

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.*<sup>1</sup>  
S.D. Fla. Case No. 1:10-cv-23872-JLK

STIPULATION AND ORDER REGARDING WITHDRAWAL OF PLAINTIFF  
SHANE SWIFT'S CONVERSION CLAIM AND CERTAIN OF  
BANCORPSOUTH BANK'S AFFIRMATIVE DEFENSES

At the September 18, 2013 oral argument on Defendant BancorpSouth Bank's ("BancorpSouth") Motion For Summary Judgment (DE# 2999) and Plaintiffs' Motion for Summary Judgment As To Certain Of Defendant BancorpSouth Bank's Affirmative Defenses (DE# 2997), Plaintiffs and BancorpSouth Bank announced their agreement regarding several issues presented in the parties' summary judgment motions. Consistent with the parties' agreement to withdraw certain issues from this case, and pursuant to the Court's instruction to submit a proposed stipulation memorializing the parties' agreement, Plaintiffs and BancorpSouth hereby submit this stipulation and request that the Court enter the stipulation as an Order of the Court.

---

<sup>1</sup> 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).

**STIPULATION**

1. Plaintiff Shane Swift and BancorpSouth stipulate and agree that Plaintiff Shane Swift's claim for conversion set forth in his Third Claim for Relief in the Second Amended Complaint, which was not the subject of the class certification motion in this action and, therefore, not certified, and correspondingly any claim for punitive damages, should be dismissed, with prejudice, with each party to bear its own fees and costs incurred in connection therewith.

2. Plaintiffs and BancorpSouth stipulate and agree that BancorpSouth's affirmative defenses of Res Judicata and/or Judicial Estoppel (Ninth Affirmative Defense) and Statutes of Repose (Third Affirmative Defense) should be dismissed, with prejudice, with each party to bear its own fees and costs incurred in connection therewith.

3. For purposes of BancorpSouth's Second Affirmative Defense, Plaintiffs and BancorpSouth stipulate and agree that Plaintiffs' claims and any damages sought to be recovered in this action on behalf of members of the certified class are limited to the following time periods that are consistent with the applicable state statutes of limitations:

	<b>Good Faith/ Fair Dealing</b>	<b>Unjust Enrichment</b>	<b>Unconscionability</b>	<b>ADTPA</b>
<b>Alabama</b>	May 18, 2004- Aug. 13, 2010	n/a <sup>2</sup>	May 18, 2004 - Aug. 13, 2010	n/a
<b>Arkansas</b>	May 18, 2005- Aug. 13, 2010	May 18, 2007- Aug. 13, 2010	May 18, 2005 - Aug. 13, 2010	May 18, 2005- Aug. 13, 2010
<b>Florida</b>	May 18, 2006 -Aug. 13, 2010	n/a	May 18, 2006 - Aug. 13, 2010	n/a
<b>Louisiana</b>	n/a	n/a	Jan. 1, 2003 - Aug. 13, 2010	n/a
<b>Mississippi</b>	May 18, 2007- Aug. 13, 2010	May 18, 2007- Aug. 13, 2010	May 18, 2007 - Aug. 13, 2010	n/a
<b>Missouri</b>	n/a	n/a	May 18, 2007 - Aug. 13, 2010	n/a

<sup>2</sup> "N/A" in this table indicate that no such claims are asserted by Plaintiffs in those states.

<b>Tennessee</b>	May 18, 2004 -Aug. 13, 2010	n/a	May 18, 2004 - Aug. 13, 2010	n/a
<b>Texas</b>	n/a	n/a	May 18, 2006 - Aug. 13, 2010	n/a

Dated: October 2, 2013.

Respectfully submitted,

/s/ Robert C. Gilbert

Robert C. Gilbert, Esquire  
 Florida Bar No. 561861  
 rcg@grossmanroth.com  
 Stuart Z. Grossman, Esquire  
 Florida Bar No. 156113  
 szg@grossmanroth.com  
 David Buckner, Esquire  
 Florida Bar No. 60550  
 dbu@grossmanroth.com  
 Seth E. Miles, Esquire  
 Florida Bar No. 385530  
 sem@grossmanroth.com  
 GROSSMAN ROTH, P.A.  
 2525 Ponce de Leon Boulevard  
 Eleventh Floor  
 Coral Gables, FL 33134  
 Telephone: (305) 442-8666  
 Facsimile: (305) 779-9596

/s/ Eric Jon Taylor

Eric Jon Taylor  
 Georgia Bar No. 699966  
 ejt@phrd.com  
 William J. Holley, II  
 Georgia Bar No. 362310  
 wjh@phrd.com  
 David B. Darden  
 Georgia Bar No. 250341  
 dbd@phrd.com  
 Darren E. Gaynor  
 Georgia Bar No. 288210  
 deg@phrd.com  
 PARKER HUDSON RAINER & DOBBS LLP  
 1500 Marquis Two Tower  
 285 Peachtree Center Avenue N.E.  
 Atlanta, Georgia 30303  
 Telephone: (404) 523-5000  
 Facsimile: (404) 522-8409

*Coordinating Counsel for Plaintiffs*

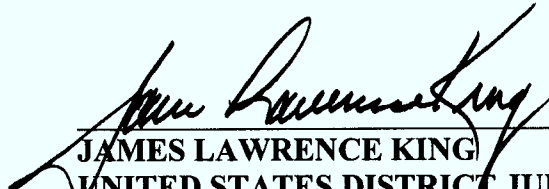
*Counsel for Defendant BancorpSouth Bank*

**ORDER APPROVING STIPULATION**

The foregoing Stipulation is approved and adopted as and Order of the Court.

**DONE AND ORDERED** in Chambers at the James Lawrence King Federal Justice

Building and United States Courthouse in Miami, Florida this 2 day of October, 2013.

  
 JAMES LAWRENCE KING  
 UNITED STATES DISTRICT JUDGE  
 SOUTHERN DISTRICT OF FLORIDA

Copies furnished to: Counsel of Record