

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

CHARLES DANIEL BICKERSTAFF,	)	
as Administrator of the Estate of JEFF	)	
BICKERSTAFF, JR., on behalf of	)	
himself and others similarly situated,	)	CIVIL ACTION
	)	
Plaintiff,	)	FILE NO. 10EV010485
v.	)	
	)	
SUNTRUST BANK,	)	
	)	
Defendant.	)	

**ORDER AND FINAL JUDGMENT**

This action is before the Court on Plaintiff’s Motion for Final Approval of Settlement and Plaintiff’s Motion for an Award of Attorneys’ Fees, Expenses and Incentive Awards, and resolution of a single objection to the Settlement and proposed Fee Award. There is no objection to the motion for expenses or to the motion for an incentive award to the Class Representative.

The Court preliminarily approved the Settlement on January 23, 2026. Notice was successfully sent to over 463,000 people in accordance with the Notice Plan approved by the Court. Notice reached 99.6% of the class. Three exclusion requests (“opt-outs”) and one objection were received. On May 26, 2026, the Court held a hearing to determine (i) whether to grant final approval of the Settlement and (ii) whether to grant the motions seeking attorneys’ fees and expenses and incentive awards and, if so, the amounts of those awards (“Final Approval Hearing”). SunTrust does not oppose either of the two motions, but does not admit Plaintiff’s allegations or any liability.

Based on the argument, authorities, and evidence presented by the parties in this action and at the Final Approval Hearing, and the Court’s familiarity with this fifteen-year-old case, the Court finds that the proposed Settlement is fair, reasonable, and adequate and meets the

requirements of O.C.G.A. § 9-11-23. The Court thus GRANTS Plaintiff's Motion for Final Approval of Settlement, APPROVES the proposed Settlement, STRIKES the one objection for, *inter alia*, lack of standing and failure to comply with the Court's mandatory procedural requirements for such objections, alternatively only OVERRULES the objection, and GRANTS Plaintiff's Motion for Attorney Fees and Expenses and an Incentive Award.

**A. History of the Litigation**

This is one of, if not the, longest running and most complex class action ever prosecuted in the Georgia courts. The issues were novel and complicated. Many of the issues upon which the Class prevailed were issues of first impression, and at times binding contrary authority had to be overruled. The procedural history is recited in detail in Plaintiff's Unopposed Motion for an Award of Attorneys' Fees, Expenses, and Incentive Award, and Brief in Support at 2–10.

In summary, Class Counsel on July 12, 2010, filed the Complaint asserting usury claims based on SunTrust overdraft fees, and at the same time also made a demand for repayment of the overdraft fees. On August 9, 2010, Class Counsel filed an Amended Complaint asserting additional common law claims for “money had and received” and “conversion” following SunTrust's rejection of the demand for repayment.

The account agreements at issue included arbitration agreements and two class action bans: one banning class actions in arbitration, and the other banning litigation class actions. The litigation over those issues alone took over a decade. Other heavily litigated issues included (1) whether overdrafts were loans for usury purposes; (2) whether overdrafts fees were interest or fees for services; (3) what is the intent requirement for usury; (4) what is the statute of limitations for “money had and received” and “conversion” where the alleged wrongful conduct was usury; and (5) whether class members had to be Georgia citizens for the entire class period.

The case has been through four rounds of interlocutory appeals, generating four decisions from the Court of Appeals of Georgia; one merits decision and two denials of certiorari from the Supreme Court of Georgia, and two denials of certiorari from the United States Supreme Court. This case has lasted through the death of two class representatives: Jeff and Ellen Bickerstaff.

On October 6, 2017, this Court granted Plaintiff Ellen Bickerstaff's Motion for Class Certification. After appeals and some discovery, court-approved notice of class certification was provided to the certified Class in May 2022. That notice noted that each recipient "may" be a member of the class. It provided an opportunity to request exclusion ("opt out") of the Class, and 158 individuals requested exclusion at that point.

Before and after the class notice, the parties conducted extensive discovery in the case, and this Court appointed a special master to oversee specified discovery matters. The parties identified numerous experts, and document and deposition discovery took place as to the many experts. A number of discovery disputes and disputes over attorney-client privilege arose and were briefed, argued and resolved.

During discovery, SunTrust produced and class counsel reviewed, digested, and prepared to use on motions and at trial approximately 69 gigabytes of documents, as well as 10 terabytes of banking data which was harvested and searched to come up with the Class list and calculate the damages on a class-wide and individual basis for over 400,000 Class Members. Class Counsel hired experts to write programs to search, categorize and manage this data. The complex factual issues on which discovery was required included, among other things—

(a) Georgia usury law, which required calculating interest on a class-wide basis for millions of transactions; this required establishing a formula and then identifying and collecting the data necessary for the inputs;

(b) Bankcard Practices, including federal and state regulation and the precise nature of the payment card processing systems that were used. Extensive expert and other discovery was required; and

(c) Georgia Citizenship issues, which involved the Class definition and complicated issues of federal removability, Georgia Constitutional law, and appellate procedure. Ultimately, this Court's class definition required that Class Counsel prove that each Class Member was a Georgia citizen continuously for a seven-year period. These issues required significant expert work and data discovery.

In 2024, the parties agreed upon Hunter Hughes to mediate this case. Mr. Hughes is considered one of the top class-action mediators in the United States. The settlement process itself took two years, running in parallel with the last two years of active litigation. The Settlement Agreement was signed on January 20, 2026. A Motion for Preliminary Approval of Settlement was prepared and was filed on January 21, 2026. A hearing was held, and this Court entered an Order Preliminarily Approving Settlement and Directing Notice on January 23, 2026. Class notices went out on March 4, 2026 in compliance with the court-approved Notice order.

## **B. Terms of the Settlement**

The Settlement Agreement establishes a maximum Settlement Amount of \$240 million. The Settlement Fund will fund payments to Settling Class Members who return a timely and valid Claim Form. Any attorneys' fees and expenses awarded by the Court (up to a maximum of one-third of the Settlement Amount for fees and up to a maximum of \$3 million for costs and expenses),<sup>1</sup> any incentive payment the Court awards to Plaintiff (up to a maximum of \$200,000), and the costs of Settlement Administration (anticipated to be approximately \$1,000,000) also

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<sup>1</sup> Although the Settlement Agreement contemplates up to \$3 million for costs and expenses of Class Counsel, the actual amount requested is substantially lower.

will be paid out of the Settlement Fund. The average amount available to Settling Class Members, after payment of requested fees, expenses and incentive award, is in excess of \$400 per account. The record shows that the Settlement provides more significant benefits than other similar class settlements.<sup>2</sup>

The Claim Form is simple, requiring only that Settling Class Members attest to continuous Georgia citizenship from July 12, 2010 through October 6, 2017. The Claim Form does so in accordance with this Court's holding that continuous citizenship is a requirement for Class membership. Settling Class Members may submit the Claim Form by mail or electronically.

The Settlement establishes a Distribution Plan that uses SunTrust's data and calculates a recovery based on overdraft fees and prejudgment interest for which Settling Class Members may bring claims under the certified Class Definition, as modified by the Court of Appeals' decision in *SunTrust Bank v. Bickerstaff*, 375 Ga. App. 37 (2025) ("*Bickerstaff V*"). The Distribution Plan calculates a pro rata share (as defined in the Settlement) of the Settlement Amount for each account for which such an overdraft fee was paid. The Claim Forms sent to the Settling Class Members after final approval will list the approximate amount recoverable for each such account. In other words, the Distribution Plan is based on the amount of covered overdraft fees paid from each relevant account.

The Settlement included an agreed-upon Settlement Notice to provide the Settling Class Members with notice of the Settlement and provides for a settlement website. The Settlement Notice advised the Settling Class Members of their right to request exclusion from the Settlement

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<sup>2</sup> Experienced class action attorney Roy Barnes, who has brought usury class actions before, testified that "The \$240 million Settlement Fund is large both in absolute numbers and as a percentage of the potential damages when compared to similar class actions." Affidavit of Roy E. Barnes ("*Barnes Aff.*") ¶ 19.

Class (“opt out”) or to object to the Settlement. And the Settlement provided for a Fairness and Final Approval Hearing (held May 26, 2026) at which the Court considered the fairness, reasonableness, and adequacy of the Settlement, Class Counsel’s motion for an award of attorneys’ fees, costs, and expenses and for a service or incentive award for the Class Representative, as well as the one objection.

The Court preliminarily approved the Settlement on January 23, 2026. Notice was provided pursuant to the Notice Plan in the Preliminary Approval Order. The Settlement was extremely well received. Notice was successfully sent to 463,763 people. Three requests for exclusion (opt-outs) were received. One objection was received. These are extremely low numbers. The one objection is addressed below.<sup>3</sup>

The evidence shows that Class Counsel have obtained an extraordinary result for the class in this highly complex and problematic case. Barnes Aff. ¶ 19; Affidavit of Michael B. Terry (“Terry Aff.”) ¶ 47.

The Settlement provides these benefits without exposing the Settling Class Members to the risk, expense, and delay of a trial and post-trial appellate proceedings. Absent the Settlement, there is a material risk that the Settling Class Members will not receive any relief, as much relief, or that the relief that can be obtained now will not be available for years.

### **C. Final Approval of the Settlement Is Granted**

Rule 23 provides that a class action may be settled only with “the approval of the court,” O.C.G.A. § 9-11-23(e), and a court may approve a class action settlement upon finding that it is fair, reasonable, and adequate. *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984).

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<sup>3</sup> The one objection asserts in cursory fashion that the settlement amount is too low, the claim form certifying citizenship should not be required, unclaimed money should not revert to SunTrust, the release is too broad, and the fee request is too high. These types of generic objections are regularly rejected by courts.

Courts generally evaluate final approval of class settlements in light of the following factors: “(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.” *Id.*; see also *Sterling v. Stewart*, 158 F.3d 1199, 1204 (11th Cir. 1998). Here, all of these factors favor final approval of the Settlement. Each factor is addressed separately below.

### **1. The Likelihood of Success at Trial**

Experienced class action lawyer Roy Barnes has analyzed the issues and opined that there were “substantial risks of obtaining no recovery at all.” Barnes Aff. ¶ 14. The Settlement Class faced substantial obstacles to recovery. Those obstacles include, but are not limited to, the following:

The Settlement Class would have to persuade a jury that overdraft fees constitute interest, overcoming substantial adverse authority from other jurisdictions and regulators;

The Settlement Class would face legal and factual disputes regarding the intent element of a usury claim;

The Settlement Class also must provide evidence sufficient to demonstrate their continuing citizenship in Georgia at all relevant times; and

The Settlement Class would have to prove its entitlement to prejudgment interest.

Thus, although Class Counsel express confidence in the merits of the case, the likelihood of success at trial is certainly questionable. The risks of non-recovery are substantial. Appellate risks exist post-trial as well. Thus, this factor supports final approval of the Settlement.

## 2. The Range of Possible Recovery

The maximum Settlement Amount of \$240 million is both significant in absolute terms and an excellent result when compared to the possible range of outcomes in this case. Plaintiff contends that the Settling Class Members' actual damages are approximately \$270.8 million,<sup>4</sup> plus potentially approximately \$295.7 million in prejudgment interest. Thus, the possible range of recovery is from zero to approximately \$566.5 million.

An award of damages at trial is not at all certain. SunTrust's defenses present obstacles to recovery. A jury potentially could find in favor of SunTrust, award lower damages than those sought by Plaintiff, and/or potentially decline to award prejudgment interest.

Statute of limitations and differing legal requirements also present significant risk to the Settlement Class. SunTrust argues the usury claim is subject to a one-year statute of limitations and therefore applies only to fees beginning in 2009. For earlier fees, the Settlement Class would have to prevail on its common law claims (conversion and money had and received), which face additional hurdles. SunTrust asserts additional defenses to conversion and money had and received that, according to SunTrust, have the potential to eliminate over \$95 million in fee damages.

The Settlement Class also faces a risk that it might be unable to persuade a jury or this Court as to the Class's Georgia citizenship, either entirely or as to some subset of the Class. This would eliminate any recovery for the Class or portion of the Class whose citizenship evidence is not accepted. And of course, even if the Settlement Class succeeded at trial, it would face the challenge of defending that result on appeal. Given all of these risks, the \$240 million Settlement Amount is far more than fair, adequate, and reasonable and this factor favors approval.

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<sup>4</sup> The Settlement Amount is 88.6% of the actual damages before interest.

### **3. The Point On or Below the Range of Possible Recovery at Which a Settlement is Fair, Adequate and Reasonable**

It is the opinion of Class Counsel and the Class Representative that this Settlement is fair, adequate, and reasonable given the range of possible recovery.<sup>5</sup> These opinions are given great weight and support a finding that the Settlement is at or above the range where the Settlement is fair, adequate and reasonable.

It is also clearly the opinion of the Settlement Class that the Settlement is fair, adequate and reasonable, as evidenced by the lack of objections from Settlement Class Members, and the small number of requests for exclusion. Again, the evidence from an experienced class action attorney testified to the extraordinary results. Barnes Aff. ¶ 19. This factor favors final approval.

### **4. The Complexity, Expense and Duration of Litigation**

This litigation has already been complex, expensive, and extraordinarily long; absent the Settlement, this complexity, expense and length will increase. Without the Settlement, this case will go to trial and following the trial, there will undoubtedly be a sixth set of appellate proceedings (and those appellate proceedings could result in a re-trial). In short, the case will likely go on for at least two to three more years absent the Settlement.

As discussed above, complex issues remain for resolution in this case, including, for example, the permissible scope of expert testimony for the many proposed expert witnesses; the impact of the most recent Court of Appeals decision; various legal issues, such as the definition of interest and the intent required for usury. If the case goes to trial, evidentiary disputes will be added to this list.

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<sup>5</sup> See Terry Aff. ¶ 47 (“Class Counsel have obtained an extraordinary result for the class in this highly complex and problematic case.”); Affidavit of C. Ronald Ellington (“Ellington Aff.”) ¶ 32 (“the damages amount involved and the results obtained, is extraordinary here. The recovery obtained is large both in absolute numbers and as a percentage of the potential damages when compared to similar class actions.”)

**5. The Opinions of the Class Counsel, Class Representatives, and the Substance and Amount of Opposition to the Settlement**

Another factor—the amount and substance of the opposition to the settlement—likewise favors approval of the Settlement. As noted above, notice of the Settlement was sent to 463,763 accountholders, holding 382,876 SunTrust accounts. Only three accountholders requested exclusion, and only one objected. As discussed below, that lone objector is not a Class Member. This small amount of opposition is a testament to the fairness, adequacy, and reasonableness of the Settlement.

**6. The Stage of Proceedings at Which the Settlement was Achieved**

As discussed above, the Settlement was reached after more than fifteen years of complex litigation. Thus, the parties and Class Counsel are aware of the facts and the legal issues involved in Plaintiff's claims and SunTrust's defenses. Class Counsel conducted extensive discovery, including document discovery, deposition discovery, expert witness discovery, and painstaking review of SunTrust data. The appellate proceedings further identified, fleshed out and narrowed disputed factual and legal issues. Class Counsel have sufficient information to gauge the strengths and weaknesses of the Class's claims and the obstacles to recovery.

Despite the passage of more than fifteen years, the proceedings are not over, as discussed above. The stage of proceedings at which the settlement was reached supports final approval of the Settlement.

**7. Notice was Adequate**

One other factor for the Court to consider is the adequacy of notice. The parties agreed on and the Court already approved the Settlement Notice attached as Exhibit 3 to the Motion for Preliminary Approval (and attached to the Settlement as Exhibit A).

The Settlement called for, and the Court already approved, a notice plan which required the Settlement Administrator to send the Settlement Notice to the Settling Class Members by first class mail *and* by email, if SunTrust has an email address for the Settling Class Member. The Settlement Administrator executed this Court-Approved plan. *See* Affidavit of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Notice Plan. The Settlement Administrator updated addresses and remailed Notices that were returned as undelivered. The Settlement Administrator established a settlement website that contained the relevant Notice and additional information. In addition, a toll-free telephone number was established through which class members could learn about the Settlement.

The agreed-upon form, substance, and manner of providing notice of the Settlement to the Settling Class Members constituted the best notice practicable under the circumstances, and provided individual notice to all Settling Class Members who could be identified through reasonable effort, and comported with O.C.G.A. § 9-11-23(c)(2) and due process. The Settlement Administrator's report reflects that the approved notice program was carried out as directed, and successfully reached over 99% of those to whom notice was directed. Further, as of May 15, 2026, there were 25,884 website page hits on the settlement website over 17,728 sessions. There were 3,093 minutes over 1,151 calls to the toll-free telephone number.

In conclusion, the Settlement is fair, reasonable and adequate, and notice thereof satisfied due process and Rule 23. The Settlement is finally APPROVED.

**D. The Objector Lacks Standing, the Objection is Procedurally Improper, and the Objection Lacks Merit**

A single objection was received from Jimmie A. McCorvey of Pensacola, Florida. The McCorvey Objection is both invalid and without merit. The McCorvey Objection is invalid both because Mr. McCorvey is not a Class Member and because he did not comply with the express

and mandatory requirements for objections set by the Court in its Order dated January 23, 2026. The McCorvey Objection is meritless because the evidence and governing law support the reasonableness of both the Settlement and the attorney fee request, as explained below.<sup>6</sup>

**1. Mr. McCorvey Is Not a Class Member and Thus Lacks Standing to Object.**

Mr. McCorvey’s standing to object is a “threshold issue” that this Court is “duty-bound to consider.” *In re Estate of Florance*, 371 Ga. App. 153, 155 (2024). The Class is defined as follows:

Every person who was a Georgia citizen on the date Plaintiff filed this Complaint [July 12, 2010], and *has thereafter continuously remained through October 6, 2017, a citizen of Georgia* who had or has one or more accounts with SunTrust Bank and who, from July 12, 2006 to October 6, 2017 (i) had at least one overdraft of \$500.00 or less resulting from an ATM or debit card transaction (the “Transaction”); (ii) paid any Overdraft Fees as a result of the Transaction; and (iii) did not receive a refund of those fees.

March 4, 2024 Order at 25–26 (emphasis added). Mr. McCorvey does not meet the Class definition because he was no longer a citizen of Georgia after September 2013. Class Counsel have provided ample evidence, including Mr. McCorvey’s Florida voter registration in 2013 and current Florida address, demonstrating that Mr. McCorvey does not meet the requirement of the Class definition that requires continuous Georgia citizenship from 2010 to 2017.

The law is clear that non-members of the class lack standing to object to a class settlement, because as non-parties their interests are not affected by the Settlement. *In re Oil Spill by Oil Rig Deepwater Horizon*, 295 F.R.D. 112, 154 (E.D. La. 2013). *See Heller v. Quovadx, Inc.*, 245 F. App’x 839, 842 (10th Cir. 2007) (“non-class members have no standing to object” to proposed settlement). “[O]nly class members have an interest in the settlement funds, and therefore only class members have standing to object to a settlement.” *Feder v. Elec. Data*

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<sup>6</sup> Mr. McCorvey submitted a written withdrawal of his objection with prejudice on May 26, 2026.

*Sys. Corp.*, 248 F. App'x 579, 580 (5th Cir. 2007). A non-class member who has no interest in the settlement funds will suffer no “legal injury” from approval of the settlement, and therefore cannot “assert a violation of her legal rights” to establish standing to object under Georgia law. *Wasserman v. Franklin County*, 320 Ga. 624, 638–39 & n.8 (2025). This Court holds that Mr. McCorvey is not a member of the Settlement Class and thus lacks standing to object.

The McCorvey Objection also fails to comply with the mandatory provisions of the Court’s Order Preliminarily Approving Settlement and Directing Notice. That Order clearly sets forth several categories of information that had to be included with any valid objection, including “[a] statement of the reasons why the objector believes they are a member of the Settlement Class.” Mr. McCorvey failed to provide this and several other required items. As noted above, an objector must be a member of the Settlement Class to have standing to object, and “[t]he objector, as a party seeking to generate a court ruling, has the burden of demonstrating her standing.” 4 *Newberg on Class Actions* § 13:22. Failure to provide required information and in particular information pertaining to class membership invalidates the objection.<sup>7</sup>

Because the McCorvey Objection does not provide the information required for such an objection to be considered by the Court, the Objection is invalid. *In re Oil Spill*, 910 F. Supp. 2d at 936. In addition to holding Mr. McCorvey lacks standing, this Court strikes the McCorvey Objection because he failed to comply with the Court’s clear, mandatory and important instructions for such objections.

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<sup>7</sup> “None of the responses are valid objections because no response includes the information required to verify that the individual or entity submitting the rejected claim form is a member of the Champaign DC Non-Arbitration Class.” *In re Wholesale Grocery Prods. Antitrust Litig.*, 2018 WL 11424046, at \*1 (D. Minn. Feb. 7, 2018). “[P]urported objectors failed to comply with the requirements of the Preliminary Approval Order in that they failed to provide written proof of class membership and, therefore, forfeited and waived their objections.” *In re Oil Spill by Oil Rig Deepwater Horizon*, 910 F. Supp. 2d 891, 936 (E.D. La. 2012), *aff’d*, 739 F.3d 790 (5th Cir. 2014).

## 2. The McCorvey Objection Lacks Merit.

Even if it were procedurally valid and Mr. McCorvey had standing to raise it, the McCorvey Objection lacks merit. Mr. McCorvey first objects to the alleged reversionary nature of the Settlement Agreement. But the cases he cites dealt with a provision whereby any requested attorney fees not awarded to class counsel would revert to the defendant, which is not the case here. *See* Settlement Agreement § 6.1.4. Here, the only reversion to SunTrust is money which Settlement Class Members do not claim. This objection lacks merit under the facts of this case.

Mr. McCorvey next objects to the “Claims-made” nature of the Settlement Agreement. Here, the “claims-made” nature of the case is justified by the requirement to show continuous citizenship and domicile: a requirement imposed by this Court and affirmed by the Court of Appeals. Thus, the requirement for a statement under penalty of perjury attesting to Georgia citizenship was justified here.<sup>8</sup> This objection lacks merit under the facts of this case.<sup>9</sup>

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<sup>8</sup> This kind of claims-made settlement structure is common and routinely approved. *See, e.g., Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 593 (N.D. Ill. 2011) (approving claims-made structure in overdraft class action and noting that “there is nothing inherently suspect about requiring class members to submit claim forms in order to receive payment”); *Trombley v. Nat’l City Bank*, 826 F. Supp. 2d 179, 201 (D.D.C. 2011) (approving claims-made structure in overdraft class action and noting that “a claims process is often used to ensure that money is fairly distributed for valid claims”); *see also In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1257 (11th Cir. 2021) (affirming approval of claims-made settlement process in data breach class action); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 940 (9th Cir. 2015) (affirming approval of claims-made settlement in antitrust class action).

<sup>9</sup> If the Objection is suggesting that the percentage is to be calculated on the amount claimed by class members rather than the total amount made available to the class to cover its damages, expenses and fees for representing the class, that is simply wrong. In *Boeing Co. v. Van Gemert*, 444 U.S. 472, 480 (1980), the Supreme Court confirmed the practice of using the entire fund in a claims made settlement as the appropriate benchmark for setting fees, at least where, as here, each class member needed only to prove his or her membership in the injured class to receive a distribution. The right to a share of the “harvest of the lawsuit” upon proof of membership in the class, “whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel.” *Id.*

The Objection asserts that the release is too broad. The release here is limited to claims that could have been asserted in the case, relating to the allegations of the case, and limited to overdraft fees or charges. Settlement Agreement § 5.1. As this case sought the recovery of *all* overdraft fees incurred during the class period and not refunded, and that was the claim being settled, a release limited to claims for overdraft fees and charges simply cannot be too broad.

The McCorvey Objection claims there are “signs of collusion.” But “[w]here the parties have negotiated at arm’s length, the Court should find that the settlement is not the product of collusion.” *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 692 (S.D. Fla. 2014). Here, the Settlement was the result of hard-fought negotiations, which required an independent third-party mediator. Courts have consistently held that the presence of an independent mediator belies any suggestion of fraud or collusion. *See, e.g., Montoya v. PNC Bank, N.A.*, 2016 WL 1529902, at \*8 (S.D. Fla. Apr. 13, 2016) (use of mediator indicates there is “no suggestion of fraud or collusion”); *In re WorldCom, Inc. ERISA Litig.*, 2004 WL 2338151, at \*6 (S.D.N.Y. Oct. 18, 2004) (presence of mediator negates any suggestion of collusion). The fifteen-plus-year history of this litigation—replete with disputes over procedural issues, the merits, and discovery—confirms the absence of fraud or collusion. The Settlement Fund of over 88 percent of the actual damages also negates any charge of collusion. This objection lacks merit.

The Court holds that (a) Mr. McCorvey is not a member of the Settlement Class and thus lacks standing to object or appeal; (b) the McCorvey Objection is procedurally barred because of his failure to comply with this Court’s express and mandatory requirements for such objections and is therefore stricken; and (c) alternatively only, the Objection lacks merit and is overruled.

### **3. The Attorney Fee Request is Reasonable and Should be Granted.**

In a class action such as this one, the customary fee is a contingency fee based on a percentage of the total available recovery (“common fund”), because virtually no individual possesses a sufficiently large stake in the litigation to justify paying his attorneys on an hourly basis. The Georgia Supreme Court has made it clear that a percentage of the common fund approach is to be used in the Courts of Georgia. “With respect to attorney’s fees, Georgia adheres to the common-fund doctrine.” *Barnes v. City of Atlanta*, 281 Ga. 256, 260 (2006) (“*Barnes III*”). The Eleventh Circuit agrees. In *Camden I Condominium Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 774–75 (11th Cir. 1991), it held that fees in common fund cases must be calculated using the percentage rather than the lodestar approach. Although the factors to be considered in selecting a percentage from the common fund “may vary from case to case,” *Friedrich v. Fid. Nat’l Bank*, 247 Ga. App. 704, 707 (2001), there are certain commonly used factors, which are discussed in detail below and in the supporting Affidavits and motion.

#### **a. A One-Third Fee Is Customary and Supported by Awards in Similar Cases.**

Caselaw suggests that the Court consider “awards in similar cases.” Class Counsel seek a recovery of 33 1/3 percent (one-third). A “one-third recovery . . . is a customary fee” for class actions. *Diakos v. HSS Sys., LLC*, 2016 WL 3702698, at \*6 (S.D. Fla. Feb. 4, 2016). For that reason, a fee of 33 1/3% of the common fund—the amount Class Counsel seeks here—is consistent with and even below what numerous other courts have awarded in similarly complex class actions and is reasonable and appropriate here. *See Barnes Aff.* ¶ 12 (“[I]t is also my opinion that one third of the settlement fund is the customary legal fee in the community for

class actions such as this”). Class Counsel provided expert testimony that a one-third recovery is customary in similar cases,<sup>10</sup> and have provided citations to dozens of cases so holding.

Georgia cases are in accord. In *Barnes III*, “[t]he trial court awarded plaintiffs’ counsel attorney fees of 33 1/3 percent of the common fund, but provided that those who had opted out of the classes were not responsible for paying attorney fees.” *Barnes v. City of Atlanta*, 275 Ga. App. 385, 386 (2005) (“*Barnes II*”), *rev’d in part*, 281 Ga. 256. The Supreme Court in *Barnes III* reversed the Court of Appeals’ holding that the opt-outs did not have to pay fees to class counsel and left the 33 1/3 percent award intact. 281 Ga. at 260–61. Further, “in *Friedrich v. Fidelity Nat. Bank*, the trial court awarded plaintiffs’ counsel attorney fees of 33 1/3 percent of the common fund.” *Barnes II*, 275 Ga. App. at 392 (footnote omitted).

**b. Additional Camden Factors Support the Award.**

Factors, discussed in more detail below, that support the award include the fact that the attorney fee recovery is purely contingent; the case has been pending for over fifteen years (delaying any fee and expense payment to Class Counsel); the case was difficult and presented complex issues of arbitration, agency, usury and limitations periods; the case has involved multiple interlocutory appeals with the extra risk, delay, expenses and attorney time attendant thereto; class certification was denied in this case, which had to be reversed in order to prevail; and summary judgment in SunTrust’s favor on a crucial limitations issue also had to be reversed. Given the complexity, burden and risk, the requested fee of 33 1/3% is well in line with the case law and is reasonable. *Bessey v. Packerland Plainwell, Inc.*, 2007 WL 3173972, at \*4 (W.D. Mich. Oct. 26, 2007) (approving 31–32% attorneys’ fees award and noting that “[e]mpirical studies show that . . . fee awards in class actions average around one-third of the recovery”)

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<sup>10</sup> See Ellington Aff. ¶ 30 (“It is also my opinion that one third of the settlement fund is the customary legal fee in the community for class actions such as this.”)

(citation omitted); *Dallas v. Alcatel-Lucent USA, Inc.*, 2013 WL 2197624, at \*12 (E.D. Mich. May 20, 2013) (“[v]arious courts have expressed approval of attorney fees in common fund cases at similar or higher percentages”).<sup>11</sup> The request is supported by the opinion of three experienced class action attorneys that a fee award of 33 1/3 percent of the settlement amount is a reasonable fee under all of the circumstances.

**c. The Case Involved Difficult Questions and Presented Significant Risk for Class Counsel.**

A *Camden* factor is “the novelty and difficulty of the questions” presented by the case and the “undesirability” of the case. *Camden*, 946 F.2d at 772 n.3. Ronald Ellington opined:

This case took sixteen years of intense labor. Multiple lawyers from several firms worked consistently and diligently over that time. The case involved multiple appeals, extensive briefing, and research and writing on new and evolving issues that certainly qualified as novel and difficult.

Ellington Aff. ¶ 17. Governor Barnes testified that there are

certain factors that I consider to be the most important in this particular case. Those are the time and labor required to resolve the case successfully; the degree of success achieved, the novelty and difficulty of the issues, and the skill required to perform the legal services necessary to achieve the result. The risk of non-recovery was also very real here. In light of all of the *Johnson* factors, but particularly based upon these factors, the performance of class counsel here more than justified a 33.33 percent fee.

Barnes Aff. ¶ 13.

Class Counsel (a) obtained summary judgment in the Class’s favor on whether an overdraft was a loan; (b) avoided summary judgment for SunTrust and created a jury issue on

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<sup>11</sup> See also, e.g., *Wolff v. Cash 4 Titles*, 2012 WL 5290155, at \*5–\*6 (S.D. Fla. Sept. 26, 2012) (noting that fees in the Eleventh Circuit are “roughly one-third”); T. Eisenberg et al., *Attorneys’ Fees in Class Actions: 2009–2013*, 92 N.Y.U. Law Rev. 937, 951 (2017) (the median fee in class actions from 2009 to 2013 was 33%); Decl. of H. Hughes (Doc. 82-1) at 4–5, *Champs Sports Bar & Grill Co. v. Mercury Payment Sys., LLC*, No. 1:16-CV-00012-MHC (N.D. Ga.) (90% of the hundreds of common fund settlements a leading Atlanta mediator has negotiated provide for a fee of one-third of the benefit).

whether an overdraft fee was actually an interest charge; (c) avoided summary judgment for SunTrust on the issue of whether regulatory approval of the overdraft fees precluded the claims asserted; and (d) despite a split in appellate authority on the issue, avoided summary judgment for SunTrust on the intent issue and obtained a beneficial ruling as to what had to be shown at trial. And all of these decisions were affirmed on appeal. Finally, there was an unsettled issue of law as to the applicable limitations period. Class Counsel lost this issue in the trial court but made new law in prevailing on this issue on appeal, approximately doubling the damages available to the Class. Ellington Aff. ¶ 29.

Other factors that would support an even higher percentage than is customary in this particular case include the fact that the case is purely contingent; has been pending for almost sixteen years (delaying any fee and expense payment to Class Counsel for all of that time); and was extraordinarily difficult and, but for Class Counsel's efforts over many years, members of the Class likely would have received none of their money back.

The amount of work, the quality of the work, the novel nature, complexity and difficulty of the issues, and the success of the work justify a fee of 33 1/3 percent of the Settlement Fund. Class Counsel have obtained an excellent result for the class in this highly complex and problematic case. As Dean Ellington opined:

Another *Friedrich* factor, the damages amount involved and the results obtained, is extraordinary here. The recovery obtained is large both in absolute numbers and as a percentage of the potential damages when compared to similar class actions. This was no simple class action settlement: rather, it involved sixteen years of intense and high-quality work.

Ellington Aff. ¶ 32.

**d. Class Counsel Skillfully Prosecuted This Action to a Successful Conclusion Against Capable Opposing Counsel.**

Both *Johnson* and *Camden* suggest as factors “[t]he skill requisite to perform the legal service properly” and “[t]he experience, reputation, and ability of the attorneys.” *Johnson v. Ga. Highway Exp., Inc.*, 488 F.2d 714, 718–19 (5th Cir. 1974). In evaluating these factors, “[t]he trial judge should closely observe the attorney’s work product, his preparation, and general ability before the court. The trial judge’s expertise gained from past experience as a lawyer and his observation from the bench of lawyers at work become highly important in this consideration.” *Id.* at 718. Dean Ellington opined, “Based on my experience and expertise and familiarity with generations of lawyers in Georgia, this team could not have been any better in this regard.” Ellington Aff. ¶ 33.

“In evaluating the quality of representation by Class Counsel, the Court should also consider the quality of opposing counsel.” *Lunsford v. Woodforest Nat’l Bank*, 2014 WL 12740375, at \*13 (N.D. Ga. May 19, 2014). Here, SunTrust hired several top notch and experienced attorneys and firms and provided them with the resources to mount a vigorous defense. The fact that Class Counsel were able to prosecute this case to a successful conclusion against such capable counsel further speaks to the quality of representation they have provided to the class.

*Camden* suggests as a factor the “time limitations imposed by the client or the circumstances” and whether other available business was foreclosed by “the fact that once the employment is undertaken the attorney is not free to use the time spent on the client’s behalf for other purposes.” *Camden*, 946 F.2d at 772 n.3; *Johnson*, 488 F.2d at 718. This factor weighs in favor of the requested fee award because during the almost sixteen years that this case has been

litigated, Class Counsel have devoted substantial time and effort to this case to the exclusion of others. Terry Aff. ¶ 30.

A fee award of one third (33 1/3 percent) of the Settlement Fund is a reasonable fee under all of the circumstances.

**e. The Experience, Reputation and Ability of Class Counsel Support the Fee.**

Another *Camden* factor is the experience, reputation, and ability of the attorneys. Class Counsel are highly competent, extremely experienced and well respected in the legal community.

The Court concludes that an award of 1/3 of the Settlement Fund is reasonable and appropriate and supported by governing law and standards. The Court therefore awards \$80 million in attorney fees to Class Counsel.

**4. Class Counsel Should be Reimbursed for Case Expenses.**

Class Counsel incurred a combined \$1,750,604.63 in expenses in connection with the prosecution of this case for which they seek reimbursement. All of these expenses are of the type that courts have found are reasonably incurred in the prosecution of a class action, such as expenses for filing fees, service fees, mediator, expert witness expenses, court reporters, photocopies, travel expenses, electronic/computerized research, etc. The Settlement provides that SunTrust will not object to any amount that does not exceed \$3,000,000. No objection was received to the expense award sought. The Court finds these expenses were reasonable and necessary for the prosecution of this action, and awards \$1,750,604.63 in expenses.

**5. An Incentive Award for the Class Representative is Justified.**

Class Counsel recommend and request an incentive payment of \$200,000 for the Class Representative. The circumstances and service of the Class Representative(s) in this case were

extraordinary and unusual. They are set forth in detail in Plaintiff’s Motion for an Award of Attorneys’ Fees, Expenses, and Incentive Award at 29–31.

“Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). Incentive awards “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009).

The 16-year, multi-generational effort and the personal risks of threatened attorney fee awards justify an incentive award to the Class Representative of \$200,000.

### **ORDER AND JUDGMENT**

IT IS HEREBY ORDERED AND ADJUDGED as follows:

(1) After considering all matters of record, the Court hereby finally approves in all respects the Settlement set forth in the Settlement Agreement. The Court finds that the Settlement is fair, reasonable, adequate, proper, and in the best interests of the Settlement Class. This Order constitutes the final order and final judgment contemplated by Section 3.4 of the Settlement Agreement and the parties are directed to and shall consummate the Settlement in accordance with the Settlement Agreement.

(2) The Settlement Class includes:

Every person who was a Georgia citizen on the date Plaintiff filed this Complaint [July 12, 2010], and has thereafter continuously remained through October 6, 2017, a citizen of Georgia who had or has one or more accounts with SunTrust Bank and who, from July 12, 2006 to October 6, 2017 (i) had at least one overdraft of \$500.00 or less resulting from an ATM or debit card transaction (the “Transaction”); (ii) paid any Overdraft

Fees as a result of the Transaction; and (iii) did not receive a refund of those fees.

AND whose SunTrust deposit accounts were not closed before June 1, 2010 AND who have qualifying claims under the Settlement Agreement based on overdraft fees charged between July 12, 2006 and April 15, 2014. The Court hereby EXCLUDES from the Settlement Class the three individuals who timely and properly requested exclusion after notice of the Settlement and the 158 who requested exclusion after notice of class certification. The excluded individuals are listed on Exhibit 1 hereto.

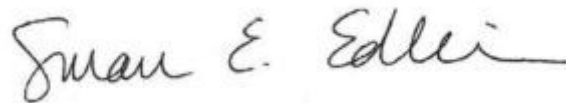
- (3) The Court awards the requested incentive award of \$200,000 to Charles Daniel Bickerstaff, as Administrator of the Estate of Jeff Bickerstaff, Jr. and hereby orders SunTrust to make such payment to the Settlement Fund in accordance with the Settlement Agreement;
- (4) The Court awards the requested expense award of \$1,750,604.63 and the requested attorney fee award of \$80 million to Class Counsel, and hereby orders SunTrust to make such payment to the Settlement Fund in accordance with the Settlement Agreement;
- (5) After receipt of payments from SunTrust, the Settlement Administrator will make payments to Class Counsel and Charles Daniel Bickerstaff, as Administrator of the Estate of Jeff Bickerstaff, Jr., in accordance with the settlement agreement.
- (6) The Court holds that (a) Mr. McCorvey is not a member of the Settlement Class and thus lacks standing to object or appeal; (b) the McCorvey Objection is procedurally barred because of his failure to comply with this Court's express and mandatory requirements for such objections and is hereby stricken; and (c) alternatively only, the McCorvey Objection lacks merit and is overruled. Furthermore, Mr. McCorvey withdrew his objection with prejudice.

(7) Any and all other pending motions are hereby denied.

(8) The claims of Settling Class Members are hereby dismissed with prejudice.

This constitutes a final entry of judgment and the Clerk is authorized to close the case pursuant to O.C.G.A. § 9-11-58(b).

SO ORDERED, this 26<sup>th</sup> day of May, 2026.



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Susan E. Edlein  
Judge, State Court of Fulton County

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