yes.

13 Q And overdraft fees also show up on
14 your monthly statements. Correct?

15 A Yes.

16 Q How do you receive your monthly
17 statements on your BancorpSouth checking
18 account?

19 A Now, they are on-line.

20 Q You don't get hard copy statements
21 anymore?

22 A No.

23 Q Is that something you chose? To get
24 them on-line?

25 A Yes.

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1 Q Use less paper?

2 A Yes.

3 Q I sympathize with that. I'm always
4 trying to keep the volume of paper down around
5 my house.

6 You testified earlier that you think
7 that BancorpSouth's overdraft payment service
8 is a benefit to you as an account holder.

9 Would it be fair to say that there
10 are certain payments that you make from your
11 BancorpSouth account that you would rather the
12 bank pay and charge you a fee than deny?

13 A Are you asking me some payments or --
14 I mean, are you asking me if I would choose
15 something over the other?

16 Q I think I can ask a better question.

17 A Okay.

18 Q Would you generally prefer that
19 BancorpSouth pay transactions and charge you a
20 fee than deny the transactions?

21 A Yes.

22 Q Are there any transactions on which
23 you don't believe that, in which you think
24 they should deny it, the transaction, instead
25 of paying your transactions?

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1 A No.

2 Q Was there any point in which you
3 incurred -- well, that you made a debit card
4 transaction, knowing that there weren't
5 sufficient funds in the account to cover the
6 amount of the transaction?

7 A Well, I would not have intentionally
8 just, you know, overdrawn my account.

9 Q Were there times when you just didn't
10 know that there may have been -- there may not
11 have been enough in there, and you weren't
12 sure; but you went forward with the
13 transaction?

14 A Yes. Maybe --

15 Q And -- I'm sorry. I cut you off.

16 A Yes. You know, it could be a time
17 where I had an idea what amount it was but did
18 not know if someone else made another
19 transaction on the account.

20 Q So that raises a good question.

21 Did you and Mr. Swift both have debit
22 cards for the BancorpSouth checking account?

23 A Yes.

24 Q Did any of your kids have debit cards
25 that drew from that account?

1 A No.

2 Q So at any given time, you may have
3 had a general idea of about what you thought
4 was in the account; but you both could be
5 making transactions at around the same time
6 drawing from the same funds?

7 A Yes.

8 Q So if you had a pretty good
9 understanding that there was, you know, \$100
10 in there at the beginning of the day and you
11 don't know what Mr. Swift is doing and you go
12 to spend -- you know, you want to buy gas; and
13 it is going to be \$50.

14 You wouldn't know that he spent \$70
15 on clothes that morning.

16 A Correct.

17 Q So there were certainly transactions
18 that you initiated unsure of whether there was
19 enough money in there to cover the
20 transaction?

21 MR. KAPLAN: Objection as to
22 form.

23 THE WITNESS: So, again, repeat
24 that.

25 BY MR. GAYNOR:

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1 Q There were times when you initiated
2 transactions being unsure if your account had
3 enough money to cover the transaction?

4 A There were times when I made a
5 transaction and I was unsure of what -- if
6 Shane had made a transaction.

7 Q You were unsure, but you went forward
8 anyway because you knew that BancorpSouth
9 would cover that transaction with the
10 overdraft payment service?

11 MR. KAPLAN: Objection as to
12 form.

13 THE WITNESS: Rephrase that
14 question to me again.

15 BY MR. GAYNOR:

16 Q You were unsure, because you couldn't
17 know what your husband was doing, whether
18 there were sufficient funds in the account to
19 cover the transaction; but you went forward
20 anyway because you knew that BancorpSouth's
21 overdraft payment service would cover those
22 transactions?

23 MR. KAPLAN: Objection. Form.
24 You can answer.

25 THE WITNESS: Well, I -- I would

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1 say that could be a case. That could be
2 a situation.

3 BY MR. GAYNOR:

4 Q As we sit here today, is it your
5 understanding -- what is your understanding of
6 the order in which BancorpSouth posts
7 transactions to checking accounts?

8 A My understanding is that they post
9 from highest to lowest now during this -- the
10 reason why I am here.

11 Q So as we sit here today, you
12 understand that BancorpSouth posts debit
13 transactions from highest to lowest dollar
14 amount?

15 A Yes.

16 Q When did you come to know that?

17 A When Shane and I looked at that
18 transaction and what started this process.

19 Q Were the transactions you are
20 referring to -- there were a series of
21 transactions that you and Mr. Swift reviewed
22 in April or May of 2010 that raised some
23 questions in your mind?

24 A Yes. We had the receipts right there
25 with us, and we just looked at the receipts;

1 and we noticed that we did things on certain
2 days.

3 It would have cleared, but we noticed
4 that the thing that was done later on cleared
5 first because it was -- and it was higher. We
6 just noticed it was higher than the other two
7 transactions.

8 Q Would it be fair to say that, when
9 you reviewed that series of transactions, it
10 was clear to you, at that point, that
11 BancorpSouth posted transactions high to low?

12 A Once we looked at that, we just
13 started going backwards and then really
14 started paying attention to it. That is the
15 way that it was arranged.

16 Q When you say you started going
17 backwards, what does that mean?

18 A When we started looking at different
19 -- sometimes keep different receipts on
20 different things. I mean, I try to keep them;
21 but after a while, it becomes a mess.

22 But we started looking at different
23 receipts, and then we looked at the bank
24 statements. And we looked on-line. And it
25 was highest to lowest.

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1 Q So you looked at older statements,
2 statements from before that time period; and
3 it was clear from looking at those statements
4 that the bank posted high to low?

5 A (Witness nods head.)

6 Q She can't take down your head nod.

7 A Yes. Yes. I'm sorry.

8 Q Do you know how far back there were
9 statements -- the statements that you looked
10 at in that process, do you know how far back
11 those went?

12 A Not exactly.

13 Q Do you have an estimate?

14 A Probably a month. I mean, probably
15 just a month of going back comparing.

16 Q Did anyone at BancorpSouth ever tell
17 you that they posted in any order other than
18 high to low?

19 A No.

20 MR. GAYNOR: Let's go off the
21 record for a minute.

22 (Whereupon, there was a discussion off
23 the record, and the deposition
24 continued as follows:)

25 BY MR. GAYNOR:

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1 Q Ms. Swift, before we took a lunch
2 break, we were talking about when you and
3 Mr. Swift reviewed some transaction history
4 and, you know, became aware that BancorpSouth
5 posts transactions high to low.

6 A Uh-huh.

7 Q I want to pick up on that a little
8 bit. I'm going to show you what has been
9 previously marked as Exhibit 6. I apologize
10 for the print quality on this and for it not
11 being easier to read.

12 But can you identify this document?

13 A It is an Account Information
14 Statement from BancorpSouth.

15 Q Does it have a date on it?

16 A Effective date March 1, 2006.

17 Q Do you remember receiving this from
18 BancorpSouth?

19 A I don't remember, but I probably have
20 received it.

21 Q Any reason to believe that you didn't
22 receive it?

23 A No.

24 Q I would like to call your attention
25 to the first page, the far left column. There

1 is a heading that says "About Overdrafts."

2 A Yes.

3 Q The second paragraph under there
4 about halfway down that paragraph says, "Also
5 if more than one check." Do you see where I
6 am referring to?

7 A Yes. I see that.

8 Q Would you read that section from
9 where it says "Also more than one check" to
10 the end of that paragraph?

11 A Yes. "Also, if more than one check
12 or other transaction is presented for payment
13 against your account on the same banking day
14 and the available balance is insufficient to
15 pay them all, we may pay them --" excuse me.

16 "We may pay any of them in any order
17 we choose even if the order we choose results
18 in greater overdraft item or insufficient
19 funds item fees than if we had chosen to pay
20 them in some other order.

21 "We may also choose to first pay
22 checks or other transactions which are payable
23 to BancorpSouth and our affiliates."

24 Q Thank you. Do you understand what
25 that is saying there?

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1 A Yes.

2 Q What is your understanding of what
3 that means?

4 A My understanding is that the bank
5 says we will pay your transaction, but we will
6 do it in the way that we want to do it.

7 Q Also, it says we may pay any of them
8 in any order we choose even if the order we
9 choose results in greater overdraft item or
10 insufficient funds item fees than if we had
11 chosen to pay them in some other order.

12 A Yes.

13 Q Does that mean that they will pay
14 them in -- could pay them in any order even if
15 it results in more fees for you?

16 A Yes.

17 Q You testified that you believe the
18 bank -- you have no reason to believe that the
19 bank didn't send you this Account Information
20 Statement on or around the time it is dated
21 here in 2006.

22 So if you had read this statement
23 earlier, you would have understood the same
24 thing about it as you understand today?

25 A Yes.

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1 Q You testified earlier that you and
2 Mr. Swift gathered from reviewing statements
3 in 2010 that BancorpSouth posts transactions
4 high to low.

5 A Yes.

6 Q If you had reviewed those statements
7 earlier, is there any reason why you wouldn't
8 have come to that understanding earlier?

9 A If I would have paid more attention
10 to that earlier, will I be able to understand
11 it better? I think I will be able to
12 understand it the same way if I would have
13 paid attention to it earlier.

14 MR. KAPLAN: That is not the
15 question.

16 BY MR. GAYNOR:

17 Q Yeah. I wasn't saying whether you
18 would have understood it better. It sounded
19 to me like what you said earlier was that,
20 when you did review those statements, it was
21 clear to you that you did have a good
22 understanding --

23 A That it was --

24 Q -- that it was high to low.

25 A Yes.

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Trina Swift on 08/16/2012

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1 Q So is there any reason why, if you
2 had reviewed them earlier, you wouldn't have
3 come to the same understanding?

4 A If I would have reviewed them
5 earlier, that I wouldn't come to the same
6 understanding? I'm not really --

7 Q I think I can say that a better way.
8 If you had reviewed those earlier,
9 you would have come to the same understanding
10 earlier?

11 A Yes.

12 Q Would you have known earlier that
13 BancorpSouth posts high to low?

14 A Yes. I mean, yes.

15 Q We talked earlier about your
16 individual checking account at Iberia Bank.
17 You said you opened that around 2009 or 2010.

18 A Maybe about around that time.

19 Q You opened that because you -- for
20 the reasons you testified earlier. You didn't
21 leave BancorpSouth because of anything the
22 bank had done.

23 A No. I did not.

24 Q Do you have any problems generally
25 with BancorpSouth as a bank?

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Trina Swift on 08/16/2012

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1 MR. KAPLAN: Objection as to
2 form.

3 THE WITNESS: So you are saying
4 do I have any other problems with them
5 than what is presented today?

6 BY MR. GAYNOR:

7 Q Right. Other than what your husband
8 alleges in his lawsuit, do you have any other
9 problems or issues with BancorpSouth as a
10 bank?

11 A No.

12 Q Your BancorpSouth checking account is
13 still open today?

14 A Yes.

15 Q Would you agree that some payments
16 you have made out of your checking account are
17 more important than other payments?

18 A Yes.

19 Q Would you agree that, for example,
20 your rent payment or your car payment is more
21 important to be paid than when you go to
22 lunch?

23 A Yes.

24 Q Would you agree that your rent
25 payment and your car payment are generally

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1 THE WITNESS: I would think they
2 would know the transactions that we are
3 making, and they will clear the account,
4 I mean, when they --

5 BY MR. GAYNOR:

6 Q But they certainly don't know when
7 you have written a check until it gets to the
8 bank.

9 A Right.

10 Q And you said on the other topics I
11 asked you about, as far as the delay or a
12 difference in the amount that is in the
13 merchant's control, you just don't know.

14 MR. KAPLAN: Objection as to
15 form.

16 THE WITNESS: Okay.

17 BY MR. GAYNOR:

18 Q Are you aware that there is sometimes
19 a difference between the date on which you
20 initiate a transaction and when that
21 transaction clears at the bank?

22 MR. KAPLAN: Objection as to
23 form.

24 THE WITNESS: Okay. Repeat that
25 for me one more time.

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1 BY MR. GAYNOR:

2 Q Are you aware that there is a
3 difference sometimes between the date on which
4 you initiate a transaction and the date on
5 which a transaction clears at the bank?

6 MR. KAPLAN: Objection as to
7 form.

8 THE WITNESS: There may be a
9 time on a nonbusiness day, on the
10 weekend.

11 BY MR. GAYNOR:

12 Q Are you aware that sometimes, even on
13 a business day, that there is a transaction
14 maybe initiated by you on one day but not
15 cleared at the bank until another day?

16 MR. KAPLAN: Objection. Form.

17 THE WITNESS: Yes. There is
18 probably a time when it does that.

19 MR. GAYNOR: I think that is all
20 I have. Thank you very much.

21 MR. KAPLAN: I don't have any
22 either.

23 (Deposition ended at 1:57 p.m.)

24 * * * * *

25

EXHIBIT H

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)
Fourth Tranche)
_____)
)
THIS DOCUMENT RELATES TO:)
)
Shane Swift v. BancorpSouth, Inc.,)
S.D. Fla. Case No. 1:10-cv-23872-JLK)
_____)

**PLAINTIFF SHANE SWIFT'S OBJECTIONS AND
RESPONSES TO DEFENDANT BANCORPSOUTH BANK'S
FIRST CONTINUING INTERROGATORIES TO PLAINTIFF**

Pursuant to Fed. R. Civ. P. 26 and 33, Plaintiff, Shane Swift ("Plaintiff") hereby responds to Defendant, BancorpSouth Bank's ("BancorpSouth" or "Defendant") First Continuing Interrogatories to Plaintiff ("interrogatories").

GENERAL OBJECTIONS

1. Plaintiff objects to each discovery request that asks for interrogatory response or the identification of documents that are inconsistent with what Judge James Lawrence King has already determined to be the proper scope of discovery for requests served on plaintiffs in his Opinion Setting Standards for Resolution of Discovery Interrogatories and Production of Documents dated December 15, 2010 (D.E. #1016).

2. Plaintiff objects to each discovery request to the extent it calls for documents or other information that are protected from discovery by the attorney-client privilege, work

product doctrine, or any other applicable privilege. Any inadvertent disclosure of privileged information shall not be deemed a waiver by Plaintiff of any applicable privilege or doctrine.

3. Plaintiff's discovery and investigation with respect to the issues in this case are ongoing. The following responses and objections are provided without prejudice to Plaintiff's right to revise or supplement their responses or objections based on subsequent discovery or investigation.

4. Plaintiff objects to each discovery request to the extent it seeks confidential or private personal or business information. To the extent that documents and other information requested by Defendant are not protected from discovery based on attorney-client privilege or work product doctrine, and are otherwise discoverable, they will be produced subject to an appropriate protective order.

5. Plaintiff objects to each discovery request to the extent that it begs the question and/or assumes facts which have not been admitted. By responding to these requests, Plaintiff does not admit, concede or agree with any explicit or implicit assumption made in the requests.

6. Plaintiff's identification of documents and other information in response to these requests is not intended and should not be construed as (a) an admission that the produced documents or other information are relevant or admissible; (b) a waiver of any of these General Objections; or (c) a waiver of any specific objections asserted in response to individual discovery requests. Plaintiff reserves all proper objections regarding the competency, relevancy, materiality, privilege, authenticity and/or admissibility as evidence, for any purpose, of any and all documents and other information produced by Plaintiff in this litigation.

7. Plaintiff objects to the "Definitions," "Instructions," and to each discovery request to the extent they purport to impose any requirement or discovery obligation on Plaintiff

greater than or different from those imposed by Rule 26 or 33 of the Federal Rules of Civil Procedure and the applicable rules of this Court.

8. Plaintiff objects to the definition of “you” and “your” to the extent it calls for information protected by the attorney-client privilege or work product doctrine, and to the extent it seeks documents or information relating to accounts held by anyone other than Plaintiff.

9. Plaintiff objects to each discovery request to the extent it seeks information about accounts other than those that are the subject of this litigation, or accounts other than Plaintiff’s BancorpSouth debit card and/or checking account.

10. Plaintiff objects to the interrogatories to the extent that they are premature contention interrogatories subject to later response under Federal Rules of Civil Procedure 26(a) and 33(a)(2). Plaintiff reserves the right to respond more fully later, or to supplement or amend any response after a sufficient opportunity for discovery.

11. Plaintiff objects to the interrogatories to the extent that they are unlimited in scope and time.

12. Plaintiff objects to the interrogatories to the extent that they use an overbroad definition of the term “identify,” and to the extent that the use of the term in certain interrogatories does not comport with any of the stated definitions.

13. Plaintiff objects to the interrogatories to the extent that they contain discreet subparts, and therefore, could exceed the allowable number of interrogatories under Rule 33 of the Federal Rules of Civil Procedure and/or under any applicable court order.

14. Plaintiff objects to the interrogatories to the extent that they seek information that Defendants already have in their possession, and are otherwise cumulative or duplicative of information in Defendant’s possession custody or control, or of information already requested or

sought in these interrogatories or contained in documents produced in response to Defendant's requests for production.

15. Plaintiff objects to the interrogatories to the extent that they request opinions or legal conclusions, for example, seeking "every material detail" calls for a legal conclusion about certain facts that might be omitted or included.

16. Plaintiff objects to the interrogatories to the extent that certain interrogatories seek "all" or "every" piece of information as overbroad and unduly burdensome, and as calling for information that is either irrelevant, or cumulative or duplicative of information already provided in these interrogatories, or of information provided in documents produced in response to Defendant's requests for production.

17. Plaintiff objects to any interrogatory that seeks legal argument that will be the subject of later proceedings in this case.

RESPONSES TO INTERROGATORIES

1. Identify each person, other than BancorpSouth or its employees, or your counsel, who has knowledge of or information concerning any of the facts alleged in the Complaint and, for each person identified, state the facts of which that person has knowledge or information and identify any documents that reflect, support, or evidence such facts.

RESPONSE:

Plaintiff and Plaintiff's wife, Trina Swift, as the joint account holders of the account at issue in this lawsuit, have knowledge of facts alleged in the Complaint, including the debit card transactions made under their BancorpSouth accounts, their management of those accounts, and documents or other communications sent by Defendant relating to their accounts.

Earnings Performance Group, a third party consultant retained by BancorpSouth, assisted BancorpSouth with developing and implementing its high-to-low re-sequencing policy.

FDR, a third party which Defendant identifies in its discovery responses to date was involved in authorizing certain debit card transactions.

2. Other than documents provided to you by BancorpSouth or that you know to be in BancorpSouth's possession, identify each and every other document, tangible object or other item of real, documentary or demonstrative evidence which contains, or may contain, material or information which is, which may be, or which you contend substantiates or supports each of your contentions involved in this case, and identify the person presently having possession, custody or control of each item listed.

RESPONSE:

Pursuant to Federal Rule of Civil Procedure 33(d), Plaintiff will produce documents responsive to Defendant's First Continuing Request for Production of Documents to Plaintiff. The responsive documents are in the possession of Plaintiff.

3. Identify all persons from whom you have obtained written or oral statements regarding the subject matter of this litigation, the date each such statement was taken or made, the person who obtained the statement and specify the information contained within said statement.

RESPONSE:

None, other than the deposition of Jeff Jagers taken on October 12, 2011.

4. Identify each agent, person, corporation, firm, association or other entity that has been retained by you to conduct or has otherwise conducted an investigation to determine any of the facts pertaining to any of the issues in this case; describe the nature of each such

investigation; the date(s) that any investigation was started and completed; and the identity of the person to whom the results were submitted.

RESPONSE:

Plaintiff has retained attorneys from Kopelowitz Ostrow, P.A., and Chitwood Harley Harnes LLP to investigate Plaintiff's claims and file a class action lawsuit on his behalf. In light of interrogatory number 5, below, Plaintiff interprets this interrogatory as not seeking information regarding any expert witnesses.

5. Identify all expert witnesses you expect to call, whether live or by affidavit or deposition, in any trial or evidentiary hearing in this action, or whose testimony you intend to present in support of your motion to certify a class in this action or in support of any alleged damages, and state the subject matter on which the expert is expected to testify, the substance of the facts and opinions for the expert's expected testimony, all bases for each opinion, and all information considered by such expert (including, but not limited to, data, treatises, compilations, or other opinions) in arriving at his opinion.

RESPONSE:

At this time, Plaintiff has not determined the experts he expects to call at the trial or any evidentiary hearing in this action. Plaintiff will comply with Court's Scheduling Order Pertaining to "Fourth Tranche" Cases (D.E. # 1340) regarding the disclosure of expert witnesses for trial. Plaintiff has retained Art Olsen of Cassis Technology, LLC, 903 N. 130th Street #108, Seattle, WA 98133, as an expert in support of his Motion for Class Certification. See Mr. Olsen's declaration filed in support of Plaintiff's Motion for Class Certification for the subject matter, the substance of the facts and opinions, the bases for the opinions, and all information considered by Mr. Olsen in arriving at his expert opinions to date.

6. If you contend that BancorpSouth, its agents or representatives, or any of its predecessor's agents or representatives, have made any admissions against interest with respect to any of the allegations contained in the Complaint, state with specificity and particularity all such admissions against interest, identify the maker of each such admission, identify the substance of each such admission, identify the date each such admission was made, and identify all persons who witnessed or who possess information regarding each such admission.

RESPONSE:

Plaintiff objects to this interrogatory on the grounds that it seeks information protected by the word-product doctrine. In addition, Plaintiff objects because a response to this interrogatory calls for a legal conclusion. Subject to and without waiving the foregoing, Plaintiff contends the deposition transcript of Jeff Jagers taken in this case contains admissions against BancorpSouth.

7. Identify each person whom you expect to call or whom you may call as a witness at the trial of this case and, for each such person, provide a detailed summary of the facts, matters, or opinions about which each such witness will or may testify in this case.

RESPONSE:

At this time, Plaintiff has not determined each person who he expects to call at the trial of this case. Plaintiff will comply with Court's Scheduling Order Pertaining to "Fourth Tranche" Cases (D.E. # 1340) regarding the disclosure of lay witnesses expected to testify at trial. Plaintiff refers Defendant to the Trial Plan submitted with his Motion for Class Certification, which provides some detail as to witnesses that he would intend to call at trial.

8. Identify all persons (other than Plaintiff's legal counsel) who participated in preparing the response to these Interrogatories.

RESPONSE:

In addition to Plaintiff's legal counsel, Plaintiff, Shane Swift, participated in preparing the responses to these interrogatories.

9. With respect to your BancorpSouth account statements that have been produced to you and are attached to BancorpSouth's First Requests for Admissions to Plaintiff, identify each individual fee that you contend was assessed by BancorpSouth unfairly, unconscionably, unlawfully or in bad faith.

RESPONSE:

Plaintiff objects to this interrogatory because a response to this interrogatory calls for a legal conclusion. Subject to and without waiving the foregoing, Plaintiff relies on the analysis of his expert, Art Olsen, as to overdraft fees that were assessed by BancorpSouth as a result of re-sequencing for which Plaintiff seeks relief in this lawsuit.

10. With respect to your BancorpSouth account statements that have been produced to you and are attached to BancorpSouth's First Requests for Admissions to Plaintiff, identify each individual fee for which you seek recovery or restitution in this lawsuit.

RESPONSE:

See response to interrogatory #9.

11. For each individual fee identified in your response to the preceding Interrogatory, state all facts on which you base your contention that the fee was assessed unfairly, unconscionably, unlawfully or in bad faith.

RESPONSE:

See response to interrogatory #9. In summary, Plaintiff now understands that Defendant assessed and collected overdraft fees for debit card transactions based on the bank re-ordering

debit card transactions to high-to-low, which increased the frequency of overdraft fees being assessed.

12. If you have had any account in last 5 years at another financial institution to which overdraft fees or charges were assessed, and if so, please identify the financial institution and type of account.

RESPONSE:

In supplement to the General Objections above, Plaintiff objects to this interrogatory on the grounds that it is inconsistent with Section A. of the Opinion Setting Standards For Resolution of Discovery Interrogatories and Production of Documents dated December 15, 2010 (D.E. #1016), which Plaintiff contends should be applicable to this case. In response to the first tranche banks' request that the plaintiffs produce information regarding their finances on accounts that are not at issue in this litigation, the Court denied the banks' motion to compel ruling that such requests were irrelevant and unduly burdensome. Accordingly, Plaintiff objects to this interrogatory on the grounds that it is unduly burdensome, irrelevant, and not likely to lead to the discovery of admissible evidence.

13. Describe each and every fact that you contend supports your allegations in the complaint that you have incurred or suffered damages "as a result" of BancorpSouth's conduct.

RESPONSE:

Plaintiff objects to this interrogatory as having the potential to invade the attorney-client and work product privileges to identify every fact that Plaintiff contends supports his claims. The request is also unduly burdensome as it would require the Plaintiff to list every fact that could be inferred from the review of the thousands of pages of documents produced to date by Defendant, as well as the facts revealed by way of Defendant's written discovery responses and

the deposition testimony of Jeff Jagers, in his capacity as Defendant's Federal Rule of Civil Procedure 30(b)(6) deponent. Plaintiff additionally incorporates and relies on the Court's comments and rulings regarding contention interrogatories set forth in the order dated December 16, 2010 (D.E. # 1016), and the standards the Court imposed in that Order. Discovery is ongoing, and as such, Plaintiff does not know each and every fact that supports his allegations in the Complaint that he has suffered damages as a result of BancorpSouth's conduct.

Plaintiff's Motion for Class Certification and related Appendices, inclusive of exhibits, the deposition of Jeff Jagers, and the declaration of Art Olsen provide facts supportive of the allegations in Complaint. Plaintiff will comply with any other Order issued by the Court regarding the identification of trial exhibits.

14. Identify each and every lawsuit to which you have ever been a party, or in which you have ever given testimony under oath, in which a financial institution was also a party or the subject matter involved a product offered by a financial institution. Identify any such lawsuit by stating the name of the lawsuit, the date on which it was filed, and the court in which it is or was pending.

RESPONSE:

None. Plaintiff also notes the ruling that the Court made in its December 16, 2010 Order (D.E. # 1016 at 9-10) regarding inquiries into other litigation to which Plaintiff may have been a party.

15. Identify all receipts referred to in footnote 3 of your Complaint.

RESPONSE:

Pursuant to Federal Rule of Civil Procedure 33(d), Plaintiff will produce documents responsive to this request.

16. Identify all receipts in your possession from third-parties for transactions in which overdraft fees were charged to you by BancorpSouth as shown on the account statements that have been produced to you and are attached to BancorpSouth's First Requests for Admissions to Plaintiff.

RESPONSE:

Pursuant to Federal Rule of Civil Procedure 33(d), Plaintiff will produce documents that are responsive to this request that he possesses, but does not believe he maintains possession of every receipt for every transaction for which Defendant charged him an overdraft fee.

17. Identify the earliest date when you became aware that BancorpSouth engaged in “reorder[ing] debits from highest to lowest” as you allege in Paragraph 35 of the Complaint.

RESPONSE:

In supplement to the General Objections above, Plaintiff objects to this interrogatory on the grounds that it is vague, inasmuch as Plaintiff cannot be expected to know what the Defendant means by “when you became aware.” The interrogatory is also objectionable because it mischaracterizes the allegation in paragraph 35 of the Complaint, which reads: “The Deposit Agreement fails to indicate that the Bank will always reorder debits from highest to lowest.”

18. Identify the earliest date when you became aware that BancorpSouth might pay a debit card transaction although the transaction resulted in your account becoming overdrawn.

RESPONSE:

In supplement to the General Objections above, Plaintiff objects to this interrogatory on the grounds that it is vague, inasmuch as Plaintiff cannot be expected to know what the Defendant means by “when you became aware.” Subject to and without waiving the foregoing, Plaintiff does not recall when he first became aware that BancorpSouth “might pay a debit card

transaction although the transaction resulted in your account becoming overdrawn.” Plaintiff is aware that the Defendant did from time to time pay debit card transactions for which the bank assessed overdraft fees because the bank indicated funds in his account were insufficient to pay for such debit card transactions. However, he was not aware until shortly before this lawsuit was filed that Defendant had assessed certain overdraft fees on his account as a result of re-ordering debit card transactions on his account from highest to lowest.

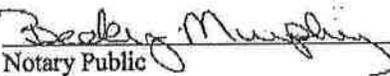
VERIFICATION

STATE OF ARKANSAS)
)ss:
COUNTY OF RANDOLPH)

The undersigned, Shane Swift, states that he has reviewed the foregoing Responses to Defendant BancorpSouth Bank's First Continuing Interrogatories to Plaintiff and that the answers given are true and correct to the best of his knowledge, information and belief.


Shane Swift

SUBSCRIBED and sworn to before me this 6 day of Jan 2012 ²⁰¹¹ 


Notary Public

MY COMMISSION EXPIRES: 3-29-17



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)
Fourth Tranche)
_____)
)
THIS DOCUMENT RELATES TO:)
)
Shane Swift v. BancorpSouth, Inc.,)
S.D. Fla. Case No. 1:10-cv-23872-JLK)
_____)

CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2011, I served the foregoing Objections and Responses to BancorpSouth Bank's First Continuing Interrogatories to Plaintiff by electronic mail on the following:

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