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.	)	

PLAINTIFF'S UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD, AND BRIEF IN SUPPORT

INTRODUCTION

Plaintiff Charles Daniel Bickerstaff, as Administrator of the Estate of Jeff Bickerstaff, Jr., on behalf of himself and others similarly situated ("Plaintiff"), through undersigned counsel ("Class Counsel"), submit this brief in support of their unopposed motion for an incentive award and an award of attorneys' fees and expenses for Class Counsel. This case has been pending for approximately 16 years. It has seen the death of two class representatives, each one replaced by court order after opposition from SunTrust. The case is on its third trial judge. It has made multiple trips to the appellate courts, including two petitions for certiorari to the United States Supreme Court and five reported appellate opinions. The most recent SunTrust petition for certiorari to the United States Supreme Court was denied on January 12, 2026 – just days before the settlement was signed.

Class Counsel have provided almost sixteen years of attorney labor by more than 20 lawyers from multiple firms, and advanced millions of dollars of expenses in the case. After sixteen years of active litigation, the case has been settled. The result is extraordinary—one of

the largest Georgia-only class settlements in history. The efforts of class counsel have led to the creation of a Settlement Amount of $240 million, available because of the efforts of Class Counsel. By this motion, Class Counsel seek an award of fees and expenses, and seek an incentive award for the class representative for sixteen years of extraordinary service, all as contemplated in the Settlement Agreement.

This motion is supported by the Affidavits of Roy E. Barnes (attached hereto as Exhibit A), C. Ronald Ellington (attached hereto as Exhibit B), Michael B. Terry (attached hereto as Exhibit C), and Banjamin Finley (attached hereto as Exhibit D), as well as by the entire record of this sixteen year old case.

A. The 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 complex and the process was difficult. 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 arbitration issues alone were daunting and essentially no other overdraft cases have overcome arbitration clauses with class action bans. Class Counsel have been assiduously working on this case for approximately 16 years. They have expended tens of thousands of hours of attorney time, and advanced millions of dollars of costs and expenses on behalf of the class. Affidavit of Michael B. Terry ("Terry Aff.") ¶ 30

The original Plaintiff in this case, Jeff Bickerstaff, Jr., approached Class Counsel in early 2010 with concerns about overdraft fees he had been charged by SunTrust Bank ("SunTrust"). After extensive investigation and legal research, Class Counsel on July 12, 2010, filed the Complaint asserting usury claims, and at the same time also made a demand for repayment of the overdraft fees. The Complaint was filed in the State Court of Fulton County ("State Court").

On August 9, 2010, Class Counsel filed an Amended Complaint asserting additional claims for "money had and received" and "conversion" following SunTrust's rejection of the demand for repayment. Terry Aff. ¶ 11.

1. Fifteen Years of Successful Litigation Over Arbitration and Purported Class Action Ban

The account agreements at issue in this case included arbitration agreements and two class action bans: one banning class actions in arbitration, and the other banning litigation class actions. When the case began, class counsel planned to avoid arbitration and the attendant class action ban by relying upon a state law unconscionability doctrine that had been adopted in the Eleventh Circuit. Terry Aff. ¶ 12.

On October 4, 2010, SunTrust moved to compel Plaintiff Jeff Bickerstaff to arbitrate his claims. The State Court allowed discovery on the motion, and the parties engaged in deposition and document discovery on that issue and filed briefs supporting and opposing the arbitration motion. Terry Aff. ¶ 13.

But after SunTrust's arbitration motion was initially briefed, the United States Supreme Court issued its decision in *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011), holding that such state law unconscionability doctrines were preempted by the Federal Arbitration Act. The litigation class action ban also raised issues of first impression that were actively litigated in this case for several years. Terry Aff. ¶ 14. *See* Affidavit of Roy E. Barnes[1] ("Barnes Aff.") ¶ 16 ("Many, if not most, attorneys would have abandoned this case when *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011) ("*Concepcion*"), changed the legal landscape for avoiding arbitration.")

[1] Roy E. Barnes, former Governor of Georgia, has been a litigation attorney for over 50 years. He has been class counsel in numerous class actions, including approximately 15 usury class actions. Barnes Aff. ¶¶ 5-9.

On March 16, 2012, the State Court denied SunTrust's motion to compel Jeff Bickerstaff to arbitrate his claims. SunTrust sought leave to file an interlocutory appeal of that ruling. The State Court granted leave, and on April 24, 2012, the Georgia Court of Appeals accepted SunTrust's application for an interlocutory appeal. On October 29, 2012, after briefing of the appeal was complete, the Court of Appeals dismissed the appeal as having been improvidently granted. Terry Aff. ¶ 15.

a. Class Certification Denied Based on Arbitration Clause – Reversed by Supreme Court

On April 8, 2013, Plaintiff Jeff Bickerstaff filed a Motion for Class Certification. After full briefing and an evidentiary hearing on February 19, 2014, the State Court denied that motion for Class Certification, holding that the arbitration agreement and class action ban precluded absent class members from participating in the class action, defeating numerosity. Terry Aff. ¶ 16.

Plaintiff Jeff Bickerstaff appealed that ruling, and the Georgia Court of Appeals affirmed the State Court's denial of class certification in *Bickerstaff v. SunTrust Bank*, 332 Ga. App. 121 (2015) ("*Bickerstaff I*"). Plaintiff Jeff Bickerstaff sought *certiorari* to the Supreme Court of Georgia. That Court granted certiorari and reversed the denial of class certification in *Bickerstaff v. SunTrust Bank*, 299 Ga. 459 (2016) ("*Bickerstaff II*"). SunTrust petitioned for certiorari to the United States Supreme Court, which denied the petition on December 5, 2016. The Court of Appeals resolved remaining issues and remanded the case to the State Court in *Bickerstaff v. SunTrust Bank*, 340 Ga. App. 43 (2017) ("*Bickerstaff III*"). Terry Aff. ¶ 17.

b. The Death of Jeff Bickerstaff and Contested Substitution of Ellen Bickerstaff

Plaintiff Jeff Bickerstaff had suffered a series of health issues. During the Appeals referenced in the preceding paragraph, Jeff Bickerstaff became seriously ill. Class Counsel met

with Jeff Bickerstaff, and he emphasized his strong wish that the case continue in the event of his death. Class Counsel consulted with Mr. Bickerstaff and his wills and estate counsel to revise his will to provide for the continuation of the case and to instruct the executrix of his estate to protect the interests of absent class members. On November 14, 2015, while this case was on appeal, Plaintiff Jeff Bickerstaff passed away. On November 30, 2015, SunTrust moved to dismiss the appeal and contended that there was no other qualified class representative. After Class Counsel filed a motion to substitute, and briefing on both SunTrust's Motion to Dismiss and the Motion to Substitute, on December 10, 2015, the Supreme Court of Georgia substituted Ellen Bickerstaff, Mr. Bickerstaff's mother and the executrix of his estate, as Class Representative. Terry Aff. ¶ 18.

c. Certification of the Class and Affirmance on Appeal

Following the remand in *Bickerstaff III*, the parties provided the State Court with supplemental briefing concerning class certification, and another class certification hearing was held. On October 6, 2017, the State Court granted Plaintiff Ellen Bickerstaff's Motion for Class Certification. Terry Aff. ¶ 19.

SunTrust appealed that ruling. In *SunTrust Bank v. Bickerstaff*, 349 Ga. App. 794 (2019) ("*Bickerstaff IV*"), the Court of Appeals affirmed the State Court's grant of class certification. SunTrust petitioned for certiorari to the Supreme Court of Georgia, which denied the petition on December 23, 2019. The case was then remanded to the State Court. Terry Aff. ¶ 20.

2. Post-Class Certification Litigation

The litigation continued for another five-plus years after the class was certified and the certification order affirmed on appeal. The battle was far from over.

a. SunTrust Continued to Fight for Arbitration and to Challenge the Class

Upon remand after affirmance of class certification, SunTrust filed a Motion to Modify the Class Definition (April 8, 2020) and a Renewed Motion to Compel Arbitration Against Certain Class Members (May 29, 2020). On February 9, 2021, the State Court denied those motions, but did not preclude SunTrust from raising the legal arguments in those motions at a later time. Terry Aff. ¶ 21.

b. Class Notice Provided Over Opposition from SunTrust

On July 30, 2021, Plaintiff Ellen Bickerstaff moved for an order directing issuance of notice of class certification. SunTrust filed an opposition to that motion on August 30, 2021. On April 7, 2022, the State Court granted the motion and directed issuance of notice of class certification. Court-approved notice of class certification was provided to the certified Class in May 2022. That notice was sent to 766,160 individuals. It provided an opportunity to request exclusion ("opt out") of the Class, and 158 individuals requested exclusion. Terry Aff. ¶ 22.

c. The Death of Ellen Bickerstaff and Contested Substitution of Dan Bickerstaff

On September 28, 2022, Plaintiff Ellen Bickerstaff passed away. On December 2, 2022, Charles Daniel "Dan" Bickerstaff, Ellen's son and Jeff's brother, moved to be substituted as Plaintiff and Class Representative in this action. On February 14, 2023, SunTrust filed an opposition to that motion. On March 20, 2023, the State Court granted the motion and substituted Dan Bickerstaff as Class Representative. Terry Aff. ¶ 23.

d. Discovery and Discovery Disputes

Before and after the class notice, the parties conducted extensive discovery in the case, and the State 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. Terry Aff. ¶ 24.

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 accounting/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 500,000 class members. In the pre-AI world, class counsel hired experts to write programs to search, categorize and manage this accounting data. These experts are discussed in Paragraph 52 below. However, 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. SunTrust litigated these issues heavily, and extensive expert and other discovery was required; and

(c) Georgia Citizenship issues, which involved the class definition and very complicated and interrelated issues of federal removability, Georgia Constitutional law, and Georgia appellate procedure. Ultimately, the State Court's class definition required that Class Counsel prove that each class member was a Georgia citizen continuously for the duration of the seven-year class period. SunTrust litigated these issues heavily and they required significant expert work and data discovery.

Terry Aff. ¶ 25.

e. Motions Practice at the Conclusion of Discovery

On October 30, 2023, SunTrust filed a Motion to Dismiss for Insufficiency of Service of Process. On October 31, 2023, SunTrust filed a Motion to Modify the Class Definition, Third Renewed Motion to Compel Arbitration, Motion to Exclude Opinions and Testimonies of the Class's Proposed Expert Witnesses, and Motion for Summary Judgment. Class Counsel filed oppositions to all those motions. Plaintiffs moved to partially exclude the testimony of three of SunTrust's experts. All of the motions were fully briefed and orally argued. Terry Aff. ¶ 26.

On March 4, 2024, the State Court issued an Omnibus Order granting in part and denying in part SunTrust's Motion for Summary Judgment and Motion to Modify the Class Definition. In that Order, the State Court defined the certified Class 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. All of the pending motions were ruled upon in the Omnibus Order, except the parties' *Daubert* motions.. Terry Aff. ¶ 27.

At that time, the trial of this case was specially set for April 29, 2024. Trial preparation was well underway. In addition to other normal trial preparation tasks, Class Counsel held several mock trials with trial consultants and mock jurors selected from the pertinent geographical area. This exercise cost tens of thousands of dollars and took approximately 1000 hours of attorney time. It provided valuable feedback as to how to structure and present the case for maximum effect and also provided crucial information regarding valuation for settlement process. The work was necessary and the costs were reasonable. Terry Aff. ¶ 28.

f. A Fourth Round of Appeals Initiated by SunTrust

Less than two months before the scheduled trial, SunTrust took an interlocutory appeal from the Omnibus Order, and Plaintiff Dan Bickerstaff then cross-appealed. In *Bickerstaff V*, 375 Ga. App. 37 (2025), the Court of Appeals affirmed some portions of the Omnibus Order and reversed others. SunTrust petitioned for certiorari to the Georgia Supreme Court, which that Court denied on September 16, 2025. SunTrust petitioned for certiorari to the United States Supreme Court, which denied the petition on January 12, 2026. Terry Aff. ¶ 29.

B. The Settlement

1. The Settlement Process

In 2024, the parties agreed upon Hunter Hughes to mediate this case. While he was originally based in Atlanta and was a member of the Georgia Bar for many years, Mr. Hughes is considered one of the top class action mediators in the United States. Mr. Hughes has mediated some of the largest class action settlements in history. He has written numerous articles and publications, including "How Our Subconscious Bias Impacts the Negotiations," American Journal of Mediation; Chapter 26, "Mediating Class Actions: How Mediators Operate and What They Want," How ADR Works, BNA Books; "Class Actions in Arbitrations," A Treatise Project of the American Bar Association Labor and Employment Law Section. Terry Aff. ¶ 31.

The settlement process itself took two years, running in parallel with the last two years of active litigation. After written submissions, the parties mediated this case in person before Mr. Hughes beginning on February 28, 2024. Discussions continued after that day. After the Georgia Supreme Court denied *certiorari* from *Bickerstaff V*, the parties resumed in-person mediation, on December 4, 2025, and discussions continued through Mr. Hughes for weeks thereafter. Terry Aff. ¶ 32.

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 the State Court entered an Order Preliminarily Approving Settlement and Directing Notice on January 23, 2026. Class notices went out on March 4, 2026. Terry Aff. ¶ 33.

2. Terms of the Settlement

The Settlement Agreement establishes a maximum Settlement Amount of $240 million. The Settlement 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),[2] any service award 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 will be paid out of the Settlement Amount. Terry Aff. ¶ 34.

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 the State Court's holding that continuous citizenship is a requirement for class membership. Settling Class Members may submit the Claim Form by mail or electronically. Terry Aff. ¶¶ 35-36.

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 *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.

[2] Although the Settlement Agreement contemplates up to $3 million for costs and expenses of Class Counsel, the actual amount requested is substantially lower, as discussed below.

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. Terry Aff. ¶ 37.

The Settlement includes 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 advises the Settling Class Members of their right to request exclusion from the Settlement Class ("opt out") or to object to the Settlement. And the Settlement provides for a Fairness and Final Approval Hearing at which the Court will consider any objections to the Settlement, the fairness, reasonableness, and adequacy of the Settlement, Class Counsel's motion for an award of attorneys' fees, costs, and expenses, and a motion for a service or incentive award for the Class Representative. Terry Aff. ¶ 38. "The results obtained are extraordinary here. 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." Barnes Aff. ¶ 19. Class Counsel have obtained an extraordinary result for the class in this highly complex and problematic case. Terry Aff. ¶ 47.

C. 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. *See Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992); *see also Norman v. Hous. Auth. of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988). The Georgia Supreme Court has made it clear that a percentage of the common fund approach is to be used in the state 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. *See* Terry Aff. ¶ 39. 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. Those factors are discussed in numerous cases, including particularly *Johnson v .Georgia Highway. Express, Inc*., 488 F.2d 714 (5th Cir. 1974), *abrogated on other grounds*, *Blanchard v. Bergeron*, 489 U.S. 87 (1989), and *Camden,* 946 F.2d at 774. *See Friedrich*, 247 Ga. App. at 706 (referencing *Johnson* and *Camden* factors).

1. A 33.33 Percent Fee Award Is Customary and Supported by "Awards in Similar Cases."

Both *Johnson* and *Camden* suggest that the Court consider "awards in similar cases." *Johnson,* 488 F.2d at 717-19; *Camden*, 946 F.2d at 772 n.3. Class Counsel in this Action seek a recovery of 33.33 percent (one-third). A "one-third recovery . . . is a customary fee" for class actions. *Diakos v. HSS Sys., LLC*, No. 14-61784, 2016 WL 3702698, at *6 (S.D. Fla. Feb. 4, 2016). For that reason, a fee of 33.3% 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 ("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. ")

For example, recently, in *Owens v. Metropolitan Life Insurance Co.*, Case No. 2:14-cv-00074, in the U.S. District Court for the Northern District of Georgia, in which Jason Carter and Michael B. Terry represented the class, Judge Richard Story awarded class counsel 33.3 percent

of the common fund of $80 million dollars in November 2019. In *DeKalb County School District v. Gold*, 307 Ga. 330 (2019), in which Jason Carter and Michael B. Terry represented the class, Judge Adams (DeKalb) awarded 33 percent of a $117.5 million settlement in 2020. In another case in which Michael B. Terry was counsel for the class, the Northern District of Georgia approved a fee award of 33.33% to class counsel who negotiated a $75 million common fund settlement, holding that percentage for such a settlement was "in keeping with fee awards in highly complex, multi-year cases." *Columbus Drywall & Insulation, Inc. v. Masco Corp*., No. 1:04-cv-3066-JEC, 2012 WL 12540344, at *1 (N.D. Ga. Oct. 26, 2012) (emphasis added). This is a "highly complex, multi-year case" such as that referred to in the *Columbus Drywall* opinion referenced above. This case has also been extensively litigated—far more than the *Columbus Drywall* case. The *Columbus Drywall* case took eight years. This case took almost sixteen years. Terry Aff. ¶ 40.

Similarly, in *Barnes III* (cited above), "the 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*, 281 Ga. 256 (2006). 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. 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 v. City of Atlanta*, 275 Ga. App. at 392. Terry Aff. ¶ 40.

One third of the amount that the efforts of class counsel make available to the class is the prevailing fee in recent class cases. *See, e.g*., *In re Clarus Corp. Sec. Litig*., No. 1:00-cv-02841 (N.D. Ga. Jan. 6, 2005) (**33.33%**); *In re Pediatrics Servs. of Am., Inc. Sec. Litig*., 1:99-cv-00670

(N.D. Ga. Mar. 15, 2002) (**33.33%**); *In re Profit Recovery Group Int'l, Inc*. Sec. Litig., No. 1:00-CV-1416-CC (N.D. Ga. May 26, 2005) (**33.33%**); *In re Theragenics Corp., Sec. Litig*., No. 1:99-CV-0141-TWT (N.D. Ga. Sept. 29, 2004) (**33.33%**); *In re Harbinger Corp. Sec. Litig*., No. 1:99-CV-2353-MHS (N.D. Ga. Oct. 18, 2001) (**33.33%**); *In re The Maxim Group, Inc. Sec. Litig*., No. 1:99-CV- 1280-CAP (N.D. Ga. July 20, 2004) (**33.33%**); *In re Terazosin Hydrochloride Antitrust Litig*., 1:99-MD-01317-PAS (S.D. Fla. April 19, 2005) (**33 1/3 %** of settlement of over $30 million); *In re Medirisk, Inc. Sec. Litig*., No. 1:98-CV-1922-CAP (N.D. Ga. Mar. 22, 2004) (**33.33%**); *Meyer v. Citizens & S. Nat'l Bank*, 117 F.R.D. 180 (M.D. Ga. 1987) (**33.3%**); *Gutter v. E.I. Dupont De Nemours & Co.,* 1:95-cv-02152 [Dkt. 626] (S.D. Fla. May 30, 2003) (**33.33 %** of settlement of $77.5 million); *Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291 (11th Cir. 1999) (**33.33 %** of settlement of $40 million); *Morgan v. Public Storage*, No. 1:14-cv-21559 [Dkt. 407] (S.D. Fla. Mar. 10, 2016) (awarding **33%**). Terry Aff. ¶ 41. *See* Affidavit of C. Ronald Ellington ("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.")

Federal Cases, including particularly those from Georgia, are in accord. "[E]mpirical studies show that ... fee awards in class actions average around one-third of the recovery[,]" and "[t]he average percentage awarded in the Eleventh Circuit mirrors that of awards nationwide – roughly one third." *Wolff v. Cash 4 Titles*, No. 03-cv-22778, 2012 WL 5290155, at *5 (S.D. Fla. Sept. 26, 2012) (collecting cases), adopted, 2012 WL 5289628 (S.D. Fla. Oct. 25, 2012); accord *George v. Academy Mortg. Corp*., 369 F. Supp. 3d 1356, 1382 (N.D. Ga. 2019) (collecting cases in which fees were awarded in the amount of one-third of the recovery); *Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291, 1294-95 (11th Cir. 1999) (affirming a fee award of one-third of a

$40 million settlement plus expenses); *Muransky v. Godiva Chocolatier, Inc*., 922 F.3d 1175, 1195-96 (11th Cir. 2019) (affirming a one-third fee award), vacated on other grounds, 939 F.3d 1279. Terry Aff. ¶ 41 n.2.

Indeed, many cases are even higher than 33.33 percent. *See Zinman v. Avemco Corp*., No. 75-1254, 1978 WL 5686 (E.D. Pa. Jan. 18, 1978) (**50%**); *Aamco Automatic Transmissions, Inc. v. Tayloe*, 82 F.R.D. 405 (E.D. Pa. 1979) (**43.87%**); *In re Ampicillin Antitrust Litig*., 526 F. Supp. 494 (D.D.C. 1981) (**40.4%**); *Howes v. Atkins*, 668 F. Supp. 1021 (E.D. Ky. 1987) (**40%**); *Fernandez v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 15-22782-CIV, 2017 WL 7798110, at *4 (S.D. Fla. Dec. 18, 2017) (**35%**); *In re Managed Care Litig. v. Aetna*, MDL No. 1334, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003) (fees and costs of **35.5%** of settlement of $100 million); *Ratner v. Bennett*, No. 92-4701, 1996 WL 243645 (E.D. Pa. May 8, 1996) (**35%**); *In re Crazy Eddie Sec. Litig*., 824 F. Supp. 320 (E.D.N.Y. 1993) (**33.85%** of settlement fund). The *Camden* Court noted that "an upper limit of 50% of the fund may be stated as a general rule, although even larger percentages have been awarded." 946 F.2d at 774-75 (internal citations omitted). Terry Aff. ¶ 42.

At least 12 Georgia cases have recently awarded **40%.** *Coleman v. Glynn County*, Civil Action No. CE12-01785-063, Superior Court of Glynn County, November 8, 2019; *Old Town Trolley Tours of Savannah, Inc. v. Mayor and Aldermen of Savannah*, Civil Action No. SPCV20-00767-MO, Superior Court of Chatham County, February 17, 2021; *Altamaha Bluff , LLC v. Thomas,* Civil Action No. 14CV0376, Superior Court of Wayne County, October 19, 2020; *Anderson v. Chatham County*, Civil Action No. SPCV21-01165-CO, Superior Court of Chatham County, March 1, 2024; *Bailey v. McIntosh County*, Civil Action No. SUV2021000009, Superior Court of McIntosh County, May 5, 2022; *Schreck v. Brooks County*, Civil Action No. 23-CV-

00067, Superior Court of Brooks County, August 18, 2025; *DRT Investments, LLC v. Emanuel County*, Civil Action No. 25CV00072, Superior Court of Emanuel County, November 5, 2025; *Deer Run Timber, LLC v. Johnson County*, Civil Action No. 2023-CV-0125, Superior Court of Johnson County, February 10, 2025; *Nixon v. City of Darien, Georgia,* Civil Action No. SUV2023000081, Superior Court of McIntosh County, February 20, 2023; *Grange Investments, LLC v. City of Port Wentworth*, Civil Action No. SPCV23-00216-KA, Superior Court of Chatham County, June 10, 2025; *Toledo Manufacturing Co. v. Charlton County*, Civil Action No. SUCV201900232, Superior Court of Charlton County, December 9, 2020; *VTAL Real Estate, LLC v. Mayor and Aldermen of Savannah*, Civil Action No. SPCV21-00789-CO, Superior Court of Chatham County, September 15, 2023. Terry Aff. ¶ 43.

2. Additional *Camden/Johnson/Friedrich* Factors Support the Award.

Factors discussed in more detail below that would suggest an even higher percentage than is customary in this particular case include the fact that the attorney fee recovery is purely contingent; has been pending for over fifteen years (delaying any fee and expense payment to Class Counsel for all of that time); the case was difficult and presented complex issues of arbitration, agency, usury and limitations period, all as discussed in more detail below; 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. As Governor Barnes testified:

> The trial court here originally denied class certification post- *Concepcion* based on the arbitration clause, and the Court of Appeals of Georgia affirmed the denial of class certification. Those two rulings, combined with the United States Supreme Court's ruling in *Concepcion* created a seemingly insurmountable obstacle to relief here. But class counsel persevered and prevailed, obtaining a very good settlement for the class after 13 more years of litigation.

> The case also included novel and difficult issues of usury law. I have been involved in several usury class actions before and thus am very familiar with the issues. To get to the Settlement in this case, Class Counsel had to address novel and difficult liability questions including whether an overdraft was a loan; (b) whether an overdraft fee was actually an interest charge or a fee for services; (c) whether regulatory approval of the overdraft fees precluded the claims asserted; and, (d) the level of intent required. Class counsel also had to obtain reversal on appeal not only of the initial class certification decision, but also an adverse statute of limitations ruling.

Barnes Aff. ¶ 17-18.

Given the complexity, burden and risk associated with this case, the requested fee of 33.33% is well in line with the case law and is reasonable.[3] *Johnson v. Midwest Logistics Sys., Ltd.*, No. 2:11-CV-1061, 2013 WL 2295880 (S.D. Ohio May 24, 2013) (approving 33% attorneys' fees and expense award in common fund settlement); *In re Se. Milk Antitrust Litig.*, No. 2:08-MD-1000, 2013 WL 2155387, at *3 (E.D. Tenn. May 17, 2013) (approving 33% attorneys' fees award [totaling $52.9 million] in common fund settlement and noting that "the percentage requested is certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit"); *Rotuna v. West Customer Mgmt. Grp.*, No. 4:09-CV-1608, 2010 WL 2490989, at *7 (N.D. Ohio June 15, 2010) (approving attorneys' fees award of 33% in common fund case); *Bessey v. Packerland Plainwell, Inc.*, No. 4:06-CV-95, 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**

[3] In opining that the requested fee is reasonable, counsel considered the *Camden I/Johnson* factors: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and the length of the professional relationship with the client; and (12) awards in similar cases. *See Camden I*, 946 F.2d at 772 n.3 (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)).

of the recovery'") (citation omitted) (emphasis added); *Dallas v. Alcatel-Lucent USA, Inc*., No. 09-14596, 2013 WL 2197624, at *12 (E.D. Mich. May 20, 2013) (preliminarily approving 33% attorneys' fees award in common fund settlement of collective action and noting that "[v]arious courts have expressed approval of attorney fees in common fund cases at similar or higher percentages").[4] Terry Aff. ¶ 44.

The request is supported by the opinion of three experienced class action attorneys that a fee award of 33.33 percent of the settlement amount is a reasonable fee under all of the circumstances.

One of the key cases that governs the awards of attorney fees in class actions in Georgia is *Friedrich v. Fidelity National Bank*, 247 Ga. App. 704 (2001) ("*Friedrich*"). *Friedrich* adopts the "percentage of the fund" analysis for Georgia class action settlements:

> [W]e find the percentage of the fund approach to be the most equitable, sensible, and fair. We therefore hold that when assessing attorney fees in a common fund case, a percentage of the fund analysis is the preferred method of determining these fees, unless unusual circumstances would make its use unfair or impractical.

Id. at 707 (emphasis added). *See* Ellington Aff. ¶¶ 11-12.[5]

Friedrich warns against placing "undue weight on the time spent by counsel, in contravention of the principles underlying the percentage of the fund approach…." *Id*. However, both *Johnson* and *Camden* list as a potential factor "the time and labor required." *Johnson*, 488

[4] *See, 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**") (emphasis added); 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, Champs Sports Bar & Grill Co. v. Mercury Payment Systems, LLC*, No. 1:16-CV-00012-MHC (N.D. Ga. July 31, 2017) (Doc. 82-1 at 4-5) (**90% of the hundreds of common fund settlements a leading Atlanta mediator has negotiated provide for a fee of one-third of the benefit**).

[5] *Friedrich* incorporates by reference the list of twelve non-mandatory factors to be considered from *Camden*, 946 F.2d at 772 n.3 (11th Cir. 1991). *Friedrich*, 247 Ga. App. at 706 n. 2. *See* Ellington Aff. ¶ 31 n.1.

F.2d at 717-19; *Camden*, 946 F.2d at 772 n.3. Class Counsel here have expended substantial time and resources to investigate, prosecute, and resolve this case. Terry Aff. ¶ 30. The procedural history set forth above details the absolutely massive amount of work required for the successful prosecution of this case. Through almost sixteen years of such efforts on behalf of the class, Class Counsel finally obtained favorable rulings on arbitration, class certification, usury, limitations and intent that allowed them to negotiate a favorable settlement. The years of time and resources devoted to this case by Class Counsel support their fee request.

As noted above *Friedrich* sets forth a list of non-mandatory and non-exclusive factors to be considered by courts in making such awards, and notes that the pertinent factors will vary according to the facts of the case. *See* Ellington Aff. ¶¶ 13-14.

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

Both *Johnson* and *Camden* suggest as factors "the novelty and difficulty of the questions" presented by the case and the "undesirability" of the case. *Johnson*, 488 F.2d at 718-19; *Camden*, 946 F.2d at 772 n.3.[6] The first three *Friedrich* factors to be considered are (1) the time and labor required to reach the settlement; (2) the novelty and difficulty of the questions presented; and (3) the skill required to perform the legal services properly. 247 Ga. App. at 704. On these first three *Friedrich* factors, Dean Ellington opined that in his over 40-year career as lawyer and an

[6] These factors recognize that class counsel "should be appropriately compensated for accepting the challenge" of undertaking challenging cases, *id*., and "must be evaluated from the standpoint of plaintiffs' counsel as of the time they commenced the suit, not retroactively, with the benefit of hindsight." *In re Checking Account Overdraft Litig*., No. 1:09-MD-02036-JLK, 2013 WL 11319392, at *15 (S.D. Fla. Aug. 5, 2013). The difficulty inherent in this task, and the resulting risk that Class Counsel undertook when they agreed to accept this case on a contingent basis, strongly support their fee request.

observer of Georgia law, he had never seen a case as compelling as this one. Ellington Aff. ¶¶ 15-16. As Dean Ellington noted:

> 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.

For example, the account agreements at issue in this case included arbitration agreements and class action bans. When the case began, class counsel planned to avoid arbitration and the attendant class action ban by relying upon a state law unconscionability doctrine that had been adopted in the Eleventh Circuit. But after the arbitration motion was initially briefed, the United States Supreme Court issued its decision in *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011), holding that such state law unconscionability doctrines were preempted by the Federal Arbitration Act. *See* Ellington Aff. ¶ 18.

The *Concepcion* decision required Class Counsel to re-brief and argue the arbitration issue and began their 15-year-plus fight against the arbitration clause and its class action ban that did not end until January 12, 2026, when the United States Supreme Court denied certiorari on the issue for the second time in this case. Ellington Aff. ¶ 19. As noted above, it is Governor Barnes's opinion that "[m]any, if not most, attorneys would have abandoned this case when

AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 352 (2011) ("*Concepcion*"), changed the legal landscape for avoiding arbitration." Barnes Aff. ¶ 16.

Indeed, the State Court originally denied class certification based on the arbitration clause. The Court of Appeals of Georgia unanimously affirmed the denial of class certification. The Supreme Court of Georgia eventually granted certiorari and reversed that holding. However, SunTrust's petition for certiorari to the United States Supreme Court followed. Ellington Aff. ¶ 20.

Even after the United States Supreme Court initially denied certiorari in 2016, the arbitration clause continued to be raised as to segments of the class and/or particular claims and, at the United States Supreme Court level, as to the entire case. On November 14, 2025, SunTrust again filed a petition for certiorari to the United States Supreme Court, raising the following question:

> Whether the FAA preempts a state court rule permitting a proposed class representative to effectively opt out of arbitration on behalf of all unnamed class members notwithstanding contrary, express requirements in the arbitration agreement.

That Petition for Certiorari was denied January 12, 2026, and the Settlement Agreement was signed just days later. Ellington Aff. ¶ 23. The amount of work arising out of this single arbitration issue was huge, novel, and complex. And the stakes were immense. Other class actions against SunTrust foundered and failed based on the arbitration provision and class action ban. Prevailing on this new, novel, and difficult issue required extraordinary skill and an enormous investment of time and effort. Ellington Aff. ¶ 24.

This case also included novel and difficult issues of usury law. Issues that had to be dealt with included (a) whether an overdraft was a loan; (b) whether an overdraft fee was actually an interest charge or instead a fee for services; (c) whether state regulatory approval of the overdraft

fees precluded the claims asserted; and (d) the level of intent required. Ellington Aff. ¶ 25. See Barnes Aff. ¶ 18. As late as 2025, SunTrust asserted that:

> The Court of Appeals gave the green light to one of the largest class actions in Georgia history, allowing Bickerstaff to proceed on **a theory of liability that has been rejected by the Georgia Legislature, by Georgia banking regulators, and by almost every one of the nearly 20 courts across the country that have held that overdraft fees are not subject to state usury law**s….
>
> The Court of Appeals' holding that overdraft fees can be interest **conflicts with virtually every possible source of legal authority—the usury statute, banking regulations, and a national consensus of courts**….

Reply in Support of Petition for a Writ of Certiorari (May 15, 2025) at 1, 2 (emphasis added).

Nonetheless, 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 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. Ellington Aff. ¶ 27.

Another novel and difficult issue was the changing legal framework. On three occasions during the pendency of the case, the state legislature and the banking regulators attempted to change the law to expressly and retroactively legalize the challenged charges. For example, the Banking Commissioner issued a supposedly retroactive order purporting to legalize the charges made. Contesting the enforceability of this order on constitutional grounds was novel and difficult, but Class Counsel prevailed. The Georgia Legislature then made two changes to the banking law, one of which amended the usury provisions directly and the other of which purported to adopt certain banking commissioner orders, including the one described above.

Such changes in the governing law greatly increased the complexity, expense, and risks of the case. Ellington Aff. ¶ 28.

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;[7] has been pending for approximately sixteen years (delaying any fee and expense payment to Class Counsel for all of that time); the case 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. Terry Aff. ¶ 45.

The procedural history of the case is set forth above. That procedural history is an important factor in the experts' opinion that 33.3% is a reasonable fee here. The amount of work, the quality of the work, the novel nature, complexity and difficulty of the issues, and the success of the work more than justify a fee of 33.33 percent of the Settlement Amount. *See* Terry Aff. ¶ 46.

Class Counsel have obtained an extraordinary result for the class in this highly complex and problematic case. Terry Aff. ¶ 47. As Dean Ellington opined:

> Another *Friedrich* factor, the damages amount involved and the results obtained,

[7] *See* Ellington Aff. ¶ 31:

> Another *Friedrich* factor is whether the original fee agreement was fixed or contingent. The original fee here was contingent, which supports a higher percentage as it both demonstrates the risk of non-payment and delayed payment assumed by Class Counsel and rebuts any inference that the fee basis is being changed to effectuate a windfall.

> 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.

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

Both *Johnson* and *Camden* suggest as factors "the skill requisite to perform the legal service properly" and "[t]he experience, reputation, and ability of the attorneys." 488 F.2d at 718-19. 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. As noted above, Dean Ellington opined that that "[b]ased 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.

Class Counsel are highly competent, extremely experienced and well respected in the legal community. Lead counsel, Michael B. Terry, is a partner in the firm of Bondurant Mixson & Elmore, LLP ("Bondurant"). Terry Aff. ¶ 4. Bondurant is one of the top litigation firms in the country and has handled over 35 class actions in the last 20 years. Terry Aff. ¶¶ 5-6. Michael B. Terry has handled sixteen class actions in that time and is recognized as a top attorney in banking and finance litigation. Terry Aff. ¶¶ 7-9. He has been named Lawyer of the Year multiple times by Best Lawyers and ALM, and has been ranked as a Top 10 Super Lawyer for several years in a row. Jason Carter has served as class counsel in numerous class actions, including recent recoveries for his clients of more than $110 million (teacher retirement benefits in *Gold v.*

DeKalb County School Board) and $80 million (life insurance beneficiaries in *Owens v. MetLife*).

Class Counsel here include a structured team consisting of the following members: Bondurant, Mixson & Elmore, LLP ("Bondurant"); The Finley Firm; C. Ronald Ellington; The Cracken Law Firm, PC and Watts Law Firm LLP. Each member of the team had a defined role and contributed to the result. For example, C. Ronald Ellington, former Dean and Civil Procedure and Georgia Procedure Professor at the University of Georgia School of Law, advised on procedural and jurisdictional issues. The Finley Firm, originally approached by Jeff Bickerstaff, took the lead on client relations, interface, and updates, and coordinated discovery responses from the Plaintiffs. Mikal Watts of Watts Law Firm LLP, is a renowned trial attorney with large trial results in complex and high profile cases, and he advised on structuring the claims and discovery for obtaining maximum results at trial and/or mediation. John Cracken of The Cracken Law Firm, PC assembled the team, and The Cracken Law Firm, PC located, retained, and coordinated with experts and consultants in banking law and regulation, finance and similar areas. Bondurant took the lead in drafting pleadings and briefs, arguments, and appeals, and coordinated the efforts of the entire team. Bondurant and The Cracken Law Firm, PC advanced approximately two million dollars of expenses for the sixteen years of litigation (although not all of those costs are being sought in this Motion). The team worked cooperatively and in a complementary fashion for the sixteen years of this case. Each member of the team assisted as requested in all aspects of representation of the class. Terry Aff. ¶ 10.

Former UGA Law Dean C. Ronald Ellington ("Dean Ellington"), who trained generations of lawyers in civil procedure and class action law, and who has been co-counsel for classes in some of Georgia's largest class actions, opined that the "experience, reputation and

ability of class counsel" is recognized by courts to be an important factor in setting the fee, and that "[b]ased 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*, No. 12-cv-103-CAP, 2014 WL 12740375, at *13 (N.D. Ga. May 19, 2014). Here, SunTrust spared no expense to defend this case by hiring several top notch, experienced law firms and providing them with the resources to mount a vigorous defense. The law firms that represented SunTrust include:

Williams & Connolly LLP

Gibson, Dunn & Crutcher LLP

Troutman Sanders, LLP

Bradley Arant Boult Cummings LLP

Rogers & Hardin LLP

Parker Hudson Rainer & Dobbs LLP.

Terry Aff. ¶ 46 n.5.

The fact that Class Counsel were able to prosecute this case to a successful conclusion against such capable and well-funded opposing counsel further speaks to their skill and to the quality of representation they have provided to the class.

5. Class Counsel have devoted substantial time and effort to this case to the exclusion of other matters.

Both *Johnson* and *Camden* suggest as factors 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." *Johnson*, 488 F.2d at 718; *Camden*, 946 F.2d at 772 n.3. These

factors recognize that "[p]riority work that delays the lawyer's other legal work is entitled to some premium." *Id*. These factors weigh 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 1/3 (33.33 percent) of the Settlement Fund is a reasonable fee under all of the circumstances. Terry Aff. ¶ 48. Dean Ellington also opines that the award sought by class counsel in this case of 1/3 of the amount made available to the class through the efforts of class counsel is fair and reasonable and well-supported by case law and the facts and history of this case. Ellington Aff. ¶ 10. *See id.,* ¶ 35 ("In sum, it is my opinion that an award of 1/3 of the Settlement Fund in this case is reasonable and appropriate and supported by governing law and standards.") Governor Barnes likewise concluded "is my opinion that an award of 1/3 of the Settlement Fund, that is, $80 million, is reasonable and appropriate and supported by governing law and standards." Barnes Aff. ¶ 20.

D. 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. The chart attached to the Affidavit of Michael B. Terry as Exhibit A shows the categories of expenses and amounts for each category for which Bondurant seeks reimbursement, totaling $1,722,667.44. Terry Aff. ¶¶ 49-50. The expenses advanced by the Finley Firm ($27,937.19) of the total sought of $1,750,604.63 are supported by the Affidavit of J. Benjamin Finley.

One of the largest categories of expenses were expert witness expenses. This case required a number of testifying and consulting experts. Given the complex banking and consumer finance issues that SunTrust raised in arguing that overdrafts are not loans and are

beneficial to consumers, Class Counsel hired and disclosed banking and consumer finance experts Dr. Scott Hein and Dr. Marco DiMaggio. Class Counsel hired damages and accounting expert Karen Fortune to calculate the interest rate on the various overdraft loans, a crucial liability issue, and to quantify prejudgment interest—an important part of the Class's damages. Because the State Court's class definition required Class Counsel to prove Georgia Citizenship on a class wide basis, that required the Class to hire Dr. Charles Cowan and other experts at Analytic Focus, LLC. The Class Counsel also hired an additional demographic expert to assist with complying with the class definition after the Court of Appeals opinion in *Bickerstaff V*. Terry Aff. ¶ 52.

In addition to these legal issues, Class Counsel had to address the terabytes of data that SunTrust had to process and produce in order to identify the various individuals who had paid the overdraft fees relevant to this litigation and to quantify those fees. SunTrust hired Ankura Consulting Group, LLC. Class Counsel was required to pay a portion of Ankura's fees and expenses. Class Counsel hired Art Olsen, one of the foremost experts on banking overdraft data, to assist with this process and to both identify the Class and quantify damages. All of these experts were necessary for the proper litigation of this complex case. SunTrust rebutted and heavily litigated the expert testimony, including depositions, rebuttal reports, and motions to exclude every single expert opinion proffered on behalf of the Class. In addition, Class Counsel had to research and depose SunTrust's experts on finance, accounting, banking, as well as citizenship and damages. These experts tendered wide-ranging testifying opinions and voluminous reports. In fact, according to Defendant SunTrust Bank's Statement of Expert Compensation at 2-5, by March 6, 2024, SunTrust had spent over $1.7 million dollars tendering these testifying experts. Terry Aff. ¶ 52.

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. These expenses were reasonable and necessary for the prosecution of this action. Finley Aff., ¶ 6; Terry Aff. ¶ 51.[8]

E. An Incentive Payment for the Class Representative is Justified and Appropriate

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. Terry Aff. ¶ 53.

To begin, Jeff Bickerstaff was a banker, and that experience helped him to recognize that there was a problem with the overdraft program at SunTrust. He explained to Class Counsel various practical aspects of banking overdraft programs and was available to answer questions. Terry Aff. ¶ 54.

Further, SunTrust served Offers of Settlement pursuant to O.C.G.A. 9-11-68 on Jeff Bickerstaff, offering to pay him a multiple of his personal damages if he would dismiss the case, and notifying him that he was potentially personally liable for SunTrust's attorney fees and expenses for defending the case if he turned down the offer and ultimately recovered less than 75% of the offered amount. *See* Emergency Motion to Strike SunTrust's Second Offer of Settlement; Order Denying Plaintiff's Emergency Motion to Strike SunTrust's Second Offer of

[8] There were more than $150,000 of additional expenses that, while reasonable and necessary, were not of a type normally submitted for reimbursement in class actions. Thus, Class Counsel are not seeking reimbursement for them. For example, during the sixteen years of this litigation, there were several attempts to amend Georgia statutes to exculpate the conduct at issue and preclude recovery for the class. Class counsel hired lobbyists to monitor, review and advise on such legislation. The expenses of these lobbyists are NOT included here. Another example of excluded expenses are upgrades to first class airfare. Such upgrade costs are NOT included. Terry Aff. ¶ 51 n.6.

Settlement. Class Counsel advised Jeff that the money being offered was a multiple of what he could recover as his personal damages in the case, and that he was exposed to potentially millions of dollars of personal liability for SunTrust's fees if he turned down the offer and ultimately recovered less than was offered, as was substantially certain to occur absent recovery for a class. He was also told that taking the money and dismissing the case would preclude a recovery for absent class members. Jeff put the interests of absent class members before his own interests and rejected the Offer of Settlement. Terry Aff. ¶ 55.

Jeff Bickerstaff also served as an active and involved class representative despite being in very bad health. When he realized that the end of his life was approaching, he reached out to Class Counsel to make sure that plans were in place to continue the case after his death. He cooperated with Class Counsel in redoing his estate plan to make sure that the executrix of his estate was authorized and directed by his will to continue the case and protect the interests of absent class members. He also discussed with his designated executrix and the backup executor his strong commitment to the case and made sure they understood and agreed with this commitment. Terry Aff. ¶ 56.

After Jeff's death, his mother, Ellen Bickerstaff, became the executrix of Jeff's Estate. In that capacity, she was substituted for Jeff as class representative by the Supreme Court of Georgia over SunTrust's opposition. Ellen honored Jeff's wish to continue the case. She actively participated as the class representative. She was deposed by SunTrust even though she had no personal knowledge of the overdraft transactions at issue. Terry Aff. ¶ 57.

When Ellen became class representative, SunTrust sent her a settlement offer/demand, informing her that she would be in conflict with her duties as executrix of the Estate if she

rejected the offer and continued the litigation. Ellen—like her son—placed the interests of the class before her own interests and rejected SunTrust's offer. Terry Aff. ¶ 58.

When Ellen died in 2022, Jeff's brother (Ellen's other son) Charles Daniel Bickerstaff ("Dan") was appointed as replacement executor of Jeff's estate. Again, over SunTrust's opposition, Dan was appointed as replacement class representative. Dan was also deposed by SunTrust in this case. Dan was required to answer questions about his brother's personal life, health, final illness and personal finances, as well as his mother's death. Dan has served faithfully as class representative since his mother's death. The contributions to this case for sixteen years by the Bickerstaff family (Jeff, Ellen and Dan), and their steadfast placement of the interests of absent class members above their own is extraordinary and even unique. Terry Aff. ¶ 59.

"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." *See, e.g. 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. W. Publ'g Corp.,* 563 F.3d 948, 958–59 (9th Cir. 2009). This description aptly describes the efforts and financial risks undertaken by the Bickerstaffs. Terry Aff. ¶ 60.

Incentive awards have been as high as $1.7 million. *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006) (awarding $1,766,666.00 to each of eight class representatives and $1,325,000.00 to a ninth representative); *Ingram*, 200 F.R.D. at 694

(awarding incentive awards of $300,000 to each named plaintiff for a total of $1.2 million), Terry Aff. ¶ 61.

The Court in *Allapattah Services* cited as a factor supporting the incentive award in that case that the fact that the class representatives had received and rejected a Rule 68 offer of judgment, thus exposing them to personal risk of paying the defendant's expenses if the offer was not exceeded by the eventual judgment. "Exxon's offer of judgment in August 1998 … was intended to heighten the risk of personal liability for the Class Representatives even if the Class won…. Thus, even a modest victory for the Class could have been financially ruinous for the Class Representatives." *Allapattah*, 454 F. Supp. 2d at 1220–21. The same factor is present here, but to an even heightened degree. That is because, unlike Fed.R.Civ. P. 68, O.C.G.A. § 9-11-68 shifts not only expenses, but also attorney fees. Thus, in rejecting SunTrust's Rule 68 Offer, Jeff Bickerstaff took on a personal risk of paying not only SunTrust's case expenses, but its attorney fees as well. Terry Aff. ¶ 62.

The requested incentive payment to the Class Representative is reasonable and appropriate given the above facts. The 16-year, multi-generational effort and the personal risks of threatened attorney fee awards and/or breach of fiduciary duty liability make this an exceptional case. A single incentive payment of $200,000 is reasonable on these extraordinary and unique facts. Terry Aff. ¶ 63.

CONCLUSION

The facts and law fully support an attorney fee award of one-third of the Settlement Fund and reimbursement of expenses of $1,751,074.07. The extraordinary service of the three class representatives over sixteen years justify an incentive award of $200,000.

Respectfully submitted this 17th day of March, 2026.

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EXHIBIT A

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.	)	

AFFIDAVIT OF ROY E. BARNES

My name is Roy E. Barnes. I have personally appeared before an officer duly authorized to administer oaths, and after being duly sworn, testify as to the following:

1. I am over the age of eighteen, am competent to provide the testimony in this affidavit, and have personal knowledge of the matters contained in this affidavit.

2. I have been asked by Plaintiff Charles Daniel Bickerstaff as Administrator of the Estate of Jeff Bickerstaff, Jr., on behalf of himself and others similarly situated, through his attorneys, to provide testimony on topics related to attorney fees. The basis for my testimony on these topics is, among other things, my experience, training, and education.

3. I am the Founding Partner and a shareholder of the Barnes Law Group. I am licensed to practice law in the State of Georgia and am in good standing with the Georgia Bar. I have been practicing law since 1972.

4. I received my undergraduate degree from the University of Georgia, and I graduated with honors from the Lumpkin School of Law at the University of Georgia in 1972. I was admitted to the practice of law on November 1, 1972.

5. After graduation, I worked for three years as a prosecutor for the District Attorney for Cobb County. I left to open my own law firm in 1975.

6. In the fifty-one years since then, I have tried civil and criminal cases throughout Georgia and in neighboring states. My practice has concentrated primarily on civil litigation, while I have developed an expertise in consumer class action cases, medical malpractice matters, products liability law, general tort matters, and commercial litigation. I have appeared in more than 350 cases in the state and federal appellate courts.

7. I have also been in public service throughout most of my fifty-four years as a practicing attorney. At the age of 26, I was elected as a member of the Georgia State Senate. I served eight terms and was a member of the Appropriations, Rules, and Transportation committees. I was also Chair of the Select Committee on Constitutional Revision, which participated in rewriting the Georgia Constitution. I also served on and was Chair of the Judiciary Committee. And I was a floor leader

to Governor Joe Frank Harris from 1983 to 1989. In 1992, I was elected to the State House of Representatives, where I served for six years and was Vice Chair of the Judiciary Committee and Chair of the Subcommittee on General Law.

8. In 1998, I was elected to serve as the 80th Governor of the State of Georgia. During my term as Governor, I focused on education reform, health care reform, and remedies for urban growth and sprawl. I created the Georgia Cancer Coalition, and I served as the Chair of the Southern Regional Education Board, the Southern Governor's Association, and the Education Commission of the States. I also made decisions regarding the Georgia state flag, for which I later received a John F. Kennedy Library Foundation Profile in Courage Award.

9. While being committed to public service, I have continued an extensive private practice on behalf of individual plaintiffs and plaintiff classes. I and my firm have won more than a billion dollars on behalf of our clients. I have served as Class Counsel in approximately 15 usury class actions against payday lenders and a number of other class actions.

10. To provide this testimony on topics related to attorney fees and litigation expenses for this action, I have reviewed certain pleadings and other materials in this case. Among other things, I have reviewed the appellate decisions in this case; the Settlement Agreement, Plaintiff's Unopposed Motion for an

Award of Attorneys' Fees, Expenses, and Incentive Award, and Brief In Support; the Affidavit of Michael B. Terry; and, the Affidavit of C. Ronald Ellington.

11. In my opinion, the award sought by class counsel in this case of 33.33 percent of the amount made available to the class through the efforts of class counsel is fair and reasonable and well-supported by case law and the facts and history of this case. In fact, it is my opinion that an even larger fee award would be reasonable in this case.

12. Awards of attorney fees in class actions in Georgia are made on the "percentage of the fund" basis. In my experience over the last 10 years, that percentage is almost always 33 or 33.33 percent of the settlement amount created through the efforts of class counsel. For example, I was class counsel in Gold v. Dekalb County School District (reported opinion at *DeKalb Cty. Sch. Dist. v. Gold*, 307 Ga. 330 (2019)), a class case which settled for $117 million in 2020. The approved fee award was 33 percent, for a case that lasted years less than did this case. I also served a liaison counsel in the Equifax litigation for which the fee award was 30%. Thus, 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.

13. Courts consider a number of factors in setting the amount of a class action fee award. Although I have considered all of the so-called *Johnson* factors in coming to my opinion, 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.

14. This case took approximately sixteen years of hard-fought litigation. The case involved multiple appeals, massive document review, novel and complex legal issues, and millions of dollars of expenses advanced, with substantial risks of obtaining no recovery at all.

15. Class counsel made new law in this case on enforceability of arbitration agreements; the enforceability of stand-alone (litigation) class action bans; the powers of class representatives to toll non-litigation deadlines for absent class members; the interplay of banking regulations and tort law; retroactivity of statutes regulating banking; the intent requirements for usury; substitution for deceased class representatives; statutes of limitation; and, the law of the case rule. All of these are complex issues and were uphill battles.

16. Many, if not most, attorneys would have abandoned this case when *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011) ("*Concepcion*"), changed the legal landscape for avoiding arbitration.

17. The trial court here originally denied class certification post-*Concepcion* based on the arbitration clause, and the Court of Appeals of Georgia affirmed the denial of class certification. Those two rulings, combined with the United States Supreme Court's ruling in *Concepcion* created a seemingly insurmountable obstacle to relief here. But class counsel persevered and prevailed, obtaining a very good settlement for the class after 13 more years of litigation.

18. The case also included novel and difficult issues of usury law. I have been involved in several usury class actions before and thus am very familiar with the issues. To get to the Settlement in this case, Class Counsel had to address novel and difficult liability questions including whether an overdraft was a loan; (b) whether an overdraft fee was actually an interest charge or a fee for services; (c) whether regulatory approval of the overdraft fees precluded the claims asserted; and, (d) the level of intent required. Class counsel also had to obtain reversal on appeal not only of the initial class certification decision, but also an adverse statute of limitations ruling.

19. The results obtained are extraordinary here. 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.

20. In sum, it is my opinion that an award of 1/3 of the Settlement Fund, that is, $80 million, is reasonable and appropriate and supported by governing

law and standards.

My testimony is true and correct and made under penalty of perjury, and I have executed this affidavit on March 16th, 2026.

Roy E. Barnes

This affidavit has been sworn to and subscribed before me on March 16, 2026.

Notary Public
My Commission Expires: 1.24.2027

EXHIBIT B

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.	)	

AFFIDAVIT OF C. RONALD ELLINGTON

My name is C. Ronald Ellington. I have personally appeared before an officer duly authorized to administer oaths, and after being duly sworn, testify as to the following:

1. My name is C. Ronald Ellington. I am a member of the State Bar of Georgia (No. 243800). I am a co-counsel for the Plaintiff Class in the above-referenced case.

2. I received my undergraduate degree summa cum laude from Emory University and earned my law degree at the University of Virginia.

3. Following law school, I practiced law for 3 years as an associate in the Atlanta office of Sutherland Asbill and Brennan.

4. I joined the law faculty of the University of Georgia in 1969 as an Assistant Professor and taught law at the University of Georgia for more than 40 years, serving as Dean of the Law School for some of that time.

5. I was the initial holder of the A. Gus Cleveland Chair of Legal Ethics and Professionalism and was named a Josiah Meigs Teaching Professor, the University's highest award for teaching excellence.

6. I taught a variety of courses in my early career on the faculty and came to specialize in the subjects of Civil Procedure, Georgia Practice and Procedure, Complex Litigation (including class actions), and The Law Governing Lawyers (Professional Responsibility).

7. Through my expertise developed in teaching these subjects, I became well-versed in the law governing class actions and the award of attorney's fees to class counsel.

8. I have previously testified as an expert witness on attorney's fees in class actions in Georgia.

9. I have also served as co-counsel in a number of class actions in Georgia. *See, e.g.*, *State Farm Mut. Auto. Ins. Co. v. Mabry*, 274 Ga. 498 (2001); *Griner v. Synovus Bank*, 818 F. Supp. 2d 1338 (N.D. Ga. 2011).

10. In my opinion, the award sought by class counsel in this case of 1/3 of the amount made available to the class through the efforts of class counsel is fair and reasonable and well-supported by case law and the facts and history of this case.

11. One of the key cases that governs the awards of attorney fees in class actions in Georgia is *Friedrich v. Fidelity National Bank*, 247 Ga. App. 704 (2001) ("*Friedrich*").

12. *Friedrich* adopts the "percentage of the fund" analysis for Georgia class action settlements:

> [W]e find the percentage of the fund approach to be the most equitable, sensible, and fair. We therefore hold that when assessing attorney fees in a common fund case, **a percentage of the fund analysis is the preferred method of determining these fees**, unless unusual circumstances would make its use unfair or impractical.

Id. at 707 (emphasis added).

13. *Friedrich* warns against placing "undue weight on the time spent by counsel, in contravention of the principles underlying the percentage of the fund approach...." *Id.*

14. *Friedrich* sets forth a list of non-mandatory and non-exclusive factors to be considered by courts in making such awards, and notes that the pertinent factors will vary according to the facts of the case.

15. The first three *Friedrich* factors to be considered are (1) the time and labor required to reach the settlement; (2) the novelty and difficulty of the questions presented; and (3) the skill required to perform the legal services properly. *Id.* at 704.

16. On these first three *Friedrich* factors, in my over 40-year career as lawyer and an observer of Georgia law, I have never seen as case as compelling as this one.

17. 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.

18. For example, the account agreements at issue in this case included arbitration agreements and class action bans. When the case began, class counsel intended to avoid arbitration and the attendant class action ban by relying upon a state law unconscionability doctrine that had been adopted in the Eleventh Circuit. But after the arbitration motion was initially briefed, the United States Supreme Court issued its decision in *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011), holding that such state law unconscionability doctrines were preempted by the Federal Arbitration Act.

19. The *Concepcion* decision required Class Counsel to re-brief and argue the arbitration issue and began their 15-year-plus fight against the arbitration clause

and its class action ban that did not end until January 12, 2026, when the United States Supreme Court denied certiorari on the issue for the second time in this case.

20. Indeed, the State Court here originally denied class certification based on the arbitration clause. The Court of Appeals of Georgia unanimously affirmed the denial of class certification. The Supreme Court of Georgia eventually granted certiorari and reversed that holding. However, SunTrust's petition for certiorari to the United States Supreme Court followed.

21. Even after the United States Supreme Court initially denied certiorari in 2016, the arbitration clause continued to be raised as to segments of the class and/or particular claims and, at the United States Supreme Court level, as to the entire case.

22. On November 14, 2025, SunTrust again filed a petition for certiorari to the United States Supreme Court, raising the following question:

> Whether the FAA preempts a state court rule permitting a proposed class representative to effectively opt out of arbitration on behalf of all unnamed class members notwithstanding contrary, express requirements in the arbitration agreement.

23. That Petition for Certiorari was denied January 12, 2026 and the Settlement Agreement was signed just days later.

24. The amount of work arising out of this single arbitration issue was huge, novel, and complex. And the stakes were immense. Other class actions against

SunTrust foundered and failed based on the arbitration provision and class action ban. Prevailing on this new, novel, and difficult issue required extraordinary skill and an enormous investment of time and effort.

25. The case also included novel and difficult issues of usury law. The issues included (a) whether an overdraft was a loan; (b) whether an overdraft fee was actually an interest charge or instead a fee for services; (c) whether regulatory approval of the overdraft fees precluded the claims asserted; and (d) the level of intent required.

26. As late as 2025 SunTrust asserted that:

> The Court of Appeals gave the green light to one of the largest class actions in Georgia history, allowing Bickerstaff to proceed on **a theory of liability that has been rejected by the Georgia Legislature, by Georgia banking regulators, and by almost every one of the nearly 20 courts across the country that have held that overdraft fees are not subject to state usury laws**....
>
> The Court of Appeals' holding that overdraft fees can be interest **conflicts with virtually every possible source of legal authority—the usury statute, banking regulations, and a national consensus of courts**....

Reply in Support of Petition for a Writ of Certiorari (May 15, 2025) at 1, 2.

27. Nonetheless, 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 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.

28. Another novel and difficult issue was the changing legal framework. On three occasions during the pendency of the case, the state legislature and the banking regulators attempted to change the law to expressly and retroactively legalize the challenged charges. For example, the Banking Commissioner issued a supposedly retroactive order purporting to legalize the charges made. Contesting the enforceability of this order on constitutional grounds was novel and difficult, but Class Counsel prevailed. The Georgia Legislature then made two changes to the banking law, one of which amended the usury provisions directly and the other of which purported to adopt certain banking commissioner orders, including the one I just described. Such changes in the governing law greatly increased the complexity, expense, and risks of the case.

29. 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.

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. *See Friedrich*, 247 Ga. App. at 704. I would direct attention to the caselaw set forth in the Affidavit of Michael B. Terry and the Affidavit of Roy Barnes on this issue.

31. Another *Friedrich* factor is whether the original fee agreement was fixed or contingent.[1] The original fee here was contingent, which supports a higher percentage as it both demonstrates the risk of non-payment and delayed payment assumed by Class Counsel and rebuts any inference that the fee basis is being changed to effectuate a windfall.

32. 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.

33. Another *Friedrich* factor is the experience, reputation and ability of class counsel. 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. In fact, I personally recommended Michael B. Terry to lead this case based

[1] *Friedrich* incorporates by reference a list of twelve non-mandatory factors to be considered from *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 772 n.3 (11th Cir. 1991). *Friedrich*, 247 Ga. App. at 706 n. 2.

upon precisely those factors. Aside from his recognized appellate expertise (something that was absolutely invaluable for this particular case), Mr. Terry has twice been named the Banking and Finance Litigation Lawyer of the Year by Best Lawyers. Jason Carter also lends experience, leadership, and expertise with class action law to the team. Those are examples only. This factor justifies the fee requested.

34. As to awards in similar cases, I would note that in *Griner v. Synovus Bank*, noted above, the approved fee was 1/3 of the funds made available to the class as a result of the settlement. Similarly, in *State Farm v. Mabry*, the court awarded 1/3 ($50 million of the total settlement fund of $150 million) as attorney fees. I would note that the *Synovus* case was litigated for 4 years and the *Mabry* case for 3 years before they were settled, compared to the almost 16 years here. Awards in similar cases support the 1/3 fee sought here.

35. In sum, it is my opinion that an award of 1/3 of the Settlement Fund in this case is reasonable and appropriate and supported by governing law and standards.

My testimony is true and correct and made under penalty of perjury, and I have executed this affidavit on March 11, 2026.

C. Ronald Ellington

C. Ronald Ellington

This affidavit has been sworn to and subscribed before me on March 11, 2026. State of Florida, County of Lee in person by C. Ronald Ellington.

GORDON ROEDDING
Notary Public
State of Florida
Comm# HH726043
Expires 1/26/2030

Notary Public
My Commission Expires:

EXHIBIT C

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.	)	

AFFIDAVIT OF MICHAEL B. TERRY

State of GEORGIA)
)
County of Fulton)

1.

My name is Michael B. Terry. I am over 18 years of age. I make this Affidavit in Fulton County, Georgia.

2.

I am suffering under no disabilities and am legally competent to make this affidavit. This affidavit is based on my personal knowledge, and my review of the pleadings in this case and of business records of Bondurant, Mixson & Elmore, LLP.

3.

I submit this affidavit in support of Plaintiffs' Unopposed Motion for an Award of Attorneys' Fees, Expenses, Service Awards, and for other purposes allowed by law.

QUALIFICATIONS OF CLASS COUNSEL

4.

I am a partner in the firm of Bondurant Mixson & Elmore, LLP ("Bondurant").

5.

Bondurant and its attorneys have been recognized for the quality of their work in various industry publications based on client- and peer-reviews. For example, Bondurant was one of ten firms in the country named to the *National Law Journal's* Litigation Boutique Hot List; *Best Lawyers in America* has listed more than one-third of our partners (in the areas of Bet-the-Company Litigation, Commercial Litigation, Antitrust Law, Appellate Law, Alternative Dispute Resolution, and First Amendment Law); Euromoney Institutional Investors' Benchmark Litigation guide has given Bondurant its highest rating, and *Chambers USA* has listed Bondurant as "Band 1" for excellence in commercial litigation. In 2026, 14 of Bondurant's Lawyers were voted as "Super Lawyers" by their peers in Georgia. This is almost half of the firm's attorneys (and another seven were voted as "Rising Stars"). Bondurant lawyers also hold leadership positions throughout the Bar and other community organizations.

6.

Bondurant has extensive experience litigating class actions, on both the plaintiff and defense side, in venues throughout the country. In addition to litigating this case since 2010, examples of that experience include:[1] *Owens v. Metro. Life Ins. Co.*, No. 2:14-cv-00074 (N.D. Ga.) (class counsel class: settled in 2019); *DeKalb Cty. Sch. Dist. v. Gold*, 307 Ga. 330 (2019) (class counsel: settled in 2020); *Cohen, et. al. v. SMHA Healthcare, Inc., et. al.*, Civil Action No.

[1] Citations to reported cases are not necessarily to decisions relating to class certification, but simply to rulings in the listed class actions. References to being class counsel include counsel for litigated, certified classes, settlement classes and putative classes.

STCV1801613 (Chatham State Ct. 2018); *In Re: Bio-Lab Class Actions*, Northern District of Georgia, Case No. 1:24-CV-04407-SEG (class counsel); *Dougherty County v. 3M Co*, United States District Court, Middle District of Georgia, Civil No. 1:25-CV-128(LAG) (class counsel); *Manjunath A. Gokare, P.C. v. Federal Express Corp.*, No. 2:11-cv-02131 (W.D. Tenn. Aug. 1, 2012) (class counsel); *Adams v. Monumental Gen. Cas. Co.*, 541 F.3d 1276 (11th Cir. 2008) (class counsel); *Andrews v. AT&T*, 95 F.3d 1014 (11th Cir. 1996) (defense counsel); *Angino v. Confederation Life Ins. Co., et al.*, No. 4563-S-1994 (Court of Common Pleas, Dauphin County, Pennsylvania) (defense counsel); *Atherton v. Toshiba American Info. Sys., Inc.*, No. CV08-02141 (C.D. Cal.) (Class Counsel); *Brown v. Fidelity Bank*, No. 11-A-37991-4 (State Court, DeKalb County, Georgia) (Class Counsel); *Butler v. Matsushita Commc'n Indus. Corp.*, 203 F.R.D. 575 (N.D. Ga. 2001) (class counsel); *Carnett's, Inc. v. Hammond*, 279 Ga. 125 (2005) (defense counsel); *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545 (N.D. Ga. 2007) (Class Counsel); *Cooper v. Southern Co.*, 390 F.3d 695 (11th Cir. 2004) (class counsel); *Flournoy v. Georgia*, No. 2009CV178947 (State Court, Fulton County, Georgia) (Class Counsel); *Griffin Indus. v. Green*, 297 Ga. App. 354 (2009) (Class Counsel); *Griner v. Synovus Bank*, 818 F. Supp. 2d 1338 (N.D. Ga. 2011) (class counsel); *In re Immucor Sec. Litig.*, 2006 WL 3000133 (N.D. Ga. Oct. 4, 2006) (defense counsel); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685 (N.D. Ga. 2001) (Class Counsel); *J.M.I.C. Life Ins. Co. v. Toole*, 280 Ga. App. 372 (2006) (Class Counsel); *Mitchell v. ADP, Inc.*, 2012 WL 3880919 (N.D. Ga. Sept. 5, 2012) (class counsel); *Perdue v. Kenny A.*, 559 U.S. 542 (2010) (Class Counsel); *Resource Life Ins. Co. v. Buckner*, 304 Ga. App. 719 (2010) (Class Counsel); *Ritt v. Billy Blanks Enters.*, 171 Ohio App. 3d 204 (2007) (defense counsel); *Sanford v. MemberWorks, Inc.*, 483 F.3d 956 (9th Cir. 2007) (defense counsel); *Sanford v. West Corp.*, 2006 WL 1791592 (Cal. Ct. App. 4th Dist. June 30, 2006)

(defense counsel); *Schorr v. Countrywide Home Loans, Inc.*, 287 Ga. 570 (2010) (Class Counsel); *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350 (11th Cir. 2009) (Class Counsel); *McNally, et al. v. Infosys McCamish Systems, LLC*, Case No. 1:24-cv-00995-JPB (N.D. Ga.) (defense counsel); *In re: Construction Equipment Rental Antitrust Litigation*, Case No. 25-cv-3487 (N.D. Ill.) (defense counsel); *Bates et al. v. McMahon et al.*, Case No. 25-cv-6193 (N.D. Ga.) (defense counsel); *Sakowski v. Equifax Information Services LLC et al.*, Case No. 3:25-cv-15756 (D.N.J)(defense counsel); *Rivera v. Equifax Information Services LLC*, No. 1:18-cv-04639 (N.D. Ga.) (defense counsel), and *Neubauer v. Equifax Information Services LLC*, No. 1:24-cv-04615-AT-CCB (N.D. Ga.) (defense counsel).

7.

I have served as lead counsel in this case since its filing in 2010. I graduated *magna cum laude* from the University of Georgia's School of Law in 1987. Since that time, my practice has focused heavily on class action litigation at both the trial and appellate court levels. My additional personal experience as counsel for plaintiffs in class matters includes *DeKalb Cty. Sch. Dist. v. Gold*, 307 Ga. 330 (2019); *Schorr v. Countrywide Home Loans, Inc*., 287 Ga. 570 (2010); *Res. Life Ins. Co. v. Buckner*, 304 Ga. App. 719 (2010); *J.M.I.C. Life Ins. Co. v. Toole*, 280 Ga. App. 372 (2006); *Owens v. Metro. Life Ins. Co.*, No. 2:14-cv-00074 (N.D. Ga.); *Columbus Drywall & Insulation, Inc. v. Masco Corp*., 258 F.R.D. 545 (N.D. Ga. 2007); *Griner v. Synovus Bank*, 818 F. Supp. 2d 1338 (N.D. Ga. 2011); *Cooper v. Southern Co.*, 390 F.3d 695 (11th Cir. 2004); *Griffin Indus. v. Green*, 297 Ga. App. 354 (2009); *Adams v. Monumental Gen. Cas. Co*., 541 F.3d 1276 (11th Cir. 2008); *Mitchell v. ADP, Inc*., No. 1:12-CV-1074, 2012 WL 3880919 (N.D. Ga. Sept. 5, 2012); and *DeKalb Cty. v. Adams*, 272 Ga. 401 (2000). I am co-counsel for the putative class in currently pending case *In Re: Bio-Lab Class Actions*, Northern

District of Georgia, Case No. 1:24-CV-04407-SEG. I am lead counsel for the putative class in currently pending case *Dougherty County v. 3M Co.*, United States District Court, Middle District of Georgia, Civil No. 1:25-CV-128(LAG). I was also counsel for the plaintiff usury class certified for settlement purposes in *Brown v. Fidelity Bank*, State Court of DeKalb County, State of Georgia, Case No. 11-A-37991-4. And I, along with Jason Carter, served as counsel for the class in *Cohen, et. al. v. SMHA Healthcare, Inc., et. al.*, Civil Action No. STCV1801613 (Chatham State Ct. 2018), which certified a class of physicians and settled the class claims for $10 million. Jason Carter also has served as class counsel in numerous class actions, including recent recoveries for his clients of more than $110 million (teacher retirement benefits in *Gold v. DeKalb County School Board*) and $80 million (life insurance beneficiaries in *Owens v. MetLife*).

8.

I have also testified as an expert on attorneys' fees in class actions and other cases in which I was not class counsel, and in that capacity have been accepted by the Courts as an expert. I have testified as a fee expert in two class actions in the last 12 months.

9.

I have repeatedly been named a Top 100 Georgia Super Lawyer and Top 10 Georgia Super Lawyer, a Leading Business Lawyer (by Chambers USA) and a Georgia Local Litigation Star (by Benchmark Plaintiff). I have been named as Lawyer of the Year for Georgia (2021) by the American Lawyer Media/Daily Report, after being a finalist in 2017. I was also named a finalist for the national "Trial Lawyer of the Year" award by Public Justice in 2023. I have been named as a Lawyer of the Year six times by Best Lawyers, including twice for Banking and Finance Litigation. I am a recipient of the Traditions of Excellence Award from the State Bar of

Georgia. In addition, I have served as the President of the Atlanta Bar Association, a member of the House of Delegates of the American Bar Association, a Member of the Board of Governors for the State Bar of Georgia and as Chair of the Atlanta Bar Association's Litigation Section.

10.

Class counsel here include a structured team consisting of the following members: Bondurant, Mixson & Elmore, LLP ("Bondurant"); The Finley Firm; C. Ronald Ellington; The Cracken Law Firm, PC and Watts Law Firm LLP. Each member of the team had a defined role and contributed to the result. For example, C. Ronald Ellington, former Dean and Civil Procedure and Georgia Procedure Professor at the University of Georgia School of Law, advised on procedural and jurisdictional issues. The Finley Firm, originally approached by Jeff Bickerstaff, took the lead on client relations, interface, and updates, and coordinated discovery responses from the plaintiffs. Mikal Watts of Watts Law Firm LLP, is a renowned trial attorney with large trial results in complex and high profile cases, and he advised on structuring the claims and discovery for obtaining maximum results at trial and/or mediation. John Cracken of The Cracken Law Firm, PC assembled the team, and The Cracken Law Firm, PC located, retained and coordinated with numerous experts and consultants in banking law and regulation and similar areas. Bondurant took the lead in drafting pleadings and briefs, argument, and appeals, and coordinated the efforts of the entire team. Bondurant and The Cracken Law Firm, PC advanced approximately two million dollars of expenses for the sixteen years of litigation (although not all of those costs are being sought in this Motion). The team worked cooperatively and in a complementary fashion for the sixteen years of this case. Each member of the team assisted as requested in all aspects of representation of the class.

THE HISTORY OF THE LITIGATION

11.

The original Plaintiff in this case, Jeff Bickerstaff, Jr., approached Class Counsel in early 2010 with concerns about overdraft fees he had been charged by SunTrust Bank ("SunTrust"). After extensive investigation and legal research, Class Counsel on July 12, 2010 filed the Complaint asserting usury claims, and at the same time also made a demand for repayment of the overdraft fees. The Complaint was filed in the State Court of Fulton County ("State Court"). On August 9, 2010, Class Counsel filed an Amended Complaint asserting additional claims for "money had and received" and "conversion" following SunTrust's rejection of the demand for repayment.

12.

The account agreements at issue in this case included arbitration agreements and two class action bans: one banning class actions in arbitration, and the other banning litigation class actions. When the case began, class counsel planned to avoid arbitration and the attendant class action ban by relying upon a state law unconscionability doctrine that had been adopted in the Eleventh Circuit.

13.

On October 4, 2010, SunTrust moved to compel Plaintiff Jeff Bickerstaff to arbitrate his claims. The State Court allowed discovery on the motion, and the parties engaged in deposition and document discovery on that issue and filed briefs supporting and opposing the arbitration motion.

14.

But after SunTrust's arbitration motion was initially briefed, the United States Supreme Court issued its decision in *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011), holding that such state law unconscionability doctrines were preempted by the Federal Arbitration Act. The litigation class action ban also raised issues of first impression that were actively litigated in this case for several years.

15.

On March 16, 2012, the State Court denied SunTrust's motion to compel Jeff Bickerstaff to arbitrate his claims. SunTrust sought leave to file an interlocutory appeal of that ruling. The State Court granted leave, and on April 24, 2012, the Georgia Court of Appeals accepted SunTrust's application for an interlocutory appeal. On October 29, 2012, after briefing of the appeal was complete, the Court of Appeals dismissed the appeal as having been improvidently granted.

16.

On April 8, 2013, Plaintiff Jeff Bickerstaff filed a Motion for Class Certification. After full briefing and an evidentiary hearing, on February 19, 2014, the State Court denied that motion for Class Certification, holding that the arbitration agreement and class action ban precluded absent class members from participating in the class action, defeating numerosity.

17.

Plaintiff Jeff Bickerstaff appealed that ruling, and the Georgia Court of Appeals affirmed the State Court's denial of class certification in *Bickerstaff v. SunTrust Bank*, 332 Ga. App. 121 (2015) ("*Bickerstaff I*"). Plaintiff Jeff Bickerstaff sought *certiorari* to the Supreme Court of Georgia. That Court granted certiorari and reversed the denial of class certification in *Bickerstaff*

v. SunTrust Bank, 299 Ga. 459 (2016) ("*Bickerstaff II*"). SunTrust petitioned for certiorari to the United States Supreme Court, which denied the petition on December 5, 2016. The Court of Appeals resolved remaining issues and remanded the case to the State Court in *Bickerstaff v. SunTrust Bank*, 340 Ga. App. 43 (2017) ("*Bickerstaff III*").

18.

Plaintiff Jeff Bickerstaff had suffered a series of health issues. During the Appeals referenced in the preceding paragraph, Jeff Bickerstaff became seriously ill. Class Counsel met with Jeff Bickerstaff, and he emphasized his strong wish that the case continue in the event of his death. Class Counsel consulted with Mr. Bickerstaff and his wills and estate counsel to revise his will to provide for the continuation of the case and to instruct the executrix of his estate to protect the interests of absent class members. On November 14, 2015, while this case was on appeal, Plaintiff Jeff Bickerstaff passed away. On November 30, 2015, SunTrust moved to dismiss the appeal, and contended that there was no other qualified class representative. After Class Counsel filed a motion to substitute, and briefing on both SunTrust's Motion to Dismiss and the Motion to Substitute, on December 10, 2015, the Supreme Court of Georgia substituted Ellen Bickerstaff, Mr. Bickerstaff's mother and the executrix of his estate, as Class Representative.

19.

Following the remand in *Bickerstaff III*, the parties provided the State Court with supplemental briefing concerning class certification, and another class certification hearing was held. On October 6, 2017, the State Court granted Plaintiff Ellen Bickerstaff's Motion for Class Certification.

20.

SunTrust appealed that ruling. In *SunTrust Bank v. Bickerstaff*, 349 Ga. App. 794 (2019) ("*Bickerstaff IV*"), the Court of Appeals affirmed the State Court's grant of class certification. SunTrust petitioned for certiorari to the Supreme Court of Georgia, which denied the petition on December 23, 2019. The case was then remanded to the State Court.

21.

Upon that remand, SunTrust filed a Motion to Modify the Class Definition (April 8, 2020) and a Renewed Motion to Compel Arbitration Against Certain Class Members (May 29, 2020). On February 9, 2021, the State Court denied those motions, but did not preclude SunTrust from raising the legal arguments in those motions at a later time.

22.

On July 30, 2021, Plaintiff Ellen Bickerstaff moved for an order directing issuance of notice of class certification. SunTrust filed an opposition to that motion on August 30, 2021. On April 7, 2022, the State Court granted the motion and directed issuance of notice of class certification. Court-approved notice of class certification was provided to the certified Class in May 2022. That notice was sent to 766,160 individuals. That notice provided an opportunity to request exclusion ("opt out") of the Class, and 158 individuals requested exclusion.

23.

On September 28, 2022, Plaintiff Ellen Bickerstaff passed away. On December 2, 2022, Charles Daniel "Dan" Bickerstaff, Ellen's son and Jeff's brother, moved to be substituted as Plaintiff and Class Representative in this action. On February 14, 2023, SunTrust filed an opposition to that motion. On March 20, 2023, the State Court granted the motion and substituted Dan Bickerstaff as Class Representative.

24.

Before and after the class notice, the parties conducted extensive discovery in the case, and the State 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.

25.

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 accounting/banking data which was harvested and searched to come up with the class list and calculate the damages on a classwide and individual basis for over 500,000 class members. In the pre-AI world, class counsel hired experts to write programs to search, categorize and manage this accounting data. These experts are discussed in Paragraph 52 below. However, 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. SunTrust litigated these issues heavily, and extensive expert and other discovery was required;

(c) Georgia Citizenship issues, which involved the class definition and very complicated and interrelated issues of federal removability, Georgia Constitutional law, and Georgia appellate procedure. Ultimately, the State Court's class definition required

that Class Counsel prove that each class member was a Georgia citizen continuously for the duration of the seven-year class period. SunTrust litigated these issues heavily and they required significant expert work and data discovery.

26.

On October 3, 2023, SunTrust filed a Motion to Dismiss for Insufficiency of Service of Process. On October 31, 2023, SunTrust filed a Motion to Modify the Class Definition, Third Renewed Motion to Compel Arbitration, Motion to Exclude Opinions and Testimonies of the Class's Proposed Expert Witnesses, and Motion for Summary Judgment. Class Counsel filed oppositions to all those motions. Plaintiffs moved to partially exclude the testimony of three of Suntrust's experts. All of the motions were fully briefed and orally argued.

27.

On March 4, 2024, the State Court issued an Omnibus Order granting in part and denying in part SunTrust's Motion for Summary Judgment and Motion to Modify the Class Definition. In that Order, the State Court defined the certified Class 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. All of the pending motions were ruled upon in the Omnibus Order, except the parties' *Daubert* motions.

28.

At that time, the trial of this case was specially set for April 30, 2024. Trial preparation was well underway. In addition to other normal trial preparation tasks, Class Counsel held

several mock trials with trial consultants and mock jurors selected from the pertinent geographical area. This exercise cost tens of thousands of dollars and took approximately 1000 hours of attorney time. It provided valuable feedback as to how to structure and present the case for maximum effect, and also provided crucial information regarding valuation for settlement process. The work was necessary and the costs were reasonable.

29.

Less than two months before the scheduled trial, SunTrust took an interlocutory appeal from the Omnibus Order, and Plaintiff Dan Bickerstaff then cross-appealed. In *Bickerstaff V*, 375 Ga. App. 37 (2025), the Court of Appeals affirmed some portions of the Omnibus Order and reversed others. SunTrust petitioned for certiorari to the Georgia Supreme Court, which that Court denied on September 16, 2025. SunTrust petitioned for certiorari to the United States Supreme Court, which denied the petition on January 12, 2026.

30.

This is, to the best of my knowledge, the longest-running and most complex class action ever prosecuted in the courts of Georgia. The issues were novel and complex and the process was difficult. 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 arbitration issues alone were daunting and essentially no other overdraft cases have overcome arbitration clauses with class action bans. Class Counsel have been assiduously working on this case for approximately 16 years. They have expended tens of thousands of hours of attorney time, and advanced millions of dollars of costs and expenses on behalf of the class. Class Counsel have devoted substantial time and effort to this case to the exclusion of other matters.

The Settlement

31.

In 2024, the parties agreed upon Hunter Hughes to mediate this case. While he was originally based in Atlanta and was a member of the Georgia Bar for many years, Mr. Hughes is considered one of the top class action mediators in the United States. Mr. Hughes has mediated some of the largest class action settlements in history. He has written numerous articles and publications, including "How Our Subconscious Bias Impacts the Negotiations," American Journal of Mediation; Chapter 26, "Mediating Class Actions: How Mediators Operate and What They Want," How ADR Works, BNA Books; "Class Actions in Arbitrations," A Treatise Project of the American Bar Association Labor and Employment Law 2ection.

32.

The settlement process itself took two years, running in parallel with the last two years of active litigation. After written submissions, the parties mediated this case in person before Mr. Hughes beginning on February 28, 2024. Limited discussions continued after that day. After the Georgia Supreme Court denied *certiorari* from *Bickerstaff V*, the parties resumed in-person mediation, on December 4, 2025, and discussions continued through Mr. Hughes for weeks thereafter.

33.

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 the State Court entered an Order Preliminarily Approving Settlement and Directing Notice on January 23, 2026. Class notices went out on March 4, 2026.

34.

The Settlement Agreement establishes a maximum Settlement Amount of $240 million. The Settlement will fund payments to Settling Class Members who return a timely and valid Claim Form. Any attorney 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), any service award 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) will be paid out of the Settlement Amount.

35.

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 the State Court's holding that continuous citizenship is a requirement for class membership.

35.

Settling Class Members may submit the Claim Form by mail or electronically.

37.

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 *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.

38.

The Settlement includes 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 advises the Settling Class Members of their right to request exclusion from the Settlement Class ("opt out") or to object to the Settlement. And the Settlement provides for a Fairness and Final Approval Hearing at which the Court will consider any objections to the Settlement, the fairness, reasonableness, and adequacy of the Settlement, Class Counsel's motion for an award of attorneys' fees, costs, and expenses, and a motion for a service or incentive award for the Class Representative.

Attorney Fees

39.

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. *See Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992); *see also Norman v. Hous. Auth. of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988). The Georgia Supreme Court has made it clear that a percentage of the common fund approach is to be used in the state 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. Those factors are discussed in numerous cases, including particularly *Johnson v. Georgia Highway Express, Inc*., 488 F.2d 714 (5th Cir. 1974), *abrogated on other grounds*, *Blanchard v. Bergeron*, 489 U.S. 87 (1989), and *Camden I Condo. Ass'n v. Dunkel*, 946 F.2d 768, 774 (11th Cir. 1991). *See Friedrich*, 247 Ga. App. at 706 (referencing *Johnson* and *Camden* factors).

40.

A "one-third recovery . . . is a customary fee" for class actions. *Diakos v. HSS Sys., LLC*, No. 14-61784, 2016 WL 3702698, at *6 (S.D. Fla. Feb. 4, 2016). For that reason, a fee of 33.3% 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. For example, recently, in *DeKalb County School District v. Gold*, 307 Ga. 330 (2019), in which Jason Carter and I represented the class, Judge Adams (DeKalb) awarded 33 percent of a $117.5 million settlement in 2020. In *Owens v. Metropolitan Life Inssurance Co.*, Case No. 2:14-cv-00074, in the U.S. District Court for the Northern District of Georgia, in which Jason Carter and I represented the class, Judge Richard Story awarded class counsel 33.3 percent of the common fund of $80 million dollars in November 2019. In another case in which I was counsel, the Northern District of Georgia approved a fee award of 33.33% to class counsel who negotiated a $75 million common fund settlement, holding that percentage for such a sizeable settlement was "in keeping with fee awards in highly complex, multi-year cases." *Columbus Drywall & Insulation, Inc. v. Masco Corp*., No. 1:04-cv-3066-JEC, 2012 WL

12540344, at *1 (N.D. Ga. Oct. 26, 2012) (emphasis added). This is a "highly complex, multi-year case" such as that referred to in the *Columbus Drywall* opinion referenced above. This case also has been extensively litigated. The *Columbus Drywall* case took eight years. This case took almost sixteen years. Similarly, in *Barnes III* (cited above), "the 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*, 281 Ga. 256 (2006). 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. 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 v. City of Atlanta*, 275 Ga. App. at 392.

41.

One third of the amount that the efforts of class counsel make available to the class is the prevailing fee in recent class cases. *See, e.g.*, *In re Clarus Corp. Sec. Litig*., No. 1:00-cv-02841 (N.D. Ga. Jan. 6, 2005) (**33.33%**); *In re Pediatrics Servs. of Am., Inc. Sec. Litig*., 1:99-cv-00670 (N.D. Ga. Mar. 15, 2002) (**33.33%**); *In re Profit Recovery Group Int'l, Inc*. Sec. Litig., No. 1:00-CV-1416-CC (N.D. Ga. May 26, 2005) (**33.33%**); *In re Theragenics Corp., Sec. Litig*., No. 1:99-CV-0141-TWT (N.D. Ga. Sept. 29, 2004) (**33.33%**); *In re Harbinger Corp. Sec. Litig*., No. 1:99-CV-2353-MHS (N.D. Ga. Oct. 18, 2001) (**33.33%**); *In re The Maxim Group, Inc. Sec. Litig*., No. 1:99-CV- 1280-CAP (N.D. Ga. July 20, 2004) (**33.33%**); *In re Terazosin Hydrochloride Antitrust Litig*., 1:99-MD-01317-PAS (S.D. Fla. April 19, 2005) (**33 1/3 %** of settlement of over $30 million); *In re Medirisk, Inc. Sec. Litig*., No. 1:98-CV-1922-CAP (N.D. Ga. Mar. 22, 2004) (**33.33%**); *Meyer v. Citizens & S. Nat'l Bank*, 117 F.R.D. 180 (M.D. Ga.

1987) (**33.3%**); *Gutter v. E.I. Dupont De Nemours & Co.,* 1:95-cv-02152 [Dkt. 626] (S.D. Fla. May 30, 2003) (**33.33 %** of settlement of $77.5 million); *Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291 (11th Cir. 1999) (**33.33 %** of settlement of $40 million); *Morgan v. Public Storage*, No. 1:14-cv-21559 [Dkt. 407] (S.D. Fla. Mar. 10, 2016) (awarding **33%**).[2]

42.

Indeed, many cases are even higher than 33.33 percent. *See Zinman v. Avemco Corp*., No. 75-1254, 1978 WL 5686 (E.D. Pa. Jan. 18, 1978) (**50%**); *Aamco Automatic Transmissions, Inc. v. Tayloe*, 82 F.R.D. 405 (E.D. Pa. 1979) (**43.87%**); *In re Ampicillin Antitrust Litig*., 526 F. Supp. 494 (D.D.C. 1981) (**40.4%**); *Howes v. Atkins*, 668 F. Supp. 1021 (E.D. Ky. 1987) (**40%**); *Fernandez v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 15-22782-CIV, 2017 WL 7798110, at *4 (S.D. Fla. Dec. 18, 2017) (**35%**); *In re Managed Care Litig. v. Aetna*, MDL No. 1334, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003) (fees and costs of **35.5%** of settlement of $100 million); *Ratner v. Bennett*, No. 92-4701, 1996 WL 243645 (E.D. Pa. May 8, 1996) (**35%**); *In re Crazy Eddie Sec. Litig*., 824 F. Supp. 320 (E.D.N.Y. 1993) (**33.85%** of settlement fund). The *Camden* Court noted that "an upper limit of 50% of the fund may be stated as a general rule, although even larger percentages have been awarded." 946 F.2d at 774-75 (internal citations omitted).

[2] Federal Cases, including particularly those from Georgia, are in accord. "[E]mpirical studies show that ... fee awards in class actions average around one-third of the recovery[,]" and "[t]he average percentage awarded in the Eleventh Circuit mirrors that of awards nationwide – roughly one third." *Wolff v. Cash 4 Titles*, No. 03-cv-22778, 2012 WL 5290155, at *5 (S.D. Fla. Sept. 26, 2012) (collecting cases), adopted, 2012 WL 5289628 (S.D. Fla. Oct. 25, 2012); accord *George v. Academy Mortg. Corp*., 369 F. Supp. 3d 1356, 1382 (N.D. Ga. 2019) (collecting cases in which fees were awarded in the amount of one-third of the recovery); *Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291, 1294-95 (11th Cir. 1999) (affirming a fee award of one-third of a $40 million settlement plus expenses); *Muransky v. Godiva Chocolatier, Inc*., 922 F.3d 1175, 1195-96 (11th Cir. 2019) (affirming a fee award of one-third of a $6.3 million settlement), vacated on other grounds, 939 F.3d 1279.

43.

At least 12 Georgia cases have recently awarded **40%.** *Coleman v. Glynn County*, Civil Action No. CE12-01785-063, Superior Court of Glynn County, November 8, 2019; *Old Town Trolley Tours of Savannah, Inc. v. Mayor and Aldermen of Savannah*, Civil Action No. SPCV20-00767-MO, Superior Court of Chatham County, February 17, 2021; *Altamaha Bluff , LLC v. Thomas,* Civil Action No. 14CV0376, Superior Court of Wayne County, October 19, 2020; *Anderson v. Chatham County*, Civil Action No. SPCV21-01165-CO, Superior Court of Chatham County, March 1, 2024; *Bailey v. McIntosh County*, Civil Action No. SUV2021000009, Superior Court of McIntosh County, May 5, 2022; *Schreck v. Brooks County*, Civil Action No. 23-CV-00067, Superior Court of Brooks County, August 18, 2025; *DRT Investments, LLC v. Emanuel County*, Civil Action No. 25CV00072, Superior Court of Emanuel County, November 5, 2025; *Deer Run Timber, LLC v. Johnson County*, Civil Action No. 2023-CV-0125, Superior Court of Johnson County, February 10, 2025; *Nixon v. City of Darien, Georgia,* Civil Action No. SUV2023000081, Superior Court of McIntosh County, February 20, 2023; *Grange Investments, LLC v. City of Port Wentworth*, Civil Action No. SPCV23-00216-KA, Superior Court of Chatham County, June 10, 2025; *Toledo Manufacturing Co. v. Charlton County*, Civil Action No. SUCV201900232, Superior Court of Charlton County, December 9, 2020; *VTAL Real Estate, LLC v. Mayor and Aldermen of Savannah*, Civil Action No. SPCV21-00789-CO, Superior Court of Chatham County, September 15, 2023.

44.

Given the complexity, burden and risk associated with this case, the requested fee of 33.3% is well in line with the case law and is reasonable.[3] *Johnson v. Midwest Logistics Sys., Ltd.*, No. 2:11-CV-1061, 2013 WL 2295880 (S.D. Ohio May 24, 2013) (approving 33% attorneys' fees and expense award in common fund settlement); *In re Se. Milk Antitrust Litig.*, No. 2:08-MD-1000, 2013 WL 2155387, at *3 (E.D. Tenn. May 17, 2013) (approving 33% attorneys' fees award [totaling $52.9 million] in common fund settlement and noting that "the percentage requested is certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit"); *Rotuna v. West Customer Mgmt. Grp*., No. 4:09-CV-1608, 2010 WL 2490989, at *7 (N.D. Ohio June 15, 2010) (approving attorneys' fees award of 33% in common fund case); *Bessey v. Packerland Plainwell, Inc*., No. 4:06-CV-95, 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**'") (citation omitted) (emphasis added); *Dallas v. Alcatel-Lucent USA, Inc*., No. 09-14596, 2013 WL 2197624, at *12 (E.D. Mich. May 20, 2013) (preliminarily approving 33% attorneys' fees award in common fund settlement of collective action and noting that "[v]arious

[3] In opining that the requested fee is reasonable, I have considered the *Camden I/Johnson* factors: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and the length of the professional relationship with the client; and (12) awards in similar cases. *See Camden I*, 946 F.2d at 772 n.3 (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)).

courts have expressed approval of attorney fees in common fund cases at similar or higher percentages").[4]

45.

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 approximately sixteen years (delaying any fee and expense payment to Class Counsel for all of that time); the case 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.

46.

The procedural history of the case is set forth above and in Plaintiffs' Unopposed Motion for Attorney's Fees, Expenses and Service Awards. That procedural history is an important factor in formulating my opinion that 33.3% is a reasonable fee here. The amount of work, the quality of the work, the novel nature, complexity and difficulty of the issues ,and the success of the work more than justify a fee of 33.33 percent of the Settlement Amount.[5]

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[4] *See, 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**") (emphasis added); 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, Champs Sports Bar & Grill Co. v. Mercury Payment Systems, LLC*, No. 1:16-CV-00012-MHC (N.D. Ga. July 31, 2017) (Doc. 82-1 at 4-5) (**90% of the hundreds of common fund settlements a leading Atlanta mediator has negotiated provide for a fee of one-third of the benefit**).

[5] "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*, No. 12-cv-103-CAP, 2014 WL 12740375, at *13 (N.D. Ga. May 19, 2014). Here, SunTrust spared no expense to defend this case by hiring several top notch, experienced law firms and providing them with the resources to mount a vigorous defense. The law firms that represented SunTrust include: Williams & Connolly LLP; Gibson, Dunn & Crutcher LLP; Troutman Sanders, LLP; Bradley Arant Boult Cummings LLP; Rogers & Hardin LLP; and, Parker Hudson Rainer & Dobbs LLP.

47.

Class Counsel have obtained an extraordinary result for the class in this highly complex and problematic case.

48.

It is my opinion that a fee award of 1/3 (33.33 percent) of the Settlement Amount, that is, $80 million, is a reasonable fee under all of the circumstances.

Expenses

49.

Class Counsel incurred a combined $1,750,604.63 in expenses in connection with the prosecution of this case for which they seek reimbursement.[6]

50.

I am the lead partner at Bondurant who approves the expenses, and the custodian of the records. Our records show case expenses of $1,722,667.44 for which we seek reimbursement. The chart attached hereto as Exhibit A shows the categories of expenses and amounts for each category. The expenses advanced by the Finley Firm ($27,937.19) are supported by the Affidavit of J. Benjamin Finley, submitted contemporaneously herewith.

[6] I have exercised billing judgment to exclude certain incurred expenses from this total. There were more than $150,000 of additional expenses that, while reasonable and necessary, were not of a type normally submitted for reimbursement in class actions. Thus, we are not seeking reimbursement for them. For example, during the sixteen years of this litigation, there were several attempts to amend Georgia statutes to exculpate the conduct at issue and preclude recovery for the class. Class counsel hired lobbyists to monitor, review and advise on such legislation. The expenses of these lobbyists are NOT included herein. Another example of excluded expenses are upgrades to first class airfare. Such upgrade costs are NOT included.

51.

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. These expenses were reasonable and necessary for the prosecution of this action.

52.

This case required a number of testifying and consulting experts. Given the complex banking and consumer finance issues that SunTrust raised in arguing that overdrafts are not loans and are beneficial to consumers, Class Counsel hired and disclosed banking and consumer finance experts Dr. Scott Hein and Dr. Marco DiMaggio. Class Counsel hired damages and accounting expert Karen Fortune to calculate the interest rate on the various overdraft loans, a crucial liability issue, and to quantify prejudgment interest—an important part of the Class's damages. Because the State Court's class definition required Class Counsel to prove Georgia Citizenship on a class wide basis, that required the Class to hire Dr. Charles Cowan and other experts at Analytic Focus, LLC. The Class Counsel also hired an additional demographic expert to assist with complying with the class definition after the Court of Appeals opinion in *Bickerstaff V*. In addition to these legal issues, Class Counsel had to address the terabytes of data that SunTrust had to process and produce in order to identify the various individuals who had paid the overdraft fees relevant to this litigation and to quantify those fees. SunTrust hired Ankura Consulting Group, LLC. Class Counsel was required to pay a portion of Ankura's fees and expenses. Class Counsel hired Art Olsen, one of the foremost experts on banking overdraft data, to assist with this process and to both identify the Class and quantify damages. All of these experts were necessary for the proper litigation of this complex case. SunTrust rebutted and

heavily litigated the expert testimony, including depositions, rebuttal reports, and motions to exclude every single expert opinion proffered on behalf of the Class. In addition, Class Counsel had to research and depose SunTrust's experts on finance, accounting, banking, as well as citizenship and damages. These experts tendered wide-ranging testifying opinions and voluminous reports. In fact, by March 6, 2024, SunTrust had spent over $1.7 million dollars tendering these testifying experts. Defendant SunTrust Bank's Statement of Expert Compensation at 2-5.

Incentive Payment for Class Representative

53.

Class Counsel recommend and request an incentive payment of $200,000 for the Estate of Jeff Bickerstaff. The circumstances and service of the class representative(s) in this case were extraordinary.

54.

To begin, Jeff Bickerstaff was a banker, and that experience helped him to recognize that there was a problem with the overdraft program at SunTrust. He explained to Class Counsel various practical aspects of banking overdraft programs and was available to answer questions.

55.

SunTrust served Offers of Settlement pursuant to O.C.G.A. 9-11-68 on Jeff Bickerstaff, offering to pay him a multiple of his personal damages if he would dismiss the case, and notifying him that he was potentially personally liable for SunTrust's attorney fees[7] and expenses for defending the case if he turned down the offer and ultimately recovered less than 75% of the offered amount. *See* Emergency Motion to Strike SunTrust's Second Offer of Settlement; Order

[7] Unlike Fed.R.Civ. P. 68, O.C.G.A. 9-11-68 shifts not only expenses, but also attorney fees.

Denying Plaintiff's Emergency Motion to Strike SunTrust's Second Offer of Settlement. Class Counsel advised Jeff that the money being offered was a multiple of what he could recover as his personal damages in the case, and that he was exposed to potentially millions of dollars of personal liability for SunTrust's fees if he turned down the offer and ultimately recovered less than was offered, as was substantially certain to occur absent recovery for a class. He was also told that taking the money and dismissing the case would preclude a recovery for absent class members. Nonetheless, Jeff put the interests of absent class members before his own interests and rejected the Offer of Settlement.

56.

Jeff Bickerstaff also served as an active and involved class representative despite being in very bad health. When he realized that the end of his life was approaching, he reached out to Class Counsel to make sure that plans were in place to continue the case after his death. He cooperated with Class Counsel in redoing his estate plan to make sure that the executrix of his estate was authorized and directed by his will to continue the case and protect the interests of absent class members. He also discussed with his designated executrix and the back-up executor his strong commitment to the case and made sure they understood and agreed with this commitment.

57.

After Jeff's death, his mother, Ellen Bickerstaff, became the executrix of Jeff's Estate. In that capacity, she was substituted for Jeff as class representative by the Supreme Court of Georgia over SunTrust's opposition. Ellen honored Jeff's wish to continue the case. She actively participated as the class representative. She was deposed by SunTrust even though she had no personal knowledge of the overdraft transactions at issue.

58.

When Ellen became class representative, SunTrust sent her a settlement offer/demand, informing her that she would be in conflict with her duties as executrix of the Estate if she rejected the offer and continued the litigation. Nonetheless, Ellen placed the interests of the class before her own interests and rejected SunTrust's offer.

59.

When Ellen died in 2022, Jeff's brother (Ellen's other son) Charles Daniel Bickerstaff ("Dan") was appointed as replacement executor of Jeff's estate. Again, over SunTrust's opposition, Dan was appointed as replacement class representative. Dan was also deposed by SunTrust in this case. Dan was required to answer questions about his brother's personal life, health, final illness and personal finances, as well as his mother's death. Dan has served faithfully as class representative since his mother's death. The contributions to this case for sixteen years by the Bickerstaff family (Jeff, Ellen and Dan), and their steadfast placement of the interests of absent class members above their own is extraordinary and even unique in my experience.

60.

"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. The 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. W. Publ'g Corp.,*

563 F.3d 948, 958–59 (9th Cir. 2009). This description aptly describes the efforts and financial risks undertaken by the Bickerstaffs.

61.

Incentive awards have been as high as $1.7 million. *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006) (awarding $1,766,666.00 to each of eight class representatives and $1,325,000.00 to a ninth representative); *Ingram*, 200 F.R.D. at 694 (awarding incentive awards of $300,000 to each named plaintiff for a total of $1.2 million),

62.

The Court in *Allapattah Services* cited as a factor supporting the incentive award in that case that fact that the class representatives had received and rejected a Rule 68 offer of judgment, thus exposing them to personal risk of paying the defendant's expenses if the offer was not exceeded by the eventual judgment. "Exxon's offer of judgment in August 1998 … was intended to heighten the risk of personal liability for the Class Representatives even if the Class won…. Thus, even a modest victory for the Class could have been financially ruinous for the Class Representatives." *Allapattah*, 454 F. Supp. 2d at 1220–21. The same factor is present here, but to an even heightened degree. That is because, unlike Fed.R.Civ. P. 68, O.C.G.A. 9-11-68 shifts not only expenses, but also attorney fees. Thus, in rejecting SunTrust's Rule 68 Offer, Jeff Bickerstaff took on a personal risk of paying not only SunTrust's case expenses, but its attorney fees as well.

63.

The requested incentive payment to the Class Representative is reasonable and appropriate given the above facts, and based upon my experience in numerous class actions. The 16 year, multi-generational effort and the personal risks of threatened attorney fee awards and/or

breach of fiduciary duty liability make this an exceptional case. It is my opinion that a single incentive payment of $200,000 is reasonable on these extraordinary and unique facts.

FURTHER AFFIANT SAYETH NOT.

Michael B. Terry

Sworn to and subscribed before
me this 17th day of March, 2026.

Notary Public
My Commission Expires:

MILDRED R HORNBLOWER NOTARY PUBLIC STATE OF GEORGIA MY COMM. EXP. 8-5-2027 PAULDING COUNTY, GEORGIA

Exhibit A

Phone Charges	$31.46
Outside Copying Charges	$599.00
Travel Expenses	$16,504.85
Business Meals	$2,331.78
Local Mileage/Parking	$506.89
On-Line Electronic CourtLink Services	$853.79
Charge for trial and deposition transcripts	$46,295.56
Charge for video depositions	$41,741.11
Witness Fees & Expenses	$194.48
Expert Witnesses and Consultants Fees & Expenses[8]	$836,048.53
Certified Copies	$109.00
Filing Fees	$24,049.96
Service of subpoena/process	$125.00
Delivery Service	$517.33
Online Court Record Access	$1,236.24
Conference Call Charges	$896.20
Court Reporters/Depositions	$203.05
Document Services/Imaging/Production/Tech	$480,478.87
Arbitration/Mediation Service	$21,000.00
Travel/Parking	$20.00
Reports/Record Search	$604.25
Books & Articles	$775.32
Court Fees	$1,070.00
Messenger Service	$170.08
Postage	$6.51
Westlaw Research	$51,905.27
Lexis Research	$43,184.88
Court Deliveries	$190.00
Data Processing -	$41.58
Data Hosting/Storage -	$30,904.25
Copying Charges	$5,598.20
Color laser printing	$118.00
Color Copies	$735.00
Mock trial/focus group fees	$76,746.00
Consultants/non-testifying	$36,591.00
Private Investigator	$284.00
Total	$1,722,667.44

[8] The fees and expenses in this category include the testifying and consultant experts identified in Paragraph 52 above.

EXHIBIT D

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CHARLES DANIEL BICKERSTAFF, as Executor of the Estate of JEFF BICKERSTAFF, JR., on behalf of himself and all persons similarly situated,	)	CIVIL ACTION
Plaintiff,	)	FILE NO. 10EV010485H
v.	)	
SUNTRUST BANK,	)	
Defendant.	)	

AFFIDAVIT OF J. BENJAMIN FINLEY

STATE OF GEORGIA

COUNTY OF MUSCOGEE

Personally appeared before the undersigned officer duly authorized to administer oaths, J. Benjamin Finley, who, after being duly sworn, states as follows:

1.

My name is J. Benjamin Finley. I am sui juris, over the age of eighteen (18), and competent to testify to the matters stated herein.

2.

I have practiced law in the State of Georgia for the past thirty-four (34) years.

3.

I am in good standing with the State Bar of Georgia and serve as counsel of record in the matter of *Bickerstaff v. SunTrust*.

4.

Over the past sixteen (16) years handling the *Bickerstaff v. SunTrust* matter, my law firm has incurred case expenses as set forth in the documentation attached hereto.

5.

To date, my law firm has not been reimbursed for these expenses, and we respectfully submit them for reimbursement as part of the settlement of the *Bickerstaff v. SunTrust* matter.

6.

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, expert witness expenses, court reporters, photocopies, travel expenses, electronic/computerized research, etc. These expenses were reasonable and necessary for the prosecution of this action.

7.

I have personal knowledge of the facts stated in this Affidavit.

8.

The statements made in this Affidavit are true and correct to the best of my knowledge and belief.

FURTHER AFFIANT SAITH NOT.

This 16th day of March, 2026.

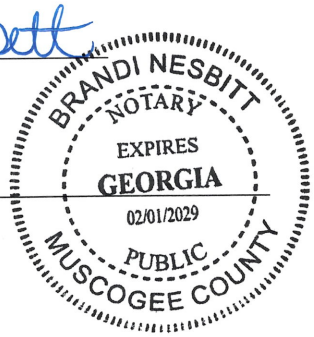
J. Benjamin Finley, Esq.

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 16TH DAY OF MARCH, 2026.

Notary Public

My Commission Expires:



INVOICE

Invoice # 10715
Date: 03/13/2026
Due On: 04/12/2026

The Finley Firm P.C.

200 13th St
Columbus, GA 31901
TAX ID No 26-0195637

Mr. Jeff Bickerstaff
1537 Dixon Dr.
Columbus, GA 31906

Bickerstaff, Jeff/Suntrust

Client Reference Number:

Type	Date	Attorney	Notes	Quantity	Rate	Total
Expense	02/28/2026	JBF	Online Research	1.00	$1,293.11	$1,293.11
Expense	02/28/2026	JBF	Copy Charges	1.00	$83.80	$83.80
Expense	02/28/2026	JBF	Hotel Fees	1.00	$7,839.12	$7,839.12
Expense	02/28/2026	JBF	Meals	1.00	$2,919.57	$2,919.57
Expense	02/28/2026	JBF	Parking	1.00	$143.09	$143.09
Expense	02/28/2026	JBF	Airfare	1.00	$149.41	$149.41
Expense	02/28/2026	JBF	Postage	1.00	$24.82	$24.82
Expense	02/28/2026	JBF	Mileage	1.00	$4,929.70	$4,929.70
Expense	02/28/2026	JBF	Filing Fees	1.00	$61.01	$61.01
Expense	02/28/2026	JBF	Local Travel (Uber)	1.00	$108.52	$108.52
Expense	02/28/2026	JBF	Experts	1.00	$3,650.00	$3,650.00
Expense	02/28/2026	JBF	Transcript Services	1.00	$6,735.04	$6,735.04
					Subtotal	**$27,937.19**
					Total	**$27,937.19**

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 2026, a true and correct copy of the foregoing **PLAINTIFF'S UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD, AND BRIEF IN SUPPORT** was electronically filed with the Clerk of Court using the Court's Odyssey Efile GA electronic filing system which will automatically send an email notification of such filing to all attorneys of record.

/s/ Michael B. Terry
Michael B. Terry