

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 09-MD-02036-JLK

**IN RE: CHECKING ACCOUNT
OVERDRAFT LITIGATION
MDL No. 2036**

**THIS DOCUMENT RELATES TO:
FOURTH TRANCHE ACTION**

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

JOINT REPORT REGARDING PROPOSED CLASS NOTICE AND NOTICE PLAN

In response to this Court's Order dated February 7, 2013 (DE # 3242) and Order on Class Notice dated February 13, 2013 (DE # 3255), counsel for Plaintiff Shane Swift and the certified class ("Plaintiffs") and Defendant BancorpSouth Bank ("BancorpSouth") have conferred. Plaintiffs respectfully request that the Court enter an Order approving the proposed form of Class Notice attached hereto as Exhibit A and the Notice Plan for the Class Notice set out below. Subject to its continuing objections described herein, BancorpSouth states that it agrees that class notice should be issued at this stage of the litigation and that it does not oppose Plaintiffs' proposed Class Notice and Notice Plan.

¹ BancorpSouth, Inc. is not a proper defendant in this matter. Counsel for Plaintiffs and BancorpSouth Bank discussed the proper BancorpSouth entity to name in this matter in 2010, and Swift properly identified the defendant herein as BancorpSouth Bank in his Second Amended Complaint (Doc. 994).

PROPOSED NOTICE PLAN

The approved class notice, substantially in the form attached as Exhibit A, will be provided to the certified class as a one-time, direct mail notice to current and former BancorpSouth account holders who had one or more consumer (non-business) accounts and incurred an overdraft fee(s) during the applicable class periods as a result of BancorpSouth Bank's practice of sequencing debit card and ATM transactions from highest to lowest dollar amount, as identified by Plaintiffs' expert's analysis of BancorpSouth transaction data. The notice will be sent by first class mail no later than 45 days after the Court enters an Order approving the class notice and notice plan. As a redundancy to facilitate notice, current and former customers for whom BancorpSouth maintains and can reasonably access email addresses also will be sent a copy of the class notice via email. The email notification to current customers for whom BancorpSouth has email addresses will be disseminated within five (5) days of dissemination of the mail notice.

Class notice dissemination and administration will be performed by Epiq Class Action & Claims Solution, Inc. ("Epiq"). Epiq will be responsible for sending the direct mail notice and email notice to all class members and for administering the toll-free hotline, website and requests for exclusion as described herein. BancorpSouth will supply mailing address information for all current and former consumer account holders identified by Plaintiffs' expert as members of the certified class, to the extent that BancorpSouth possesses and can reasonably access such information. To increase the accuracy of class member mailing addresses, Epiq will compare the addresses supplied by BancorpSouth for its current and former customers to the National Change of Address Database. For any direct mail notices that are returned as undeliverable within forty-five (45) days from mailing of the initial direct mail notice, Epiq shall promptly attempt to obtain

updated addresses and re-mail the direct mail notice to those persons whose new addresses are identified.

In the event that more than 10% of the total direct mail notices for any state(s) in which BancorpSouth maintained branches during the class period are returned as undeliverable within forty-five (45) days of mailing of the initial direct mail notice, a summary class notice will be published one time in a general daily circulation newspaper(s) in each such state. The parties will meet and confer with each other and with Epiq to determine the appropriate newspaper(s) for such publication notice.

Class members may seek additional information regarding the case by accessing a website or toll-free telephone hotline, both to be maintained by Epiq, or by requesting information by mail or email. The telephone hotline will consist of a recorded message providing information about the case. The parties will meet and confer with each other and with Epiq regarding the content of the website and the recorded message on the telephone hotline. A dedicated email address will also be available for class members to make attorney-client privileged inquiries to class counsel. The telephone hotline, website, and email address will remain operational through the conclusion of the case.

Class members will be able to opt out of the class by submitting a written request to a dedicated post office box or an email address, both to be maintained by Epiq, no later than seventy-five (75) days after the initial direct mail notice. Instructions for class members to opt out are included on the Class Notice.

Pursuant to the parties' prior agreement, BancorpSouth will be responsible for paying all fees and costs of Epiq associated with providing the class notice and for administration of the toll free hotline, website and requests for exclusion described herein. In the event that subsequent

notices to the class are necessary, the parties will meet and confer regarding cost allocation for such notice.

BANCORPSOUTH'S STATEMENT OF OBJECTION

Although it does not object to the form of the Class Notice or the procedures for providing notice set out in the Notice Plan, BancorpSouth reasserts all of its previously stated objections to the certification of the certified class, including but not limited to the class definition proposed by Plaintiffs and adopted in this Court's Order Granting Class Certification (DE # 2673). BancorpSouth reasserts its objection that the members of the certified class cannot be ascertained because the class definition is contingent upon the fact finder determining that BancorpSouth's high-to-low posting order was unlawful, and if it does so, also determining what alternative posting order should have been used. BancorpSouth also reasserts its arguments that the certified class does not meet the criteria of Rule 23 of the Federal Rules of Civil Procedure.

BancorpSouth further objects to providing notice to the extent that notice is provided to BancorpSouth account holders who do not fall within the class definition. BancorpSouth has identified for Plaintiffs' counsel flaws in the methodology of Plaintiffs' expert Arthur Olsen that lead to BancorpSouth account holders who are not properly within the class definition receiving class notice. BancorpSouth objects to the extent that any account holders not properly within the class are to receive notice pursuant to the proposed Notice Plan.

Plaintiffs disagree with BancorpSouth's characterizations of the certified class and assert that BancorpSouth's objections do not have merit. Plaintiffs, however, acknowledge BancorpSouth's continuing objections to the certified class and stipulate that BancorpSouth has not waived its objections to the certified class by not opposing the form of the Class Notice and the Notice Plan. A proposed order is attached hereto as Exhibit B.

Dated: March 15, 2013.

Respectfully submitted,

/s/ Robert C. Gilbert

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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